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FEDERAL REGISTER

Vol. 78 Monday,

No. 23 February 4, 2013

Pages 7641–7992

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHEN: Tuesday, February 12, 2013
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Federal Register

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0794; Directorate Identifier 2006–SW–04–AD; Amendment 39–17319; AD 2013–01–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) Model AS350B3 and EC130B4 helicopters. This AD requires revising the Limitations section of the Rotorcraft Flight Manual (RFM) to reduce the starter generator operating current to 180 amperes (amps) and installing a placard in the instrument panel indicating the revised limitation. This AD was prompted by the determination that the manufacturer-installed Aircraft Parts Corporation (APC) starter generator has exceeded the shaft horse power extractions allowed for Turbomeca engines. The actions of this AD are intended to prevent the engine surge margin being reduced, which can result in engine failure.

DATES: This AD is effective March 11, 2013.

ADDRESSES: For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5110, fax (817) 222–5961, email *chinh.vuong,@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On July 30, 2012, at 77 FR 44513, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Model AS350B3 and EC130B4 helicopters with an APC 200-amp starter generator, part number 200SGL130Q, installed. That NPRM proposed to require, within the next 100 hours time-in-service (TIS), revising the Limitations section of the RFM to reduce the starter generator rating to 180 amps and installing a placard on the instrument panel below the vehicle engine multifunction display indicating the starter generator reduced limitation: ''MAXIMUM CONTINUOUS GENERATOR LOAD 180A.'' The proposed requirements were intended to prevent the engine surge margin being reduced, which can result in engine failure.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2006–0337, dated November 7, 2006, to correct an unsafe condition for the Eurocopter Model AS350B3 and EC130B4 helicopters. EASA advises that the power drawn by an APC 200 amp starter generator from the engine is above the consumption capacity for the specified Eurocopter model helicopters. Excessive power consumption of the starter generator reduces the engine surge margin, which can result in engine failure.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (77 FR 44513, July 30, 2012).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the EASA AD

We require that this AD be accomplished within 100 hours TIS, rather than 110 flight hours or 12 months as stated in the EASA AD.

Related Service Information

Eurocopter has issued Alert Service Bulletins (ASBs) No. 01.00.57 for the Model AS350B3 helicopters and No. 04A002 for the Model EC130B4 helicopters. Both ASBs are Revision 1 and both are dated September 14, 2006. The ASBs specify defining the limitation for the APC 200-amp starter generator. EASA classified these ASBs as mandatory and issued AD No. 2006–0337, dated November 7, 2006, to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD will affect 363 helicopters of U.S. Registry.

We estimate that operators may incur the following costs in order to comply with this AD. It will cost $21.25, assuming it takes 15 minutes to revise the RFM and install a placard on the

instrument panel of each helicopter at an average labor rate of $85 per work hour, or $7,714 for the fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–01–05 Eurocopter France: Amendment 39–17319; Docket No. FAA–2012–0794; Directorate Identifier 2006–SW–04–AD.

(a) Applicability

This AD applies to Model AS350B3 and EC130B4 helicopters with an Aircraft Parts Corporation 200-ampere (amp) starter generator, part number 200SGL130Q, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as excessive power consumption of the starter generator, which reduces the engine surge margin. This condition could result in engine failure and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective March 11, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Within the next 100 hours time-in-service:

(1) Revise Paragraph 2, Limitations, of the Rotorcraft Flight Manual Supplement 29 to reduce the maximum current of the starter generator to 180 amps Max. continuous.

(2) Install a placard, 125 millimeters long by 10 millimeters wide, on the instrument panel below the vehicle engine multifunction display indicating the starter generator reduced limitation: ''MAXIMUM CONTINUOUS GENERATOR LOAD = 180A.''

(f) Alternative Methods of Compliance (AMOC)

(1) The Manager, Safety Management Group, Rotorcraft Directorate, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5110, fax (817) 222–5961, email *chinh.vuong@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Eurocopter Alert Service Bulletins No. 01.00.57 and No. 04A002, both Revision 1, and both dated September 14, 2006, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, TX 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.* You may review copies of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in European Aviation Safety Agency AD No. 2006–0337, dated November 7, 2006.

(h) Subject

Joint Aircraft Service Component (JASC) Code: Starter-Generator 2435.

Issued in Fort Worth, Texas, on January 9, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–02236 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0731; Directorate Identifier 2012–CE–020–AD; Amendment 39–17334; AD 2013–02–13]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (type certificate previously held by The New Piper Aircraft Inc.) PA–28, PA–32, PA–34, and PA–44 airplanes. This AD was prompted by reports of control cable assembly failures that may lead to failure of the horizontal stabilator control system and could result in loss of pitch control. This AD requires inspections of the stabilator control system and replacement of parts as necessary. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective March 11, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 11, 2013.

ADDRESSES: For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *http://www.piper.com/pages/publications.cfm.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Hector Hernandez, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5587; fax: (404) 474–5606; email: *hector.hernandez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on August 2, 2012 (77 FR 45979). That NPRM proposed to require inspections of the stabilator control system and replacement of parts as necessary.

Comments

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

Request To Rescind the AD

Gregory E. Sniegowski, Carl Poplawsky, and Eric Stendahl stated that since inspections of the control systems and pulleys are already part of the annual inspection, the requirements of this AD would seem to be redundant and that the NPRM should be withdrawn.

We do not agree. The service difficulty report (SDR) database shows that certain Piper models have multiple reports of cracks, corrosion, failure of the turnbuckle, control cable fraying, or cable swage end breaks. This AD was prompted by reports concerning an accident on a Piper Model PA–32R–301T and an incident on a Piper Model PA–32R–300 airplane.

NTSB Support

Deborah A.P. Hersman, Chairman, National Transportation Safety Board (NTSB), stated that two special airworthiness information bulletins (SAIBs) have been issued that recommend inspecting the entire surface of each cable terminal, turnbuckle, or other cable fittings for corrosion or cracking. Within the past 2 years, the NTSB has investigated two accidents and one incident involving Piper airplanes where control cable assembly failures due to stress corrosion cracking led to failures of the horizontal stabilator control system. She stated that the fact these events continue to occur more than 10 years after the SAIBs were issued shows that the SAIBs were not effective. The NTSB supports the need for this AD.

We concur with the findings by the NTSB.

Removal of Surface Corrosion

Joseph Boenzi stated that we should revise the AD to allow an individual to remove the surface corrosion on a turnbuckle by using a cleaning agent and then making a determination if the part is airworthy. There have been reports that surface corrosion on turnbuckles could be easily removed with scotch-brite.

We agree because Piper investigated the possibility of using scotch-brite to remove surface corrosion and found it to be acceptable. We will change this AD to reference the revised Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245A, dated November 28, 2012, which incorporated cleaning agents and scotch-brite.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 45979, August 2, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 45979, August 2, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 34,013 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the horizontal stabilator control system.	5 work-hours × $85 per hour = $425	Not applicable ..	$425	$14,455,525

We estimate the following costs to do any necessary replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of all stabilator control cable system—per set of cables.	10 work-hours × $85 per hour = $850	$608	$1,458

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–02–13 Piper Aircraft, Inc.: Amendment 39–17334; Docket No. FAA–2012–0731; Directorate Identifier 2012–CE–020–AD.

(a) Effective Date

This AD is effective March 11, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Models PA–28–236, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–181, PA–28–201T, PA–28R–201, PA–28–235, PA–28R–201T, PA–28S–160, PA–28S–180, PA–28R–180, PA–28R–200, PA–28RT–201, PA–28RT–201T, PA–32–260, PA–32–301, PA–32–301T, PA–32–300, PA–32R–300, PA–32R–301T, PA–32R–301 (SP), PA–32R–301 (HP), PA–32RT–300, PA–32RT–300T, PA–32S–300, PA–32–301FT, PA–32–301XTC, PA–34–200, PA–34–200T, PA–34–220T, PA–44–180, and PA–44–180T airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2740, Stabilizer Control System.

(e) Unsafe Condition

This AD was prompted by reports of control cable assembly failures that may lead to failure of the horizontal stabilator control system and could result in loss of pitch control. This AD requires inspections of the stabilator control system and replacement of parts as necessary. We are issuing this AD to correct the unsafe condition on these products.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

(1) Initially inspect the stabilator control system following instructions 1 through 10 of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245A, dated November 28, 2012, as follows:

(i) *If the age of the airplane is at or exceeds 15 years as of March 11, 2013 (the effective date of this AD*): At the next annual inspection or within the next 12 months after March 11, 2013 (the effective date of this AD).

(ii) *If the age of the airplane is less than 15 years as of March 11, 2013 (the effective date of this AD):* When the age of the airplane reaches 15 years, then at the next annual inspection or within 12 months after the airplane reaches 15 years of age.

(iii) If the age of the airplane cannot be determined as of *March 11, 2013 (the effective date of this AD):* At the next annual inspection or within the next 12 months after March 11, 2013 (the effective date of this AD).

Note for paragraph (g)(1)(i), (g)(1)(ii), and (g)(1)(iii) of this AD: To assist in determining the age of the airplane, you may contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: www.piper.com; or access the FAA airplane registry database at: *http://registry.faa.gov/aircraftinquiry/Serial_Inquiry.aspx.*

(2) After the applicable initial inspection required in paragraph (g)(1) of this AD, repetitively thereafter at intervals not to exceed 2,000 hours time-in-service or 7 years, whichever occurs first, inspect the stabilator control system following instructions 1 through 10 of Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245A, dated November 28, 2012.

(h) Repair

If any cracks, corrosion, or cable fraying are found during any inspection required in paragraphs (g)(1) or (g)(2) of this AD, before further flight, replace the damaged part with an airworthy part.

(i) Credit for Actions Accomplished in Accordance With Previous Service Information

This AD provides credit for the actions required in this AD if already done before March 11, 2013 (the effective date of this AD) following Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245, dated May 3, 2012.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(k) Related Information

For more information about this AD, contact Hector Hernandez, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; telephone: (404) 474–5587; fax: (404) 474–5606; email: hector.hernandez@faa.gov.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Piper Aircraft, Inc. Mandatory Service Bulletin No. 1245A dated November 28, 2012.

(ii) Reserved.

(3) For Piper Aircraft, Inc. service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; Internet: *http://www.piper.com/pages/publications.cfm.*

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on January 22, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–02075 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0082; Directorate Identifier 2010–SW–036–AD; Amendment 39–17318; AD 2013–01–04]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc., Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Bell Helicopter Textron, Inc. (Bell), Model 412 and 412EP helicopters. This AD requires creating a component history card or equivalent record and begin counting and recording the number of accumulated landings for each high aft crosstube assembly (crosstube). Also, this AD requires installing ''caution'' decals regarding towing of a helicopter at or above 8,900 pounds. This AD also requires confirming the crosstube is within the horizontal deflection limits and replacing it if it is not. This AD also requires a recurring fluorescent penetrant inspection (FPI) of each crosstube and upper center support for a crack, any corrosion, nick, scratch, dent, or any other damage. This AD requires repairing damaged crosstubes and upper center supports that are within acceptable limits, reworking crosstubes by bonding on abrasion strips, and replacing each unairworthy crosstube with an airworthy crosstube. This AD was prompted by analysis of the crosstubes conducted as a result of recent field failures and corrosion problems of the affected crosstubes. The actions are intended to prevent failure of a crosstube, collapse of the landing gear, and subsequent loss of control of the helicopter.

DATES: This AD is effective March 11, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain document listed in this AD as of March 11, 2013.

ADDRESSES: For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *7-avs-asw-170@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On February 3, 2012, at 77 FR 5427, the **Federal Register** published our notice of proposed rulemaking (NPRM), which proposed to amend 14 CFR part 39 to include an AD that would apply to Bell Model 412 and 412EP helicopters. That NPRM proposed to require counting and recording the number of accumulated landings for each crosstube on a component history card or equivalent record and installing CAUTION decals regarding towing a helicopter that weighs at or above 8,900 pounds. The NPRM also proposed to require confirming that the crosstube is within the horizontal deflection limits and replacing it if it is not. Also, the NPRM proposed to require a recurring FPI of each crosstube and upper center support for a crack, any corrosion, a nick, scratch, dent, or other damage, repairing each damaged crosstube and upper center support if there is damage within acceptable limits, reworking each crosstube by bonding abrasion strips, and replacing each unairworthy crosstube.

The affected crosstubes are the older non-anodized configuration and have had a service history of corrosion problems. In response to reports of field failures, Bell has completed a load level survey, material coupon testing, and additional analysis of the crosstubes. The results indicate that fatigue damage can occur during towing and landing. The proposed requirements were intended to prevent failure of a crosstube, collapse of the landing gear, and subsequent loss of control of the helicopter.

Comments

After our NPRM (77 FR 5427, February 3, 2012) was published, we received comments from one commenter.

Request

One commenter objected to the proposal because of ''continual noise, pollution and aggravation as a result of low flying planes.'' The commenter expressed concern about additional airplanes operating at lower altitudes for longer periods of time over her home near Peachtree-Dekalb Airport, Georgia. We find that this comment does not pertain to the NPRM (77 FR 5427,

February 3, 2012) regarding Bell Model 412 and 412EP helicopters, and believe the comment was attached to the NPRM in error. We find the comment does not warrant extending the comment period or withdrawing the proposed action.

FAA's Determination

We have reviewed the relevant information, considered the comment received, and determined that an unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Related Service Information

We have reviewed Bell Helicopter Alert Service Bulletin No. 412–09–135, dated August 25, 2009 (ASB). The ASB specifies, within 6 months after receiving the ASB, for each affected crosstube, a recurring 12 month/2500 landing FPI, a recurring 12 month/2500 landing deflection check, and use of a towing retention kit per BHT–412–SI–58 Gross Weight Towing Kit Provisions and Puller Equipment for helicopters that weigh 8900 pounds or higher.

Costs of Compliance

We estimate that this AD will affect 115 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. It will take about 1 work-hour to create a component history card or equivalent record and begin to determine and record the number of accumulated landings; 0.5 work-hour to install caution decals on the pilot and co-pilot side of each helicopter; 0.5 work-hour to measure the horizontal deflection of each crosstube; 3 work-hours to inspect and prepare the area and do an FPI on each crosstube; 4 work-hours to rework a crosstube, assuming 5 will need to be reworked; and 2 work-hours to replace a crosstube, assuming 3 will need to be replaced. The average labor rate is $85 per work-hour and required parts for a replacement crosstube will cost about $9,315 per helicopter. Based on these figures, we estimate the total cost impact of this AD on U.S. operators to be $79,030.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–01–04 Bell Helicopter Textron, Inc.: Amendment 39–17318; Docket No. FAA–2012–0082; Directorate Identifier 2010–SW–036–AD.

(a) Applicability

This AD applies to Bell Helicopter Textron, Inc. (Bell), Model 412 and 412EP helicopters with a high aft crosstube assembly (crosstube), part number (P/N) 412–050–011–101, –103, –105, –107; or 412–050–045–105, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure and corrosion of the affected crosstubes. This condition could result in collapse of the landing gear and subsequent loss of control of the helicopter.

(c) Effective Date

This AD becomes effective March 11, 2013.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

(1) Within 50 hours time-in-service (TIS):

(i) For each crosstube, create a component history card or equivalent record. Begin to count and record the number of accumulated landings for each crosstube. For the purposes of this AD, a landing would be counted anytime the helicopter lifts off into the air and then lands again with any further reduction of the collective after the landing gear touches the ground.

(ii) Install CAUTION decals, P/N 212–070–600–143, on the pilot and co-pilot sides of each helicopter as depicted in Figure 3 of Bell Helicopter Alert Service Bulletin No. 412–09–135, dated August 25, 2009 (ASB), and by following the Accomplishment Instructions, Part III—Towing, paragraph 1., of the ASB.

(2) Within 6 months and thereafter at intervals not to exceed 12 months or 2,500 landings, whichever occurs first, determine the horizontal deflection of each crosstube from the centerline of the helicopter (BL 0.0) to the outside edge of each skid tube. Before further flight, replace any crosstube that exceeds any maximum allowable deflection limit contained in the maintenance manual.

(3) Within 6 months and thereafter at intervals not to exceed 12 months or 2,500 landings, whichever occurs first:

(i) Remove and disassemble the landing gear assembly to prepare each crosstube for a fluorescent penetrant inspection (FPI) by following the Accomplishment Instructions, Part I, paragraphs 1. through 9., of the ASB.

Note 1 to paragraph (e)(3)(i) of this AD: Abrasion strip, P/N 206–050–301–111; lower center support, P/N 412–050–007–101, with the incorporated Larson L101 abrasion strip; and lower center support, P/N 604–026–003, if installed on any crosstube, P/N 412–050–045–105, or reworked crosstubes, P/N 412–050–011–101, –103, –105, or –107, are only removed if required by following the instructions in the ASB (see items 2, 5, and 6 in Figure 1 of the ASB).

(ii) Clean and prepare the crosstube for the FPI by removing the sealant and paint in the

area depicted in Figure 2 of the ASB by following the Accomplishment Instructions, Part I, ''Cleaning and Preparation,'' paragraphs 1. through 5., of the ASB.

(iii) Perform an FPI of each crosstube and upper center support, P/N 412–050–006–101, for a crack, any corrosion, a nick, scratch, dent, or any other damage by following the Accomplishment Instructions, Part I, ''Inspection,'' paragraphs 1. through 3. of the ASB. Use Table 2 in the ASB to determine the appropriate Inspection Criteria Table to use in the maintenance manual, which list the maximum repair damage limits for each crosstube P/N applicable to this AD.

(iv) Repair the crosstube or upper center support if there is any corrosion, a nick, scratch, dent, or any other damage that is within the maximum repair damage limits, before further flight, or replace the crosstube with an airworthy crosstube.

Note 2 to paragraph (e)(3)(iv) of this AD: The repair procedures are specified in the Component Repair and Overhaul Manual.

(v) If there is a crack or other damage beyond any of the maximum repair damage limits, before further flight, replace the crosstube with an airworthy crosstube.

(4) Before further flight, after completing paragraph (e)(3) of this AD, rework each crosstube P/N 412–050–011–101, –103, –105, or –107 by applying the bonding procedures and abrasion strips on the under side of the crosstubes at BL 0.0 and BL 14 by following the Accomplishment Instructions, Part I, ''Rework of Crosstubes,'' paragraphs 1. through 10. of the ASB. Record on the component history card or equivalent record an ''FM'' to the end of the part number sequence of each crosstube that has been reworked (for example, 412–050–011–107FM). Omit the Larson L101 abrasion strip at BL 0.0 on each crosstube when installing lower center support, P/N 604–026–003 (see item 6 in Figure 1 of the ASB).

(f) Special Flight Permits

Special flight permits for inspections only may be issued under 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Rotorcraft Certification Office, FAA, may approve AMOCs for this AD. Send your proposal to: Michael Kohner, Aviation Safety Engineer, Rotorcraft Certification Office, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; email *7-avs-asw-170@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 3210, Main Landing Gear.

(i) Material Incorporated by Reference

(1) The Director of the **Federal Register** approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bell Helicopter Alert Service Bulletin No. 412–09–135, dated August 25, 2009.

(ii) Reserved.

(3) For Bell Helicopter service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101; telephone (817) 280–3391; fax (817) 280–6466; or at *http://www.bellcustomer.com/files/.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on January 9, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–02238 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0639; Directorate Identifier 2012–NM–005–AD; Amendment 39–17329; AD 2013–02–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD was prompted by a report that the safe life limit and inspection requirements for the horizontal stabilizer trim actuator (HSTA) attachment pins and trunnions were not listed in the Airworthiness Limitations Section of the maintenance program. This AD requires inspecting the trunnions and upper and lower pins for gouges, scratches, and corrosion, and replacing the trunnions if necessary; and adding serial numbers and new part numbers to certain trunnions, and upper and lower pins. This AD also requires revising the maintenance program to incorporate the information specified in certain temporary revisions of the limitations section. We are issuing this AD to detect and correct cracking, gouges, scratches, and corrosion of the HSTA attachment pins and trunnions, which could result in failure of these pins and trunnions and consequent disconnection of the horizontal stabilizer and subsequent loss of controllability of the airplane.

DATES: This AD becomes effective March 11, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 11, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 20, 2012 (77 FR 36948). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> During a review of the Horizontal Stabilizer Trim Actuator (HSTA) system, it was discovered that the safe life limits and the inspection requirements for the HSTA attachment pins and trunnions were not listed in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness. Also, the HSTA attachment pins and trunnions were not serialized making it impossible to keep accurate records of the life of these parts. Failure of these pins and trunnions will lead to a disconnect of the horizontal stabilizer and subsequent loss of the aeroplane.

This [Canadian] Airworthiness Directive (AD) mandates the serialization of the HSTA attachment pins and trunnions.

The required actions include a detailed inspection of the trunnions and upper and lower pins for gouges, scratches, and corrosion, and replacing if necessary; and adding serial numbers and new part numbers to certain trunnions, and upper and lower pins. The required actions also include revising the maintenance program to incorporate the information specified in certain temporary revisions of the limitations section. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Allow Alternative Method of Identifying Parts

Air Wisconsin Airlines Corporation (Air Wisconsin) requested that we allow the use of indelible ink and clear coat to mark the identified HSTA. The commenter stated that the tolerances identified in Bombardier Service Bulletin 601R–27–160, dated September 29, 2011, are too strict to hand vibro-peen these individual parts. The commenter also noted that Bombardier, Inc. is working on a revision to that service bulletin to authorize marking all of these parts with indelible ink and clear coat.

We agree that an alternative method of marking the HSTA would be beneficial to operators. Since the issuance of the NPRM (77 FR 36948, June 20, 2012), Bombardier, Inc. has issued Service Bulletin 601R–27–160, Revision A, dated October 3, 2012, which describes an alternative method for marking the HSTA. We have revised paragraphs (g), (h), (i), and (n) of this AD to reference Bombardier Service Bulletin 601R–27–160, Revision A, dated October 3, 2012. We have also added a new paragraph (j) to this AD to allow credit for actions done before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–27–160, dated September 29, 2011. We have re-identified the subsequent paragraphs accordingly.

Request To Clarify the Term ''Horizontal Stabilizer Trim Actuator (HSTA) Trunnion Support''

Air Wisconsin requested that we clarify what is meant by ''HSTA trunnion support,'' as referenced in paragraph (j) of the NPRM (77 FR 36948, June 20, 2012) and Bombardier Temporary Revision 2B–2180, dated August 8, 2011, to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

We agree to clarify the definition of HSTA trunnion support. The HSTA trunnion support includes the upper and lower attachments of the HSTA to the airframe mounting structure. No change has been made to the AD in this regard.

Request To Make Documents Available to Public

Air Wisconsin requested that the documents ''Aerospace Standard 478'' and ''ATA Report 51–93–01 'Structural Maintenance Program Guidelines for Continuing Airworthiness' '' be made available to the public. The commenter stated that these documents are referenced in Bombardier Service Bulletin 601R–27–160, dated September 29, 2011.

We disagree with the request to make these documents available to the public. At the final rule stage, we post on *www.regulations.gov* only the service information that is approved for incorporation by reference in the final rule by the Office of the Federal Register. Since Aerospace Standard 478 is not a document that is incorporated by reference, we do not make it available on that Web site. However, if the document is not currently in an operator's possession, it can be obtained from the airplane manufacturer at the address specified in paragraph (n)(2) of this AD. We have added an option to paragraph (i) of this AD to allow operators to do the actions using a method approved by the FAA. ATA Report 51–93–01 ''Structural Maintenance Program Guidelines for Continuing Airworthiness'' is not necessary to accomplish the AD actions. It is not necessary for compliance with the AD, and is cited as reference material only.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 36948, June 20, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 36948, June 20, 2012).

Costs of Compliance

We estimate that this AD will affect 586 products of U.S. registry. We also estimate that it will take about 20 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $162 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,091,132, or $1,862 per product.

In addition, we estimate that any necessary follow-on actions would take about 20 work-hours and require parts costing $4,391, for a cost of $6,091 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 36948, June 20, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–02–08 Bombardier, Inc.: Amendment 39–17329. Docket No. FAA–2012–0639; Directorate Identifier 2012–NM–005–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 11, 2013.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, all serial numbers.

(2) This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m)(1) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

(d) Subject

Air Transport Association (ATA) of America Code 27: Flight controls.

(e) Reason

This AD was prompted by a report that the safe life limit and inspection requirements for the horizontal stabilizer trim actuator (HSTA) attachment pins and trunnions were not listed in the Airworthiness Limitations Section of the maintenance program. We are issuing this AD to detect and correct cracking, gouges, scratches, and corrosion of the HSTA attachment pins and trunnions, which could result in failure of these pins and trunnions and consequent disconnection of the horizontal stabilizer and subsequent loss of controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection

At the earliest of the times specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Do a detailed inspection of the trunnions, upper pins, and lower pins identified in table 1 to paragraphs (g) and (h) of this AD, for gouges, scratches, and corrosion, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–160, Revision A, dated October 3, 2012.

(1) Within 5,000 flight hours after the effective date of this AD.

(2) Within 60 months after the effective date of this AD.

(3) Before the accumulation of 40,000 total flight cycles, or within 60 days after the effective date of this AD, whichever occurs later.

TABLE 1 TO PARAGRAPHS (G) AND (H) OF THIS AD—*Affected Parts*

Part name	Part No.
Upper Pin	600–92384–5
Upper Pin	600–92384–7
Upper Pin	601R92310–1
Lower Pin	600–92383–5
Lower Pin	600–92383–7
Lower Pin	601R92309–1
Trunnion	601R92386–1

(h) Replacement

If, during any inspection required by paragraph (g) of this AD, any gouges, scratches, or corrosion are found: Before further flight, replace the affected part with a part other than one identified in table 1 to paragraphs (g) and (h) of this AD, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–160, Revision A, dated October 3, 2012.

(i) Re-Identification

If, during any inspection required by paragraph (g) of this AD, no gouges, scratches or corrosion are found: Before further flight, add serial numbers and new part numbers to the trunnions, upper pins, and lower pins, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–160, Revision A, dated October 3, 2012; or using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g), (h), and (i) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 601R–27–160, dated September 29, 2011 (which is not incorporated by reference by this AD).

(k) Revise Maintenance Program

Within 30 days after the effective date of this AD, revise the maintenance program to incorporate the information specified in Bombardier Temporary Revisions 2B–2180, dated August 8, 2011; and 2B–2186, dated August 8, 2011; to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual (MRM). The compliance time for doing the initial replacement for the HSTA trunnion support and attaching hardware is before the accumulation of 80,000 landings or within 60 days after the effective date of this AD, whichever occurs later. The compliance time for doing the initial inspection of the upper and lower installation pins of the horizontal stabilizer pitch trim actuator is before the accumulation of 40,000 landings or within 60 days after the effective date of this AD, whichever occurs later.

(l) No Alternative Actions or Intervals

After accomplishing the revision required by paragraph (k) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m)(1) of this AD.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue,

Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2011–45, dated December 19, 2011, and the service information specified in paragraphs (n)(1)(i), (n)(1)(ii), and (n)(1)(iii) of this AD, for related information.

(i) Bombardier Service Bulletin 601R–27–160, Revision A, dated October 3, 2012.

(ii) Bombardier Temporary Revision 2B–2180, dated August 8, 2011, to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

(iii) Bombardier Temporary Revision 2B–2186, dated August 8, 2011, to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Bombardier Service Bulletin 601R–27–160, Revision A, dated October 3, 2012.

(ii) Bombardier Temporary Revision 2B–2180, dated August 8, 2011, to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

(iii) Bombardier Temporary Revision 2B–2186, dated August 8, 2011, to Appendix B—Airworthiness Limitations, of Part 2, Airworthiness Requirements, of the Bombardier CL–600–2B19 Maintenance Requirements Manual.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on January 16, 2013.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–01821 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30882; Amdt. No. 3517]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

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

DATES: This rule is effective February 4, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 4, 2013.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR part 97

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

Issued in Washington, DC, on January 18, 2013.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 7 MARCH 2013

Anaktuvuk Pass, AK, Anaktuvuk Pass, AKUMY THREE, Graphic DP
San Martin, CA, South County Arpt of Santa Clara County, GPS RWY 32, Orig-A, CANCELED
San Martin, CA, South County Arpt of Santa Clara County, RNAV (GPS) RWY 32, Orig
San Martin, CA, South County Arpt of Santa Clara County, Takeoff Minimums and Obstacle DP, Amdt 1
Walsenburg, CO, Spanish Peaks Airfield, GOSIP ONE, Graphic DP
Walsenburg, CO, Spanish Peaks Airfield, RNAV (GPS) RWY 9, Orig
Walsenburg, CO, Spanish Peaks Airfield, RNAV (GPS) RWY 27, Orig
Walsenburg, CO, Spanish Peaks Airfield, Takeoff Minimums and Obstacle DP, Orig
Hartford, CT, Hartford-Brainard, LDA RWY 2, Amdt 2
Hartford, CT, Hartford-Brainard, RNAV (GPS) RWY 2, Orig
Hartford, CT, Hartford-Brainard, VOR–A, Amdt 10
Boise, ID, Boise Air Terminal/Gowen Fld, ILS OR LOC/DME RWY 28R, Orig
Boise, ID, Boise Air Terminal/Gowen Fld, RNAV (GPS) Y RWY 28R, Amdt 4
Coeur D'Alene, ID, Coeur D'Alene—Pappy Boyington Field, COEUR D'ALENE TWO, Graphic DP
Chicago/West Chicago, IL, Dupage, RNAV (GPS) RWY 2R, Orig
Chicago/West Chicago, IL, Dupage, RNAV (GPS) RWY 20L, Orig
Moline, IL, Quad City Intl, ILS OR LOC RWY 27, Amdt 2A
Thibodaux, LA, Thibodaux Muni, Takeoff Minimums and Obstacle DP, Orig
Beverly, MA, Beverly Muni, RNAV (GPS) RWY 27, Orig
Beverly, MA, Beverly Muni, RNAV (GPS) RWY 34, Orig
Eveleth, MN, Eveleth-Virginia Muni, GPS RWY 27, Amdt 1A, CANCELED
Eveleth, MN, Eveleth-Virginia Muni, RNAV (GPS) RWY 27, Orig
Eveleth, MN, Eveleth-Virginia Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Eveleth, MN, Eveleth-Virginia Muni, VOR RWY 27, Amdt 1
Eveleth, MN, Eveleth-Virginia Muni, VOR/DME–A, Amdt 2
Greenwood, MS, Greenwood-Leflore, ILS OR LOC RWY 18, Amdt 8
Greenwood, MS, Greenwood-Leflore, RNAV (GPS) RWY 5, Amdt 2
Greenwood, MS, Greenwood-Leflore, RNAV (GPS) RWY 18, Amdt 2
Greenwood, MS, Greenwood-Leflore, RNAV (GPS) RWY 36, Amdt 1
Greenwood, MS, Greenwood-Leflore, Takeoff Minimums and Obstacle DP, Amdt 7
Mount Olive, NC, Mount Olive Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Mount Olive, NC, Mount Olive Muni, VOR–A, Amdt 2
Claremont, NH, Claremont Muni, RNAV (GPS) RWY 29, Orig-A
Trenton, NJ, Trenton Mercer, RNAV (RNP) Y RWY 24, Orig
New York, NY, John F Kennedy Intl, RNAV (GPS) RWY 22R, Amdt 1B
Baker City, OR, Baker City Muni, RNAV (GPS) RWY 13, Amdt 1
Medford, OR, Rogue Valley Intl—Medford, Takeoff Minimums and Obstacle DP, Amdt 10
Erie, PA, Erie Intl/Tom Ridge Field, RNAV (GPS) RWY 6, Amdt 1
Erie, PA, Erie Intl/Tom Ridge Field, RNAV (GPS) RWY 24, Amdt 1
Fayetteville, TN, Fayetteville Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Navasota, TX, Navasota Muni, RNAV (GPS) RWY 17, Orig
Navasota, TX, Navasota Muni, RNAV (GPS) RWY 35, Orig
Navasota, TX, Navasota Muni, VOR–A, Amdt 2
San Marcos, TX, San Marcos Muni, RNAV (GPS) RWY 13, Amdt 1
San Marcos, TX, San Marcos Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Morrisville, VT, Morrisville-Stowe State, Takeoff Minimums and Obstacle DP, Amdt 3

Burlington/Mount Vernon, WA, Skagit Rgnl, NDB RWY 11, Amdt 5
Burlington/Mount Vernon, WA, Skagit Rgnl, RNAV (GPS) RWY 11, Amdt 2
Burlington/Mount Vernon, WA, Skagit Rgnl, RNAV (GPS) RWY 29, Amdt 1
Burlington/Mount Vernon, WA, Skagit Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Greybull, WY, South Big Horn County, NDB RWY 34, Amdt 3
Greybull, WY, South Big Horn County, RNAV (GPS) RWY 7, Orig
Greybull, WY, South Big Horn County, RNAV (GPS) RWY 34, Amdt 1
Greybull, WY, South Big Horn County, RNAV (GPS)-A, Orig, CANCELED
Greybull, WY, South Big Horn County, Takeoff Minimums and Obstacle DP, Amdt 1
Jackson, WY, Jackson Hole, ILS OR LOC Z RWY 19, Orig, CANCELED
Jackson, WY, Jackson Hole, ILS Y OR LOC RWY 19, Orig-A
Jackson, WY, Jackson Hole, ILS Z OR LOC/DME RWY 19, Orig
Jackson, WY, Jackson Hole, RNAV (GPS) Z RWY 19, Amdt 1
Jackson, WY, Jackson Hole, RNAV (RNP) Y RWY 19, Amdt 1

Effective 4 APRIL 2013

Des Moines, IA, Des Moines Intl, Takeoff Minimums and Obstacle DP, Amdt 11
Fort Worth, TX, Fort Worth Alliance, RNAV (GPS) RWY 34R, Amdt 2A

[FR Doc. 2013–02043 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30883; Amdt. No. 3518]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

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

DATES: This rule is effective February 4, 2013. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 4, 2013.

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

For Examination—

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

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

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

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

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

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

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

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

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

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

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

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under

Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97:

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

Issued in Washington, DC, on January 18, 2013.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

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

* * * *Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC Date	Subject
7–Mar–13	MI	Detroit	Coleman A. Young Muni	2/7262	01/11/13	RNAV (GPS) RWY 33, Orig
7–Mar–13	TX	Graford	Possum Kingdom	3/0511	01/11/13	RNAV (GPS) RWY 20, Orig
7–Mar–13	TX	Mineral Wells	Mineral Wells	3/0512	01/11/13	VOR RWY 31, Amdt 10B
7–Mar–13	TX	Mineral Wells	Mineral Wells	3/0513	01/11/13	GPS RWY 31, Orig-A
7–Mar–13	TX	Graford	Possum Kingdom	3/0514	01/11/13	RNAV (GPS) RWY 2, Orig
7–Mar–13	WA	Hoquiam	Bowerman	3/0876	01/11/13	RNAV (GPS) RWY 24, Amdt 2
7–Mar–13	AK	Kivalina	Kivalina	3/1292	01/11/13	RNAV (GPS) RWY 30, Amdt 1
7–Mar–13	OH	Columbus	Bolton Field	3/1519	01/11/13	RNAV (GPS) RWY 4, Orig
7–Mar–13	IN	Terre Haute	Terre Haute Intl-Hulman Field	3/1520	01/11/13	ILS OR LOC RWY 5, Amdt 22F
7–Mar–13	TX	Mineral Wells	Mineral Wells	3/1523	01/11/13	ILS OR LOC/DME RWY 31, Orig
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1565	01/11/13	RNAV (GPS) RWY 4R, Amdt 3
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1566	01/11/13	ILS OR LOC/DME RWY 4R, Amdt 1
7–Mar–13	NE	Ogallala	Searle Field	3/1684	01/11/13	RNAV (GPS) RWY 13, Orig
7–Mar–13	LA	Monroe	Monroe Rgnl	3/1703	01/11/13	RNAV (GPS) RWY 32, Orig
7–Mar–13	TX	Palacios	Palacios Muni	3/1794	01/11/13	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Orig
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1833	01/11/13	RNAV (GPS) RWY 31R, Orig-A
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1834	01/11/13	RNAV (RNP) Y RWY 13C, Amdt 1A
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1835	01/11/13	ILS OR LOC/DME RWY 13C, Orig-A
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1836	01/11/13	ILS OR LOC/DME RWY 31C, Amdt 1
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1837	01/11/13	VOR/DME RNAV OR GPS RWY 22L, Amdt 3B
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1838	01/11/13	RNAV (GPS) RWY 31C, Amdt 2
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1839	01/11/13	RNAV (GPS) RWY 13L, Orig
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1843	01/11/13	RNAV (GPS) Z RWY 13C, Orig-A
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1844	01/11/13	RNAV (GPS) RWY 22R, Orig-A
7–Mar–13	IL	Chicago	Chicago Midway Intl	3/1845	01/11/13	RNAV (GPS) RWY 4L, Orig
7–Mar–13	TX	Fort Worth	Fort Worth Spinks	3/1854	01/11/13	RNAV (GPS) RWY 17R, Amdt 1
7–Mar–13	ME	Wiscasset	Wiscasset	3/1932	01/11/13	RNAV (GPS) RWY 25, Orig
7–Mar–13	ME	Wiscasset	Wiscasset	3/1933	01/11/13	RNAV (GPS) RWY 7, Orig
7–Mar–13	MA	Gardner	Gardner Muni	3/1984	01/11/13	VOR A, Amdt 6
7–Mar–13	MA	Gardner	Gardner Muni	3/1985	01/11/13	RNAV (GPS) B, Orig
7–Mar–13	NY	Farmingdale	Republic	3/2143	01/16/13	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Amdt 6

[FR Doc. 2013–02038 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240 and 260

[Release Nos. 33–9383; 34–68753; 39–2489; File No. S7–26–11]

RIN 3235–AL17

Extension of Exemptions for Security-Based Swaps

AGENCY: Securities and Exchange Commission.

ACTION: Interim final rule; extension.

SUMMARY: We are adopting amendments to the expiration dates in our interim final rules that provide exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for those security-based swaps that prior to July 16, 2011 were security-based swap agreements and are defined as ''securities'' under the Securities Act and the Exchange Act as of July 16, 2011 due solely to the provisions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the amendments, the expiration dates in the interim final rules will be extended to February 11, 2014.

DATES: The amendments are effective February 4, 2013. See Section I of the **SUPPLEMENTARY INFORMATION** concerning amendment of expiration dates in the interim final rules.

FOR FURTHER INFORMATION CONTACT: Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551–3860, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to the following rules: interim final Rule 240 under the Securities Act of 1933 (''Securities Act''),[1] interim final Rules 12a–11 and 12h–1(i) under the Securities Exchange Act of 1934 (''Exchange Act''),[2] and interim final Rule 4d–12 under the Trust Indenture Act of 1939 (''Trust Indenture Act'').[3]

I. Amendment of Expiration Dates in the Interim Final Rules

In July 2011, we adopted interim final Rule 240 under the Securities Act, interim final Rules 12a–11 and 12h–1(i) under the Exchange Act, and interim final Rule 4d–12 under the Trust Indenture Act (collectively, the ''interim final rules'').[4] The interim final rules provide exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for those security-based swaps that prior to July 16, 2011 (''Title VII effective date'') were ''security-based swap agreements'' and are defined as ''securities'' under the Securities Act and the Exchange Act as of the Title VII effective date due solely to the provisions of Title VII of the Dodd-Frank Act.[5] The interim final rules exempt offers and sales of security-based swap agreements that became security-based swaps on the Title VII effective date from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as from the Exchange Act registration requirements and from the provisions of the Trust Indenture Act,[6] provided certain conditions are met.[7] The interim final rules currently expire on February 11, 2013.[8]

Title VII amended the Securities Act and the Exchange Act to include ''security-based swaps'' in the definition of ''security'' for purposes of those statutes.[9] As a result, ''security-based swaps'' became subject to the provisions of the Securities Act and the Exchange Act and the rules and regulations thereunder applicable to ''securities.''[10] The interim final rules were intended to allow security-based swap agreements that became security-based swaps on the Title VII effective date to continue to trade as they did so prior to the enactment of Title VII.[11] We were concerned about disrupting the operation of the security-based swaps market until the compliance date for final rules that we may adopt further defining the terms ''security-based swap'' and ''eligible contract participant.''[12] We recognized that until we further defined such terms, market participants may be uncertain as to how to comply with the registration requirements of the Securities Act applicable to securities transactions, the registration requirements of the Exchange Act applicable to classes of securities, and the indenture provisions of the Trust Indenture Act.[13]

We also needed additional time and market input to evaluate the implications for security-based swaps under the Securities Act, the Exchange Act, and the Trust Indenture Act as a

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 77aaa *et seq.*

[4] *See* 17 CFR 230.240, 17 CFR 240.12a-11, 17 CFR 240.12h–1, and 17 CFR 260.4d–12. *See also Exemptions for Security-Based Swaps,* Release No. 33–9231 (Jul. 1, 2011), 76 FR 40605 (Jul. 11, 2011) (''Interim Final Rules Adopting Release'').

[5] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The provisions of Title VII generally were effective on July 16, 2011 (360 days after enactment of the Dodd-Frank Act), unless a provision requires a rulemaking. If a Title VII provision requires a rulemaking, it will go into effect ''not less than'' 60 days after publication of the related final rule or on July 16, 2011, whichever is later. *See* Section 774 of the Dodd-Frank Act.

[6] The category of security-based swaps covered by the interim final rules involves those that would have been defined as ''security-based swap agreements'' prior to the enactment of Title VII. That definition of ''security-based swap agreement'' does not include security-based swaps that are based on or reference only loans and indexes only of loans. The Division of Corporation Finance issued a no-action letter that addressed the availability of the interim final rules to offers and sales of security-based swaps that are based on or reference only loans or indexes only of loans. *See* Cleary Gottlieb Steen & Hamilton LLP (Jul. 15, 2011) (''Cleary Gottlieb No-Action Letter''). The Cleary Gottlieb No-Action Letter will remain in effect for so long as the interim final rules remain in effect.

[7] The security-based swap that is exempt must be a security-based swap agreement (as defined prior to the Title VII effective date) and entered into between eligible contract participants (as defined prior to the Title VII effective date). *See* Rule 240 under the Securities Act [17 CFR 230.240]. *See also* Interim Final Rules Adopting Release.

[8] The interim final rules currently expire on the later of the compliance dates for final rules we may adopt further defining the terms ''security-based swap'' and ''eligible contract participant,'' unless we take further action to modify the expiration dates in the interim final rules. In April 2012, we adopted final rules and interpretations further defining the term ''eligible contract participant'' and the compliance date of those rules and interpretations was July 23, 2012. In July 2012, we adopted final rules and interpretations further defining the term ''security-based swap'' and the compliance date of those rules and interpretations is February 11, 2013. *See Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Release No. 33–9338 (Jul. 18, 2012), 77 FR 48208 (Aug. 13, 2012).

[9] *See* Sections 761(a)(2) and 768(a)(1) of the Dodd-Frank Act (amending Section 3(a)(10) of the Exchange Act [15 U.S.C. 78c(a)(10)] and Section 2(a)(1) of the Securities Act [15 U.S.C. 77b(a)(1)], respectively).

[10] The Securities Act requires that any offer and sale of a security must be either registered under the Securities Act or made pursuant to an exemption from registration. *See* Section 5 of the Securities Act [15 U.S.C. 77e]. In addition, certain provisions of the Exchange Act relating to the registration of classes of securities and the indenture qualification provisions of the Trust Indenture Act of 1939 (''Trust Indenture Act'') [15 U.S.C. 77aaa *et seq.*] also potentially could apply to security-based swaps. The provisions of Section 12 of the Exchange Act could, without an exemption, require that security-based swaps be registered before a transaction could be effected on a national securities exchange. *See* Section 12(a) of the Exchange Act [15 U.S.C. 78l(a)]. In addition, registration of a class of security-based swaps under Section 12(g) of the Exchange Act could be required if the security-based swap is considered an equity security and held of record by either 2000 persons or 500 persons who are not accredited investors at the end of a fiscal year. *See* Section 12(g)(1)(A) of the Exchange Act [15 U.S.C. 78l(g)(1)(A)]. Further, without an exemption, the Trust Indenture Act could require qualification of an indenture for security-based swaps considered to be debt. *See* 15 U.S.C. 77aaa *et seq.*

[11] *See* Interim Final Rules Adopting Release.

[12] *Id.*

[13] *Id. See also* footnote 10 above.

result of the inclusion of the term ''security-based swap'' in the definition of ''security.'' [14] We understood from market participants that there were several types of trading platforms being used to effect transactions in security-based swaps, including security-based swap agreements that became security-based swaps on the Title VII effective date, that would likely register as security-based swap execution facilities (''security-based SEFs'') [15] and that the use of trading platforms to effect security-based swap transactions would continue after the Title VII effective date.[16] We also understood from market participants that if parties continued to engage in the same type of trading activities after the Title VII effective date that they were engaging in prior to the Title VII effective date with respect to security-based swap agreements that became security-based swaps on the Title VII effective date, such activities could raise concerns about the availability of exemptions from the registration requirements of the Securities Act and the Exchange Act.[17] Accordingly, at the time of adoption of the interim final rules in July 2011, we requested comment on various aspects of the interim final rules. In particular, we requested comment on the following:[18] (i) Whether security-based swaps are transacted or expected to be transacted following the full implementation of Title VII in a manner that would not permit the parties to rely on existing exemptions under the Securities Act and the Exchange Act; and (ii) whether we should consider additional exemptions under the Securities Act and the Exchange Act for security-based swaps traded on a national securities exchange or through a security-based SEF with eligible contract participants.[19]

We received three comment letters from three commentators regarding the interim final rules.[20] One commentator opposed any exemptions for security-based swaps, including the exemptions provided in the interim final rules, but did not provide any explanation for the reason.[21] The other commentators supported the interim final rules.[22] These commentators stated their view that the interim final rules were necessary and appropriate steps to prevent disruption of the security-based swaps market and to ensure the orderly implementation of Title VII.[23] These commentators provided a description of the security-based swaps market as it currently functions and how it may function following the full implementation of Title VII.[24] These commentators expressed concerns regarding the availability of exemptions from the registration requirements of the Securities Act for security-based swap transactions entered into solely between eligible contract participants due to the operation of security-based swap trading platforms and the publication or distribution of other information regarding security-based swaps.[25] They indicated that certain communications involving security-based swaps, such as the publication or distribution of price quotes, may be available on or through trading platforms on an unrestricted basis, including following the full implementation of Title VII.[26] They also indicated that security-based swap dealers publish and distribute research regarding security-based swap transactions that may be broadly disseminated and could be available on an unrestricted basis.[27] They were concerned that unrestricted access to these communications could affect the availability of exemptions from the registration requirements of the Securities Act, such as the exemption in Section 4(a)(2), for security-based swap transactions entered into solely between eligible contract participants.[28] Based on their concerns regarding the availability of exemptions from the registration requirements of the Securities Act, these commentators requested that we adopt permanent relief from the registration requirements of Section 5 of the Securities Act for offers and sales of security-based swaps [29] solely between eligible contract

[14] *Id.* Prior to the Title VII effective date, security-based swap agreements that became security-based swaps on the Title VII effective date were outside the scope of the federal securities laws, other than the anti-fraud and certain other provisions. *See* Section 2A of the Securities Act [15 U.S.C. 77b(b)–1)] and Section 3A of the Exchange Act [15 U.S.C. 78c–1], each as in effect prior to the Title VII effective date.

[15] A security-based swap execution facility is a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility, that facilitates the execution of security-based swaps between persons and is not a national securities exchange. *See* Section 3(a)(77) of the Exchange Act [15 U.S.C. 78c(a)(77)]. *See also* Section 3D of the Exchange Act [15 U.S.C. 78c–4] and *Registration and Regulation of Security-Based Swap Execution Facilities,* Release No. 34–63825 (Feb. 2, 2011), 76 FR 10948 (Feb. 28, 2011) (''Security-Based SEF Proposing Release'').

[16] *See* Interim Final Rules Adopting Release.

[17] *Id.* We received comments expressing concern regarding the implications of including security-based swaps in the definition of ''security.'' Commentators indicated that they were still analyzing the full implications of such expansion of the definition of ''security,'' but that it would take time. Market participants requested temporary relief from certain provisions of the Securities Act and the Exchange Act so that parties could complete their analysis and submit requests for more targeted relief. *Id.*

[18] *Id.* We also requested comment on these matters in an earlier proposing release regarding exemptions for security-based swap transactions involving an eligible clearing agency. *See Exemptions For Security-Based Swaps Issued By Certain Clearing Agencies,* Release No. 33–9222 (Jun. 9, 2011), 76 FR 34920 (Jun. 15, 2011) (''Cleared SBS Exemptions Proposing Release'').

[19] The term ''eligible contract participant'' is defined in Section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)]. The definitions of the term ''eligible contract participant'' in the Securities Act and the Exchange Act both refer to the definition of ''eligible contract participant'' in the Commodity Exchange Act. *See* Section 5(e) of the Securities Act [15 U.S.C. 77e(e)] and Section 3(a)(65) of the Exchange Act [15 U.S.C. 78c(a)(65)]. The eligible contract participant definition includes several categories of persons: financial institutions; insurance companies; investment companies; commodity pools; business entities, such as corporations, partnerships, and trusts; employee benefit plans; government entities, such as the United States, a State or local municipality, a foreign government, a multinational or supranational government entity, or an instrumentality, agency or department of such entities; market professionals, such as broker dealers, futures commission merchants, floor brokers, and investment advisors; and natural persons with a specified dollar amount invested on a discretionary basis. The SEC and the CFTC recently adopted final rules further defining the term ''eligible contract participant.'' The CFTC staff recently issued a letter, Staff Interpretations and No-Action Relief Regarding ECP Status: Swap Guarantee Arrangements; Jointly and Severally Liable Counterparties; Amounts Invested on a Discretionary Basis; and ''Anticipatory ECPs,'' CFTC Letter No. 12–17 (Oct. 12, 2012). Such letter does not interpret or further define the term ''eligible contract participant'' for purposes of Section 712(d) of the Dodd-Frank Act or the federal securities laws. *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant''*, Release No. 34–66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012).

[20] *See* letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, The Securities Industry and Financial Markets Association (''SIFMA''), dated December 21, 2012 (''SIFMA Letter''); letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, and Robert Pickel, Chief Executive Officer, International Swaps and Derivatives Association (''ISDA''), dated Apr. 20, 2012 (''SIFMA/ISDA Letter''); and letter from Tom Nappi, dated Jul. 14, 2011 (''Nappi Letter'').

[21] *See* Nappi Letter.

[22] *See* SIFMA Letter and SIFMA/ISDA Letter.

[23] *See* SIFMA/ISDA Letter.

[24] *Id.*

[25] *See* SIFMA Letter and SIFMA/ISDA Letter.

[26] *See* SIFMA/ISDA Letter.

[27] *See* SIFMA Letter.

[28] *See* SIFMA Letter and SIFMA/ISDA Letter.

[29] The category of security-based swaps that would be covered by this request for relief is broader in some ways than the category of security-based swaps covered by the exemptions provided in the interim final rules. As noted in footnote 6 above, the exemptions provided in the interim final rules apply to security-based swaps that were defined as ''security-based swap agreements'' prior to the Title VII effective date. That definition of ''security-based swap agreement'' does not include

Continued

participants.[30] These commentators also requested relief under the Exchange Act for offers and sales of security-based swaps solely between eligible contract participants.[31] They were concerned that ambiguity regarding the definition of a ''class'' as applied to security-based swaps could raise concerns regarding the registration requirements of Section 12(g) of the Exchange Act.[32] Finally, these commentators requested relief from Section 304(d) of the Trust Indenture Act for security-based swaps entered into solely between eligible contract participants.[33] They believed that the protections of the Trust Indenture Act are not necessary in the context of such transactions because such transactions involve contracts between two counterparties who are capable of enforcing obligations under the security-based swaps directly.[34]

Moreover, although not submitted in connection with the interim final rules, we received two comment letters from four commentators regarding the proposed exemptions for security-based swap transactions involving an eligible clearing agency discussing issues arising with respect to security-based swap transactions not involving an eligible clearing agency.[35] One commentator suggested that we provide permanent exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions entered into between eligible contract participants and effected through any trading platform similar to the proposed exemptions for security-based swap transactions involving an eligible clearing agency.[36] The other commentators suggested that we provide exemptions under Section 12(g) of the Exchange Act and the Trust Indenture Act for security-based swap transactions entered into solely between eligible contract participants similar to the proposed exemptions for security-based swap transactions involving an eligible clearing agency.[37] In adopting the exemptions for security-based swap transactions involving an eligible clearing agency, we indicated that these commentator's suggestions were more appropriate to be considered in connection with the interim final rules.[38]

We are carefully considering the comments we have received on the interim final rules as part of our evaluation of the implications for security-based swaps resulting from the inclusion of the term ''security-based swap'' in the definition of ''security'' under the Securities Act and the Exchange Act. We also are in the process of implementing the Title VII statutory provisions governing the registration and regulation of security-based SEFs. We have proposed rules to implement these provisions,[39] but the particular characteristics of trading platforms that security-based SEFs will be permitted to operate will not be known until we adopt final rules for security-based SEFs. We currently are evaluating the comments we received regarding these proposed rules, but we have not yet adopted final rules implementing the Title VII statutory provisions governing the registration and regulation of security-based SEFs. We also are evaluating such comments in connection with our consideration of the comments we have received on the interim final rules given commentators' concerns regarding the operation of security-based swap trading platforms.

We do not expect to complete our evaluation of the implications for security-based swaps as securities, including our consideration of the comments we have received on the interim final rules, and implement any appropriate regulatory relief before February 11, 2013, the current expiration date of the interim final rules. If the interim final rules expire before we complete such evaluation, market participants entering into security-based swap transactions may need to register the offer and sale of the security-based swaps under the Securities Act. Market participants also may be required to comply with the registration provisions of the Exchange Act applicable to classes of securities and the indenture provisions of the Trust Indenture Act. We believe that requiring compliance with these provisions while we consider the comments we have received on the interim final rules likely would disrupt the operation of the security-based swaps market. Moreover, we have received a request from a commentator to extend the expiration dates in the interim final rules.[40] This commentator stated its belief that key issues and questions regarding the application of the federal securities laws to security-based swaps remain unresolved and, as a result, pending resolution of those issues and questions, all of the exemptions in the interim final rules are needed to avoid the potential for significant disruption in the security-based swaps market.[41] Thus, while we consider the comments we have received on the interim final rules, the interim final rules are needed to allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities may not comply with the registration requirements of the Securities Act applicable to securities transactions, the registration requirements of the Exchange Act applicable to classes of securities, and the indenture provisions of the Trust Indenture Act.

Based on the foregoing, we believe that it is necessary and appropriate in the public interest and consistent with the protection of investors to continue providing the exemptions from all provisions of the Securities Act (other than the Section 17(a) antifraud provisions), the registration requirements of the Exchange Act

security-based swaps that are based on or reference only loans and indexes only of loans.

[30] *See* SIFMA Letter and SIFMA/ISDA Letter. These commentators limited their request for relief to security-based swap transactions not involving an eligible clearing agency. *Id.* We recently adopted exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swap transactions involving an eligible clearing agency. *See* Rule 239 under the Securities Act [17 CFR 230.239], Rules 12a–10 and 12h–1(h) under the Exchange Act [17 CFR 240.12a–10 and 240.12h–1(h)], and Rule 4d–11 under the Trust Indenture Act of 1939 [17 CFR 260.4d–11]. *See also Exemptions for Security-Based Swaps Issued By Certain Clearing Agencies,* Release No. 33–9308 (Mar. 30, 2012), 77 FR 20536 (Apr. 5, 2012) (''Cleared SBS Exemptions Adopting Release''). These exemptions do not apply to security-based swap transactions not involving an eligible clearing agency, even if the security-based swaps subsequently are cleared in transactions involving an eligible clearing agency. *Id.*

[31] *See* SIFMA/ISDA Letter.

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *See* letter from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, Robert Pickel, Chief Executive Officer, ISDA, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated Jan. 31, 2012 (''FSR/ISDA/SIFMA Letter''); and letter from Scott Pintoff, General Counsel, GFI Group Inc., dated Jul. 25, 2011 (''GFI Letter''). These letters were submitted in response to our request for comment in the Cleared SBS Exemptions Proposing Release. *See* footnote 18 above.

[36] *See* GFI Letter. This commentator did not provide any explanation as to why such exemption was needed, including how security-based swap trading platforms operate, that would enable us to evaluate whether relief is necessary or appropriate. *See* Cleared SBS Exemptions Adopting Release.

[37] *See* FSR/ISDA/SIFMA Letter. These commentators requested relief under the Exchange Act and the Trust Indenture Act, but did not request relief under the Securities Act. However, two of these commentators subsequently submitted the SIFMA Letter and the SIFMA/ISDA Letter to request relief under the Securities Act. *See* footnote 30 above and accompanying text.

[38] *See* Cleared SBS Exemptions Adopting Release.

[39] *See* Security-Based SEF Proposing Release.

[40] *See* letter from Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, SIFMA, dated December 20, 2012. This commentator requested that the Commission extend the expiration dates in the interim final rules to July 17, 2013.

[41] *Id.*

relating to classes of securities, and the indenture provisions of the Trust Indenture Act for those security-based swaps that prior to the Title VII effective date were security-based swap agreements, provided certain conditions are met. Accordingly, due to the limited time the interim final rules will be needed, and our consideration of comments we have received on the interim final rules, we have determined that it is necessary and appropriate to extend the expiration dates in the interim final rules to February 11, 2014.[42] If we adopt further rules relating to issues raised by the application of the Securities Act and other federal securities laws to the security-based swaps market before February 11, 2014, we may determine to alter the expiration dates in the interim final rules as part of that rulemaking. We only are extending the expiration dates in the interim final rules; we are not making any other changes to the interim final rules.

II. Certain Administrative Law Matters

Section 553(b) of the Administrative Procedure Act[43] generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**. This requirement does not apply, however, if the agency ''for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[44] Further, the Administrative Procedure Act also generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[45] This requirement does not apply, however, if the agency finds good cause for making the rule effective sooner.[46] We, for good cause, find that notice and solicitation of comment before adopting the amendments to the interim final rules is impracticable, unnecessary, or contrary to the public interest. We also find good cause not to delay the effective date of the amendments to the interim final rules.

For the reasons we discuss throughout this release, we believe that we have good cause to act immediately to adopt the amendments to the interim final rules to extend the expiration dates in the interim final rules. The extension of the expiration dates in the interim final rules is intended to minimize disruptions and costs to the security-based swaps market that could occur on the current expiration date of the interim final rules. The interim final rules are needed to allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities will be subject to the registration requirements of the Securities Act and the Exchange Act and the indenture qualification provisions of the Trust Indenture Act while we consider the comments we have received on the interim final rules.

As noted above, we sought and received comments on the interim final rules.[47] Although one commentator did not support the interim final rules, this commentator did not provide any explanation for the reason. The other commentators supported the interim final rules and stated their view that the interim final rules were necessary and appropriate steps to prevent disruption of the security-based swaps market and to ensure the orderly implementation of Title VII. These commentators provided detailed responses to our requests for comment on the interim final rules and expressed concerns regarding the treatment of certain communications involving security-based swaps under the Securities Act. These commentators also stated their view that permanent relief was needed for security-based swap transactions and requested that we adopt permanent exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act, similar to the exemptions provided in the interim final rules, for security-based swap transactions entered into solely between eligible contract participants. We also received comments on the proposed exemptions for security-based swap transactions involving an eligible clearing agency that were responsive to the request for comment on the interim final rules.[48] We are carefully considering all of these comments as we evaluate the implications for security-based swaps resulting from the inclusion of the term ''security-based swap'' in the definition of ''security'' under the Securities Act and the Exchange Act.

Moreover, we are in the process of implementing the Title VII statutory provisions governing the registration and regulation of security-based SEFs. As noted above, we have proposed rules to implement these provisions, but the particular characteristics of trading platforms that security-based SEFs will be permitted to operate will not be known until we adopt final rules for security-based SEFs. We currently are evaluating the comments we received regarding these proposed rules, but we have not yet adopted final rules implementing the Title VII statutory provisions governing the registration and regulation of security-based SEFs. We also are evaluating such comments in connection with our consideration of the comments we have received on the interim final rules given commentators' concerns regarding the operation of security-based swap trading platforms. However, we may not complete our evaluation of the comments we have received on the interim final rules or our evaluation of the comments received and our rulemaking relating to the implementation of the Title VII statutory provisions governing the registration and regulation of security-based SEFs before February 11, 2013, the current expiration date of the interim final rules.

Absent an extension, the interim final rules will expire on February 11, 2013. The interim final rules have been in place since July 2011 and market participants have relied on them to enter into security-based swap transactions. Extending the expiration dates in the interim final rules will not affect the substantive provisions of the interim final rules. Extending the expiration dates in the interim final rules will allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities will be subject to the registration requirements of the Securities Act and the Exchange Act and the indenture qualification provisions of the Trust Indenture Act while we consider the comments we have received on the interim final rules. Based on the foregoing and for the reasons we discuss throughout this release, we find that there is good cause to have the amendments to the interim final rules effective upon publication in the **Federal Register** and that notice and solicitation of comment in advance of the effectiveness of the amendments to the interim final rules is impracticable, unnecessary and contrary to the public interest.[49]

[42] The Cleary Gottlieb No-Action Letter will remain in effect for so long as the interim final rules remain in effect. *See* footnote 6 above.

[43] 5 U.S.C. 553(b).

[44] *Id.*

[45] *See* 5 U.S.C. 553(d).

[46] *Id.*

[47] *See* footnotes 18 and 20 above and accompanying text.

[48] *See* footnote 35 above and accompanying text.

[49] This finding also satisfies the requirements of 5 U.S.C. 808(2), allowing the rule amendment to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a Federal agency finds that notice and public comment are ''impractical, unnecessary or contrary to the public interest,'' a rule ''shall take

Continued

III. Economic Analysis

In July 2011, we adopted the interim final rules to provide exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for those security-based swaps that prior to the Title VII effective date were security-based swap agreements and are defined as ''securities'' under the Securities Act and the Exchange Act as of the Title VII effective date due solely to the provisions of Title VII. In this release, we are adopting amendments to the interim final rules to extend the expiration dates in the interim final rules. Extending the expiration dates in the interim final rules is intended to minimize disruptions and costs to the security-based swaps market that could occur on the current expiration date of the interim final rules. The interim final rules are needed to allow market participants that meet the conditions of the interim final rules to continue to enter into security-based swap transactions without concern that such activities will be subject to the registration requirements of the Securities Act and the Exchange Act and the indenture qualification provisions of the Trust Indenture Act while we consider the comments we have received on the interim final rules.

We are sensitive to the costs and benefits imposed by our rules. The discussion below attempts to address the amendments to the interim final rules extending the expiration dates in the interim final rules, including the costs and benefits of the amendments as well as the effect of the amendments on efficiency, competition, and capital formation.[50]

Absent the extension of the expiration dates in the interim final rules, the offer and sale of those security-based swaps that prior to the Title VII effective date were defined as security-based swap agreements may have to be registered under the Securities Act, certain of those security-based swaps may have to be registered as a class under the Exchange Act, and the indenture provisions of the Trust Indenture Act may need to be complied with. We believe that requiring compliance with these provisions at this time for security-based swap transactions between eligible contract participants likely would disrupt and impose unnecessary costs on this segment of the security-based swaps market.[51] We also believe that because security-based swap transactions that qualify for the exemptions under the interim final rules generally involve individualized negotiations, extending the expiration date of such exemptions is not likely to impose a substantial informational cost on the market participants involved in such transactions. Further, absent the action we are taking in this release, we believe that certain market participants could incur additional costs due to compliance with the registration requirements of the Securities Act and the Exchange Act, as well as compliance with the provisions of the Trust Indenture Act. It also is possible that without the extension of the expiration dates in the interim final rules, a market participant may not continue to participate in these types of transactions if compliance with these provisions were infeasible (economically or otherwise). Not extending the expiration dates in the interim final rules could cause disruptions in the security-based swaps market. Therefore, we believe that extending the expiration dates in the interim final rules provides important benefits to market participants in the security-based swaps market.

Because the extension of the expiration dates in the interim final rules would maintain the status quo with respect to the ability of market participants to engage in transactions in those security-based swaps that prior to the Title VII effective date were defined as security-based swap agreements, we do not believe that our actions in this release will have an impact on the current state of competition. We also believe that the extension of the expiration dates in the interim final rules will promote efficiency by minimizing disruptions and costs to the security-based swaps market that could occur on the current expiration date of the interim final rules. To the extent that those security-based swaps that prior to the Title VII effective date were defined as security-based swap agreements are used to hedge risks, including those related to the issuance of the referenced securities (as occurs with equity swaps and the issuance of convertible bonds, for example), the extension of the expiration dates in the interim final rules will prevent potential impairment of the capital formation process. For example, if registration of these transactions is required under our existing Securities Act registration scheme, this might result in the issuers of security-based swaps providing disclosure regarding their security-based swap positions that might not otherwise be disclosed to the market. This position disclosure could lead to a decreased use of security-based swaps by these market participants, which could potentially affect capital formation to the extent counterparties might use security-based swaps for hedging their exposure to issuers of referenced securities.

We recognize that a consequence of extending the expiration dates in the interim final rules will be the unavailability of certain remedies under the Securities Act and the Exchange Act and certain protections under the Trust Indenture Act for an interim period to the extent that any of these security-based swap transactions otherwise would be subject to the registration requirements of the Securities Act and the Exchange Act. Absent the extension of the expiration dates in the interim final rules, a market participant may have to file a registration statement covering the offer and sale of the security-based swaps, may have to register the class of security-based swaps that it has issued under the Exchange Act, which would provide investors with civil remedies in addition to antifraud remedies, and may have to satisfy the applicable provisions of the Trust Indenture Act. A registration statement covering the offer and sale of security-based swaps may provide certain information about the market participants, the security-based swap contract terms, and the identification of the particular reference securities, issuers, or loans underlying the security-based swap. As a result of the extension of the expiration dates in the interim final rules, while an investor would be able to pursue an antifraud action in connection with the purchase and sale of security-based swaps under Section 10(b) of the Exchange Act, it would not be able to pursue civil remedies under Sections 11 or 12 of the Securities Act. The Commission could

effect at such time as the Federal agency promulgating the rule determines'').

[50] Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. *See* 15 U.S.C. 78w(a)(2). Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. *Id.* In addition, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation. *See* 15 U.S.C. 77b(b) and 15 U.S.C. 78c(f).

[51] If market participants are not required to register the offer and sale of these security-based swaps, they will not have to incur the additional costs of such registration, including legal and accounting costs. The availability of the exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act also would mean that market participants would not incur the costs of preparing disclosure documents describing these security-based swaps and would not incur the costs of preparing indentures and arranging for the services of a trustee.

still pursue an antifraud action in the offer and sale of security-based swaps under Section 17(a) of the Securities Act.

IV. Paperwork Reduction Act

The interim final rules do not impose any new ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[52] nor do they create any new filing, reporting, recordkeeping, or disclosure reporting requirements. Accordingly, we did not submit the interim final rules to the Office of Management and Budget for review in accordance with the PRA.[53] We requested comment on whether our conclusion that there are no collections of information is correct, and we did not receive any comment.

V. Regulatory Flexibility Act Certification

We hereby certify pursuant to 5 U.S.C. 605(b) that extending the expiration dates in the interim final rules will not have a significant economic impact on a substantial number of small entities.[54] The interim final rules apply only to counterparties that may engage in security-based swap transactions in reliance on the interim final rule providing an exemption under the Securities Act. The interim final rule under the Securities Act provides that the exemption is available only to security-based swaps that are entered into between eligible contract participants, as that term is defined in Section 1a(12) of the Commodity Exchange Act as in effect prior to the Title VII effective date, and other than with respect to persons determined by the CFTC to be eligible contract participants pursuant to Section 1a(12)(C) of the Commodity Exchange Act. Based on our existing information about the participants in the security-based swaps market, including our existing information about participants in the security-based swaps market, we believe that the interim final rules apply to few, if any, small entities.[55] For this reason, the extension of the expiration dates in the interim final rules should not have a significant economic impact on a substantial number of small entities.

VI. Statutory Authority and Text of the Rules and Amendments

The amendments described in this release are being adopted under the authority set forth in Sections 19 and 28 of the Securities Act, Sections 12(h), 23(a) and 36 of the Exchange Act, and Section 304(d) of the Trust Indenture Act.

List of Subjects in 17 CFR Parts 230, 240 and 260

Reporting and recordkeeping requirements, Securities.

Text of the Rules and Amendments

For the reasons set out in the preamble, the Commission amends 17 CFR parts 230, 240, and 260 as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

§ 230.240 [Amended]

■ 2. In § 230.240(c), in the first sentence, remove the words ''the compliance date for final rules that the Commission may adopt further defining both the terms *security-based swap* and *eligible contract participant*'' and add, in their place, the words ''February 11, 2014''.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u-5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* 12 U.S.C. 5221(e)(3), 15 U.S.C. 8302, and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

§ 240.12a–11 [Amended]

■ 4. In § 240.12a–11(b), in the first sentence, remove the words ''the compliance date for final rules that the Commission may adopt further defining both the terms *security-based swap* and *eligible contract participant*'' and add, in their place, the words ''February 11, 2014''.

§ 240.12h–1 [Amended]

■ 5. In § 240.12h–1(i), in the second sentence, remove the words ''the compliance date for final rules that the Commission may adopt further defining both the terms *security-based swap* and *eligible contract participant''* and add, in their place, the words ''February 11, 2014''.

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 6. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

* * * * *

§ 260.4d–12 [Amended]

■ 7. In § 260.4d–12, in the second sentence, remove the words ''the compliance date for final rules that the Commission may adopt further defining both the terms *security-based swap* and *eligible contract participant''* and add, in their place, the words ''February 11, 2014''.

By the Commission.

Dated: January 29, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–02191 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2009–0039]

RIN 0960–AH04

Revised Medical Criteria for Evaluating Congenital Disorders That Affect Multiple Body Systems

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are revising the criteria in the Listing of Impairments (listings) that we use to evaluate cases involving impairments that affect multiple body systems in adults and children under titles II and XVI of the Social Security Act (Act). The revisions reflect our program experience and address adjudicator questions we have received since we last comprehensively revised this body system in 2005. We do not expect any decisional differences due to the revisions in this body system.

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[52] 44 U.S.C. 3501 *et seq.*

[53] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[54] We certified pursuant to 5 U.S.C. 605(b) that the interim final rules will not have a significant economic impact on a substantial number of small entities. *See* Interim Final Rules Adopting Release. We received no comments on that certification.

[55] For example, as revealed in a current survey conducted by Office of the Comptroller of the Currency, 100.0% of credit default swap positions held by U.S. commercial banks and trust companies are held by those with assets over $10 billion. *See* Office of the Comptroller of the Currency, ''Quarterly Report on Bank Trading and Derivatives Activities Third Quarter 2012'' (2012).

DATES: These rules are effective April 5, 2013.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

We are making final the rules for evaluating congenital disorders that affect multiple body systems we proposed in a notice of proposed rulemaking (NPRM) we published in the **Federal Register** on October 25, 2011 (76 FR 66006). The preamble to the NPRM provides a full explanation of the background of these revisions. We are not repeating that information here because we are adopting our proposed rules without change. You can view the preamble to the NPRM by visiting *www.regulations.gov* and searching for document ''SSA–2009–0039–0004.''

Why are we revising the listings for evaluating congenital disorders that affect multiple body systems?

We are revising the listings for evaluating congenital disorders that affect multiple body systems to update the medical criteria, clarify how we evaluate congenital disorders, and address adjudicator questions.

When will we begin to use these final rules?

We will begin to use these final rules on their effective date. We will continue to use the current listings until the date these final rules become effective. We will apply the final rules to new applications filed on or after the effective date of these final rules and to claims that are pending on or after the effective date.[1] These final rules will remain in effect for 5 years after the date they become effective, unless we extend them, or revise and issue them again.

[1] This means that we will use these final rules on and after their effective date, in any case in which we make a determination or decision. We expect that Federal courts will review our final decisions using the rules that were in effect at the time we issued the decisions. If a court reverses the our final decision and remands a case for further administrative proceedings after the effective date of these final rules, we will apply these final rules to the entire period at issue in the decision we make after the court's remand.

Public Comments

In the NPRM, we provided the public with a 60-day comment period, which ended on December 27, 2011. We received one public comment letter. The comment came from a national group representing disability examiners in the State agencies that make disability determinations for us.

Below we provide a summary of points that were relevant to this rulemaking and our responses. We tried to present the commenter's concerns and suggestions accurately and completely.

Comment: The commenter suggested revisions to the proposed criteria for meeting listings 10.06 and 110.06 *Non-mosaic Down syndrome.* The commenter suggested that an individual be found to meet the criteria of the listings unless chromosomal analysis shows a diagnosis of mosaic Down syndrome.

Response: We are not adopting this comment because we do not agree with the suggestion that an individual should be found to meet listings 10.06 or 110.06 unless chromosomal analysis shows a diagnosis of mosaic Down syndrome. We believe that the evidence needs to confirm a diagnosis of non-mosaic Down syndrome. Our rules specify that mosaic Down syndrome does not meet the criteria of our listings. However, it could satisfy the criteria of listings in other body systems, depending on the severity of the manifestations.

Comment: The commenter also stated that fluorescence in situ hybridization (FISH) testing could differentiate non-mosaic from mosaic Down syndrome. The commenter suggested that we use this test in combination with a clinical description of diagnostic physical features and a diagnosis from an acceptable medical source to meet listings 10.06 and 110.06.

Response: We do not agree that we should use FISH testing when we evaluate non-Mosaic Down syndrome under listings 10.06 and 110.06. FISH testing does not distinguish between mosaic and non-mosaic Down syndrome. Karyotype analysis is the only stand-alone method of chromosomal analysis acceptable for confirming non-mosaic Down syndrome.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them. Sections 205(a), 702(a)(5), and 1631(d)(1).

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending 20 CFR part 404 subpart P as set forth below:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by

■ a. Revising item 11 of the introductory text;

■ b. Revising the body system name in part A for section 10.00 in the table of contents;

■ c. Revising section 10.00 in part A;
■ d. Revising the body system name in part B for section 110.00 in the table of contents; and
■ e. Revising section 110.00 in part B.

The revisions read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

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11. Congenital Disorders That Affect Multiple Body Systems (10.00 and 110.00): [Insert date 5 years from the effective date of the final rules].

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10.00 Congenital Disorders That Affect Multiple Body Systems

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Part A

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10.00 Congenital Disorders that Affect Multiple Body Systems

A. *Which disorder do we evaluate under this body system?* Although Down syndrome exists in non-mosaic and mosaic forms, we evaluate only non-mosaic Down syndrome under this body system.

B. *What is non-mosaic Down syndrome?* Non-mosaic Down syndrome is a genetic disorder. Most people with non-mosaic Down syndrome have three copies of chromosome 21 in all of their cells (chromosome 21 trisomy); some have an extra copy of chromosome 21 attached to a different chromosome in all of their cells (chromosome 21 translocation). Virtually all people with non-mosaic Down syndrome have characteristic facial or other physical features, delayed physical development, and intellectual disability. People with non-mosaic Down syndrome may also have congenital heart disease, impaired vision, hearing problems, and other disorders. We evaluate non-mosaic Down syndrome under 10.06. If you have non-mosaic Down syndrome documented as described in 10.00C, we consider you disabled from birth.

C. *What evidence do we need to document non-mosaic Down syndrome under 10.06?*

1. Under 10.06A, we will find you disabled based on laboratory findings.

a. To find that your disorder meets 10.06A, we need a copy of the laboratory report of karyotype analysis, which is the definitive test to establish non-mosaic Down syndrome. We will not purchase karyotype analysis. We will not accept a fluorescence in situ hybridization (FISH) test because it does not distinguish between the mosaic and non-mosaic forms of Down syndrome.

b. If a physician (see §§ 404.1513(a)(1) and 416.913(a)(1) of this chapter) has not signed the laboratory report of karyotype analysis, the evidence must also include a physician's statement that you have Down syndrome.

c. For purposes of 10.06A, we do not require additional evidence stating that you have the distinctive facial or other physical features of Down syndrome.

2. If we do not have a laboratory report of karyotype analysis showing that you have non-mosaic Down syndrome, we may find you disabled under 10.06B or 10.06C.

a. Under 10.06B, we need a physician's report stating: (i) your karyotype diagnosis or evidence that documents your type of Down syndrome is consistent with prior karyotype analysis (for example, reference to a diagnosis of ''trisomy 21''), and (ii) that you have the distinctive facial or other physical features of Down syndrome. We do not require a detailed description of the facial or other physical features of the disorder. However, we will not find that your disorder meets 10.06B if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

b. If we do not have evidence of prior karyotype analysis (you did not have testing, or you had testing but we do not have information from a physician about the test results), we will find that your disorder meets 10.06C if we have: (i) a physician's report stating that you have the distinctive facial or other physical features of Down syndrome, and (ii) evidence that your functioning is consistent with a diagnosis of non-mosaic Down syndrome. This evidence may include medical or nonmedical information about your physical and mental abilities, including information about your education, work history, or the results of psychological testing. However, we will not find that your disorder meets 10.06C if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

D. *How do we evaluate mosaic Down syndrome and other congenital disorders that affect multiple body systems?*

1. *Mosaic Down syndrome.* Approximately 2 percent of people with Down syndrome have the mosaic form. In mosaic Down syndrome, there are some cells with an extra copy of chromosome 21 and other cells with the normal two copies of chromosome 21. Mosaic Down syndrome can be so slight as to be undetected clinically, but it can also be profound and disabling, affecting various body systems.

2. *Other congenital disorders that affect multiple body systems.* Other congenital disorders, such as congenital anomalies, chromosomal disorders, dysmorphic syndromes, inborn metabolic syndromes, and perinatal infectious diseases, can cause deviation from, or interruption of, the normal function of the body or can interfere with development. Examples of these disorders include both the juvenile and late-onset forms of Tay-Sachs disease, trisomy X syndrome (XXX syndrome), fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. For these disorders and other disorders like them, the degree of deviation, interruption, or interference, as well as the resulting functional limitations and their progression, may vary widely from person to person and may affect different body systems.

3. *Evaluating the effects of mosaic Down syndrome or another congenital disorder under the listings.* When the effects of mosaic Down syndrome or another congenital disorder that affects multiple body systems are sufficiently severe we evaluate the disorder under the appropriate affected body system(s), such as musculoskeletal, special senses and speech, neurological, or mental disorders. Otherwise, we evaluate the specific functional limitations that result from the disorder under our other rules described in 10.00E.

E. *What if your disorder does not meet a listing?* If you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. See §§ 404.1526 and 416.926 of this chapter. If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. We proceed to the fourth, and if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter. We use the rules in §§ 404.1594 and 416.994 of this chapter, as appropriate, when we decide whether you continue to be disabled.

10.01 Category of Impairments, Congenital Disorders That Affect Multiple Body Systems

10.06 *Non-mosaic Down syndrome* (chromosome 21 trisomy or chromosome 21 translocation), documented by:

A. A laboratory report of karyotype analysis signed by a physician, or both a laboratory report of karyotype analysis not signed by a physician *and* a statement by a physician that you have Down syndrome (see 10.00C1), or

B. A physician's report stating that you have chromosome 21 trisomy or chromosome 21 translocation consistent with prior karyotype analysis with the distinctive facial or other physical features of Down syndrome (see 10.00C2a), or

C. A physician's report stating that you have Down syndrome with the distinctive facial or other physical features *and* evidence demonstrating that you function at a level consistent with non-mosaic Down syndrome (see 10.00C2b).

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110.00 Congenital Disorders That Affect Multiple Body Systems

* * * * *

Part B

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110.00 Congenital Disorders That Affect Multiple Body Systems

A. *Which disorders do we evaluate under this body system?* We evaluate non-mosaic Down syndrome and catastrophic congenital disorders under this body system.

B. *What is non-mosaic Down syndrome?* Non-mosaic Down syndrome is a genetic disorder. Most children with non-mosaic Down syndrome have three copies of chromosome 21 in all of their cells (chromosome 21 trisomy); some have an extra copy of chromosome 21 attached to a different chromosome in all of their cells (chromosome 21 translocation). Virtually all children with non-mosaic Down syndrome have characteristic facial or other physical features, delayed physical development, and intellectual disability. Children with non-mosaic Down syndrome may also have

congenital heart disease, impaired vision, hearing problems, and other disorders. We evaluate non-mosaic Down syndrome under 110.06. If you have non-mosaic Down syndrome documented as described in 110.00C, we consider you disabled from birth.

C. *What evidence do we need to document non-mosaic Down syndrome under 110.06?*

1. Under 110.06A, we will find you disabled based on laboratory findings.

a. To find that your disorder meets 110.06A, we need a copy of the laboratory report of karyotype analysis, which is the definitive test to establish non-mosaic Down syndrome. We will not purchase karyotype analysis. We will not accept a fluorescence in situ hybridization (FISH) test because it does not distinguish between the mosaic and non-mosaic forms of Down syndrome.

b. If a physician (see §§ 404.1513(a)(1) and 416.913(a)(1) of this chapter) has not signed the laboratory report of karyotype analysis, the evidence must also include a physician's statement that you have Down syndrome.

c. For purposes of 110.06A, we do not require evidence stating that you have the distinctive facial or other physical features of Down syndrome.

2. If we do not have a laboratory report of karyotype analysis documenting that you have non-mosaic Down syndrome, we may find you disabled under 110.06B or 110.06C.

a. Under 110.06B, we need a physician's report stating: (i) your karyotype diagnosis or evidence that documents your type of Down syndrome that is consistent with prior karyotype analysis (for example, reference to a diagnosis of ''trisomy 21'') and (ii) that you have the distinctive facial or other physical features of Down syndrome. We do not require a detailed description of the facial or other physical features of the disorder. However, we will not find that your disorder meets 110.06B if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

b. If we do not have evidence of prior karyotype analysis (you did not have testing, or you had testing but we do not have information from a physician about the test results), we will find that your disorder meets 110.06C if we have: (i) a physician's report stating that you have the distinctive facial or other physical features of Down syndrome and (ii) evidence that your functioning is consistent with a diagnosis of non-mosaic Down syndrome. This evidence may include medical or nonmedical information about your physical and mental abilities, including information about your development, education, work history, or the results of psychological testing. However, we will not find that your disorder meets 110.06C if we have evidence—such as evidence of functioning inconsistent with the diagnosis—that indicates that you do not have non-mosaic Down syndrome.

D. *What are catastrophic congenital disorders?* Some catastrophic congenital disorders, such as anencephaly, cyclopia, chromosome 13 trisomy (Patau syndrome or trisomy D), and chromosome 18 trisomy (Edwards' syndrome or trisomy E), are usually expected to result in early death. Others such as cri du chat syndrome (chromosome 5p deletion syndrome) and the infantile onset form of Tay-Sachs disease interfere very seriously with development. We evaluate catastrophic congenital disorders under 110.08. The term ''very seriously'' in 110.08 has the same meaning as in the term ''extreme'' in § 416.926a(e)(3) of this chapter.

E. *What evidence do we need under 110.08?*

We need one of the following to determine if your disorder meets 110.08A or B:

1. A laboratory report of the definitive test that documents your disorder (for example, genetic analysis or evidence of biochemical abnormalities) signed by a physician.

2. A laboratory report of the definitive test that documents your disorder that is not signed by a physician *and* a report from a physician stating that you have the disorder.

3. A report from a physician stating that you have the disorder with the typical clinical features of the disorder and that you had definitive testing that documented your disorder. In this case, we will find that your disorder meets 110.08A or B unless we have evidence that indicates that you do not have the disorder.

4. If we do not have the definitive laboratory evidence we need under E1, E2, or E3, we will find that your disorder meets 110.08A or B if we have: (i) a report from a physician stating that you have the disorder and that you have the typical clinical features of the disorder, *and* (ii) other evidence that supports the diagnosis. This evidence may include medical or nonmedical information about your development and functioning.

5. For obvious catastrophic congenital anomalies that are expected to result in early death, such as anencephaly and cyclopia, we need evidence from a physician that demonstrates that the infant has the characteristic physical features of the disorder. In these rare cases, we do not need laboratory testing or any other evidence that confirms the disorder.

F. *How do we evaluate mosaic Down syndrome and other congenital disorders that affect multiple body systems?*

1. *Mosaic Down syndrome.* Approximately 2 percent of children with Down syndrome have the mosaic form. In mosaic Down syndrome, there are some cells with an extra copy of chromosome 21 and other cells with the normal two copies of chromosome 21. Mosaic Down syndrome can be so slight as to be undetected clinically, but it can also be profound and disabling, affecting various body systems.

2. *Other congenital disorders that affect multiple body systems.* Other congenital disorders, such as congenital anomalies, chromosomal disorders, dysmorphic syndromes, inborn metabolic syndromes, and perinatal infectious diseases, can cause deviation from, or interruption of, the normal function of the body or can interfere with development. Examples of these disorders include both the juvenile and late-onset forms of Tay-Sachs disease, trisomy X syndrome (XXX syndrome), fragile X syndrome, phenylketonuria (PKU), caudal regression syndrome, and fetal alcohol syndrome. For these disorders and other disorders like them, the degree of deviation, interruption, or interference, as well as the resulting functional limitations and their progression, may vary widely from child to child and may affect different body systems.

3. *Evaluating the effects of mosaic Down syndrome or another congenital disorder under the listings.* When the effects of mosaic Down syndrome or another congenital disorder that affects multiple body systems are sufficiently severe we evaluate the disorder under the appropriate affected body system(s), such as musculoskeletal, special senses and speech, neurological, or mental disorders. Otherwise, we evaluate the specific functional limitations that result from the disorder under our other rules described in 110.00G.

G. *What if your disorder does not meet a listing?* If you have a severe medically determinable impairment(s) that does not meet a listing, we will consider whether your impairment(s) medically equals a listing. See § 416.926 of this chapter. If your impairment(s) does not meet or medically equal a listing, we will consider whether it functionally equals the listings. See §§ 416.924a and 416.926a of this chapter. We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

110.01 Category of Impairments, Congenital Disorders That Affect Multiple Body Systems

110.06 *Non-mosaic Down syndrome* (chromosome 21 trisomy or chromosome 21 translocation), documented by:

A. A laboratory report of karyotype analysis signed by a physician, or both a laboratory report of karyotype analysis not signed by a physician *and* a statement by a physician that the child has Down syndrome (see 110.00C1), or

B. A physician's report stating that the child has chromosome 21 trisomy or chromosome 21 translocation consistent with karyotype analysis with the distinctive facial or other physical features of Down syndrome (see 110.00C2a), or

C. A physician's report stating that the child has Down syndrome with the distinctive facial or other physical features *and* evidence demonstrating that the child is functioning at the level of a child with non-mosaic Down syndrome (see 110.00C2b).

110.08 *A catastrophic congenital disorder* (see 110.00D and 110.00E) with:

A. Death usually expected within the first months of life, or

B. Very serious interference with development or functioning.

* * * * *

[FR Doc. 2013–02169 Filed 2–1–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2012–1079]

RIN 1625–AA08

SLR; 2013 International Rolex Regatta; St. Thomas Harbor; St. Thomas, U.S. Virgin Islands

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is establishing special local regulations on the waters of St. Thomas Harbor in St. Thomas, U. S. Virgin Islands during the 2013 International Rolex Regatta, a series of sail boat races. The event is scheduled to take place on Friday, March 22, 2013 through Sunday, March 24, 2013. Approximately 65 sail boats will be participating in the races. It is anticipated that approximately 20 spectator vessels will be present during the races. These special local regulations are necessary for the safety of race participants, participant vessels, spectators, and the general public on the navigable waters of the United States during the event. The special local regulation establishes a race area, where all persons and vessels, except those persons and vessels participating in the sail boat races, are prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port San Juan or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before February 13, 2013.

Requests for public meetings must be received by the Coast Guard on or before February 13, 2013.

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 CWO Anthony Cassisa, Sector San Juan Prevention Department, Coast Guard; telephone (787) 289–2073, email *Anthony.J.Cassisa@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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–2012–1079 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–2012–1079 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 part 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 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 2013 International Rolex Regatta.

D. Discussion of Proposed Rule

On March 22, 2013 through March 24, 2013, the St. Thomas Yacht Club is sponsoring the 2013 Rolex Regatta, a series of sail boat races. The races will be held on the waters of St. Thomas Harbor, St. Thomas, U. S. Virgin Islands. Approximately 65 sail boats will be participating in the races. It is anticipated that approximately 20 spectator vessels will be present during the races.

The special local regulations encompass certain waters surrounding on St. Thomas Harbor, St. Thomas, U. S. Virgin Islands. The special local regulations will be enforced from 11:00 a.m. until 2:00 p.m. every day from March 22, 2013 through March 24, 2013. The special local regulation consists of the a race area, where all persons and vessels, except those persons and vessels participating in the sail boat races, are prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port San Juan or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative. The Coast Guard will provide notice of the special local regulations by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

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 regulation will be enforced for only three hours a day for three days, for a total of nine hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the race area without authorization from the Captain of the Port San Juan or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the race area during the enforcement period if authorized by the Captain of the Port San Juan or a designated representative; 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 St. Thomas Harbor encompassed within the special local regulations from 11:00 a.m. until 2:00 p.m. on March 22, 2013 through March 24, 2013. 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 (Pub. L. 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 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 a special local regulation issued in conjunction with a regatta or marine parade, paragraph 34(h) of Figure 2–1 of the Commandant Instruction. 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 amends 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 § 100.35T07–1079 to read as follows:

§ 100.35T07–1079 Special Local Regulations; 2013 International Rolex Regatta, St. Thomas Harbor; St. Thomas, U. S. Virgin Islands.

(a) *Regulated Areas.* The following regulated area is established as a special local regulation. All coordinates are North American Datum 1983.

(1) *Race Area.* All waters of Rada Fajardo encompassed within an imaginary line connecting the following points: starting at Point 1 in position 18°19.927N, 64°55.973W; thence east to Point 2 in position 18°19.970N, 64°55.769W; thence southeast to Point 3 in position 18°19.567N, 64°55.594W; thence south to point 4 in position 18°19.133N, 64°55.474W; thence west to point 5 in position 18°19.133N, 64°55.628W; thence north to point 6 in position 18°19.568N, 64°55.752W; thence northwest back to origin. All persons and vessels, except those persons and vessels participating in the sail boat race, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port San Juan in the enforcement of the regulated areas.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area, unless participating in the race.

(1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the race area, unless participating in the race.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated areas by contacting the Captain of the Port San Juan by telephone at (787) 289–2041, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port San Juan or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port San Juan or a designated representative.

(3) The Coast Guard will provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This rule will be enforced from 11:00 a.m. until 2:00 p.m. from Friday, March 22, 2013 through Sunday, March 24, 2013.

Dated: January 14, 2013.

D.W. Pearson,

Captain, U.S. Coast Guard, Captain of the Port San Juan.

[FR Doc. 2013–02309 Filed 2–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0011]

RIN 1625–AA00

Safety Zones; Pacific Northwest Grain Handlers Association Facilities; Columbia and Willamette Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is establishing temporary safety zones around the following Pacific Northwest Grain Handlers Association facilities: the Columbia Grain facility on the Willamette River in Portland, OR, the United Grain Corporation facility on the Columbia River in Vancouver, WA, the Temco Irving facility on the Willamette River in Portland, OR, and the Temco Kalama facility on the Columbia River in Kalama, WA. These safety zones extend to the waters of the Columbia and Willamette Rivers, respectively, approximately between the navigable channel and the facility described. These safety zones are being established to ensure that protest activities relating to an ongoing labor dispute involving these facilities do not create hazardous navigation conditions for vessels in the navigable channel or vessels attempting to moor at the facilities.

DATES: This rule has been effective upon actual notice from January 17, 2013,

until February 4, 2013. This rule is effective in the **Federal Register** from February 4, 2013 until June 1, 2013.

Comments and related material must be received by the Coast Guard on or before March 6, 2013.

Requests for public meetings must be received by the Coast Guard on or before February 11, 2013.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2013–0011. 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.

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 Ensign Ian P. McPhillips, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone (503) 240–9319, email *MSUPDXWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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 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 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 Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be impracticable since neither grain shipment vessels nor potential protest activity can be postponed by the Coast Guard. Additionally, delayed promulgation may result in injury or damage to the maritime public, vessel crews, the vessels themselves, the facilities, and law enforcement personnel from protest activities that could occur prior to conclusion of a notice and comment period before promulgation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because to do otherwise would be impracticable since the arrival of grain-shipment vessels cannot be delayed by the Coast Guard and protest activities are unpredictable and potentially volatile and may result in

injury to persons, property, or the environment. Delaying the effective date until 30 days after publication may mean that grain-shipment vessels will have arrived or departed the Columbia and Willamette Rivers before the end of the 30 day period. This delay would eliminate the safety zone's effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic before 30 days have elapsed.

Although the Coast Guard has good cause to issue this temporary rule without first publishing a proposed rule, you are invited to submit post-promulgation comments and related material regarding this rule through March 6, 2013. All comments will be reviewed as they are received. Your comments will assist us in drafting future rules should they be necessary, and may result in changes to this temporary interim rule before it expires.

C. Basis and Purpose

In light of labor protests relating to grain facilities, the Coast Guard believes that safety zones are necessary to ensure the safe navigation of maritime traffic on the Columbia and Willamette Rivers while grain-shipment vessels transit to and from these Pacific Northwest Grain Handlers Association facilities. Safety zones are needed to allow maximum use of the waterway consistent with safe navigation and to ensure that protestors and other river users are not injured by deep-draft vessels with maneuvering characteristics with which they may be unfamiliar. In addition, there is a need to ensure that protestors are not injured due to the effects of the strong river currents around the facilities' docks, piers, and wharves.

D. Discussion of the Interim Rule

This rule establishes temporary safety zones around the following four Pacific Northwest Grain Handlers Association facilities located on the Columbia and Willamette Rivers in Oregon and Washington. These safety zones would apply equally to all waterway users.

The safety zone around Columbia Grain is enclosed by three lines and the shoreline: line one starting on the shoreline at 45–38′35″ N/122–46′2″ W then heading 150 yards offshore to 45–38′38″ N/122–46′15″ W then heading up river 380 yards to 45–38′32″ N/122–46′28″ then heading 150 yards to the shoreline ending at 45–38′30″ N/122–46′25″ W. In essence, these boundaries extend from the shoreline of the facility 150 yards onto the river from each corner of the facility and encompass all waters and structures therein. No person or vessel may enter or remain in the safety zone unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

The safety zone around United Grain Corporation is also enclosed by three lines and the shoreline: line one starting on the shoreline at 45–37′46″ N/122–41′34″ W then heading 150 yards offshore to 45–37′48″ N/122–41′50″ W then heading up river 470 yards to 45–37′42″ N/122–41′37″ then heading 150 yards to the shoreline ending at 45–37′44″ N/122–41′31″ W. In essence, these boundaries extend from the shoreline of the facility 150 yards onto the river from each corner of the facility and encompass all waters and structures therein. No person or vessel may enter or remain in the safety zone unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

The safety zone around the Temco grain facility in Kalama, WA is enclosed by three lines and the shoreline: line one starting on the shoreline at 45–59′10″ N/122–50′09″ W then heading 150 yards offshore to 45–59′09″ N/122–50′14″ W then heading up river 385 yards to 45–58′58″ N/122–50′07″ then heading 150 yards to the shoreline ending at 45–59′00″ N/122–50′01″ W. In essence, these boundaries extend from the shoreline of the facility 150 yards onto the river from each corner of the facility and encompass all waters and structures therein. No person or vessel may enter or remain in the safety zone unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

The safety zone around the Temco grain facility in Portland, OR is also enclosed by three lines and the shoreline: line one starting on the shoreline at 45–32′10″ N/122–40′34″ W then heading 150 yards offshore to 45–32′09″ N/122–40′39″ W then heading up river 275 yards to 45–32′01″ N/122–40′33″ then heading 150 yards to the shoreline ending at 45–32′04″ N/122–40′28″ W. In essence, these boundaries extend from the shoreline of the facility 150 yards onto the river from each corner of the facility and encompass all waters and structures therein. No person or vessel may enter or remain in the safety zone unless authorized by the Sector Columbia River Captain of the Port or his designated representatives.

This rule has been enforced with actual notice since January 17, 2013 and it will be enforced until June 1, 2013.

E. 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. Although this rule will restrict access to the regulated areas, the effect of this rule will not be significant because: (i) The safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the safety zones; (iii) the safety zones will effect limited geographical locations for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the safety zones; (iii) the safety zones will effect limited geographical locations for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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. In preparing this temporary rule, the Coast Guard carefully considered the rights of lawful protestors. The safety zones created by this rule do not prohibit members of the public from assembling on shore or expressing their points of view from locations on shore. In addition, the Captain of the Port has identified waters in the vicinity of these safety zones where those desiring to do so can assemble and express their views without compromising navigational safety. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION 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 From Environmental Health Risks

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 temporary safety zones around the Columbia Grain facility on the Willamette River in Portland, OR, the United Grain Corporation facility on the Columbia River in Vancouver, WA, the Temco Irving facility on the Willamette River in Portland, OR, and the Temco Kalama facility on the Columbia River in Kalama, WA. 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, 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. 1226, 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T13–240 to read as follows:

§ 165.T13–240 Safety Zones; Pacific Northwest Grain Handlers Association Facilities; Columbia and Willamette Rivers.

(a) *Definitions.* As used in this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the Navigation Rules, International-Inland.

(4) *Official Patrol* means those persons designated by the Captain of the Port to monitor a vessel safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Federal Law Enforcement Officers

authorized to enforce this section are designated as the Official Patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Grain-shipment vessel* means any vessel bound for or departing from any of the following waterfront facilities: Columbia Grain in Portland, OR, United Grain Corporation in Vancouver, WA, Temco Irving in Portland, OR, and Temco Kalama in Kalama, WA, or any vessel assisting such a vessel to moor or maneuver, to include, but not limited to tugs, pilot boats, and launches.

(7) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(8) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020

(b) *Locations.* The following areas are safety zones:

(1) Columbia Grain: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone enclosed by three lines and the shoreline: Line one starting on the shoreline at 45–38′35'' N/122–46′2″ W then heading 150 yards offshore to 45–38′38″ N/122–46′15'' W then heading up river 380 yards to 45–38′32'' N/122–46′28'' then heading 150 yards to the shoreline ending at 45–38′30″ N/122–46′25″ W. Geographically this rule will cover all waters of the Willamette River between the navigable channel and the Columbia Grain facility in Portland, OR.

(2) United Grain Corporation: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone enclosed by three lines and the shoreline: Line one starting on the shoreline at 45–37′46″ N/122–41′34″ W then heading 150 yards offshore to 45–37′48″ N/122–41′50″ W then heading up river 470 yards to 45–37′42″ N/122–41′37″ then heading 150 yards to the shoreline ending at 45–37′44″ N/122–41′31″ W. Geographically this rule will cover all waters of the Columbia River between the navigable channel and the United Grain Corporation facility at the Port of Vancouver, WA.

(3) Temco Portland: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone enclosed by three lines and the shoreline: line one starting on the shoreline at 45–32′10″ N/122–40′34″ W then heading 150 yards offshore to 45–32′09″ N/122–40′39″ W then heading up river 275 yards to 45–32′01″ N/122–40′33″ then heading 150 yards to the shoreline ending at 45–32′04″ N/122–40′28″ W.

(4) Temco Kalama: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone enclosed by three lines and the shoreline: Line one starting on the shoreline at 45–59'10″ N/122–50′09″ W then heading 150 yards offshore to 45–59′09″ N/122–50′14″ W then heading up river 385 yards to 45–58′58″ N/122–50′07″ then heading 150 yards to the shoreline ending at 45–59′00″ N/122–50′01″ W.

(c) *Effective Period.* The safety zones created in this section will be in effect from January 17, 2013, until June 1, 2013. They will be activated for enforcement as described in paragraph (d) of this section.

(d) *Enforcement Periods.* The Sector Columbia River Captain of the Port will cause notice of the enforcement of the grain-shipment vessels safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Sector Columbia River Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the safety zone is suspended. Upon notice of enforcement by the Sector Columbia River Captain of the Port, the Coast Guard will enforce the safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Sector Columbia River Captain of the Port, all persons and vessels are authorized to enter, transit, and exit the safety zone, consistent with the Navigation Rules.

(e) *Regulation.* (1) In accordance with the general regulations in section 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Sector Columbia River Captain of the Port, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within the safety zone contact the on-scene official patrol on VHF–FM channel 16 or 13, or the Sector Columbia River Command Center at phone number (503) 861–6211. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within the safety zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within the safety zone.

(4) Maneuver-restricted vessels. When conditions permit, the on-scene official patrol, or a designated representative of the Captain of the Port at the Sector Columbia River Command Center, should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter or operate within the safety zone in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within the safety zone; and

(iii) Permit vessels that must transit via a navigable channel or waterway to enter or operate within the safety zone in order to do so.

(f) *Exemption.* Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. § 70118. In addition, the Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section.

(h) *Waiver.* The Captain of the Port Columbia River may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: January 17, 2013.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2013–02307 Filed 2–1–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0828]

RIN 1625–AA00

Safety Zone; Indian Street Bridge Construction, St. Lucie Canal, Palm City, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the St. Lucie Canal, Palm City, Florida to provide for the safety of life and vessels on a narrow waterway during bridge construction for the Indian Street Bridge. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from February 11, 2013 through March 11, 2013. This rule will be enforced from 10 a.m. to 4 p.m. each day.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0828. 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 Junior Grade Mike H. Wu, Sector Miami Prevention Department, Coast Guard; telephone (305) 535–7576, email *Mike.H.Wu@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Coast Guard did not receive all necessary information regarding the bridge construction until January 7, 2013. As a result, the Coast Guard did not have sufficient time to publish a NPRM and to receive public comments prior to the operations. Any delay in the effective date of this rule would be contrary to the public interest because this rule is needed to provide for the safety of life on a navigable waterway of the United States.

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

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and other 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.

The purpose of the rule is to provide for the safety of life and vessels on a narrow waterway during bridge construction.

C. Discussion of Rule

From February 11, 2013 through March 11, 2013, construction will be conducted on the Indian Street Bridge in Palm City, Florida. The construction will impede the safe navigation of vessel traffic on a narrow waterway.

The temporary safety zone encompasses all waters of the St. Lucie Canal in the vicinity of the Indian Street Bridge, Palm City, Florida. This safety zone will be enforced daily from 10 a.m. to 4 p.m. during this period of bridge construction.

Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative.

Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

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 economic impact of this rule is not significant for the following reasons: (1) The safety zone will be enforced for a maximum of 6 hours daily; (2) persons and vessels may enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Miami or a designated representative; (3) persons and vessels not authorized by the Captain of the Port Miami or designated representative to enter, transit through, anchor in, or remain within the safety zone may operate in the surrounding area during the enforcement period; and (4) the Coast Guard will provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit through, anchor in, or remain within the safety zone established by this regulation during the respective enforcement period.

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.

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 temporary safety zone to provide for the safety of life. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion 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 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 a temporary § 165.T07–0828 to read as follows:

§ 165.T07–0828 Safety Zone; Indian Street Bridge Construction, St. Lucie Canal, Palm City, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the St. Lucie Canal, Palm City, FL surrounding the Indian Street Bridge bounded by the following positions: starting at point 1 in position 27°09′36″ N, 80°15′06″ W; thence southeast across the canal to position 2 in position 27°09′35″ N, 80°15′04″ W; thence southwest along the shoreline to position 3 in position 27°09′29″ N, 80°15′07″ W; thence northwest across the canal to position 4 in position 27°09′30″ N, 80°15′09″ W; then northeast along the shoreline back to point of origin.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 10 a.m. February 11, 2013 through 4 p.m. March 11, 2013.

Dated: January 15, 2013.

J.B. Pruett,

Captain, U.S. Coast Guard, Acting Captain of the Port Miami.

[FR Doc. 2013–02308 Filed 2–1–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2012–0435; FRL–9775–2]

Approval and Promulgation of Implementation Plans; Texas; Beaumont/Port Arthur Ozone Maintenance Plan Revision to Approved Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a revision to the Beaumont/Port Arthur (BPA) 1997 8-hour ozone maintenance air quality State Implementation Plan (SIP) which replaces the previously approved motor vehicle emissions budgets (budgets) with budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) 2010a emissions model. The BPA 1997 8-hour ozone maintenance area consists of Hardin, Jefferson, and Orange Counties in Texas.

DATES: This final rule is effective on March 6, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2012–0435. All documents in the docket are listed at *www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 Freedom of Information Act (FOIA) Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey Riley, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–8542; fax number 214–665–6762; email address *riley.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' and ''our'' means EPA.

Table of Contents

I. What is the background for this action?
II. What public comments were received?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

The background for today's action is discussed in detail in our September 19, 2012 proposal (77 FR 58058). In that notice, we proposed to approve a revision to the BPA 1997 8-hour ozone maintenance air quality SIP by replacing the previously approved motor vehicle emissions budgets, developed with EPA's MOBILE 6.2 model, with budgets developed using EPA's more current Motor Vehicle Emissions Simulator (MOVES) 2010a emissions model. At the time of our proposal, Texas had provided for public review and comment of the SIP revision at the state level. Subsequently, the State adopted the revision and submitted it to us on December 10, 2012.

An air quality maintenance plan is required to show that an area will continue to maintain attainment of the applicable standard taking into account projections of future emissions. Our approval means that EPA is finding that Beaumont's ozone air quality maintenance plan still demonstrates that the area will maintain attainment of the 1997 ozone national ambient air quality standard through the year 2021 while taking into account the revised emissions from the MOVES model. The motor vehicle emissions budgets are the amount of emissions from on-road motor vehicles that are consistent with the maintenance plan. Once EPA approves the submitted budgets, they must be used by local, state and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the Clean Air Act (CAA) and 40 CFR 93.102.

II. What public comments were received?

The State public comment period for this SIP revision was from June 29, 2012, until August 3, 2012. A public hearing was offered but was not requested. No public comments were received by Texas during the comment period.

The **Federal Register** proposing approval of this SIP revision was published on September 19, 2012, and the public comment period closed on October 19, 2012. EPA received three comment letters. However, one comment letter is not related to EPA's proposal and is outside the scope of this action. Therefore, EPA is responding only to the two comments that are relevant to this action. Those comments expressed support of EPA's approval of this SIP revision and were submitted by the Texas Commission on Environmental Quality, Austin; Executive Director, and the 8-Hour Ozone SIP Coalition, Austin; Project Coordinator. EPA appreciates the support for this action. The comment letters are available for review in the docket for this rulemaking.

III. What action is EPA taking?

EPA is approving as a SIP revision new MOVES2010a-based budgets for the Beaumont/Port Arthur 1997 ozone maintenance area because the submitted budgets will continue to keep emissions below the attainment level and maintain air quality. On the effective date of this rulemaking, the submitted MOVES2010a budgets will replace the existing, MOBILE6.2-based budgets in the state's 1997 8-hour ozone maintenance plan and will be used in future transportation conformity analyses for the area. The previously approved MOBILE6.2 budgets will no longer be applicable for transportation conformity purposes.

BEAMONT/PORT ARTHUR MOVES2010a-BASED 8-HR OZONE MVEBS (TPD)

Budget year	NO_X MVEB	VOC MVEB
2021	9.7	3.9

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 20, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: January 16, 2013.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. Section 52.2270(e) is amended by adding an entry for *On-Road Mobile Source Emissions Inventory and Motor Vehicle Emissions Budget Update* at the end of the second table titled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

* * * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or non-attainment area	State submittal/ effective date	EPA approval date	Comments
*	*	*	*	*
On-Road Mobile Source Emissions Inventory and Motor Vehicle Emissions Budget Update.	Beaumont/Port Arthur, TX	12/10/2012	2/4/2013 [Insert citation of publication in **Federal Register**].	MOVES update to motor vehicle emissions budgets.

[FR Doc. 2013–02237 Filed 2–1–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. CDC–2011–0007]

42 CFR Part 71

RIN 0920–AA37

Foreign Quarantine; Import Regulations for Infectious Biological Agents, Infectious Substances, and Vectors

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) is issuing this final rule amending the regulations regarding the importation of infectious biological agents, infectious substances, and vectors. The amendments improve HHS/CDC's ability to prevent the introduction, transmission, or spread of communicable diseases into the United States.

DATES: The final rule is effective April 5, 2013.

FOR FURTHER INFORMATION CONTACT: Robbin Weyant, Ph.D., Director, Division of Select Agents and Toxins, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS A–46, Atlanta, GA 30333. Telephone: 404–718–2000.

SUPPLEMENTARY INFORMATION: The preamble is organized as follows:

I. Background
II. Statutory Authority
III. Responses to Public Comments
A. Definitions
B. Infectious Biological Agent
C. Biosafety
D. Permit Exemptions
E. Transportation
F. Subsequent Transfer
G. Miscellaneous
IV. Required Regulatory Analyses Under Executive Orders 13563 and 12866 and Regulatory Flexibility Act
V. Other Administrative Requirements
A. Paperwork Reduction Act of 1995
B. Executive Order 12988, Civil Justice Reform and Executive Order 13132, Federalism
C. Plain Language in Government Writing

I. Background

On October 14, 2011, we published a proposed rule in the **Federal Register** (76 FR 63891) to clarify regulatory definitions, ensure adequate biosafety measures, increase oversight through inspections, to address permit exemptions and transportation requirements, and to describe an appeal process. The proposed rule provided a 60-day public comment period that ended on December 13, 2011.

This final rule contains provisions that apply to a variety of entities including academic institutions and biomedical centers, commercial manufacturing facilities, Federal, State, and local laboratories, including clinical and diagnostic laboratories, research facilities, exhibition facilities, and educational facilities.

II. Statutory Authority

This final rule is issued under the authority of Section 361 of the Public Health Service Act (PHS Act) (42 U.S.C. 264). This provision authorizes the Health and Human Services (HHS) Secretary to make and enforce such regulations as in her judgment are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States or possessions of the United States and from one State or possession into any other State or possession. For purposes of carrying out and enforcing such regulations, the HHS Secretary may authorize a variety of public health measures, including inspection, fumigation, disinfection, sanitation, pest extermination, destruction of animals or articles found to be sources of dangerous infection to human beings, and other measures.

The Foreign Quarantine regulations (42 CFR part 71) set forth provisions to prevent the introduction, transmission, and spread of communicable disease from foreign countries into the United States. Part 71, Subpart F (Importations) contains provisions for importation of etiological agents, hosts, and vectors (42 CFR 71.54), requiring persons to obtain a permit issued by the CDC before importing, or distributing after import, any of these materials.

III. Responses to Public Comment

We received nine comments from academic, private and government facilities. The comments are discussed below.

A. Definitions

Commenters requested clarification about whether the definition of ''vector'' should (1) include an exemption for animals meant for a zoo, (2) address pelts or other objects meant for museum use or (3) limit the definition to the importation of live animals. Prior to entry into the United States and regardless of the purpose for the importation, a permit will continue to be required for any live animal or animal product (e.g., a mount, rug, or other display item composed of the hide, hair, skull, teeth, bones, or claws of an animal) unless (1) the animal or animal product is not known to transfer or to be capable of transferring an infectious biological agent to a human or (2) the animal product has been rendered noninfectious. The documentation may include a statement from a treating veterinarian, statement from a medical facility, medical certificate, or in the case of an animal product, documentary evidence, such as a veterinary or taxidermy certificate, describing how the material had been treated to render it noninfectious. Any live animal or animal product imported for scientific, educational or exhibition purposes (e.g., bats and bat products) will also continue to require a permit, unless accompanied by documentation indicating that the animal or animal product is not known to transfer or to

be capable of transferring an infectious biological agent to a human or the product has been rendered noninfectious.

The terms ''educational purpose,'' ''exhibition purpose'' and ''scientific purpose'' are defined in 42 CFR 71.1. ''Scientific purpose'' means ''use for scientific research following a defined protocol and other standards for research projects as normally conducted at the university level. The term also includes the use for safety testing, potency testing, and other activities related to the production of medical products.'' ''Educational purpose'' means ''use in the teaching of a defined educational program at the university level or equivalent.'' ''Exhibition purpose'' means ''use as a part of a display in a facility comparable to a zoological park or in a trained animal act. The animal display must be open to the general public at routinely scheduled hours on 5 or more days of each week. The trained animal act must be routinely scheduled for multiple performances each week and open to the general public except for reasonable vacation and retraining periods.''

One commenter urged HHS/CDC to modify the definition section to include a new definition for the term ''infectious substance.'' The commenter indicated that defining the term ''infectious substance'' in the context of applicable transportation standards and requirements for dangerous goods and hazardous materials would clarify HHS/CDC's expectations regarding the packaging and shipping of these materials and help applicants to better understand and address these issues. We agree with the commenter and are replacing the definition of ''infectious material'' with an ''infectious substance'' definition, which states ''any material that is known or reasonably expected to contain an infectious biological agent.'' This definition for ''infectious substance'' is consistent with the definitions found in the Department of Transportation (DOT) regulations set forth at 49 CFR Part 171–180 (''A material known or suspected to contain a pathogen:—a microorganism (including bacteria, viruses, parasites, fungi) or other agent, that can cause disease in humans or animals'') and World Health Organization (WHO) Transport of Infectious Substances Standard (''For the purposes of transport, infectious substances are defined as substances which are known or are reasonably expected to contain pathogens. Pathogens are defined as microorganisms (including bacteria, viruses, rickettsiae, parasites, fungi) and other agents such as prions, which can cause disease in humans or animals'').

A commenter recommended defining the term ''biosafety measures,'' which is used several times in the proposed regulatory language, to help importers prepare for use of these requirements and to assist in agency review of such measures before the issuance of a permit. The commenter recommended that ''biosafety measures'' be defined as ''standard microbiological practices, special practices, safety equipment (primary and personal protective equipment) and laboratory facilities (secondary barriers) as noted in the current edition of *Biosafety in Microbiological and Biomedical Laboratories* (BMBL) and additional safeguards as provided in the NIH Guidelines for recombinant and synthetic DNA if appropriate for the substance or material for which such measures are implemented.'' We made no changes based on this comment. While the commenter provided excellent references, we believe that citing only these references is limiting since there are other references that provide useful recommendations for safely working with a variety of human pathogens (i.e., Occupational Safety and Health Administration (OSHA) regulations, World Health Organization guidance, etc.).

B. Infectious Biological Agent

One commenter noted that she was not aware of any medically important fungal agents that are communicable (transmissible from person to person), with the possible exception of dermatophyte agents (*Epidermophyton, Microsporum, and Trichophyton*). The commenter argued that the hazardous characteristics of dermatophyte agents are not sufficiently severe to merit regulation of these agents through the import permit mechanism. The commenter suggested that the regulatory text be clarified to list the fungal agents that would be regulated. The commenter further reasoned that *Coccidioides* species, *Histoplasma capsulatum,* and *Blastomyces dermatitidis* should no longer require an import permit since they do not cause communicable disease and are not transmissible from person to person. We made no changes based on this comment. Section 71.1 (Scope and definitions) of Title 42, Code of Federal Regulations defines ''communicable disease'' as ''an illness due to a specific infectious agent or its toxic products which arises through transmission of that agent or its products from an infected person or animal or a reservoir to a susceptible host, either directly, or indirectly through an intermediate animal host, vector, or the inanimate environment.'' All examples cited by this commenter meet this definition of the term ''infectious biological agents'' because each of the fungi cited are capable of causing communicable disease.

C. Biosafety

One commenter was interested in knowing specifically how HHS/CDC will ''work with'' entities to address safety issues. The commenter questioned if this will entail providing additional financing to bring importers into compliance, or is this ''offer to work with'' the importer a distinctive part of the permit issuance process. HHS/CDC's statement in the preamble to the proposed rule that it was willing to work with an entity whose biosafety measures were found to be inadequate was neither an offer to provide financial assistance nor a distinctive part of the permit issuance process. It was simply a statement that, rather than simply deny a permit, HHS/CDC would be willing to assist an applicant to achieve compliance with the import regulations. If an importer is unable to address the inadequate biosafety measures identified, the importer would not receive a permit to import the infectious biological agent, infectious substance, or vector requested.

D. Permit Exemptions

Diagnostic Specimens

One commenter proposed to replace the term ''diagnostic specimen'' with the phrase, ''exempt human specimen or exempt animal specimen'', consistent with DOT Hazardous Materials Regulations and the International Air Transport Association Dangerous Goods Standards. We made no changes based on this comment since the proposed replacement language limits the specimens to human and animals and does not include environmental samples.

Another commenter stated that the proposed rule leaves too much speculation about what is potentially infectious material. The commenter suggested that a standard which was more closely aligned with the WHO standard for biological materials and infectious substances would provide more clarity. We agree with the commenter and have replaced the definition for ''infectious material'' with an ''infectious substance'' definition that closely aligns with definitions found in the DOT regulations and WHO standards.

Even though we did not receive a comment regarding bats, we clarified

that these materials should not be exempted since people become infected with germs either through direct or close contact with bats or their droppings. Specifically, bats are known carriers of germs that cause disease in humans, including internal and external parasites, fungi, bacteria, and viruses. The most significant of these germs are Nipah virus and viruses that cause diseases such as Ebola, Marburg Hemorrhagic Fever, Sudden Acute Severe Respiratory Syndrome (SARS), and rabies.

Genomic Material

One commenter requested that the importation and subsequent transfer of positive stranded viral RNA be considered in this Part. The commenter reasoned that if this material could be used to recover an infectious agent, its importation and subsequent transfer would be, for all intents and purposes, identical to the importation and subsequent transfer of an etiological agent. The commenter also reasoned that if the intent was the extraction of the genetic information only, and the recipient had no intention to retrieve the infectious agent from the nucleic acid preparation, then the need for the permit would seem not to be warranted. We made no changes based on this comment since positive stranded viral rRNA genomic material would meet our proposed definition as a ''component of such microorganism or prion that is capable of causing communicable disease in a human.'' It should be noted that our proposed rule already contains an exemption for genomic materials certified by the importer to be incapable of producing infectious biological agents.

E. Transportation

One commenter argued that the regulations should place the responsibility for compliance with all applicable laws and regulations concerning the packaging and shipment of infectious substances on the shipper since the only thing related to shipping that could be practically mandated for the recipient would be to open the shipment in a manner consistent with the expected hazard and report any spillage/leakage. The commenter stated that the importer could be required to obtain some type of affirmation from the shipper to the effect that the shipment is done in compliance with applicable regulations. We agree with the commenter insofar as the commenter suggests that the shipper comply with all applicable legal requirements relating to the packaging, labeling, and shipment of infectious substances, such as those found at 49 CFR part 173 and standards issued by the International Civil Aviation Organization (ICAO). We disagree with the commenter, however, insofar as the commenter suggests that the importer should bear no legal responsibility under these regulations for actions taken by the shipper on the importer's behalf. Accordingly, under these regulations the importer, as the initiator of the Import Permit request, must implement measures to ensure that the shipper will package, label, and ship the requested infectious substance, infectious biological agent, or vector in a manner that is safe and in compliance with all applicable legal requirements.

Another commenter suggested that we amend the statement ''The importer is in compliance with all applicable laws concerning the packaging and shipment of infectious substance'' to include ''and regulations'' in the statement. The commenter also recommended that guidance be provided on the HHS/CDC Web site to clarify HHS/CDC's expectations regarding the packaging and shipping of infectious substances. We agreed with the commenter that the statement should be revised to include all laws and regulations. Therefore, we changed the language to read, ''The importer takes measures to help ensure that the shipper complies with all applicable legal requirements concerning the packaging, labeling, and shipment of infectious substances.'' To clarify HHS/CDC's expectations regarding the packaging and shipping of infectious substances, we have posted guidance regarding our expectations on the HHS/CDC import permit Web site at: *http://www.cdc.gov/od/eaipp/faq.htm.*

F. Subsequent Transfer

One commenter requested confirmation that an importer may still seek authorization for subsequent transfers of the items within the United States through the initial permit application. We confirm that an importer may still seek authorization for subsequent transfers of items within the United States in the initial permit application.

G. Miscellaneous

Cost

One commenter believed that there would be a significant cost to implement the HHS/CDC inspection program. The commenter stated it should be an institutional responsibility to ensure that an appropriate biosafety plan is in place. The commenter believed if an institution does not have a biosafety office or plan; it should not have the permit to import items that may pose any kind of risk. We agree that an entity that does not have a biosafety plan should not have a permit to import items that have the potential to pose a risk to public health and safety.

Since 2009, we have refined the HHS/CDC import permit database to include better descriptions of material being imported, the biosafety level of the laboratory where the work will be performed, and the type of work to be conducted (e.g., diagnostic, research). To estimate the number of facilities that would require a biosafety inspection under this Part; we first identified those facilities that had previously applied to import agents which are capable of causing serious or potentially lethal disease in humans via the aerosol route. From that list, we deleted those facilities already receiving periodic biosafety inspections from either HHS/CDC or the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (USDA/APHIS) under the HHS or USDA Select Agent Regulations (42 CFR part 73, 9 CFR part 121, or 7 CFR part 131) and concluded that approximately 25 facilities would need to be inspected per year to verify that they have in place the appropriate biosafety measures. Since we already review documents regarding biosafety and have a staff of fully trained and experienced biosafety inspectors, and based on our review of recent permitting activity, we believe the projected travel costs to perform these inspections will be less than 1% of the current budget for the HHS/CDC's Division of Select Agents and Toxins. We also plan to coordinate these inspections with those we are already conducting under the Federal Select Agent Inspection Program to recognize greater efficiencies.

Internet Site

One commenter suggested that HHS/CDC maintain on its internet site the current permit preparation guidance text so that permit applicants will have ready access to information regarding their responsibilities under the regulations, separate from the regulations themselves. We agree with this commenter and will review our Web site content on a regular ongoing basis to ensure that the content is consistent with the regulations and easy to find.

Alternatives Considered

In the proposed rule we discussed the alternative approaches we considered in development of this rulemaking in order to reduce burden for clinical/diagnostic laboratories or small businesses selling manufactured goods.

First, we noted that, from HHS/CDC's Select Agent inspection program, specific biosafety measure implementation issues were identified in 81 of the 316 entities inspected by CDC since 2003. Some of the biosafety measure implementation issues were serious enough to require the suspension of registration or other restrictions on biological work at these facilities. We noted that USDA/APHIS had identified similar biosafety issues. Because of these issues, we proposed to require specific biosafety measures to be implemented by the applicant.

Second, we considered proposing a requirement that applicants develop and maintain a written biosafety plan commensurate with the hazard posed by the infectious biological agent, infectious material, and/or vector to be imported, and the level of risk given the intended use including what elements of the plan are essential to prevent exposures and dramatically reduce the incidence of laboratory acquired infections and protect the public health and the environment. We acknowledged that most, if not all, importers of etiological agents already have such biosafety plans. We based this on our experience with import permit submissions that address Section G (Receiving Laboratory Capabilities) of the permit application. We specifically sought comment from the public concerning the cost and burden of requiring a formal a written biosafety plan. We did not receive any comments specifically addressing the cost and burden of requiring a formal written biosafety plan.

Finally, we proposed exemptions to allow importers to import certain material that is already approved or authorized by another Federal agency or material that has been determined not to be an infectious biological agent.

IV. Required Regulatory Analyses Under Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is being treated as ''not significant'' under EO 12866. It clarifies regulatory definitions, insures adequate biosafety measures, increases oversight through inspections, addresses permit exemptions and transportation requirements, and describes an appeal process when the permit request is denied. Thus, the rule has not been reviewed by the Office of Management and Budget (OMB).

Based on past experience, we estimate that there will be approximately 2,000 applications for both import and distribution permit requests each year and that the average response time to complete the application is 20 minutes. We believe that the burden has been limited to requesting only essential information on the application, verifying information, when required, by telephone, and mailing information to the appropriate parties.

With regard to the new requirement to have biosafety measures in place, our current experience from reviewing the information submitted for the import permit applications addressing Section G (Receiving Laboratory Capabilities) (e.g., detailed description of any required personal protective equipment (PPE)), and laboratory equipment (i.e., biosafety cabinets, autoclaves) that ensures materials are properly handled and contained indicates that the vast majority of importers of etiological agents already have instituted such biosafety measures. Based on our review of applications received between March 2011 and January 2012, we estimate that 98% (632 out of 644) of the applicants possess written biosafety plans and already follow standard biosafety practices and procedures.

With regard to whether HHS/CDC will inspect an import facility, as noted above, HHS/CDC will use the following specific criteria to determine which entities are to be inspected: (1) facilities that request to perform research with imported agents that would need to be conducted in a biosafety level (BSL) 3, BSL–4, animal biosafety level (ABSL) 3, ABSL–4 or BSL–3 Agriculture laboratory as described in the BMBL (e.g., *Mycobacterium tuberculosis* used in aerosol studies required at BSL–3), and (2) facilities that have not been inspected by either HHS/CDC or USDA/APHIS under the Federal Select Agent Regulations.

Since 2009, we have refined the HHS/CDC import permit database to include better descriptions of material being imported, the biosafety level of the facility where the work would be performed, and the type of work to be conducted (e.g., diagnostic, research). To estimate the number of facilities that would require a biosafety inspection, we first identified those facilities that applied to import agents to use in research, which may cause serious or potentially lethal disease after inhalation. From that list, we removed those facilities already subject to periodic biosafety inspections under the Federal Select Agent Regulations. We concluded that approximately 25 facilities would need to be inspected per year to verify that they have in place the appropriate biosafety measures. To minimize additional burdens on inspected facilities, we will be contacting those facilities that received a permit in 2012, and would meet the criteria for requiring an inspection, 3 months prior to the expiration of the facility's import permit to initiate the renewal process. We plan to inspect these facilities once in a two year timeframe, assuming that no significant biosafety problems are identified.

We also anticipate that there will be minimal increased cost to HHS/CDC to implement these changes since we already review documents regarding biosafety and have a staff of fully trained and experienced biosafety inspectors. Based on our review of recent permitting activity, we believe the projected travel costs to perform these inspections will be less than 1% of the current budget for the HHS/CDC's Division of Select Agents and Toxins. We also plan to coordinate these inspections with those we are already conducting under the Federal Select Agent Inspection Program to recognize greater efficiencies.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 601 et seq.), agencies must consider the impact of regulations on small entities and analyze regulatory options that would minimize a rule's impacts on these entities. Alternatively, the agency head may certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, eligibility for classification as a small business is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. For example, a business is considered small if its annual revenue ranges between $2.5 to $21.5 million for services provided or the number of its employees range from 100 to 500 depending on the particular product being provided. Based on this

definition, HHS/CDC does not anticipate that these regulatory changes will have a significant economic impact on a substantial number of small businesses or other small entities. HHS/CDC estimates that only 100 applications out of the approximately 2,000 applications that we receive each year will be from small businesses. We received no comments to the proposed rule concerning the cost and burden of the proposed rule on small businesses.

V. Other Administrative Requirements

A. Paperwork Reduction Act of 1995

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), HHS/CDC has determined that the Paperwork Reduction Act does apply to information collection and recordkeeping requirements included in this rule. We note that the information collection and recordkeeping requirements are already approved by OMB under OMB Control Number 0920–0199, expiration 1/31/2014. There are no new information collection or recordkeeping requirements in this rule.

Since 2003, HHS/CDC has denied 2 applications for permits. HHS/CDC proposes to provide applicants with an opportunity for a written appeal in the event that the HHS/CDC denies a request for a permit to import infectious biological agents, infectious substances, or vectors under this part. Under the proposal, an applicant who wishes to make such an appeal would have 30 calendar days after receiving the denial to submit the appeal in writing to the HHS/CDC Director. The appeal must state the factual basis for the appeal and provide any supporting documentations to justify the appeal (e.g., documents that demonstrate the facility has the appropriate biosafety measures in place for working safely with requested imported material). HHS/CDC would then issue a written response, which would constitute final agency action. HHS/CDC estimates the time to prepare and submit such a request is four hours. We received no comments regarding this process.

B. Executive Order 12988, Civil Justice Reform and Executive Order 13132, Federalism

This rule has been reviewed under Executive Order 12988, Civil Justice Reform, and Executive Order 13132, Federalism. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

C. Plain Language in Government Writing

Pursuant to Presidential Memorandum of June 1, 1998 Plain Language in Government Writing (63 FR 31885), Executive Departments and Agencies are directed to use plain language in all proposed and final rules. HHS/CDC believes it has used plain language in drafting of this final rule. We received no comments from the public to the proposed rule in this regard.

List of Subjects in 42 CFR Part 71

Airports, Animals, Communicable diseases, Harbors, Imports, Pesticides and pests, Public health, Quarantine, Reporting and recordkeeping requirements.

Dated: January 28, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

For the reasons stated in the preamble, the Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, amends 42 CFR Part 71 as follows:

PART 71—FOREIGN QUARANTINE

■ 1. The authority citation for part 71 continues to read as follows:

Authority: Secs. 215 and 311 of Public Health Service (PHS) Act as amended (42 U.S.C. 216, 243); secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

■ 2. Revise § 71.54 to read as follows:

§ 71.54 Import regulations for infectious biological agents, infectious substances, and vectors.

(a) The following definitions apply to this section:

Animal. Any member of the animal kingdom except a human including an animal product (e.g., a mount, rug, or other display item composed of the hide, hair, skull, teeth, bones, or claws).

Diagnostic specimen. Specimens of human and animal matter (including tissue, blood, body discharges, fluids, excretions or similar material), or environmental samples.

Genomic material. Deoxyribonucleic acid (DNA) or Ribonucleic acid (RNA) comprising the genome or organism's hereditary information, that may be single-stranded or double-stranded, and in a linear, circular, or segmented configuration and may be positive sense (same polarity as mRNA), negative sense, or ambisense (mixture of the two).

Infectious biological agent. A microorganism (including, but not limited to, bacteria (including rickettsiae), viruses, fungi, or protozoa) or prion, whether naturally occurring, bioengineered, or artificial, or a component of such microorganism or prion that is capable of causing communicable disease in a human.

Infectious substance. Any material that is known or reasonably expected to contain an infectious biological agent.

Select agents and toxins. Biological agents and toxins that could pose a severe threat to public health and safety as listed in 42 CFR 73.3 and 73.4.

Vector. Any animals (vertebrate or invertebrate) including arthropods or any noninfectious self-replicating system (e.g., plasmids or other molecular vector) or animal products (e.g., a mount, rug, or other display item composed of the hide, hair, skull, teeth, bones, or claws of an animal) that are known to transfer or are capable of transferring an infectious biological agent to a human.

(b) Unless excluded pursuant to paragraph (f) of this section, a person may not import into the United States any infectious biological agent, infectious substance, or vector unless:

(1) It is accompanied by a permit issued by the Centers for Disease Control and Prevention (CDC). The possession of a permit issued by the CDC does not satisfy permitting requirements placed on materials by the U.S. Department of Agriculture that may pose hazards to agriculture or agricultural production in addition to hazards to human health.

(2) The importer is in compliance with all of the permit requirements and conditions that are outlined in the permit issued by the CDC.

(3) The importer has implemented biosafety measures commensurate with the hazard posed by the infectious biological agent, infectious substance, and/or vector to be imported, and the level of risk given its intended use.

(4) The importer takes measures to help ensure that the shipper complies with all applicable legal requirements concerning the packaging, labeling, and shipment of infectious substances.

(c) If noted as a condition of the issued permit, subsequent transfers of any infectious biological agent, infectious substance or vector within the United States will require an additional permit issued by the CDC.

(d) A permit is valid only for:

(1) The time period and/or term indicated on the permit, and

(2) Only for so long as the permit conditions continue to be met.

(e) A permit can be denied, revoked or suspended if:

(1) The biosafety measures of the permit holder are not commensurate with the hazard posed by the infectious biological agent, infectious substance, or vector, and the level of risk given its intended use; or,

(2) The permit holder fails to comply with all conditions, restrictions, and precautions specified in the permit.

(f) A permit issued under this part is not required for an item if:

(1) It is a biological agent listed in 42 CFR Part 73 as a select agent and its importation has been authorized in accordance with 42 CFR 73.16 or 9 CFR 121.16.

(2) With the exception of bat or nonhuman primate specimens, it is a diagnostic specimen not known by the importer to contain, or suspected by the importer of containing, an infectious biological agent and is accompanied by an importer certification statement confirming that the material is not known to contain or suspected of containing an infectious biological agent, or has been rendered noninfectious.

(3) With the exception of live bats or bat or nonhuman primate products, it is an animal or animal product being imported for educational, exhibition, or scientific purposes and is accompanied by documentation confirming that the animal or animal product is not known to contain (or suspected of containing) an infectious biological agent or has been rendered noninfectious.

(4) It consists only of nucleic acids that cannot produce infectious forms of any infectious biological agent and the specimen is accompanied by an importer certification statement confirming that the material is not known to contain or suspected of containing an infectious biological agent.

(5) It is a product that is cleared, approved, licensed, or otherwise authorized under any of the following laws:

(i) The Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), or

(ii) Section 351 of the Public Health Service Act pertaining to biological products (42 U.S.C. 262), or

(iii) The Virus-Serum-Toxin Act (21 U.S.C. 151–159).

(6) It is an animal or animal product listed in 42 CFR Part 71 and its importation has been authorized in accordance with 42 CFR 71.52, 71.53, or 71.56.

(g) To apply for a permit, an individual must:

(1) Submit a signed, completed CDC Form 0.753 (Application for Permit to Import Biological Agents or Vectors of Human Disease into the United States) to the HHS/CDC Import Permit Program.

(2) Have in place biosafety measures that are commensurate with the hazard posed by the infectious biological agent, infectious substance, and/or vector to be imported, and the level of risk given its intended use.

(h) Issuance of a permit may be contingent upon an inspection of the importer's facility by the CDC to evaluate whether the importer's biosafety measures (e.g., physical structure and features of the facility, and operational and procedural safeguards) are commensurate with the hazard posed by the infectious biological agent, infectious substance, and/or vector, and the level of risk given its intended use.

(i) Denial, suspension, or revocation of a permit under this section may be appealed to the CDC Director. The appeal must be in writing, state the factual basis for the appeal, and be submitted to the CDC Director within 30 calendar days of the denial, suspension, or revocation of the permit. HHS/CDC will issue a written response to the appeal, which shall constitute final agency action.

[FR Doc. 2013–02391 Filed 2–1–13; 8:45 am]

BILLING CODE 4163–18–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

DATES: *Effective date:* This rule is effective as of February 4, 2013.

FOR FURTHER INFORMATION CONTACT: Kara Ward, Assistant General Counsel, Legal Services Corporation, 3333 K St. NW., Washington, DC 20007; (202) 295–1596; *karaward@lsc.gov.*

SUPPLEMENTARY INFORMATION:

Section 1007(a)(2) of the Legal Services Corporation Act (Act), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(c) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the Federal Poverty Guidelines. Since 1982, the Department of Health and Human Services has been responsible for updating and issuing the Federal Poverty Guidelines. The figures for 2013 set out below are equivalent to 125 percent (125%) of the current Federal Poverty Guidelines as published on January 24, 2013 (78 FR 5182).

In addition, LSC is publishing charts listing income levels that are two hundred percent (200%) of the Federal Poverty Guidelines. These charts are for reference purposes only as an aid to grant recipients in assessing the financial eligibility of an applicant whose income is greater than 125 percent (125%) of the applicable Federal Poverty Guidelines amount, but less than 200 percent (200%) of the applicable Federal Poverty Guidelines amount (and who may be found to be financially eligible under duly adopted exceptions to the annual income ceiling in accordance with sections 1611.3, 1611.4 and 1611.5).

List of Subjects in 45 CFR Part 1611

Grant programs—law, Legal services.

For reasons set forth in the preamble, the Legal Services Corporation amends 45 CFR part 1611 as follows:

PART 1611—ELIGIBILITY

■ 1. The authority citation for part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

■ 2. Revise Appendix A to part 1611 to read as follows:

Appendix A to Part 1611—Income Level for Individuals Eligible for Assistance

LEGAL SERVICES CORPORATION 2013 INCOME GUIDELINES *

Size of household	48 Contiguous States and the District of Columbia	Alaska	Hawaii
1	$14,363	$17,938	$16,538
2	19,388	24,225	22,313
3	24,413	30,513	28,088
4	29,438	36,800	33,863
5	34,463	43,088	39,638
6	39,488	49,375	45,413
7	44,513	55,663	51,188
8	49,538	61,950	56,963
For each additional member of the household in excess of 8, add:	5,025	6,288	5,775

* The figures in this table represent 125% of the poverty guidelines by household size as determined by the Department of Health and Human Services.

REFERENCE CHART—200% OF DHHS FEDERAL POVERTY GUIDELINES

Size of household	48 Contiguous States and the District of Columbia	Alaska	Hawaii
1	22,980	$28,700	$26,460
2	31,020	38,760	35,700
3	39,060	48,820	44,940
4	47,100	58,880	54,180
5	55,140	68,940	63,420
6	63,180	79,000	72,660
7	71,220	89,060	81,900
8	79,260	99,120	91,140
For each additional member of the household in excess of 8, add:	8,040	10,060	9,240

Dated: January 29, 2013.

Victor M. Fortuno,

General Counsel.

[FR Doc. 2013–02325 Filed 2–1–13; 8:45 am]

BILLING CODE 7050–01–P

Proposed Rules

Federal Register
Vol. 78, No. 23
Monday, February 4, 2013

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

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2013–BT–TP–0008]

RIN 1904–AC96

Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnaces and Boilers

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) proposes to revise its test procedure for residential furnaces and boilers established under the Energy Policy and Conservation Act. This rulemaking would adopt needed equations, applicable to certain classes of these products, which were omitted from the relevant industry standard incorporated by reference in the DOE test procedure.

DATES: *Meeting:* DOE will hold a public meeting on Wednesday, March 13, 2013, from 9:00 a.m. to 12:00 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than April 22, 2013. See section V, ''Public Participation,'' for details.

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

Interested parties are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov*. Follow the instructions for submitting comments. Alternatively, interested parties may submit comments, identified by docket number EERE–2013–BT–TP–0008 and/or regulatory information number (RIN) number 1904–AC96, by any of the following methods:

- *Email: ResFurnBoilers2013TP0008@ee.doe.gov* Include the docket number EERE–2013–BT–TP–0008 and/or RIN 1904–AC96 in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC, 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2013-BT-TP-0008*. This web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for information on how to submit comments through *www.regulations.gov*.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov*.

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov*.

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I. Authority and Background

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act''), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles.[2] These include residential furnaces and boilers, the subject of today's notice. (42 U.S.C. 6292(a)(5)) [3]

Under EPCA, this program consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for: (1) Certifying to DOE that their products comply with the applicable energy conservation standards adopted pursuant to EPCA, and (2) making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test requirements when determining whether the products comply with any relevant standards promulgated under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures that DOE must follow when prescribing or amending test procedures for covered products. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, DOE has tentatively concluded that any test procedure changes arising from this rulemaking would not impact existing energy conservation standards for residential furnaces and boilers, because such changes would simply allow for the generation of accurate information reflecting the energy efficiency of affected basic models, which are typically comfortably above the existing minimum standard level.

DOE's current energy conservation standards for residential furnaces and boilers are expressed as minimum annual fuel utilization efficiency (AFUE). AFUE is an annualized fuel efficiency metric that fully accounts for fuel consumption in active, standby, and off modes. The existing DOE test procedure for determining the AFUE of residential furnaces and boilers is located at 10 CFR part 430, subpart B, Appendix N, *Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers.* The current DOE test procedure for residential furnaces and boilers was originally established by a final rule published in the **Federal Register** on May 12, 1997, and it incorporates by reference American National Standards Institute (ANSI)/American Society of Heating, Refrigerating, and Air-conditioning Engineers (ASHRAE) Standard 103–1993, *Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers* (ASHRAE 103–1993). 62 FR 26140, 26157 (incorporated by reference at 10 CFR 430.3(f)(9)). On October 14, 1997, DOE published an interim final rule in the **Federal Register** to revise a provision concerning the insulation of the flue collector box in order to ensure the updated test procedure would not affect the measured AFUE of existing furnaces and boilers. (62 FR 53508.) This interim final rule was subsequently adopted without change in a final rule published in the **Federal Register** on February 24, 1998. 63 FR 9390.

On October 20, 2010, DOE amended its test procedure for furnaces and boilers to establish a method for measuring the electrical energy use in standby mode and off mode for gas and oil-fired furnaces and boilers pursuant to requirements established by EISA 2007. 75 FR 64621. These test procedure amendments were primarily based on and incorporated by reference provisions of the International Electrotechnical Commission (IEC) Standard 62301 (First Edition), ''Household electrical appliances—Measurement of standby power.'' On December 31, 2012, DOE published a final rule in the **Federal Register** that updated the incorporation by reference of the standby mode and off mode test procedure provisions to refer to the latest edition of IEC Standard 62301 (Second Edition). 77 FR 76831.

On January 4, 2013, DOE published a request for information (RFI) in the **Federal Register** that requested comment and information on a variety of issues relating to the residential furnace and boiler AFUE test method. 78 FR 675. Key issues discussed in the RFI include avenues for reducing test burden and the addition of a performance test for automatic means of adjusting water temperature in hot water boilers.

II. Summary of the Notice of Proposed Rulemaking

In this notice of proposed rulemaking (NOPR), DOE proposes to modify the existing DOE testing procedures for residential furnaces and boilers to address an omission in the current test procedure regarding the calculation of AFUE for two-stage and modulating condensing furnaces and boilers that employ the optional procedure to skip

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

[3] Under 42 U.S.C. 6292(a)(5), the statute establishes ''furnaces'' as covered products. Originally, boilers were considered a class of furnaces. However, amendments to EPCA in the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007), distinguished between furnaces and boilers in 42 U.S.C. 6295(f) by adding the text ''and boilers'' to the title of that section and by prescribing standards for boiler products. Although EISA 2007 did not similarly update 42 U.S.C. 6292(a)(5), it is implicit that this coverage continues to include boilers.

the heat-up and cool-down tests, as described in section 9.10 (Optional Test Procedure for Condensing Furnaces and Boilers That Have No Off-Period Flue Losses) of ASHRAE 103–1993. Section 9.10 of ASHRAE 103–1993, which is incorporated by reference into the DOE test procedure for use at Appendix N to subpart B of 10 CFR part 430, allows certain condensing furnaces and boilers to omit the heat-up and cool-down tests provided that the model: (1) Has no measurable airflow through the combustion chamber and heat exchanger during the burner off-period, and (2) has post-purge period(s) of less than 5 seconds. Specifically, section 9.10 of ASHRAE 103–1993 reads as follows:

> For units designed with no measurable airflow through the combustion chamber and heat exchanger during the burner off-period and having post-purge periods of less than 5 seconds, D_F and D_P may be set equal to 0.05. At the discretion of the one testing, the cool-down and heat-up tests specified in 9.5 and 9.6 may be omitted on such units. In lieu of conducting the cool-down and heat-up tests, the tester may use the losses determined during the steady-state test described in 9.1 when calculating heating seasonal efficiency, $Effy_{HS}$.

For single-stage condensing furnaces and boilers, section 11.3.11.3 of ASHRAE 103–1993 provides two separate equations to calculate the heating seasonal efficiency (which contributes to the ultimate calculation of AFUE). One equation is based on the results of the heat-up and cool-down tests described in sections 9.5 and 9.6 and is to be used if these tests were conducted, and the other equation is based on the results of the steady-state test described in section 9.1 and is to be used if these tests were not conducted and the option in section 9.10 was employed instead. Having two separate equations for this section adequately addresses the difference in the data collected depending on whether the option in section 9.10 is employed. Therefore, for single-stage condensing boilers and furnaces, the necessary equations are already present for the calculation of AFUE when the optional procedure described in section 9.10 is utilized.

However, for two-stage and modulating condensing furnaces and boilers, there are no corresponding equations provided in ASHRAE 103–1993 to calculate the heating seasonal efficiency (which contributes to the ultimate calculation of AFUE) if the option in section 9.10 is selected. The only equation provided in the test procedure to calculate the heating seasonal efficiency for two-stage and modulating condensing furnaces and boilers requires values for the part-load efficiencies, which are based on the results of the heat-up and cool-down tests. Therefore, if two-stage and modulating condensing furnaces or boilers were tested and the heat-up and cool-down tests were omitted in accordance with section 9.10, the part-load efficiencies, heating seasonal efficiency, and resulting AFUE would all be erroneous if calculated using the DOE test method. DOE is aware that many boiler manufacturers have utilized the optional section 9.10 provisions for two-stage and modulating condensing boilers, regardless of the fact that no equations exist in section 11.5.11 that would provide for the calculation of the part-load efficiencies for such equipment. In calculating the AFUE, manufacturers have used ''0'' for the temperatures that would be taken during the heat-up and cool-down tests. Research into this issue conducted by the Air-conditioning, Heating, and Refrigeration Institute (AHRI) revealed that AFUE values calculated for boilers using this approach are inflated from one to four percent above their true values. (AHRI, No. 1 at p. 6)

DOE has considered two options to correct this issue for two-stage and modulating condensing furnaces and boilers, including: (1) suspend the use of the option in section 9.10 and require heat-up and cool-down tests be performed; and (2) develop or adopt a new set of equations to address the use of the option in section 9.10.

DOE has tentatively determined that the best course of action is to proceed with adopting equations to address the use of the option in section 9.10. Accordingly, DOE is proposing in today's NOPR to amend the test procedure to include equations that would allow for the calculation of the part-load efficiencies at the maximum input rate and reduced input rates (and ultimately AFUE) of two-stage and modulating condensing furnaces and boilers when utilizing the option to skip the heat-up and cool-down tests, as provided under section 9.10 of ASHRAE 103–1993.

In any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency or measured energy use of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

The proposed test procedure amendments include a revised method for calculating the AFUE for two-stage and modulating condensing furnaces and boilers. While this change may lead to a revised AFUE rating for certain residential furnaces or boilers, DOE does not believe that the resulting changes in AFUE would require amending the applicable energy conservation standard or affect compliance with the standard by the models at issue here. As noted, the error applies only to two-stage and modulating condensing models, which test well above the current minimum standards. The current minimum energy conservation standards are based on AFUE ratings that correspond to non-condensing furnaces and boilers, and those values would not change as a result of today's proposal to remedy the omission of necessary equations pertaining to condensing models. DOE does not foresee that a model that would need to be re-rated using the equation proposed in today's notice would have a resulting AFUE below the minimum required efficiency.

III. Discussion

A. Description of AFUE Inflation Issues Associated With Omitting Cool-Down and Heat-Up Testing for Two-Stage and Modulating Condensing Furnaces and Boilers

Recent investigation by AHRI has demonstrated that the DOE test procedure erroneously omits an equation needed to calculate the AFUE rating of two-stage and modulating condensing furnaces or boilers that utilize an optional procedure allowing the tester to skip the heat-up and cool-down tests. This error carries through to the software commonly used in the heating industry to rate and verify the energy efficiency of residential furnaces and boilers, and, thus, the software produces an erroneously high energy efficiency rating for some types of product under certain conditions. DOE has since independently confirmed these findings.

The Federal test procedure for determining the energy efficiency of residential furnaces and boilers in Appendix N to Subpart B of 10 CFR part 430 is based largely upon ASHRAE 103–1993, which the DOE test procedure incorporates by reference. A product's energy efficiency rating is expressed in terms of AFUE, which is an estimate of the product's fuel consumption during the heating season when operating under a set of standard conditions.

Energy lost during a product's transient heat-up and cool-down stages and during steady-state operation reduces the product's AFUE rating, which can be no higher than 100 percent.

ASHRAE 103–1993 requires consideration of several sources of energy loss when determining a product's energy efficiency rating. For non-weatherized residential boilers, which DOE requires be rated as indoor units (10 CFR part 430, subpart B, Appendix N, section 10.1 in the definition of $Effy_{HS}$), all energy loss is in the form of heat exhausted from the product's vent system. During the burner's on-cycle, losses consist of residual heat in the flue gases and flue gas condensate. During the burner off-cycle, losses include heat transferred from the product's heat exchanger to any air that moves through the heat exchanger when the combustion air fan is running to purge combustible gases from the boiler and/or naturally due to residual draft in the vent system. If the product draws combustion air from inside the heated space, losses also include the heat contained in the warm room air vented during the on-cycle and off-cycle (*i.e.,* infiltration loss). Since boilers are rated as indoor units, off-cycle infiltration losses can be significant, therefore most mid-efficiency boilers are equipped with vent dampers to minimize the loss of room air in the off cycle. Also, because boiler heat exchangers retain a significant amount of heat in the form of hot water, off-cycle sensible heat losses [4] can be significant.

In contrast to residential boilers, DOE requires that non-weatherized residential furnaces be rated as isolated combustion systems (ICS) (10 CFR 430, subpart B, Appendix N, section 10.1 in the definition of $Effy_{HS}$). This means that furnaces are assumed to draw all combustion air from outside the building. Since no indoor air is used for the combustion process, there is no efficiency penalty related to heating the unconditioned air which would infiltrate the house. Moreover, furnace heat exchangers have lower residual thermal mass than boiler heat exchangers, so off-cycle sensible losses are less significant.

Off-cycle infiltration and sensible heat losses are quantified by the heat-up and cool-down tests contained in ASHRAE 103–1993. In these tests, the test engineer measures the temperature and mass flow of the vent gases as the flue gases rise to steady-state temperature and after the burner is turned off. However, the test engineer is allowed to omit the heat-up and cool-down tests for condensing furnaces and boilers that are ''units designed with no measurable airflow through the combustion chamber and heat exchanger during the burner off-period and having post-purge periods of less than 5 seconds.'' (See ASHRAE 103–1993, section 9.10, ''Optional Test Procedures for Condensing Furnaces and Boilers That Have No Off-Period Flue Losses.'') Since air movement through the heat exchanger in the off-cycle is responsible for any off-cycle AFUE penalties for boilers, when no air can flow through the heat exchanger in the off-cycle, there is no AFUE penalty to be calculated. Thus, ASHRAE 103–1993 reasonably disregards infiltration and sensible heat losses in the off-cycle for condensing products when air cannot flow through the heat exchanger by allowing the manufacturer the option to omit the heat-up and cool-down tests. This reduces the testing burden and would have a negligible effect on a product's AFUE rating.

At the present time, the judgment of whether a unit is designed with no measurable off-cycle airflow typically has been determined at the discretion of the testing engineer and/or the manufacturer who is responsible for testing. DOE plans to investigate objective methods for determining whether units have no measurable off-cycle airflow in a separate, ongoing test procedure rulemaking for furnaces and boilers.[5] Should the test engineer elect to omit the heat-up and cool-down tests, ASHRAE 103–1993 provides an alternate calculation that omits the results of those tests for single-stage condensing products (section 11.3.11.3). However, the alternate calculation applies only to products having a single firing rate—there is no counterpart in section 11.5.11 for two-stage and modulating condensing products. Thus, ASHRAE 103–1993 and the Federal test procedure do not provide a method of calculating AFUE for two-stage and modulating condensing products when the heat-up and cool-down tests are omitted, even though the test procedure explicitly provides for such an option. This ambiguity has worked its way into the AFUE calculation software [6] commonly employed by industry in testing and rating residential furnaces and boilers. The software was originally developed by the National Institute of Science and Technology (NIST), before being reprogrammed for use with Microsoft Windows and offered for sale by the Gas Appliance Manufacturers Association (GAMA), which is now AHRI. AHRI is the trade association for manufacturers of heating equipment, and it also administers an industry energy efficiency verification program.

As noted above, when calculating the AFUE of a product for which the heat-up and cool-down tests have been omitted, test engineers have been substituting 0 °F for various temperatures ordinarily measured during the omitted tests. For single-stage condensing equipment, these zeros trigger the AFUE calculator to use the correct alternate equation. However, for two-stage and modulating condensing equipment, the AFUE calculator erroneously uses those zeros in the ordinary efficiency calculation as if the heat-up and cool-down tests were actually performed. The calculated results indicate that the boiler seems to be recovering heat during heat-up and cool-down instead of losing it, which inflates its AFUE rating, and according to AHRI, the error results in the over-rating of AFUE in two-stage and modulating condensing products by one to four percent. (AHRI, No. 1 at p. 6) The error applies to any two-stage or modulating condensing product for which the heat-up and cool-down tests have been omitted. Based on assertions from AHRI, such over-rating appears to be common for high-efficiency condensing boilers and no other product type. (AHRI, No. 1 at p. 2)

B. Options To Correct Existing Test Procedure

In considering how to address the omitted calculation for two-stage and modulating condensing furnaces and boilers, DOE considered two potential options: (1) Suspending the use of section 9.10 for those models; and (2) developing or adopting a new set of equations to address the use of the option in section 9.10 with those models. Each of these potential options is discussed in detail below.

1. Suspend the Use of Section 9.10 for Two-Stage and Modulating Condensing Furnaces and Boilers

The existing DOE test procedure currently does not provide the necessary

[4] ''Sensible heat'' is heat exchanged by a body or thermodynamic system that is the result of a change of temperature. The term is used in contrast to ''latent heat,'' which is the amount of heat exchanged without change of temperature.

[5] For more information on the ongoing test procedure rulemaking for residential furnaces and boilers, see: *http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/55*

[6] DOE notes that the software voluntarily used by manufacturers to streamline the calculations in Appendix N to Subpart B of Part 430 is not DOE-issued or approved. It is the manufacturer's responsibility to ensure that any software employed to automate the DOE test procedure equations is consistent with the exact methods in the test procedure.

equations to accommodate the use of the option in section 9.10 of ASHRAE 103–1993 for two-stage and modulating condensing equipment in the calculations provided in section 11.5.11. If DOE were simply to suspend the use of section 9.10 for two-stage and modulating products, manufacturers and test engineers would need to conduct heat-up and cool-down tests for all two-stage and modulating furnaces and boilers, both condensing and non-condensing.

DOE considered this option as a straightforward approach that could be implemented quickly, would eliminate confusion, and would resolve this issue. Requiring the heat-up and cool-down tests would also ensure more accurate AFUE ratings than those developed using the optional method in section 9.10. However, this approach would also increase test burden on manufacturers and industry. Not only would this be an issue for manufacturers rating equipment efficiency in the future, but initially, it would require a significant amount of re-rating of existing equipment through additional testing, which could significantly burden test labs. Upon considering these concerns and the potential alternatives discussed later in this section, DOE has tentatively decided not to pursue this option.

2. Develop Additional Equations To Correct Existing Test Procedure

ASHRAE 103–1993 lacks equations for determining heating seasonal efficiency for two-stage and modulating condensing furnace and boiler products when the heat-up and cool-down tests are omitted. For single-stage equipment, when the heat-up and cool-down tests are omitted, an alternate equation is provided in which cyclic sensible and infiltration loss factors are replaced with the steady-state sensible heat loss factor, corrected for outdoor air temperature if applicable. More specifically, in section 11.3.11.3, ''Heating Seasonal Efficiency,'' the alternate equation substitutes the steady-state sensible heat loss adjusted for outdoor air temperature when applicable, in place of the sum of the sensible and infiltration heat losses during the on and off cycles.

If the option in section 9.10 of ASHRAE 103–1993 is not employed:

$$Effy_{HS} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right]\left(L_{S,ON} + L_{S,OFF} + L_{I,ON} + L_{I,OFF}\right)$$

If the option in section 9.10 of ASHRAE 103–1993 is employed:

$$Effy_{HS} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](C_S)(L_{S,SS})$$

So, under the option in section 9.10 of ASHRAE 103–1993, $(C_S)(L_{S,SS})$ is substituted for $(L_{S,ON} + L_{S,OFF} + L_{I,ON} + L_{I,OFF})$.

This concept of replacing cyclic infiltration and sensible heat losses with steady-state infiltration and sensible heat losses also applies when dealing with two-stage and modulating condensing furnaces and boilers. DOE proposes the following equations for use in testing two-stage and modulating condensing furnaces and boilers when employing the option in section 9.10 of ASHRAE 103–1993:

11.5.11.1 *Part-Load Efficiency at Reduced Fuel Input Rate*

$$Effy_{U,R} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](C_S)(L_{S,SS})$$

Where:

$L_{S,SS}$ = value as defined in section 11.5.6 at reduced input rate

C_S = value as defined in section 11.5.10.1 at reduced input rate

11.5.11.2 *Part-Load Efficiency at Maximum Fuel Input Rate*

$$Effy_{U,H} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right](C_S)(L_{S,SS})$$

Where:

$L_{S,SS}$ = value as defined in section 11.5.6 at maximum input rate

C_S = value as defined in section 11.5.10.1 at maximum input rate

In its investigation of the issue, AHRI developed identical equations to accommodate the option of omitting the

heat-up and cool-down tests, as they pertain to two-stage and modulating condensing furnaces and boilers. (AHRI, No. 2 at p. 1)

C. Results of Preliminary DOE Testing

DOE conducted testing on two modulating condensing residential boilers to validate the equations discussed above. The test results showed that the AFUEs calculated by omitting the heat-up and cool-down tests and using of the equations discussed in section III.B.2 were within 0.04 percent AFUE of the AFUE determined using the heat-up and cool-down tests. Tables III.1 and III.2 show the results of the testing and various intermediate values for the two boilers, labeled boilers "A" and "B."

Table III.1Test Results for Boiler Model "A"

Value	Description	Scenario 1: Heat-up/ cool-down tests	Scenario 2: Employ 9.10 using new calculations
D_F	Draft Factor	.05	.05
$T_{F,ON(t1)}$	Heat-up temp @ 1 min	120	N/A
$T_{F,ON(t2)}$	Heat-up temp @ 5.5 min	124	N/A
$T_{F,OFF(t3)}$	Cool-down temp @ 3.75 min	94	N/A
$T_{F,OFF(t4)}$	Cool-down temp @ 22.5 min	81	N/A
$T_{F,OFF(t5)}$	Cool-down temp @ 45 min	75	N/A
τ_{ON}	On-cycle time constant (min)	4.096	N/A
R_{ON}	$= \frac{15}{\tau_{ON}}$	3.662	N/A
τ_{OFF}	Off- cycle time constant (min)	16.266	N/A
R_{OFF}	$= \frac{15}{\tau_{OFF}}$	.922	N/A
θ_{FOX}	Effective Flue gas temp differences at burner start up (F◦)	7.659	N/A
ψ_{FOX}	Effective Flue gas temp. difference at shutdown (F◦)	23.926	N/A
$C_{T,ON}$	Start- up Burner Cycling effective	.814	N/A
C_S	Correction factor that corrects for the use of outside air for combustion	1.446	1.446
$\theta_{F,O}$	Effective Flue Gas Temp Difference at burner start-up, corrected for burner cycling effect (F◦)	9.02	N/A
$R_{T,F}$	Ratio of combustion air to stoichiometric air	1.37	1.37
$K_{S,ON}$	Multiplication factor for sensible heat loss during on cycle	.0248	N/A
$L_{S,ON}$	On-cycle sensible heat loss	1.956	N/A
$K_{S,OFF}$	Multiplication factor for	.222	N/A

	sensible heat loss during burner off cycle		
$\psi_{F=X}$	Minimum Flue gas temp difference above room temp	1	N/A
$\psi_{F=}$	Effective minimum flue gas temp difference above room temp corrected for burner cycling effect	1.22	N/A
$C_{T,OFF}$	Shutdown Burner Cycling effect correction factor	.897	N/A
ψ_{FO}	Effective Flue gas temp difference at burner shutdown, corrected for burner cycling effective (∘F)	26.18	N/A
F5	Off-cycle sensible heat loss integration factors	.0804	N/A
F6		.0077	N/A
L_{LA}	Average Latent Heat Loss of test fuel used	9.55	9.55
$L_{S,SS}$	Average Sensible Heat Loss at Steady-State Operation	1.393	1.393
L_C	Part-Load Heat Loss Due to Condensate Going Down the Drain	.014	.014
L_G	Latent Heat Gain Under Part-Load Conditions	.6665	.6665
$L_{I,ON}$	Off-cycle infiltration loss	0	N/A
$L_{I,OFF}$	On-cycle infiltration loss	0	N/A
$L_{S,OFF}$	Off-cycle sensible heat loss, for system 9 or 10	.0199	N/A
$Effy_{SS,R}$	Steady-state efficiency at reduced firing rate	89.63	89.63
$Effy_{U,R}$	Part-load efficiency reduced firing rate	89.13	89.09
$Effy_{U,M}$	Average part-load efficiency at modulating firing rate	89.65	89.65
$Effy_{H,S}$	Heating Seasonal Efficiency	89.48	89.45
AFUE	Annual Fuel Utilization Efficiency	89.48	89.45

Table III.2 Test Results for Boiler Model "B"

Value	Description	Scenario 1: Heat-up/ cool-down tests	Scenario 2: Employ 9.10 using new calculations
D_F	Draft Factor	.05	.05

$T_{F,ON(t1)}$	Heat-up temp @ 1 min	117	N/A
$T_{F,ON(t2)}$	Heat-up temp @ 5.5 min	119.9	N/A
$T_{F,OFF(t3)}$	Cool-down temp @ 3.75 min	111	N/A
$T_{F,OFF(t4)}$	Cool-down temp @ 22.5 min	106	N/A
$T_{F,OFF(t5)}$	Cool-down temp @ 45 min	78	N/A
τ_{ON}	On-cycle time constant (min)	1.323	N/A
R_{ON}	$=\frac{15}{\tau_{ON}}$	11.337	N/A
τ_{OFF}	Off- cycle time constant (min)	114.11	N/A
R_{OFF}	$=\frac{15}{\tau_{OFF}}$	.1314	N/A
θ_{FOX}	Effective Flue gas temp differences at burner start up (F◦)	6.388	N/A
ψ_{FOX}	Effective Flue gas temp. difference at shutdown (F◦)	34.102	N/A
$C_{T,ON}$	Start- up Burner Cycling effective	.288	N/A
C_S	Correction factor that corrects for the use of outside air for combustion	1.541	1.541
$\theta_{F,O}$	Effective Flue Gas Temp Difference at burner start-up, corrected for burner cycling effect (F◦)	2.837	N/A
$R_{T,F}$	Ratio of combustion air to stoichiometric air	1.206	1.206
$K_{S,ON}$	Multiplication factor for sensible heat loss during on cycle	.02199	N/A
$L_{S,ON}$	On-cycle sensible heat loss	1.766	N/A
$K_{S,OFF}$	Multiplication factor for sensible heat loss during burner off cycle	0.194	N/A
$\psi_{F\infty X}$	Minimum Flue gas temp difference above room temp	6	N/A
$\psi_{F\infty}$	Effective minimum flue gas temp difference above room temp corrected for burner cycling effect	7.32	N/A
$C_{T,OFF}$	Shutdown Burner Cycling effect correction factor	.9	N/A
ψ_{FO}	Effective Flue gas temp difference at burner shutdown, corrected for burner cycling effective (◦F)	37.44	N/A

F5	Off-cycle sensible heat loss integration factors	.1897	N/A
F6		.0083	N/A
L_{LA}	Average Latent Heat Loss of test fuel used	9.55	9.55
$L_{S,SS}$	Average Sensible Heat Loss at Steady-State Operation	1.149	1.149
L_C	Part-Load Heat Loss Due to Condensate Going Down the Drain	.0577	.0577
L_G	Latent Heat Gain Under Part-Load Conditions	3.64	3.64
$L_{I,ON}$	Off-cycle infiltration loss	0	N/A
$L_{I,OFF}$	On-cycle infiltration loss	0	N/A
$L_{S,OFF}$	Off-cycle sensible heat loss, for system 9 or 10	.0487	N/A
$Effy_{SS,R}$	Steady-state efficiency at reduced firing rate	91.97	91.97
$Effy_{U,R}$	Part-load efficiency reduced firing rate	92.22	92.26
$Effy_{U,M}$	Average part-load efficiency at modulating firing rate	91.67	91.67
$Effy_{H,S}$	Heating Seasonal Efficiency	92.02	92.06
AFUE	Annual Fuel Utilization Efficiency	92.02	92.06

As shown in the tables above, the difference between the AFUE values calculated using section 9.10 of ASHRAE 103–1993 with the proposed equations and the AFUE values calculated using the heat-up and cool-down tests is 0.03 percent AFUE for boiler ''A'' and 0.04 percent AFUE for boiler ''B.'' DOE believes that the difference between the two calculation methods is small enough that the AFUE values using the new equations are representative of the actual performance of the models. Thus, the resulting values are an accurate representation of the product's energy efficiency for consumer information purposes and would result in minimal additional test burden.

D. Proposed Corrective Action

DOE is proposing to amend the DOE test procedure for residential furnaces and boilers in Appendix N to subpart B of 10 CFR part 430 by adopting the alternate equations that were developed by DOE and also independently proposed by AHRI, as described in section III.B.2 above.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993). Accordingly, this regulatory action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (''Act'') (5 U.S.C. 601 *et seq.,* as amended) requires preparation of an initial regulatory flexibility analysis (IFRA) for any rule that by law must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis amines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.*

DOE reviewed today's proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that the rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

For manufacturers of residential furnaces and boilers, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the Act. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 13 CFR part 121. These size standards and codes are established by

the North American Industry Classification System (NAICS) and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf.* Residential boiler manufacturing is classified under NAICS 333414, ''Heating equipment (except warm air furnaces) manufacturing,'' for which the size threshold is 500 employees. Residential furnace manufacturing is classified under NAICS 333415, ''Air-conditioning and warm air heating equipment and commercial and industrial refrigeration equipment manufacturing'' for which the size threshold is 750 employees. DOE surveyed the AHRI certification directories for furnaces and boilers, as well as the SBA database and market research tools (*e.g.,* Hoovers [7]), to identify manufacturers of residential furnaces and boilers. DOE then consulted publically-available data or contacted companies, as necessary, to determine if they meet the SBA's definition of a ''small business'' manufacturer, and have their manufacturing facilities located within the United States. Based on this analysis, DOE identified 11 small businesses that manufacture residential furnaces, and 14 small businesses that manufacture residential boilers (one of which also manufactures residential furnaces), for a total of 24 small businesses potentially impacted by this rulemaking.

Today's notice of proposed rulemaking would amend DOE's test procedure by incorporating additional equations to account for the use of section 9.10 of ASHRAE 103–1993 (the relevant industry standard incorporated by reference) for two-stage and modulating condensing furnaces and boilers. As explained earlier in this notice, section 9.10 permits a manufacturer of condensing furnaces and boilers the option of omitting the specified heat-up and cool-down tests if the model has no measurable airflow through the combustion chamber and heat exchanger during the burner off period and has post-purge period(s) of less than 5 seconds. However, under the current DOE test procedure, the equations needed to use section 9.10 do not exist for two-stage and modulating condensing models, and, thus, DOE assumes that manufacturers are currently conducting the heat-up and cool-down tests in order to properly rate the performance of their two-stage and modulating condensing furnaces and boilers. Therefore, DOE believes the equations proposed for adoption today would lessen manufacturer burden in comparison to application of the current test procedure. To the extent that any manufacturers have applied the option in section 9.10, even in absence of the equations needed to use that section, to rate the AFUE of their two-stage and modulating condensing furnace and boiler models, those manufacturers would be required to re-rate their models using either today's proposed equations, if adopted in a final rule, or by conducting the heat-up and cool-down tests. The estimated costs of re-rating using the proposed equations is discussed below, along with the estimated costs of conducting the heat-up and cool-down tests.

DOE believes that manufacturers are likely to choose one of two approaches to use the proposed equations to recalculate the efficiency of two-stage and modulating condensing models for which section 9.10 has been employed: (1) Manufacturers may recalculate the efficiency for each model individually by doing the calculations manually; or (2) manufacturers may update the AFUE calculation computer program to account for the new equations.

DOE estimates that recalculating the AFUE manually using the new equation would take between 30 minutes and 1 hour per basic model. At an hourly rate of $60 for a test lab technician, DOE believes that each model that is re-rated in this manner would cost approximately $30 to $60.

Alternatively, an individual manufacturer may decide to reprogram its software for calculating AFUE to account for the new equation. DOE estimates that a programmer would need between 16 and 40 hours to rewrite the program code to account for this new equation. At an hourly rate of $80 for a programmer, the resulting cost would be a one-time expenditure of $1280 to $3200 to update the automatic AFUE calculation program. DOE notes that given the role AHRI has traditionally played and the potential for cost savings for AHRI members AHRI may decide to reprogram its software, In this case, the effort required to recalculate AFUE for individual manufacturers, would be much less than the cost AHRI would incur to modify the program, as described in the following paragraph.

DOE notes that at the time of this publication, the AHRI certification directories for residential furnaces and boilers contain a combined total of over 1800 active condensing models for which recalculation could potentially be required, although only a fraction of the total condensing models would be two-stage and modulating products which might need to be re-rated using the new equations. Further, DOE notes that AHRI required member manufacturers of condensing two-stage or condensing modulating boilers to either: (1) Re-rate their products at 90 percent AFUE; (2) discontinue the model; or (3) substantiate the model's efficiency rating by providing data from the heat up and cool down tests. (AHRI, No. 1 at p. 2) DOE examined the number of models in the AHRI certified directory for boilers that are rated at 90 percent AFUE (the majority of which are likely to be re-rated models that used option 9.10) and found that there are 210 models rated at 90 percent AFUE. If all of these models were to be re-rated through the use of the updated computer program, the per-model cost would be $6 to $15.

In comparison to re-rating product efficiency using the proposed equations, DOE estimates that conducting the heat-up and cool-down tests generally requires 2 hours combined for two-stage and modulating condensing products. In contrast, at $60 per hour for a lab technician, the cost to perform the heat-up and cool-down tests is approximately $120 per model.

When considering the costs discussed above, DOE believes they are small relative to the overall cost of manufacturing, testing, and certifying residential furnace and boiler products. DOE seeks comment on its conclusion. For the reasons stated above, DOE certifies that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. Therefore, DOE did not prepare an initial regulatory flexibility analysis for the proposed rule. DOE will transmit its certification and a supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review pursuant to 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of residential furnaces and boilers must certify to DOE that their products comply with all applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for residential furnaces and boilers, including any amendments adopted for those test procedures on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential furnaces and

[7] For more information see: *http://www.hoovers.com/.*

boilers. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for residential furnaces and boilers. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and tentatively determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For regulatory actions likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://energy.gov/gc/office-general-counsel.*) DOE examined today's proposed rule according to UMRA and its statement of policy and has tentatively determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to amend the test procedure for measuring the energy efficiency of residential furnaces and boilers is not a significant regulatory action under Executive Order 12866 or any successor order. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

Today's proposed rule incorporates testing methods contained in the following commercial standard: ASHRAE 103–1993 (Method of Testing for Annual Fuel Utilization Efficiency of Residential Central Furnaces and Boilers). Today's NOPR proposes to continue the use of ASHRAE 103–1993 as the basis for the DOE test procedure, albeit with changes to certain equations. The Department has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA, (*i.e.,* that it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact on competition of requiring manufacturers to use the test methods contained in this standard prior to prescribing a final rule.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE of this fact as soon as possible by contacting Ms. Brenda Edwards to initiate the necessary procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/72.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak and Prepared General Statements for Distribution

Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address show in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include in their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, request to give an oral presentation should ask for such alternative arrangements.

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the

public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the public meeting, interested parties may submit further comments on the proceedings, as well as on any aspect of the rulemaking, until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice, and will be accessible on the DOE Web site. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: one copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked

''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. The proposed equations for determining the heating seasonal efficiency (which contributes to the ultimate calculation of AFUE) of two-stage and modulating condensing furnaces and boilers that are tested under option 9.10 of ASHRAE 103–1993.

2. DOE's conclusion that the costs of complying with the proposed test procedure changes are small relative to the overall cost of manufacturing, testing, and certifying residential furnace and boiler products, along with any additional information regarding average annual revenues for manufacturers of these products.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on January 25, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 430 of Chapter II, subchapter D of Title 10, Code of Federal Regulations as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Appendix N to subpart B of part 430 is amended by:

■ a. Redesignating sections 10.2 through 10.9 as sections 10.4 through 10.11;

■ b. Revising sections 10.0 and 10.1; and

■ c. Adding sections 10.2 and 10.3.

The revisions and additions read as follows:

Appendix N to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers

* * * * *

10.0 *Calculation of derived results from test measurements.* Calculations shall be as specified in section 11 of ANSI/ASHRAE 103–1993 (incorporated by reference, see § 430.3) and the October 24, 1996, Errata Sheet for ASHRAE 103–1993, except for sections 11.5.11.1, 11.5.11.2, and appendices B and C; and as specified in sections 10.1 through 10.10 and Figure 1 of this appendix.

10.1 *Annual fuel utilization efficiency.* The annual fuel utilization efficiency (AFUE) is as defined in sections 11.2.12 (non-condensing systems), 11.3.12 (condensing systems), 11.4.12 (non-condensing modulating systems) and 11.5.12 (condensing modulating systems) of ANSI/ASHRAE 103–1993 (incorporated by reference, see § 430.3), except for the definition for the term $Effy_{HS}$ in the defining equation for AFUE. $Effy_{HS}$ is defined as:

$Effy_{HS}$ = heating seasonal efficiency as defined in sections 11.2.11 (non-condensing systems), 11.3.11 (condensing systems), 11.4.11 (non-condensing modulating systems) and 11.5.11 (condensing modulating systems) of ANSI/ASHRAE 103–1993, except that for condensing modulating systems sections 11.5.11.1 and 11.5.11.2 are replaced by sections 10.2 and 10.3 of this appendix. $Effy_{HS}$ is based on the assumptions that all weatherized warm air furnaces or boilers are located out-of-doors, that warm air furnaces which are not weatherized are installed as isolated combustion systems, and that boilers which are not weatherized are installed indoors.

10.2 *Part-Load Efficiency at Reduced Fuel Input Rate.* Calculate the part-load efficiency at the reduced fuel input rate, $Effy_{U,R}$, for condensing furnaces and boilers equipped with either step modulating or two-stage controls, expressed as a percent and defined as

$$Effy_{U,R} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right] x \left(L_{S,ON} + L_{S,OFF} + L_{I,ON} + L_{I,OFF}\right)$$

If the option in section 9.10 of ASHRAE 103–1993 (incorporated by reference, see § 430.3) is employed:

$$Effy_{U,R} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right] (C_S)(L_{S,SS})$$

Where:

$L_{L,A}$ = value as defined in section 11.2.7 of ASHRAE 103–1993

L_G = value as defined in section 11.3.11.1 of ASHRAE 103–1993 at reduced input rate,

L_C = value as defined in section 11.3.11.2 of ASHRAE 103–1993 at reduced input rate,

L_J = value as defined in section 11.4.8.1.1 of ASHRAE 103–1993 at maximum input rate,

t_{ON} = value as defined in section 11.4.9.11 of ASHRAE 103–1993,

Q_P = pilot flame fuel input rate determined in accordance with section 9.2 of ASHRAE 103–1993 in Btu/h

Q_{IN} = value as defined in section 11.4.8.1.1 of ASHRAE 103–1993,

t_{OFF} = value as defined in section 11.4.9.12 of ASHRAE 103–1993 at reduced input rate,

$L_{S,ON}$ = value as defined in section 11.4.10.5 of ASHRAE 103–1993 at reduced input rate,

$L_{S,OFF}$ = value as defined in section 11.4.10.6 of ASHRAE 103–1993 at reduced input rate,

$L_{I,ON}$ = value as defined in section 11.4.10.7 of ASHRAE 103–1993 at reduced input rate,

$L_{I,OFF}$ = value as defined in section 11.4.10.8 of ASHRAE 103–1993 at reduced input rate,

C_J = jacket loss factor and equal to:

= 0.0 for furnaces or boilers intended to be installed indoors

= 1.7 for furnaces intended to be installed as isolated combustion systems

= 2.4 for boilers (other than finned-tube boilers) intended to be installed as isolated combustion systems

= 3.3 for furnaces intended to be installed outdoors

= 4.7 for boilers (other than finned-tube boilers) intended to be installed outdoors

= 1.0 for finned-tube boilers intended to be installed outdoors

= 0.5 for finned-tube boilers intended to be installed in ICS applications

$L_{S,SS}$ = value as defined in section 11.5.6 of ASHRAE 103–1993 at reduced input rate,

C_S = value as defined in section 11.5.10.1 of ASHRAE 103–1993 at reduced input rate.

10. 3 *Part-Load Efficiency at Maximum Fuel Input Rate.* Calculate the part-load efficiency at maximum fuel input rate, $Effy_{U,H}$, for condensing furnace and boilers equipped with two-stage controls, expressed as a percent and defined as:

$$Effy_{U,H} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right] x \left(L_{S,ON} + L_{S,OFF} + L_{I,ON} + L_{I,OFF}\right)$$

If the option in section 9.10 of ASHRAE 103–1993 (incorporated by reference, see § 430.3) is employed:

$$Effy_{U,R} = 100 - L_{L,A} + L_G - L_C - C_J L_J - \left[\frac{t_{ON}}{t_{ON} + \left(\frac{Q_P}{Q_{IN}}\right) t_{OFF}}\right] (C_S)(L_{S,SS})$$

Where:

$L_{L,A}$ = value as defined in section 11.2.7 of ASHRAE 103–1993,

L_G = value as defined in section 11.3.11.1 of ASHRAE 103–1993 at maximum input rate,

L_C = value as defined in section 11.3.11.2 of ASHRAE 103–1993 at maximum input rate,

L_J = value as defined in section 11.4.8.1.1 of ASHRAE 103–1993 at maximum input rate,

t_{ON} = value as defined in section 11.4.9.11 of ASHRAE 103–1993 of ASHRAE 103–1993,

Q_P = pilot flame fuel input rate determined in accordance with section 9.2 of ASHRAE 103–1993 in Btu/h,

Q_{IN} = value as defined in section 11.4.8.1.1 of ASHRAE 103–1993,

t_{OFF} = value as defined in section 11.4.9.12 of ASHRAE 103–1993 at maximum input rate,

$L_{S,ON}$ = value as defined in section 11.4.10.5 of ASHRAE 103–1993 at maximum input rate,

$L_{S,OFF}$ = value as defined in section 11.4.10.6 of ASHRAE 103–1993 at maximum input rate,

$L_{I,ON}$ = value as defined in section 11.4.10.7 of ASHRAE 103–1993 at maximum input rate,

$L_{I,OFF}$ = value as defined in section 11.4.10.8 of ASHRAE 103–1993 at maximum input rate,

C_J = value as defined in section 10.2 of this appendix,

$L_{S,SS}$ = value as defined in section 11.5.6 of ASHRAE 103–1993 at maximum input rate,

C_S = value as defined in section 11.5.10.1 of ASHRAE 103–1993 at maximum input rate.

* * * * *

[FR Doc. 2013–02168 Filed 2–1–13; 8:45 am]

BILLING CODE 6450–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2009–0038]

RIN 0960–AH03

Revised Medical Criteria for Evaluating Genitourinary Disorders

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise the criteria in the Listing of Impairments (listings) that we use to evaluate claims involving genitourinary disorders in adults and children under titles II and XVI of the Social Security Act (Act). The proposed revisions reflect our program experience, advances in methods of evaluating genitourinary disorders, and comments we received in response to an advance notice of proposed rulemaking (ANPRM).

DATES: To ensure that your comments are considered, we must receive them by no later than April 5, 2013.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0038 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2009–0038. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Why are we proposing to revise this body system?

We last published final rules making comprehensive revisions to genitourinary body system listings on July 5, 2005.[1] These listings are scheduled to expire on September 6, 2013.[2] We published an ANPRM on November 10, 2009, in which we invited interested people and organizations to send us written comments and suggestions about whether and how we should revise these listings.[3] We are now proposing to update the medical criteria in the listings to reflect our program experience and to address adjudicator questions and public comments that we have received since 2005.

What revisions are we proposing?

We propose to:

- Revise the name of the body system from ''Genitourinary Impairments'' to ''Genitourinary Disorders'';
- Reorganize and revise the introductory text for the adult listings (section 6.00) and the childhood listings (section 106.00);
- Reorganize, revise, and rename adult listing 6.02 and childhood listing 106.02 for impairment of renal function;
- Add a listing criterion for evaluating chronic kidney disease (CKD), with impairment of kidney function, in adults (6.05) and in children (106.05);
- Reorganize and revise adult listing 6.06 and childhood listing 106.06 for nephrotic syndrome;
- Add an adult listing (6.09) for evaluating complications of CKD requiring hospitalizations; and
- Reorganize and revise childhood listing 106.07 for congenital genitourinary disorders.

Why are we proposing to change the name of this body system?

We propose to change the name of this body system from ''Genitourinary Impairments'' to ''Genitourinary Disorders'' to make it consistent with our names for other body systems. We have re-named other body systems to include the word ''disorders'' as we revise them, and the name change we are proposing in this NPRM is consistent with that approach.

What changes are we proposing to the introductory text of the genitourinary adult listings?

The following chart provides a comparison of the current introductory text for adults and the proposed introductory text:

Current introductory text	Proposed introductory text
6.00A *What impairments do these listings cover?*	6.00A *Which disorders do we evaluate under these listings?*
6.00B *What do we mean by the following terms in these listings?*	Removed.
6.00C *What evidence do we need?*	6.00B *What evidence do we need?*
6.00D *How do we consider the effects of treatment?*	Removed.
6.00E *What other things do we consider when we evaluate your chronic renal disease under specific listings?*	6.00C *What other factors do we consider when we evaluate your chronic kidney disease?*
6.00F *What does the term "persistent" mean in these listings?*	Removed.
6.00G *How do we evaluate impairments that do not meet one of the genitourinary listings?*	6.00D *How do we evaluate disorders that do not meet one of the genitourinary listings?*

As the chart illustrates, we are proposing to make minor revisions to terms in the introductory text (for example, changing the word ''impairment'' to ''disorder,'' where appropriate) and to reorganize the information in the text. We propose to replace the word ''renal'' with ''kidney'' throughout the introductory text because the medical community commonly uses the word ''kidney.'' The only exception to this proposal is that we would retain the term ''renal osteodystrophy'' because it remains a common term in the medical community.

Proposed section 6.00A corresponds to current section 6.00A and explains the disorders we evaluate under the genitourinary disorders listings.

We propose to remove current 6.00B that lists definitions because we would provide a definition, as appropriate, when we first use a term in the introductory text.

Proposed section 6.00B corresponds in part to current 6.00C and explains the evidence we need to evaluate a person's CKD. We propose to revise the text to remove redundancies and to add a description of estimated glomerular filtration rate (eGFR).

Proposed section 6.00C corresponds to part of current sections 6.00C and 6.00E. We propose to revise the text to remove redundancies and add guidance on anorexia with weight loss and on complications of CKD requiring hospitalizations.

We propose to remove current 6.00D because that section's guidance is not specific to evaluating genitourinary

[1] 70 FR 38582.

[2] In the 2005 final rules, we stated that the rules would be effective for 8 years unless we extended them or revised and issued them again.

[3] 74 FR 57970. We received three comment letters. We said in the ANPRM that we would not respond directly to the comment letters. This notice of proposed rulemaking (NPRM) does adopt some of the commenters' suggestions. You may read the comment letters at *http://www.regulations.gov* by searching under docket number SSA–2009–0038.

disorders. Only one listing, proposed 6.06, would require the presence of a particular medical finding despite treatment. We do not propose to evaluate a person's response to treatment under any other listings in this section.

We propose to remove current 6.00F because we would no longer use the term ''persistent'' in these listings. Instead, we would provide specific parameters for determining whether an impairment meets the duration requirement.

Proposed section 6.00D corresponds to current section 6.00G. We propose to make minor editorial changes to the way that we cite regulations in the current section by removing the paragraph levels of the citations to shorten them.

What changes are we proposing to the genitourinary listings for adults?

The following chart provides a comparison of the current listings for adults and the proposed listings:

Current listing	Proposed listing
6.02 *Impairment of renal function*	6.02 Removed.
	6.03 *Chronic kidney disease,* with chronic hemodialysis or peritoneal dialysis.
	6.04 *Chronic kidney disease,* with kidney transplant.
	6.05 *Chronic kidney disease,* with impairment of kidney function.
6.06 *Nephrotic syndrome*	6.06 *Nephrotic syndrome.*
	6.09 *Complications of chronic kidney disease.*

We propose to revise current listing 6.02 by making each of the three criteria a separate listing. We believe that this revision would improve our ability to monitor claims involving CKD. It would also improve our ability to schedule continuing disability reviews because the timing of these reviews is different for each of the three criteria. We also propose to replace the term ''impairment of renal function'' in the listing title with ''chronic kidney disease.''

Proposed listing 6.03 and 6.04 correspond to current listings 6.02A and 6.02B, respectively. We are not proposing any changes to the current criteria.

Proposed listing 6.05 corresponds to current listing 6.02C. We propose to restructure the listing to clarify the requirements in the current listing.

We propose to add a criterion to proposed listing 6.05A3 for estimated glomerular filtration rate (eGFR). The glomerular filtration rate (GFR) is the best overall measure of kidney function; however, it is difficult to measure directly. Most clinicians who treat CKD use the eGFR instead of the GFR to determine the severity of a person's CKD and to make decisions about the course of treatment. The eGFR values will likely be readily available in the medical records for people with CKD.

We would replace the criterion for ''[p]ersistent motor or sensory neuropathy'' in current 6.02C2 with ''[p]eripheral neuropathy'' in proposed 6.05B2. People with CKD develop neuropathy at a later stage of the disease than they once did because of advances in CKD treatment. We do not need to replace ''persistent'' with a criterion based on a defined period of time because when neuropathy develops at a later stage of CKD, it is invariably persistent.

We would replace the criterion for ''[p]ersistent'' in current 6.02C3 with a criterion based on a defined period of time to evaluate hypertension (proposed 6.05B3a), vascular congestion (proposed 6.05B3b), and anorexia (proposed 6.05B4).

Proposed listing 6.06 for nephrotic syndrome corresponds to current listing 6.06. We propose to restructure the listing to clarify the requirements in the current listing. We would add a criterion for the urine total-protein-to-creatinine ratio (a laboratory calculation based on total protein and creatinine in a urine sample). This ratio is an alternative to the 24-hour measurement in 6.06A2a and is widely used in the clinical community to monitor proteinuria.

We propose to add listing 6.09 to evaluate complications of CKD that require periodic hospitalization. We would require a person to have at least three hospitalizations occurring at least 30 days apart to ensure that we are evaluating separate complication events. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization. We would require that each hospitalization last at least 48 hours because we believe this period is indicative of a severe complication of CKD. We would include the hours the person spends in the emergency department immediately before hospital admission because the person is likely to be receiving the same intensity of care as he or she will receive in the hospital. We would also require that these three hospitalizations occur within a consecutive 12-month period, consistent with our rules in other body systems.

What changes are we proposing to the introductory text of the genitourinary listings for children?

The following chart provides a comparison of the current introductory text for children and the proposed introductory text:

Current introductory text	Proposed introductory text
106.00A *What impairments do these listings cover?*	106.00A *Which disorders do we evaluate under these listings?*
106.00B *What do we mean by the following terms in these listings?*	Removed.
106.00C *What evidence do we need?*	106.00B *What evidence do we need?*
106.00D *How do we consider the effects of treatment?*	Removed.
106.00E *What other things do we consider when we evaluate your genitourinary impairment under specific listings?*	106.00C *What other factors do we consider when we evaluate your genitourinary disorder?*
106.00F *What does the term "persistent" mean in these listings?*	Removed.
106.00G *How do we evaluate impairments that do not meet one of the genitourinary listings?*	106.00D *How do we evaluate disorders that do not meet one of the genitourinary listings?*

The same basic rules for evaluating genitourinary disorders in adults apply to children. Except for minor editorial changes to make the text specific to children, we propose to repeat much of the introductory text of proposed 6.00 in the introductory text of proposed 106.00.

What changes are we proposing to the genitourinary listings for children?

The following chart provides a comparison of the current listings for children and the proposed listings:

Current listing	Proposed listing
106.02 *Impairment of renal function*	106.02 Removed.
	106.03 *Chronic kidney disease,* with chronic hemodialysis or peritoneal dialysis.
	106.04 *Chronic kidney disease,* with kidney transplant.
	106.05 *Chronic kidney disease,* with impairment of kidney function
106.06 *Nephrotic syndrome*	106.06 *Nephrotic syndrome.*
106.07 *Congenital genitourinary impairments*	106.07 *Congenital genitourinary disorder.*
	106.09 *Complications of chronic kidney disease.*

The proposed childhood genitourinary listings are designated 106.03 through 106.07 and 106.09. They have the same headings as their counterparts in the proposed adult listings, except for proposed 106.07, which does not have an adult counterpart.

The criteria we propose for children are the same as, or based on, the current childhood genitourinary criteria. Many of the proposed changes to the childhood listings correspond to the changes we propose to make in the adult listing. Since we have already described these proposed changes above, we describe here only those changes that are unique to children or that require further explanation.

Proposed listing 106.05 for CKD with impairment of kidney function incorporates the criteria in current 106.02C and 106.02D. We would revise the current requirement that a finding is present ''over at least 3 months.'' We would require, instead, that the finding is present ''on at least two occasions at least 90 days apart during a consecutive 12-month period.'' This proposed revision corresponds to our proposal to replace the word ''persistent'' in the adult listings. The proposed revision is also consistent with our rules in other body systems.

In proposed 106.06 for nephrotic syndrome, we would change the required serum albumin level from ''2.0 g/dL (100 ml) or less'' to 3.0 g/dL or less. We are proposing this change so that the childhood criterion is consistent with the corresponding adult criterion.

We propose to revise current 106.07 by creating two listings: proposed 106.07 and proposed 106.09.

Proposed 106.07 for congenital genitourinary disorder corresponds to current 106.07A. We would incorporate the guidance in current 106.00E4 by adding a requirement that a child must have at least three urological surgical procedures occurring in a consecutive 12-month period, with at least 30 days between procedures. We would also add a criterion that would consider a child disabled for 1 year from the date of the last urological surgery. Our program experience has shown that children who have had these surgeries need a period of 1 year before we can evaluate any remaining limitations resulting from the impairment.

Proposed 106.09 for complications of CKD corresponds to current 106.07B and 106.07C. We would expand our consideration of complications to include other types of CKD complications that require hospitalization. Current 106.07B does not require hospitalization. We propose to add a hospitalization requirement in proposed 106.09 for consistency with the adult criteria. We believe this change would have minimal impact on children with CKD complications because most children who require parenteral antibiotics are hospitalized for this treatment. We believe that three hospitalizations in a 12-month period establish CKD complications of listing-level severity because CKD complications that require hospitalization are generally more serious and involve longer recovery periods than those treated solely in outpatient settings.

What time period should we use for finding disability following a kidney transplant?

We propose to retain our current policy for a finding of disability for a period of one year following a kidney transplant. Thereafter, we consider the residual impairment, including post-transplant kidney function, any rejection episodes, adverse effects of on-going treatment, and complications in other body systems. We are specifically interested in any comments of suggestions you have about this policy, such as whether the time period we use is appropriate, whether we should use a longer time period, and, if so, what time period we should use.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them. Sections 205(a), 702(a)(5), and 1631(d)(1).

How long would these proposed rules be effective?

If we publish these proposed rules as final rules, they will remain in effect for 5 years after the date they become effective, unless we extend them, or revise and issue them again.

Clarity of These Proposed Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

When will we start to use these rules?

We will not use these rules until we evaluate public comments and publish

final rules in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rules.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Regulatory Flexibility Act

We certify that this NPRM will not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This NPRM does not create any new or affect any existing collections and, therefore, does not require Office of Management and Budget approval under the Paperwork Reduction Act.

References

We consulted the following references when we developed these proposed rules:

Copelovitch, L., Warady, B., & Furth, S. (2011). Insights from the Chronic Kidney Disease in Children. *Clinical Journal of the American Society of Nephrology, 6*(8), 2047–2053. doi:10.2215/CJN.10751210.

Furth, S., Abraham, A. G., Jerry-Fluker, J., Schwartz, G. J. Benfield, M., Kaskel, F., et al. (2011). Metabolic Abnormalities, Cardiovascular Disease Risk Factors, and GFR Decline in Children with Chronic Kidney Disease. *Clinical Journal of the American Society of Nephrology, 6*(9), 2132–2140. doi:10.2215/CJN.07100810.

Furth, S. L., Cole, S. R., Moxey-Mims, M., Kaskel, F., Mak, R., Schwartz, G., et al. (2006). Design and Methods of the Chronic Kidney in Children (CKiD) Prospective Cohort Study. *Clinical Journal of the American Society of Nephrology, 1*(5), 1006–1015. doi:10.2215/CJN.01941205.

Gipson, D. S., Massengill, S. F., Trachtman, H., Greenbaum, L. A., Yao, L., Nagaraj, S., et al. (2009). Management of Childhood Onset Nephrotic Syndrome. *Pediatrics, 124*(2), 747–757. doi:10.1542/peds.2008–1559.

Gordillo, R., & Sptizer, A. (2009). The Nephrotic Syndrome. *Pediatrics in Review, 30*(3), 94–105. doi:10.1542/pir.30–3–94.

Gulati, S. (2011, June 21). Chronic Kidney Disease in Children. *Medscape Reference.* Retrieved from *http://emedicine.medscape.com/article/984358-overview.*

Hogg, R., Furth, S., Eknoyan, G., Levey, A. S., Lemley, K. V., Portman, R., et al. (2003). National Kidney Foundation's Kidney Disease Outcome Quality Initiative Clinical Practice Guidelines for Chronic Kidney Disease in Children and Adolescents: Evaluation, Classification, and Stratification. *Pediatrics, 111*(6), 1416–1421. doi:10.1542/peds.111.6.1416.

Kliegman, R. M., Stanton, B. F., Schor, N. F., St. Geme III, J. W., & Behrman, R. E. (2011). *Nelson Textbook of Pediatrics* (19th ed.). Philadelphia, PA: Elsevier Saunders.

Lurbe, E., Alvarez, V., & Redon. J. (2004). Predictors of Progression in Hypertensive Renal Disease in Children. *Journal of Clinical Hypertension, 64*(4), 186–191. doi:10.1111/j.1524–6175.2004.02617.x.

Miller, W.G. (2009). Estimating Equations for Glomerular Filtration Rate in Children: Laboratory Considerations. *Clinical Chemistry, 55*(3), 402–403. doi:10.1373/clinchem.2008.122218.

National Kidney Foundation (2010). *Frequently Asked Questions About GFR Estimates.* Retrieved from: *http://www.kidney.org/professionals/kls/pdf/12-10-4004_KBB_FAQs_AboutGFR–1.pdf.*

National Kidney Foundation (2006). KDOQI Clinical Practice Guidelines and Clinical Practice Recommendations for Anemia in Chronic Kidney Disease. The Guidelines are available at: *http://www.kidney.org/professionals/kdoqi/guidelines_anemia/pdf/AnemiaInCKD.pdf.*

National Kidney Foundation (2007). KDOQI Clinical Practice Guidelines and Clinical Practice Recommendations for Diabetes and Chronic Kidney Disease. These Guidelines are available at: *http://www.kidney.org/professionals/kdoqi/pdf/Diabetes_AJKD_FebSuppl_07.pdf*]

National Kidney Foundation (2005). KDOQI Clinical Practice Guidelines for Bone Metabolism and Disease in Children with Chronic Kidney Disease. The Guidelines are available at: *http://www.kidney.org/professionals/kdoqi/guidelines_pedbone/index.htm.*

National Kidney Foundation (2003). KDOQI Clinical Practice Guidelines for Bone Metabolism and Disease in Chronic Kidney Disease. The Guidelines are available at: *http://www.kidney.org/professionals/KDOQI/guidelines_bone/index.htm.*

National Kidney Foundation (2002). KDOQI Clinical Practice Guidelines for Chronic Kidney Disease: Evaluation, Classification and Stratification. These Guidelines are available at: *http://www.kidney.org/professionals/kdoqi/pdf/ckd_evaluation_classification_stratification.pdf.*

National Kidney Foundation (2009). KDOQI Clinical Practice Guidelines for Nutrition in Children with CKD: 2008 Update. *American Journal of Kidney Diseases, 53*(Supp.2), S1–S124. doi:10.1053/S0272–6386(09)00054–7. These Guidelines are available at: *http://www.kidney.org/professionals/kdoqi/guidelines_updates/pdf/CPGPedNutr2008.pdf.*

Renal Physicians Association (2010). Shared Decision-Making in the Appropriate Initiation of and Withdrawal from Dialysis. *RPA Clinical Practice Guideline* (Second ed., pp. 121–155). Rockville, MD: Renal Physicians Association.

Vassalotti, J., Stevens, L., & Levey, A. (2007) Testing for Chronic Kidney Disease: A Position Statement from the National Kidney Foundation. *American Journal of Kidney Diseases, 50*(2), 169–180. doi:10.1053/j/ajkd.2007.06.013.

We included these references in the rulemaking record for these proposed rules and will make them available for inspection by interested individuals who make arrangements with the contact person identified above.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income).

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, survivors, and disability insurance; Reporting and recordkeeping requirements; Social Security.

Dated: January 25, 2013.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR part 404, subpart P as set forth below:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising item 7 of the introductory text before part A of appendix 1 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

7. Genitourinary Disorders (6.00 and 106.00): [DATE 5 YEARS FROM THE EFFECTIVE DATE OF THE FINAL RULES].

* * * * *

■ 3. Amend part A of appendix 1 to subpart P of part 404 by revising the body system name for section 6.00 in the table of contents to read as follows:

* * * * *

Part A

* * * * *

6.00 Genitourinary Disorders

* * * * *

■ 4. Revise section 6.00 in part A of appendix 1 to subpart P of part 404 to read as follows:

* * * * *

Part A

* * * * *

6.00 Genitourinary Disorders

A. Which disorders do we evaluate under these listings?

We evaluate genitourinary disorders resulting in chronic kidney disease. Examples of such disorders include chronic glomerulonephritis, hypertensive nephropathy, diabetic nephropathy, chronic obstructive uropathy, and hereditary nephropathies. We also evaluate nephrotic syndrome due to glomerular dysfunction under these listings.

B. What evidence do we need?

1. We need evidence that documents the signs, symptoms, and laboratory findings of your chronic kidney disease. This evidence should include reports of clinical examinations, treatment records, and documentation of your response to treatment. Laboratory findings, such as serum creatinine or serum albumin levels, may document your kidney function. We generally need evidence covering a period of at least 90 days unless we can make a fully favorable determination or decision without it.

2. *Estimated glomerular filtration rate (eGFR).* The eGFR is an estimate of the filtering capacity of the kidneys that takes into account serum creatinine concentration and other variables such as your age, gender, and body size. If your medical evidence includes eGFR findings, we will consider them when we evaluate your chronic kidney disease under 6.05.

3. *Kidney or bone biopsy.* If you have had a kidney or bone biopsy, we need a copy of the pathology report. When we cannot get a copy of the pathology report, we will accept a statement from an acceptable medical source verifying that a biopsy was performed and describing the results.

C. What other factors do we consider when we evaluate your chronic kidney disease?

1. *Chronic hemodialysis or peritoneal dialysis.*

a. Dialysis is a treatment for chronic kidney disease that uses artificial means to remove toxic metabolic byproducts from the blood. Hemodialysis uses an artificial kidney machine to clean waste products from the blood; peritoneal dialysis uses a dialyzing solution that is introduced into and removed from the abdomen (peritoneal cavity) either continuously or intermittently. Under 6.03, your ongoing dialysis must have lasted or be expected to last for a continuous period of at least 12 months. We will accept a report from an acceptable medical source that describes your chronic kidney disease and the need for ongoing dialysis to satisfy the requirements in 6.03.

b. If you are undergoing chronic hemodialysis or peritoneal dialysis, your chronic kidney disease may meet our definition of disability before you started dialysis. We will determine the onset of your disability based on the facts in your case record.

2. *Kidney transplant.*

a. If you receive a kidney transplant, we will consider you to be disabled under 6.04 for 1 year from the date of transplant. After that, we will evaluate your residual impairment(s) by considering your post-transplant function, any rejection episodes you have had, complications in other body systems, and any adverse effects related to ongoing treatment.

b. If you received a kidney transplant, your chronic kidney disease may meet our definition of disability before you received the transplant. We will determine the onset of your disability based on the facts in your case record.

3. *Renal osteodystrophy.* This condition is the bone degeneration resulting from chronic kidney disease-mineral and bone disorder (CKD–MBD). CKD–MBD occurs when the kidneys are unable to maintain the necessary levels of minerals, hormones, and vitamins required for bone structure and function. Under 6.05B1, ''severe bone pain'' means frequent or intractable bone pain that interferes with physical activity or mental functioning.

4. *Peripheral neuropathy.* This disorder results when the kidneys do not adequately filter toxic substances from the blood. These toxins can adversely affect nerve tissue. The resulting neuropathy may affect peripheral motor or sensory nerves, or both, causing pain, numbness, tingling, and muscle weakness in various parts of the body. Under 6.05B2, the peripheral neuropathy must be a severe impairment. (See §§ 404.1520(c), 404.1521, 416.920(c), and 416.921 of this chapter.) It must also have lasted or be expected to last for a continuous period of at least 12 months.

5. *Fluid overload syndrome.* This condition occurs when excess sodium and water retention in the body due to chronic kidney disease results in vascular congestion. Under 6.05B3, we need a description of a physical examination that documents signs and symptoms of vascular congestion, such as congestive heart failure, pleural effusion (excess fluid in the chest), ascites (excess fluid in the abdomen), hypertension, fatigue, shortness of breath, or peripheral edema.

6. *Anasarca* (generalized massive edema or swelling). Under 6.05B3 and 6.06B, we need a description of the extent of edema, including pretibial (in front of the tibia), periorbital (around the eyes), or presacral (in front of the sacrum) edema. We also need a description of any ascites, pleural effusion, or pericardial effusion.

7. *Anorexia with weight loss.* Anorexia is a frequent sign of chronic kidney disease and can result in weight loss. We will use body mass index (BMI) to determine the severity of your weight loss under 6.05B4. (BMI is the ratio of your measured weight to the square of your measured height.) The formula for calculating BMI is in section 5.00G.

8. *Complications of chronic kidney disease.* The hospitalizations in 6.09 may be for different complications of chronic kidney disease. Examples of complications that may result in hospitalization include stroke, congestive heart failure, hypertensive crisis, or acute kidney failure requiring a short course of hemodialysis.

D. How do we evaluate disorders that do not meet one of the genitourinary listings?

1. The listed disorders are only examples of common genitourinary disorders that we consider severe enough to prevent you from doing any gainful activity. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (See §§ 404.1526 and 416.926 of this chapter.) Genitourinary disorders may be associated with disorders in other body systems, and we consider the combined effects of multiple impairments when we determine whether they medically equal a listing. If your impairment(s) does not meet or medically equal the criteria of a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. We proceed to the fourth and, if necessary, the fifth steps of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter. We use the rules in §§ 404.1594 and 416.994 of this chapter, as appropriate, when we decide whether you continue to be disabled.

6.01 Category of Impairments, Genitourinary Disorders

6.03 *Chronic kidney disease,* with chronic hemodialysis or peritoneal dialysis (see 6.00C1).

6.04 *Chronic kidney disease,* with kidney transplant. Consider under a disability for 1 year following the transplant; thereafter, evaluate the residual impairment (see 6.00C2).

6.05 *Chronic kidney disease,* with impairment of kidney function, with A and B:

A. Reduced glomerular filtration evidenced by one of the following laboratory findings documented on at least two occasions at least 90 days apart during a consecutive 12-month period:

1. Serum creatinine of 4 mg/dL or greater; or

2. Creatinine clearance of 20 ml/min. or less; or

3. Estimated glomerular filtration rate (eGFR) of 20 ml/min/1.73m^2 or less; and

B. One of the following:

1. Renal osteodystrophy (see 6.00C3) with severe bone pain and imaging studies documenting bone abnormalities, such as osteitis fibrosa, osteomalacia, or pathologic fractures; or

2. Peripheral neuropathy (see 6.00C4); or

3. Fluid overload syndrome (see 6.00C5) documented by one of the following:

a. Diastolic hypertension greater than or equal to diastolic blood pressure of 110 mm Hg despite at least 90 consecutive days of prescribed therapy, documented by at least two measurements of diastolic blood pressure at least 90 days apart during a consecutive 12-month period; or

b. Signs of vascular congestion or anasarca (see 6.00C6) despite at least 90 consecutive days of prescribed therapy, documented on at least two occasions at least 90 days apart during a consecutive 12-month period; or

4. Anorexia with weight loss (see 6.00C7) determined by body mass index (BMI) of 18.0 or less, calculated on at least two occasions at least 90 days apart during a consecutive 12-month period.

6.06 *Nephrotic syndrome,* with A and B:

A. Laboratory findings as described in 1 or 2, documented on at least two occasions at least 90 days apart during a consecutive 12-month period:

1. Proteinuria of 10.0 g or greater per 24 hours; or

2. Serum albumin of 3.0 g/dL) or less, and

a. Proteinuria of 3.5 g or greater per 24 hours; or

b. Urine total-protein-to-creatinine ratio of 3.5 or greater; and

B. Anasarca (see 6.00C6) persisting for at least 90 days despite prescribed treatment.

6.09 *Complications of chronic kidney disease* (see 6.00C8) requiring at least three hospitalizations within a consecutive 12-month period and occurring at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization.

* * * * *

■ 5. Amend part B of appendix 1 to subpart P of part 404 by revising the body system name for section 106.00 in the table of contents to read as follows:

* * * * *

Part B

* * * * *

106.00 Genitourinary Disorders

* * * * *

■ 6. Revise section 106.00 in part B of appendix 1 to subpart P of part 404 to read as follows:

* * * * *

Part B

* * * * *

106.00 Genitourinary Disorders

A. Which disorders do we evaluate under these listings?

We evaluate genitourinary disorders resulting in chronic kidney disease. Examples of such disorders include chronic glomerulonephritis, hypertensive nephropathy, diabetic nephropathy, chronic obstructive uropathy, and hereditary nephropathies. We also evaluate nephrotic syndrome due to glomerular dysfunction, and congenital genitourinary disorders, such as ectopic ureter, exotrophic urinary bladder, urethral valves, and Eagle-Barrett syndrome (prune belly syndrome), under these listings.

B. What evidence do we need?

1. We need evidence that documents the signs, symptoms, and laboratory findings of your chronic kidney disease. This evidence should include reports of clinical examinations, treatment records, and documentation of your response to treatment. Laboratory findings, such as serum creatinine or serum albumin levels, may document your kidney function. We generally need evidence covering a period of at least 90 days unless we can make a fully favorable determination or decision without it.

2. *Estimated glomerular filtration rate (eGFR).* The eGFR is an estimate of the filtering capacity of the kidneys that takes into account serum creatinine concentration and other variables such as your age, gender, and body size. If your medical evidence includes eGFR findings, we will consider them when we evaluate your chronic kidney disease under 106.05.

3. *Kidney or bone biopsy.* If you have had a kidney or bone biopsy, we need a copy of the pathology report. When we cannot get a copy of the pathology report, we will accept a statement from an acceptable medical source verifying that a biopsy was performed and describing the results.

C. What other factors do we consider when we evaluate your genitourinary disorder?

1. *Chronic hemodialysis or peritoneal dialysis.*

a. Dialysis is a treatment for chronic kidney disease that uses artificial means to remove toxic metabolic byproducts from the blood. Hemodialysis uses an artificial kidney machine to clean waste products from the blood; peritoneal dialysis uses a dialyzing solution that is introduced into and removed from the abdomen (peritoneal cavity) either continuously or intermittently. Under 106.03, your ongoing dialysis must have lasted or be expected to last for a continuous period of at least 12 months. We will accept a report from an acceptable medical source that describes your chronic kidney disease and the need for ongoing dialysis to satisfy the requirements in 106.03.

b. If you are undergoing chronic hemodialysis or peritoneal dialysis, your chronic kidney disease may meet our definition of disability before you started dialysis. We will determine the onset of your disability based on the facts in your case record.

2. *Kidney transplant.*

a. If you receive a kidney transplant, we will consider you to be disabled under 106.04 for 1 year from the date of transplant. After that, we will evaluate your residual impairment(s) by considering your post-transplant function, any rejection episodes you have had, complications in other body systems, and any adverse effects related to ongoing treatment.

b. If you received a kidney transplant, your chronic kidney disease may meet our definition of disability before you received the transplant. We will determine the onset of your disability based on the facts in your case record.

3. *Anasarca* (generalized massive edema or swelling). Under 106.06B, we need a description of the extent of edema, including pretibial (in front of the tibia), periorbital (around the eyes), or presacral (in front of the sacrum) edema. We also need a description of any ascites, pleural effusion, or pericardial effusion.

4. *Congenital genitourinary disorder.* Procedures such as diagnostic cystoscopy or circumcision do not satisfy the requirement for urologic surgical procedures in 106.07.

5. *Complications of chronic kidney disease.* The hospitalizations in 106.09 may be for different complications of chronic kidney disease. Examples of complications that may result in hospitalization include stroke, congestive heart failure, hypertensive crisis, or acute kidney failure requiring a short course of hemodialysis.

D. How do we evaluate disorders that do not meet one of the genitourinary listings?

1. The listed disorders are only examples of common genitourinary disorders that we consider severe enough to result in marked and severe limitations. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that satisfies the criteria of a listing in another body system.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. (See § 416.926 of this chapter.) Genitourinary disorders may be associated with disorders in other body systems, and we consider the combined effects of multiple impairments when we determine whether they medically equal a listing. If your impairment(s) does not medically equal a listing, we will also consider whether it functionally equals the listings. (See § 416.926a of this chapter.) We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

106.01 Category of Impairments, Genitourinary Disorders

106.03 *Chronic kidney disease,* with chronic hemodialysis or peritoneal dialysis (see 106.00C1).

106.04 *Chronic kidney disease,* with kidney transplant. Consider under a disability for 1 year following the transplant; thereafter, evaluate the residual impairment (see 106.00C2).

106.05 *Chronic kidney disease,* with impairment of kidney function, with one of the following documented on at least two occasions at least 90 days apart during a consecutive 12-month period:

A. Serum creatinine of 3 mg/dL or greater; or

B. Creatinine clearance of 30 ml/min/1.73m^2 or less; or

C. Estimated glomerular filtration rate (eGFR) of 30 ml/min/1.73m^2 or less.

106.06 *Nephrotic syndrome,* with A and B:

A. One of the following laboratory findings documented on at least two occasions at least 90 days apart during a consecutive 12-month period:

1. Serum albumin of 3.0 g/dL or less, or
2. Proteinuria of 40 mg/m²/hr or greater; and

B. Anasarca (see 106.00C3) persisting for at least 90 days despite prescribed treatment.

106.07 *Congenital genitourinary disorder* (see 106.00C4) requiring urologic surgical procedures at least three times in a consecutive 12-month period, with at least 30 days between procedures. Consider under a disability for 1 year following the day of the last surgery; thereafter, evaluate the residual impairment.

106.09 *Complications of chronic kidney disease* (see 106.00C5) requiring at least three hospitalizations within a consecutive 12-month period and occurring at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization.

[FR Doc. 2013–02166 Filed 2–1–13; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–R09–OAR–2012–0904, FRL–9775–9]

Partial Approval and Disapproval of Air Quality Implementation Plans; Arizona; Regional Haze and Visibility Transport; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA is extending the public comment period for a proposed rule published in the **Federal Register** on December 21, 2012, with a former deadline for comments of February 4, 2013. The new deadline of March 6, 2013, will provide an additional 30 days for a total of 75 days to comment on our proposal. The proposal is to approve in part and disapprove in part a revision to Arizona's State Implementation Plan (SIP) to implement the regional haze program for the first planning period through 2018. The proposal includes all portions of the State's regional haze SIP except for three electric generating stations that were addressed in a final rule published on December 5, 2012.

DATES: Comments on the proposed rule published on December 21, 2012 (77 FR 75704) must be received on or before March 6, 2013.

ADDRESSES: You may submit comments, identified by Docket ID No. EPA–R09–OAR–2012–0904, by one of the following methods:

- *Federal Rulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: r9azreghaze@epa.gov.*
- *Fax:* 415–947–3579 (Attention: Gregory Nudd)
- *Mail, Hand Delivery or Courier:* Gregory Nudd, EPA Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, California 94105. Hand and courier deliveries are only accepted Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

FOR FURTHER INFORMATION CONTACT: Gregory Nudd, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Gregory Nudd can be reached at telephone number (415) 947–4107 and via electronic mail at *r9azreghaze@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Instructions for Submitting Comments

EPA's policy is to include all comments received in the public docket without change. We may make comments available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or that is otherwise protected through *http://www.regulations.gov* or email. The *http://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 *http://www.regulations.gov,* we will include your email address 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 not include special characters or any form of encryption, and be free of any defects or viruses.

B. Docket

The proposed rule published on December 21, 2012, relies on documents, information and data that are listed in the index on *http://www.regulations.gov* under docket number EPA–R09–OAR–2012–0904. Although listed in the index, some information is not publicly available (e.g., Confidential Business Information (CBI)). Certain other material, such as copyrighted material, is publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Planning Office of the Air Division, AIR–2, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 9–5:00 PST, excluding Federal holidays.

C. Submitting Confidential Business Information

Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim as CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, you must submit a copy of the comment that does not contain the information claimed as CBI for inclusion in the public docket. We will not disclose information so marked except in accordance with procedures set forth in 40 CFR part 2.

D. Tips for Preparing Comments

When submitting comments, remember to:

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

• Make sure to submit your comments by the identified comment period deadline.

Dated: January 28, 2013.

Alexis Strauss,

Acting Regional Administrator, EPA Region 9.

[FR Doc. 2013–02394 Filed 2–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0728; FRL 9775–8]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District, Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that address volatile organic compound (VOC) emissions from municipal solid waste landfills and livestock waste. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 6, 2013.

ADDRESSES: Submit comments, identified by docket number, EPA–R09–OAR–2012–0728, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Weeda Ward, Air Division, U.S. Environmental Protection Agency, Region 9, (213) 244–1812, email: *ward.laweeda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	1150.1	Control of Gaseous Emissions from Municipal Solid Waste Landfills.	04/01/11	09/27/11
SCAQMD	1127	Emissions Reductions from Livestock Waste	08/06/04	10/05/06

On October 24, 2011 and October 24, 2006, EPA determined that the submittals for SCAQMD Rules 1150.1 and 1127, respectively, met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of Rule 1150.1 into the SIP on July 1, 2002 (67 FR 44062). SCAQMD adopted revisions to the SIP-approved version on April 1, 2011 and CARB submitted them to us on September 27, 2011.

C. What is the purpose of the submitted rule and rule revision?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. EPA's technical support documents (TSD) have more information about these rules.

SCAQMD Rule 1150.1, ''Control of Gaseous Emissions from Municipal Solid Waste Landfills,'' is an amended rule that regulates landfill gas emissions. The submitted rule applies to both active and inactive municipal solid waste (MSW) landfills and defines an active MSW landfill as one that has received solid waste on or after November 8, 1987.

The two previous versions of Rule 1150.1 (April 10, 1998 and March 10, 2000) focused on controlling VOC emissions, as well as toxic air contaminant (TAC) emissions. SCAQMD's intent was to reduce the contribution of these pollutants to atmospheric ozone, avoid public nuisance complaints from odorous compounds, and prevent the detriment to public health caused by such emissions.

Increased focus on controlling greenhouse gases (GHGs) led to the enactment by the California Legislature of Assembly Bill 32 (AB 32), the Global Warming Solutions Act of 2006. SCAQMD's primary purpose for revising Rule 1150.1 is to incorporate provisions to achieve equivalency with an AB 32 early action measure, the Landfill Methane Regulation (California Code of Regulations, Title 17, Sections 95460 to 95476). We note that the revisions to Rule 1150.1 also enhance the regulation of VOCs by improving the rule's overall enforceability through clarifications of standards for already-required controls and the streamlining of duplicative recordkeeping and reporting requirements.

SCAQMD Rule 1127 was adopted on August 6, 2004. The purpose of the rule is to reduce emissions of ammonia, VOC and particulate matter under 10 microns (PM_{10}) from dairies. Applicable operations include dairies, heifer, and calf farms within the SCAQMD's jurisdiction. It also applies to manure processing operations, such as composting operations and anaerobic digesters.

Rule 1127 was designed to implement the 2003 Air Quality Management Plan (AQMP) control measure, WST–01, and establish Best Available Control Measure (BACM) requirements for dairies pursuant to Senate Bill (SB) 700 (Florez) signed by California governor Gray Davis on September 22, 2003. SB 700 required applicable non-attainment areas to remove exemptions for certain agricultural operations from permitting requirements. EPA is evaluating the rule provisions for conformance with reasonable available control technology (RACT) requirements pursuant to Clean Air Act (CAA) Section 182(b)(2).

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require RACT for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rules 1150.1 and 1127 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. The revisions to Rule 1150.1 strengthen the rule by improving enforceability and streamlining duplicative requirements. Rule 1127 meets the RACT criteria by implementing control technology that is reasonably available, considering technological and economic feasibility. The TSDs have more information on our evaluation.

C. EPA recommendations to further improve the rules.

EPA has no recommendation to further improve Rule 1150.1. We do have recommendations to improve Rule 1127 which are detailed in the TSD.

D. Public Comment and Final Action.

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 2013.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 23, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–02377 Filed 2–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2012–0986; FRL–9775–5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Georgia; Redesignation of the Atlanta; 1997 8-Hour Ozone Moderate Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 4, 2012, the State of Georgia, through the Georgia Environmental Protection Division (GA EPD), submitted a request for EPA to redesignate the Atlanta, Georgia 8-hour ozone nonattainment area (hereafter referred to as the ''Atlanta Area'' or ''Area'') to attainment for the 1997 8-hour National Ambient Air Quality Standards (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Area. The Atlanta Area consists of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in their entireties. EPA is proposing to approve the redesignation request for the Area, along with the related SIP revision, including Georgia's plan for maintaining attainment of the 1997 8-hour ozone standard in the Area. EPA is also proposing to approve the motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) for the year 2024 for the Area. These actions are being proposed pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: Comments must be received on or before March 6, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0986, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0986, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012-0986. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Sara Waterson of the Regulatory Development Section, in the Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Spann may be reached by phone at (404) 562–9029, or via electronic mail at *spann.jane@epa.gov.* Ms. Waterson may be reached by phone at (404) 562–9061,

or via electronic mail at *waterson.sara@epa.gov.*

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I. What are the actions EPA is proposing to take?

EPA is proposing to take the following two separate but related actions, one of which involves multiple elements: (1) to redesignate the Atlanta Area to attainment for the 1997 8-hour ozone NAAQS and (2) to approve into the Georgia SIP, under section 175A of the CAA, Georgia's plan for maintaining the 1997 8-hour ozone NAAQS (1997 ozone NAAQS maintenance plan), including the associated MVEBs. EPA is also notifying the public of the status of EPA's adequacy determination for the Atlanta Area MVEBs. These actions are summarized below and described in greater detail throughout this notice of proposed rulemaking.

First, EPA proposes to determine that the Atlanta Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In this action, EPA is proposing to approve a request to change the legal designation of the Atlanta Area from nonattainment to attainment for the 1997 8-hour ozone NAAQS.

Second, EPA is proposing to approve Georgia's 1997 ozone NAAQS maintenance plan for the Atlanta Area as meeting the requirements of section 175A (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Atlanta Area in attainment of the 1997 8-hour ozone NAAQS through 2024. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes NO_X and VOC MVEBs for the year 2024 for the Atlanta Area. EPA is proposing to approve (into the Georgia SIP) the 2024 MVEBs that are included as part of Georgia's 1997 ozone NAAQS maintenance plan.

EPA is also notifying the public of the status of EPA's adequacy process for the newly-established NO_X and VOC MVEBs for 2024 for the Atlanta Area. The public comment period for Adequacy for the Atlanta Area 2024 MVEBs began on February 29, 2012, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#atlanta2*). The Adequacy comment period for these MVEBs closed on March 30, 2012. No comments, adverse or otherwise, were received during EPA's adequacy process for the MVEBs associated with Georgia's 1997 8-hour ozone maintenance plan. Please see section VII of this proposed rulemaking for further explanation of this process and for more details on the MVEBs.

Today's notice of proposed rulemaking is in response to Georgia's April 4, 2012, SIP revision. That document addresses the specific issues summarized above and the necessary elements described in section 107(d)(3)(E) of the CAA for redesignation of the Atlanta Area to attainment of the 1997 8-hour ozone NAAQS.

II. What is the background for EPA's proposed actions?

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million (ppm). Under EPA's regulations at 40 CFR part 50, the 1997 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm when rounding is considered). *See* 69 FR 23857 (April 30, 2004).[1] Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS, based on the three most recent years of ambient air quality data at the conclusion of the designation process. The Atlanta Area was designated nonattainment for the 1997 8-hour ozone NAAQS on April 30, 2004 (effective June 15, 2004) using 2001–2003 ambient air quality data (69 FR 23857, April 30, 2004). At the time of designation the Atlanta Area was classified as a marginal nonattainment area for the 1997 8-hour ozone NAAQS. In the April 30, 2004, Phase I Ozone Implementation Rule, EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA. This established an attainment date 3 years after the June 15, 2004, effective date for areas classified as marginal areas for the 1997 8-hour ozone nonattainment designations. Therefore, the Atlanta Area's original attainment date was June 15, 2007. *See* 69 FR 23951, April 30, 2004.

The Atlanta Area failed to attain the 1997 8-hour ozone NAAQS by June 15, 2007 (the applicable attainment date for marginal nonattainment areas), and did not qualify for any extension of the attainment date as a marginal area. As a consequence, on March 6, 2008, EPA published a rulemaking determining that the Atlanta Area failed to attain and, consistent with Section 181(b)(2) of the CAA, the Atlanta Area was reclassified by operation of law to the next highest classification, or ''moderate'' nonattainment. *See* 73 FR 12013. When an area is reclassified, a new attainment date for the reclassified area must be established. Section 181 of the CAA explains that the attainment date for moderate nonattainment areas shall be as expeditiously as practicable, but no later than six years after designation, or June 15, 2010.[2] EPA further required that Georgia submit the SIP revisions meeting the new moderate area requirements as expeditiously as practicable, but no later than December 31, 2008.

On October 21, 2009, Georgia submitted an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, a 2002 base year emissions inventory and other planning SIP

[1] On July 20, 2012, EPA designated the Atlanta area as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. The current proposed action, however, is being taken with regard to the 1997 8-hour ozone NAAQS and not for the 2008 8-hour ozone NAAQS.

[2] On November 30, 2010, EPA determined that Georgia met the CAA requirements to obtain a one-year extension of the attainment date for the 1997 8-hour ozone NAAQS for the Atlanta Area. *See* 75 FR 73969. As a result, the Atlanta Area's attainment date was extended from June 15, 2010, to June 15, 2011, for the 1997 8-hour ozone NAAQS.

revisions related to attainment of the 1997 8-hour ozone NAAQS in the Atlanta Area. Subsequently, on June 23, 2011 (76 FR 36873), EPA determined that the Atlanta Area attained the 1997 8-hour ozone NAAQS. The determination of attaining data was based upon complete, quality-assured and certified ambient air monitoring data for the 2008–2010 period, showing that the Area had monitored attainment of the 1997 8-hour ozone NAAQS. The requirements for the Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to attainment of the standard were suspended as a result of the determination of attainment, so long as the Area continues to attain the 1997 8-hour ozone NAAQS. *See* 40 CFR 52.582(d). Within the April 4, 2012, maintenance plan and redesignation request cover letter, Georgia withdrew the Atlanta Area's attainment demonstration (except the emissions inventory) as allowed by 40 CFR 51.1004(c); however, such withdrawal does not suspend the emissions inventory requirement found in CAA section 172(c)(3) and section 182(a)(1). EPA took direct final action to approve the baseline emissions inventory portion of the attainment demonstration SIP revision on April 24, 2012 (77 FR 24399). The emissions statements requirement was approved on November 27, 2009 (74 FR 62249).

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area for purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.
11. ''Next Steps for Pending Redesignation Requests and State Implementation Plan Actions Affected by the Recent Court Decision Vacating the 2011 Cross-State Air Pollution Rule,'' Memorandum from Gina McCarthy, Assistant Administrator, November 19, 2012.

IV. Why is EPA proposing these actions?

On April 4, 2012, the State of Georgia, through GA EPD, requested the redesignation of the Atlanta Area to attainment for the 1997 8-hour ozone NAAQS. EPA's evaluation indicates that the Atlanta Area has attained the 1997 8-hour ozone NAAQS, and that the Atlanta Area meets the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. As a result, EPA is proposing to take the two related actions summarized in section I of this notice.

V. What is EPA's analysis of the request?

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) redesignate the Atlanta Area to attainment for the 1997 8-hour ozone NAAQS; and (2) approve the Atlanta Area's 1997 8-hour ozone NAAQS maintenance plan, including the associated MVEBs, into the Georgia SIP. These actions are based upon EPA's preliminary determinations that the Atlanta Area continues to attain the 1997 8-hour ozone NAAQS, and EPA's preliminary determination that Georgia has met all other redesignation criteria for the Atlanta Area. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Atlanta Area in the following paragraphs of this section.

Criteria (1)—The Atlanta Area has Attained the 1997 8-Hour Ozone NAAQS

For ozone, an area may be considered to be attaining the 1997 8-hour ozone NAAQS if it meets the 1997 8-hour ozone NAAQS, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring

data. To attain these NAAQS, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the data handling and reporting convention described in 40 CFR part 50, Appendix I, the NAAQS are attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

On June 23, 2011, at 76 FR 36873, EPA determined that the Atlanta Area was attaining the 1997 8-hour ozone NAAQS. For that action EPA reviewed ozone monitoring data from monitoring stations in the Atlanta Area for the 1997 8-hour ozone NAAQS for 2008–2010. These data have been quality-assured and are recorded in AQS. EPA has reviewed the 2009–2011 data, which indicate that the Area continues to attain the 1997 8-hour ozone NAAQS beyond the submitted 3-year attainment period of 2008–2010. The fourth-highest 8-hour ozone average for 2008, 2009, 2010, 2011, and the 3-year averages of these values (i.e., design values), are summarized in the following Table 1 of this proposed rulemaking.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE ATLANTA 1997 8-HOUR OZONE AREA

Location	County	Monitor ID	Annual arithmetic mean concentrations (ppm)			3-Year design values (ppm)	
			2008	2009	2010	2008–2010	2009–2011
GA National Guard McCollum Pkwy.	Cobb	13–067–0003	0.075	0.076	0.079	0.076	0.078
University of West Georgia at Newnan.	Coweta	13–077–0002	0.075	0.065	0.065	0.068	0.067
2390-B Wildcat Road Decatur	Dekalb	13–089–0002	0.087	0.077	0.075	0.079	0.077
Douglasville W. Strickland St.	Douglas	13–097–0004	0.080	0.072	0.074	0.075	0.074
Gwinnett Tech 1250 Atkinson Rd.	Gwinnett	13–135–0002	0.079	0.073	0.072	0.074	0.075
Henry County Extension Office	Henry	13–151–0002	0.086	0.074	0.078	0.079	0.078
Yorkville	Paulding	13–223–0003	0.072	0.067	0.071	0.070	0.071
Conyers Monastery	Rockdale	13–247–0001	0.089	0.070	0.076	0.078	0.075
Confederate Ave	Fulton	13–121–0055	0.084	0.077	0.080	0.080	0.080
Fayetteville-GDOT	Fayette	13–113–0001	0.086	*	*	*	*

* The Fayetteville-GDOT monitor was temporarily discontinued on October 31, 2008.

The 3-year design value for 2008–2010 submitted by Georgia for redesignation of the Atlanta Area is 0.080 ppm, which meets the NAAQS as described above. As mentioned above, on June 23, 2011 (76 FR 36873), EPA published a clean data determination for the Atlanta Area for the 1997 8-hour ozone NAAQS. The 2009–2011 certified data show that the Atlanta Area continues to attain the 1997 8-hour ozone NAAQS with a design value of 0.080 ppm at the Confederate Ave monitor. In today's action, EPA is proposing to determine that the Area is attaining the 1997 8-hour ozone NAAQS. EPA will not go forward with the redesignation if the Area does not continue to attain the 1997 8-hour ozone NAAQS until the time that EPA finalizes the redesignation. As discussed in more detail below, the State of Georgia has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

Criteria (2)—Georgia has a Fully Approved SIP Under Section 110(k) for the Atlanta Area; and Criteria (5)—Georgia Has Met All Applicable Requirements Under Section 110 and Part D of Title I of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Georgia has met all applicable SIP requirements for the Atlanta Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Georgia SIP satisfies the criterion that it meets applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 1997 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these proposed determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Atlanta Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants (e.g., NO_X SIP Call [3] and the Clean Air Interstate Rule (CAIR) [4]). The section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. However, as discussed later in this notice, addressing pollutant transport from other states is an important part of an area's maintenance demonstration.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). *See also* the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

EPA completed rulemaking on a submittal from Georgia dated December 13, 2007, addressing ''infrastructure SIP'' elements required for the 1997 8-hour ozone NAAQS under CAA section 110(a)(2) on February 6, 2012. *See* 77 FR 5706. However, these are statewide requirements that are not a consequence of the nonattainment status of the Atlanta Area. As stated above, EPA believes that section 110 elements not linked to an area's nonattainment status are not applicable for purposes of redesignation. Therefore, EPA believes it has approved all SIP elements under section 110 that must be approved as a prerequisite for redesignating the Atlanta Area to attainment.

Title I, Part D, subpart 1 applicable SIP requirements. Subpart 1 of part D, found in sections 172(c)(1) through (9) and in section 176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992). Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's ozone nonattainment classification. A thorough discussion of the requirements contained in section 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

Part D Subpart 1 Section 172 Requirements and Part D, Subpart 2 Section 182 Requirements. Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and to provide for attainment of the national primary ambient air quality standards. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's ozone nonattainment classification. For purposes of evaluating this redesignation request, the applicable part D, subpart 2 SIP requirements for all moderate nonattainment areas are contained in sections 182(b)(1)–(5). However, pursuant to 40 CFR 51.918, EPA's June 23, 2011, determination that the Area was attaining the 1997 8-hour ozone NAAQS suspended Georgia's obligation to submit most of the attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended Georgia's obligation to submit an attainment demonstration and planning SIPs to provide for RFP, RACM, and contingency measures under sections 172(c)(9) and 182(b)(1) of the CAA.

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992)).

Because attainment has been reached in the Atlanta Area, no additional measures are needed to provide for attainment for the 1997 8-hour ozone NAAQS,[5] and section 172(c)(1) requirements for an attainment demonstration and RACM are no longer

[3] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. While Georgia was not issued a NO_X SIP Call, the State has identified benefits from surrounding states. In compliance with EPA's NO_X SIP Call, 22 eastern states developed rules governing the control of NO_X emissions from electric generating units (EGU), major non-EGU industrial boilers, major cement kilns, and internal combustion engines.

[4] On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), which requires significant reductions in emissions of SO_2 and NO_X from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. *See* 76 FR 70093. The D.C. Circuit initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the court's decision, EPA issued Cross-State Air Pollution Rule (CSAPR), to address interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate CSAPR. In that decision, it also ordered EPA to continue administering CAIR ''pending the promulgation of a valid replacement.'' *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d. 7, 38 (D.C. Cir., 2012). The D.C. Circuit has not yet issued the final mandate in *EME Homer City* as EPA (as well as other intervenors) petitioned for rehearing *en banc,* asking the full court to review the decision. While rehearing proceedings are pending, EPA intends to act in accordance with the panel opinion in the *EME Homer City* opinion.

[5] Effective July 20, 2012, EPA designated 15 counties in the Atlanta Area as nonattainment for the 2008 8-hour ozone NAAQS. This rulemaking does not address requirements for the portion of Atlanta that was designated nonattainment for the 2008 8-hour ozone NAAQS. Requirements for the portion of Atlanta that was designated nonattainment for the 2008 8-hour ozone NAAQS will be addressed in the future.

considered to be applicable for purposes of redesignation as long as the Area continues to attain the 1997 8-hour ozone NAAQS until redesignation. See also 40 CFR 51.918.

The RFP plan requirements under sections 172(c)(2) and 182(b)(1) are defined as progress that must be made toward attainment for the 1997 8-hour ozone NAAQS. These requirements are not relevant for purposes of redesignation because EPA has determined that the entire Atlanta Area has monitored attainment of the 1997 8-hour ozone NAAQS. *See* General Preamble, 57 FR 13564. *See* also 40 CFR 51.1004 (c). While it is not a requirement for redesignation, EPA is considering taking action on Georgia's RFP plan for the 1997 8-hour ozone NAAQS separate from today's proposed action.

Section 172(c)(3) and section 182(b) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. Section 182(b) references section 182(a) of the CAA which requires, in part, for states to submit a current inventory of actual emissions (182(a)(1)). As part of Georgia's attainment demonstration for the Atlanta Area, Georgia submitted a 2002 base year emissions inventory. EPA approved the 2002 base year inventory on March 24, 2012, as meeting the section 172(c)(3) and section 182(a)(1) emissions inventory requirement. *See* 77 FR 24399.

Section 172(c)(4) requires the identification and quantification of emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) and section 182(b) require source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Georgia has demonstrated that the Atlanta Area will be able to maintain the NAAQS without part D NSR in effect, and therefore Georgia need not have fully approved part D NSR programs prior to approval of the redesignation request. Nonetheless, Georgia currently has a fully-approved part D NSR program in place. Georgia's PSD program will become applicable in the Atlanta Area upon redesignation to attainment. Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the Georgia SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 182(b) references, in part, section 182(a)(3), which requires states to submit periodic inventories and emissions statements. Section 182(a)(3)(A) of the CAA requires states to submit a periodic inventory every 3 years. The periodic emissions inventory is discussed in more detail in Criteria (4)(e), *Verification of Continued Attainment.*

Section 182(a)(3)(B) of the CAA requires states with areas designated nonattainment for the ozone NAAQS to submit a SIP revision to require emissions statements to be submitted to the state by sources within that nonattainment area. EPA approved Georgia's emissions statements requirement, which is part of the attainment plan submittal, on November 27, 2009. *See* 74 FR 62249. EPA believes the Georgia SIP meets the requirements of section 182(a)(3)(B) applicable for purposes of redesignation.

Section 182(b)(2) of the CAA requires states with areas designated nonattainment for the ozone NAAQS to submit a SIP revision to require reasonably available control technology (RACT) for all major VOC and NO_X sources and for each category of VOC sources in the Area covered by a Control Techniques Guidelines (CTG) document.

The CTGs established by EPA are guidance to the states and provide recommendations only. A state can develop its own strategy for what constitutes RACT for the various CTG categories, and EPA will review that strategy in the context of the SIP process and determine whether it meets the RACT requirements of the CAA and its implementing regulations. If no major sources of VOC or NO_X emissions (which should be considered separately) or no sources in a particular source category exist in an applicable nonattainment area, a state may submit a negative declaration for that category.

EPA approved Georgia's RACT submittals on September 28, 2012. *See* 77 FR 59554. EPA believes the Georgia SIP meets the requirements of section 182(b)(2) applicable for purposes of redesignation.

Originally, the section 182(b)(3) Stage II requirement also applied in all moderate ozone nonattainment areas. However, under section 202(a)(6) of the CAA, 42 U.S.C. 7521(a)(6), the requirements of section 182(b)(3) no longer apply in moderate ozone nonattainment areas after EPA promulgated the onboard refueling vapor recovery standards on April 6, 1994, 59 FR 16262, codified at 40 CFR parts 86 (including 86.098–8), 88 and 600. Under implementation rules issued in 2002 for the 1997 8-hour ozone NAAQS, EPA retained the Stage II-related requirements under section 182(b)(3) as they applied for the now-revoked 1-hour ozone NAAQS. *See* 40 CFR 51.900(f)(5) and 40 CFR 51.916(a). As a previous 1-hour ozone nonattainment area, Georgia currently has Stage II requirements approved in its SIP for 13 counties in the Atlanta Area. This proposed rulemaking does not relate to those requirements and is not proposing any action to remove those requirements from Georgia's SIP.

Section 182(b)(4) of the CAA requires states with areas designated nonattainment for the ozone NAAQS to submit SIPs requiring inspection and maintenance of vehicles (I/M). Section 182(c)(3)requires enhanced vehicle inspection and maintenance (I/M) in ozone nonattainment areas classified as serious or worse. Georgia's enhanced I/M rule for the 13 county nonattainment area under the 1990 1-hr ozone standard was submitted to EPA on August 9, 1999, and approved on April 19, 2002 (67 FR 19335), effective June 18, 2002. Even though the Atlanta Area was designated as part of the moderate Atlanta Area for the 1997 8-hour ozone NAAQS, applicability of the I/M regulations to areas outside the Ozone Transport Region is based on the population of the urbanized area as defined by the 1990 census. In 1990, the Atlanta urbanized area was totally contained within Georgia and did not touch the State line. Therefore, the applicability level of a 1990 census population of 200,000 or more in an urbanized area (40 CFR 51.350(a)(1)) applies to the Atlanta urbanized area. EPA believes the Georgia SIP meets the requirements of section 182(b)(3) and 182(b)(4) applicable for purposes of redesignation.

Section 182(b)(5) of the CAA requires that for purposes of satisfying the general emission offset requirement, the ratio of total emission reductions to total increase emissions shall be at least 1.15

to 1. Georgia currently requires these offsets. EPA believes the Georgia SIP meets the requirements of section 182(b)(5) applicable for purposes of redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements [6] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Georgia has an approved conformity SIP for the Atlanta Area. *See* 77 FR 35866, June 15, 2012. Thus, the Atlanta Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

b. The Atlanta Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Georgia SIP for the Atlanta Area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (*see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, Georgia has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1997 8-hour ozone NAAQS SIP elements applicable in the Atlanta Area (March 2, 1976, 41 FR 8956; 110(a)(1) and (2) for 1997 8-hour ozone NAAQS, February 6, 2012, 77 FR 5706; RACT, September 28, 2012, 77 FR 59554; emissions inventory, March 24, 2012, 77 FR 24399; emissions statement, November 27, 2009, 74 FR 62249).

As indicated above, EPA believes that the section 110 elements that are neither connected with nonattainment plan submissions nor linked to an area's nonattainment status are not applicable requirements for purposes of redesignation. EPA has approved all part D subpart 1 requirements applicable for purposes of this redesignation.

Criteria (3)—The Air Quality Improvement in the Atlanta 1997 8-Hour Ozone NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA has preliminarily determined that Georgia has demonstrated that the observed air quality improvement in its portion of the Atlanta Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state adopted measures. EPA does not have any information to suggest that the decrease in ozone concentrations in the Atlanta Area is due to unusually favorable meteorological conditions

State, local and federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions.

The state measures, some of which implement federal requirements, that have been implemented to date and relied upon by Georgia to demonstrate attainment and/or maintenance include: Georgia Rule (yy)—Emissions of Nitrogen Oxides, Georgia Rule (lll)—NO_X from Fuel Burning Equipment, Georgia Rule (rrr)—NO_X from Small Fuel Burning Equipment, and Georgia Rule (jjj)—NO_X from EGUs. These rules have been approved in the federally-approved SIP.

Georgia's smoke management plan is a state-only requirement and is therefore not federally enforceable. This measure is not necessary for the continued maintenance of the Atlanta nonattainment area, however the implementation of this plan will support the maintenance of the ozone NAAQS for the Atlanta area. Additionally, Georgia Rule (sss) has not been submitted to EPA for approval into the SIP and is therefore not federally enforceable. The rule requirements to install and operate the control equipment have been incorporated into the each facility's respective title V federal operating permit. The rule alone is not relied upon to meet continued maintenance; however, the rule was designed to meet the emission reductions and deadlines of CAIR. Without the operation of the equipment required by Rule (sss), it would be impossible for the coal-fired EGUs operating in the state of Georgia to meet the emission budgets of either CAIR. Rule (sss) is state-effective and currently being implemented in Georgia.

The federal measures that have been implemented include the following:

Tier 2 vehicle standards. Implementation began in 2004 and will require all passenger vehicles in any manufacturer's fleet to meet an average standard of 0.07 grams of NO_X per mile. The Tier 2 rule also reduced the sulfur content of gasoline to 30 ppm starting in January of 2006.

Large Non-road Diesel Engines Rule and Ultra Low-Sulfur Diesel Rule. EPA issued this rule in June 2004 (69 FR 38958), which applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent nationwide. The non-road diesel rule was fully implemented by 2010.

Control Technique Guidelines. Georgia listed CTGs under federal measures implemented in the Atlanta Area. CTGs are not federal control measures. CTGs are federal guidelines for states to use in order to meet a CAA requirement for states to control VOC emissions from specific source categories. The resulting state controls are considered state measures, not

[6] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the MVEBs that are established in control strategy SIPs and maintenance plans.

federal measures. See criteria 2(a) of section V of this action for more information regarding CTGs.

Heavy-duty gasoline and diesel highway vehicle standards and Ultra Low-Sulfur Diesel Rule. EPA issued this rule in January 2001 (66 FR 5002). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007, which further reduced the highway diesel fuel sulfur content to 15 ppm, leading to additional reductions in combustion NO_X and VOC emissions. This rule is expected to achieve a 95 percent reduction in NO_X emissions from diesel trucks and buses.

Nonroad spark-ignition engines and recreational engines standards. This rule was effective in 2003 and will reduce NO_X and hydrocarbon emissions.

NO_X SIP Call in Surrounding States. The NO_X SIP Call created the NO_X Budget Trading Program designed to reduce the amount of ozone that crosses state lines.

EPA has considered the relationship of the Atlanta Area's maintenance plan to the reductions currently required pursuant to CAIR. Although CAIR was remanded to EPA, the remand of CAIR does not alter the requirements of the NO_X SIP Call and the State has demonstrated that the Atlanta Area can maintain the 1997 ozone NAAQS without any additional requirements (beyond those required by the NO_X SIP Call in surrounding states). Therefore, EPA has made the preliminary determination that the State's demonstration of maintenance under sections 175A and 107(d)(3)(E) remains valid based on reductions from the NO_X SIP Call.

The NO_X SIP Call required states to make NO_X emissions reductions. It also provided a mechanism (the NO_X Budget Trading Program) that states could use to achieve those reductions. When EPA promulgated CAIR, it discontinued (starting in 2009) the NO_X Budget Trading Program, 40 CFR 51.121(r), but established another mechanism—the CAIR ozone season trading program—which states could use to meet their NO_X SIP Call obligations, 70 FR 25289–90. EPA notes that a number of states, when submitting SIP revisions to require sources to participate in the CAIR ozone season trading program, removed the SIP provisions that required sources to participate in the NO_X Budget Trading Program. In addition, because the provisions of CAIR including the ozone season NO_X trading program have remained in place during the remand, EPA is not currently administering the NO_X Budget Trading Program. Nonetheless, all states regardless of the current status of their regulations that previously required participation in the NO_X Budget Trading Program, will remain subject to all of the requirements in the NO_X SIP Call even if the existing CAIR ozone season trading program is withdrawn or altered. In addition, the anti-backsliding provisions of 40 CFR 51.905(f) specifically provide that the provisions of the NO_X SIP Call, including the statewide NO_X emission budgets, continue to apply after revocation of the 1-hour NAAQS. Thus, for purposes of today's action, emissions reductions associated with the NO_X SIP Call are ''permanent and enforceable.''

All NO_X SIP Call states have SIPs that currently satisfy their obligations under the NO_X SIP Call; the NO_X SIP Call reduction requirements are being met; and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR remand. For these reasons, EPA believes that regardless of the status of the CAIR program, the NO_X SIP Call requirements can be relied upon in demonstrating maintenance. Here, the State has demonstrated maintenance based in part on those requirements.

CAIR and CSAPR. CAIR remains in place and enforceable until substituted by a ''valid'' replacement rule. Regardless of the timing of the transition from CAIR to CSAPR, or a resulting court-ordered interstate transport remedy, emissions of NO_X and SO_2 have declined significantly and are expected to continue to decrease in the future due to the continuation of CAIR and Georgia's own EGU emissions rules.

To the extent that the Georgia submittal relies on CAIR reductions that occurred through 2012, the recent directive from the D.C. Circuit in *EME Homer City* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period for purposes of CAA section 107(d)(3)(E)(iii) and Georgia's request to redesignate the Atlanta Area and seek approval of its maintenance plan and other requirements associated with redesignation. EPA has been ordered by the court to develop a new rule, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine if they can be approved, and EPA has taken action on the SIPs, including promulgating a Federal Implementation Plan, if appropriate. The court's clear instruction to EPA is that it must continue to administer CAIR until a ''valid replacement'' exists and thus CAIR reductions may be relied upon until the necessary actions are taken by EPA and states to administer CAIR's replacement. Furthermore, the court's instruction provides an additional backstop; by definition, any rule that replaces CAIR and meets the court's direction would require upwind states to have SIPs that eliminate significant contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating CSAPR and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR ''might be more severe now in light of the reliance interests accumulated over the intervening four years.'' *EME Homer City,* 696 F.3d at 38. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR, which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation actions, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emissions reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed. In light of these unique circumstances and for the reasons explained above, EPA is proposing to approve the redesignation request and related SIP revisions for the Atlanta Area. EPA continues to implement CAIR in accordance with current direction from the court, and thus CAIR is in place and enforceable and will remain so until substituted by a valid replacement rule. Georgia's SIP revision lists CAIR as a control measure, which became state-effective on February 28, 2007, and was approved by EPA on October 9, 2007, 72 FR 57202, for the purpose of reduction SO_2 and NO_X emissions. The monitoring data used to demonstrate the Area's attainment of the

1997 8-hour ozone standard was impacted by CAIR.

Criteria (4)—The Atlanta Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Atlanta Area to attainment for the 1997 8-hour ozone NAAQS, GA EPD submitted a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA has made the preliminary determination that this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the remainder of the 20-year period following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future 1997 8-hour ozone violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA proposes to find that Georgia's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Georgia SIP.

b. Attainment Emissions Inventory

The Atlanta Area attained the 1997 8-hour ozone NAAQS based on monitoring data for the 3-year period from 2008–2010. Georgia selected 2008 as the attainment emissions inventory year. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 8-hour ozone NAAQS. Georgia began development of the attainment inventory by first generating a baseline emissions inventory for the Atlanta Area. As noted above, the year 2008 was chosen as the base year for developing a comprehensive emissions inventory for NO_X and VOC, for which projected emissions could be developed for 2017 and 2024.

The attainment year emissions were projected to future years separately using different methods by seven source categories, including: EGU point sources; non-EGU point sources; area sources; fires; nonroad mobile sources; nonroad mobile sources—marine, aircraft and railroad; and onroad mobile sources. Point sources captured in the inventory include stationary sources whose actual emissions equal or exceed 25 tons per year (tpy) of VOC or NO_X in the 13 counties in the Atlanta area that were previously nonattainment for the 1-hour ozone NAAQS and are currently nonattainment for the 1997 8-hour ozone NAAQS (Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale), and 100 tpy of VOC or NO_X in the seven remaining counties that make up the Atlanta nonattainment area for the 1997 8-hour ozone NAAQS (Barrow, Bartow, Carroll, Hall, Newton, Spalding, and Walton).

The emissions inventory is composed of four major types of sources: point, area, on-road mobile and non-road mobile. Process-level emissions estimates for three EGU facilities in the Atlanta Area during 2008 were obtained from NEI2008 Version 1.5. The emissions were projected to year 2017 and 2024 using corresponding growth and control factors.

Ozone season daily emissions for EGU point sources were calculated by multiplying the annual total emissions with daily emissions fractions during June, July and August. The fractions for NO_X and VOC emissions during June, July and August were estimated, respectively, using hourly 2008 CAMD CEM NO_X emissions and heat input data, and then were divided by the number of days in these three months (92) to get ozone season daily emissions fractions. The same daily fractions have been used for both attainment year and future years. For future year emissions from Plant McDonough-Atkinson, the fraction of NO_X emissions during the months of June through August was calculated as the product of the NO_X ozone-season limit and three months divided by the sum of the ozone-season limit times five months and the non-ozone season limit times seven months.

Emissions estimates for non-EGU point sources in 2008 were obtained from NEI2008 Version 1.5. Emissions in future years 2017 and 2024 were estimated using SCC- and county-specific growth factors generated with the U.S. EPA's Economic Growth Analysis System Version 5.0 (EGAS 5.0) with ''Default REMI 6.0 SCC Configuration.'' Appendix B–2 contains a summary of the SCC specific growth factors for Atlanta ozone nonattainment area. These emissions are not subject to additional controls in the future years 2017 and 2024. Ozone season daily emissions for non-EGU point sources were estimated by multiplying the annual total emissions with ozone season daily emissions fractions, which were calculated using the same temporal allocation method used in Sparse Matrix Operator Kernel Emissions (SMOKE, *http://www.smoke-model.org/index.cfm*). The SMOKE temporal profiles and reference files were obtained from EPA's 2005 Modeling Platform Web site (*ftp://ftp.epa.gov/EmisInventory/2005v4_2/ancillary_smoke*). The SMOKE temporal profiles gave monthly emissions fractions, and were linked to each emission record by SCC according to the SMOKE temporal reference file. The total of the monthly fractions of June, July and August were divided by the number of days in these three months (92) to get ozone season daily emissions fractions.

Nonpoint sources captured in the inventory include stationary sources whose emissions levels of NO_X, SO_2, and particulate matter are each less than 25 tons per year. Emissions from nonpoint sources in 2008 were obtained from NEI2008 version 1.5. Ozone season daily emissions for area sources were calculated using the SMOKE temporal profiles as described for non-EGU point sources.

Emissions from fires in 2008 were obtained from NEI2008 version 1.5. These estimates were provided by Georgia Environmental Protection Division as part of AERR2008 submission (Georgia Air Protection Branch, 2011). This inventory was developed using 2008 burned area data and burning permit data provided by Georgia Forestry Commission and the same method as used for the VISTAS2002 fire inventory (*www.epa.gov/ttnchie1/conference/ei13/rpo/barnard_pres.pdf*). Emissions in future years 2017 and 2024 were assumed to be the same as attainment year 2008. Ozone season daily emissions for fires were calculated by

dividing the total emissions during June, July and August by the number of days in these three months (92). The emissions during these three months were estimated using monthly emissions for nonpoint fires and event emissions records for wildfires occurred during this period in NEI2008.

The 2008 NO_X and VOC emissions for the Atlanta Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Tables 2 through 4 of the following subsection discussing the maintenance demonstration.

c. Maintenance Demonstration

The April 4, 2012, final SIP revision includes a maintenance plan for the Atlanta Area. The maintenance plan:

(i) Shows compliance with and maintenance of the 8-hour ozone standard by providing information to support the demonstration that current and future emissions of NO_X and VOC remain at or below 2008 emissions levels.

(ii) Uses 2008 as the attainment year and includes future emissions inventory projections for 2017, 2020, and 2024.

(iii) Identifies an ''out year'' at least 10 years (and beyond) after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, NO_X and VOC MVEBs were established for the last year (2024) of the maintenance plan (see section VI below).

(iv) Provides actual and projected emissions inventories, in tons per day (tpd), for the Atlanta Area, as shown in Tables 2 through 4 below.

TABLE 2—ACTUAL AND PROJECTED ANNUAL NO_X EMISSIONS (tpd) FOR THE ATLANTA AREA

Sector	2008	2014	2017	2020	2024
Point	75.99	60.69	53.05	54.43	56.27
Area *	49.30	54.92	57.73	60.62	64.48
Nonroad	117.47	99.18	90.04	87.03	83.01
On-road	364.02	264.80	215.19	165.58	99.43
Total **	606.78	479.59	416.01	367.66	303.19

* For nonpoint emissions, excluding fire.
** Numbers may be slightly different than the April 4, 2012, submittal based on rounding conventions.

TABLE 3—ACTUAL AND PROJECTED ANNUAL VOC EMISSIONS (tpd) FOR THE ATLANTA AREA

Sector	2008	2014	2017	2020	2024
Point	13.79	15.80	16.81	17.80	19.13
Area *	216.46	243.28	256.69	270.61	289.16
Nonroad	96.03	74.75	64.11	63.50	62.69
On-road	165.53	126.92	107.61	88.30	62.56
Total **	491.82	460.75	445.22	440.21	433.55

* For nonpoint emissions, excluding fire.
** Numbers may be slightly different than the April 4, 2012, submittal based on rounding conventions.

TABLE 4—EMISSION ESTIMATES FOR THE ATLANTA AREA

Year	VOC (tpd)	NO_X (tpd)
2008	491.82	606.78
2024	433.55	303.19
Difference from 2008 to 2024	−58.27	−303.59

Tables 2 through 4 summarize the 2008 and future projected emissions of NO_X and VOC from Atlanta. In situations where local emissions are the primary contributor to nonattainment, the ambient air quality standard should not be violated in the future as long as emissions from within the nonattainment area remain at or below the baseline with which attainment was achieved. Georgia has projected emissions as described previously and determined that emissions in the Atlanta Area will remain below those in the attainment year inventory for the duration of the maintenance plan.

As discussed in section VI of this proposed rulemaking, a safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. Georgia selected 2008 as the attainment emissions inventory year for the Atlanta Area. The State has decided to allocate a safety margin to the 2024 MVEB for the Atlanta Area. The safety margin was calculated as 99.43 tpd for NO_X and 62.56 tpd for VOC. A portion of the overall emissions reductions from 2008 to 2024 will be used as the safety margin for MVEB. The MVEB to be used for transportation conformity proposes is discussed in section VI. This allocation and the resulting available safety margin for the Atlanta Area are discussed further in section VI of this proposed rulemaking.

d. Monitoring Network

There are currently nine monitors measuring ozone in Atlanta. The State of Georgia, through GA EPD, has committed to continue operation of the monitors in Atlanta Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved the ozone portion of Georgia's 2012 annual ambient air monitoring network plan on October 16, 2012.

e. Verification of Continued Attainment

The State of Georgia, through GA EPD, has the legal authority to enforce and implement the requirements of the 1997 8-hour ozone maintenance plan for the Atlanta Area. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic updates of the Area's emissions inventory. GA EPD will continue to operate the current monitors located in the metro Atlanta area. There are no plans to discontinue operation,

relocate, or otherwise change the existing ambient monitoring network. Georgia will continue to update its emissions inventory at least once every three years.

The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002. The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) rule on December 17, 2008. The most recent triennial inventory for Georgia was compiled for 2008. The larger point sources of air pollution will continue to submit data on their emissions on an annual basis as required by the AERR. Emissions from the rest of the point sources, the nonpoint source portion, and the on-road and nonroad mobile sources continue to be quantified on a three-year cycle. The inventory will be updated and maintained on a three-year cycle. As required by the AERR, the next overall emissions inventory will be compiled for 2011.

f. Contingency Measures in the Maintenance Plan

The contingency measures are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

The contingency plan included in Georgia's April 4, 2012, SIP revision includes a triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The State of Georgia will use actual ambient monitoring data and emissions inventory data as the indicators to determine whether contingency measures should be implemented.

Georgia has identified a primary trigger (Tier I) for the 1997 8-hour ozone NAAQS when any quality-assured 8-hour ozone monitoring reading exceeds 0.084 ppm at an ambient monitoring station located in the Atlanta maintenance area or if the periodic emission inventory updates reveal excessive or unanticipated growth greater than 10 percent in emissions of either ozone precursor over the attainment or intermediate emissions inventories for the Atlanta maintenance area (as determined by the triennial emission reporting required by AERR). GA EPD will conduct an evaluation as expeditiously as practicable to determine if the trend is likely to continue. If it is determined that additional emission reductions are necessary, GA EPD will adopt and implement any required measures in accordance with the schedule and procedure for adoption and implementation of contingency measures.

The ozone trigger concentrations described above apply to each monitor in the maintenance area. GA EPD will evaluate a Tier I condition, if it occurs, as expeditiously as practicable to determine the cause(s) of the ambient ozone or emissions inventory increase and to determine if a Tier II condition (see below) is likely to occur.

A secondary trigger (Tier II) is activated when any violation of the 1997 8-hour ozone NAAQS at any of the metro Atlanta ambient monitoring stations in the Atlanta maintenance area is recorded, based on quality-assured monitoring data. In this event, GA EPD will conduct a comprehensive study to determine the cause(s) of the ambient ozone increase and will implement any required measures as expeditiously as practicable, taking into consideration the ease of implementation and the technical and economic feasibility of selected measures

GA EPD will, in the event of 1) a Tier II trigger condition or 2) a Tier I condition in which GA EPD has determined that a Tier II condition is likely to occur, conduct a comprehensive study to determine what contingency measure(s) are required for the maintenance of the ozone standard. Since the metro Atlanta area may be influenced by emissions from outside the maintenance area, the study will attempt to determine whether the trigger condition is due to local emissions, emissions from elsewhere, or a combination of the previous. The comprehensive analysis, based on quality-assured ambient data, will examine:

- The severity of the trigger condition;
- the meteorological conditions (in the case of an ambient concentration trigger)
- associated with the trigger condition;
- potential contributing local emissions sources;
- potential contributing emissions resulting from regional or long-range transport;
- the geographic applicability of possible contingency measures;
- emission trends, including implementation timelines of potential control measures;
- timelines of ''on-the-books'' (adopted) measures that are not yet fully implemented (e.g., Georgia Rule (sss) NO_X controls);
- current and recently identified control technologies.

The comprehensive study will be completed and submitted to EPA for review as expeditiously as practical but no later than nine months after the Tier I or Tier II trigger is activated. When GA EPD determines, through the comprehensive study, what contingency measure(s) are required for the maintenance of the ozone standard, appropriate corrective measures will be adopted and implemented within 18 to 24 months after the Tier I or II trigger occurs. EPA anticipates that control measures not relied upon for attainment but that are currently being implemented by GA EPD will continue to produce substantial reductions in ozone precursors in excess of what is relied upon in this maintenance plan. They include the Georgia Multipollutant Rule as well as diesel engine retrofit, replacement, and repowering programs and truck stop electrification programs. Contingency measures will be adopted no later than 18 months following the date on which the Tier I or Tier II trigger is activated. Selection of measures will take into consideration the ease of implementation as well as technical and economic feasibility. If it is determined that adoption and implementation of a rule will take longer than 24 months following the trigger date, GA EPD will submit for EPA's approval a revised schedule for the development and adoption of contingency measures.

If the analysis required above determines emissions from the local area are contributing to the trigger condition, GA EPD will evaluate those measures as specified in Section 172 of the CAA for control options as well as other available measures. Section 175A(d) requires that state maintenance plans shall include a requirement that the state will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area to attainment. Currently all such measures are in effect

for the Atlanta Area. Contingency measure(s) will be selected from the following types of measures or from any other measure deemed appropriate and effective at the time the selection is made:

- RACM for sources of VOC and NO_X.
- RACT for point sources of VOC and NO_X, specifically the adoption of new and revised RACT rules based on Groups II, III, and IV CTGs.
- Expansion of RACM/RACT to area(s) of transport within the State.
- Mobile Source Measures.
- Implementation of a new measure/control that is already promulgated and scheduled to be implemented at the federal or state level.
- Additional NO_X reduction measure(s) yet to be identified.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: attainment inventory, monitoring network, verification of continued attainment, and a contingency plan. Therefore, the maintenance plan SIP revision submitted by the State of Georgia for the Atlanta Area meets the requirements of section 175A of the CAA, and thus EPA is proposing approval of the plan.

VI. What is EPA's analysis of Georgia's proposed NO_X and VOC MVEBs for the Atlanta area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans for nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

After interagency consultation with the transportation partners for the Atlanta Area, Georgia has developed MVEBs for NO_X and VOC for the Atlanta Area. Georgia is developing these MVEBs, as required, for the last year of its maintenance plan, 2024. The MVEBs reflect the total on-road emissions for 2024, plus an allocation from the available NO_X and VOC safety margin. Under 40 CFR 93.101, the term ''safety margin'' is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. The NO_X and VOC MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model vehicle miles traveled and new emission factor models. The NO_X and VOC MVEBs for the Atlanta Area are defined in Table 5 below.

TABLE 5—ATLANTA AREA NO_X AND VOC MVEBS (TPD)

	2024
NO_X Emissions	
Base Emissions	99.43
Safety Margin Allocated to MVEB	26.9
NO_X Conformity MVEB	126
VOC Emissions	
Base Emissions	62.56
Safety Margin Allocated to MVEB	29.4
VOC Conformity MVEB	92

As mentioned above, Georgia has chosen to allocate a portion of the available safety margin to the NO_X and VOC MVEBs for 2024 for the Atlanta Area. This allocation is 26.9 tpd and 29.4 tpd for NO_X and VOC, respectively. Thus, the remaining safety margins for 2024 are 28.87 tpd and 276.69 tpd NO_X and VOC, respectively.

Through this rulemaking, EPA is proposing to approve the MVEBs for NO_X and VOC for 2024 for the Atlanta Area because EPA has preliminarily determined that the Area maintains the 1997 8-hour ozone NAAQS with the emissions at the levels of the budgets. Once the MVEBs for the Atlanta Area are approved or found adequate (whichever is completed first), they must be used for future conformity determinations. After thorough review, EPA has preliminarily determined that the budgets meet the adequacy criteria, as outlined in 40 CFR 93.118(e)(4), and is proposing to approve the budgets because they are consistent with maintenance of the 1997 8-hour ozone NAAQS through 2024.

VII. What is the status of EPA's adequacy determination for the proposed NO_X and VOC MVEBs for 2024 for the Atlanta area?

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA may affirmatively find the MVEB contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining adequacy of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEBs for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the

adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Georgia's maintenance plan submission includes NO_X and VOC MVEBs for the Atlanta Area for 2024, the last year of the maintenance plan. EPA reviewed the NO_X and VOC MVEBs through the adequacy process. The Georgia SIP submission, including the Atlanta Area NO_X and VOC MVEBs, was open for public comment on EPA's adequacy Web site on February 29, 2012, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm#atlanta2.* The EPA public comment period on adequacy for the MVEBs for 2024 for the Atlanta Area closed on March 30, 2012. No comments, adverse or otherwise, were received during EPA's adequacy process for the MVEBs associated with Georgia's 1997 8-hour ozone maintenance plan.

EPA intends to make its determination on the adequacy of the 2024 MVEBs for the Atlanta Area for transportation conformity purposes in the near future by completing the adequacy process that was started on February 29, 2012. After EPA finds the 2024 MVEBs adequate or approves them, the new MVEBs for NO_X and VOC must be used for future transportation conformity determinations. For required regional emissions analysis years for 2024 and beyond, the applicable budgets will be the new 2024 MVEBs established in the maintenance plan, as defined in section VI of this proposed rulemaking.

VIII. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Proposed Approval of the 2024 NO_X and VOC MVEBs for the Atlanta Area

EPA previously determined that the Atlanta Area was attaining the 1997 8-hour ozone NAAQS on June 23, 2011, at 76 FR 36873. EPA is now proposing to take two separate but related actions regarding the Atlanta Area's redesignation and maintenance of the 1997 8-hour ozone NAAQS.

First, EPA is proposing to determine, based on complete, quality-assured and certified monitoring data for the 2009–2011 monitoring period that the Atlanta Area is attaining the 1997 8-hour ozone NAAQS. Based on 2010–2012 preliminary data in AQS, the Area is continuing to attain the 1997 8-hour ozone NAAQS. EPA is proposing to determine that Georgia has met the criteria under CAA section 107(d)(3)(E) for the Atlanta Area for redesignation from nonattainment to attainment for the 1997 8-hour ozone NAAQS. On this basis, EPA is proposing to approve Georgia's redesignation request for the 1997 8-hour ozone NAAQS for the Atlanta Area.

Second, EPA is proposing to approve the maintenance plan for the Atlanta Area, including the NO_X and VOC MVEBs for 2024, into the Georgia SIP (under CAA section 175A). The maintenance plan demonstrates that the Area will continue to maintain the 1997 8-hour ozone NAAQS, and the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5). Further, as part of today's action, EPA is describing the status of its adequacy determination for the NO_X and VOC MVEBs for 2024 in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy determination for the MVEBs or the effective date for the final rule for this action, whichever is earlier, the transportation partners will need to demonstrate conformity to the new NO_X and VOC MVEBs pursuant to 40 CFR 93.104(e).

If finalized, approval of the redesignation request would change the official designation of Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Hall, Henry, Newton, Paulding, Rockdale, Spalding and Walton Counties in Georgia from nonattainment to attainment for the 1997 8-hour ozone NAAQS as found at 40 CFR part 81. This proposed action is does not relate to these same counties designation status under the 2008 8-hour ozone NAAQS. Those counties in the Atlanta Area that were designated nonattainment for the 2008 8-hour ozone NAAQS would remain nonattainment for that NAAQS even if this action is finalized.

IX. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Georgia's redesignation request would change the legal designation of the designated portion of Atlanta Area for the 1997 8-hour ozone NAAQS, found at 40 CFR part 81, from nonattainment to attainment.[7] Approval of Georgia's request would also incorporate a plan for maintaining the 1997 8-hour ozone NAAQS in the Atlanta Area through 2024 into the Georgia SIP. This maintenance plan includes contingency measures to remedy any future violations of the 1997 8-hour ozone NAAQS and procedures for evaluation of potential violations. The maintenance plan also establishes NO_X and VOC MVEBs for 2024 for the Atlanta Area. The NO_X MVEB is 126 tpd. The VOC MVEB is 92 tpd. Additionally, EPA is notifying the public of the status of EPA's adequacy determination for the newly-established NO_X and VOC MVEBs for 2024 for the Atlanta Area.

X. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these proposed actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For this reason, these proposed actions:

- Are not ''significant regulatory action[s]'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a

[7] This proposed action does not proposed to change the Area's designation for the 2008 8-hour ozone NAAQS.

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L.104–4);

• do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination does not have substantial direct effects on an Indian Tribe. There are no Indian Tribes located within the Atlanta nonattainment area.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 24, 2013.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

[FR Doc. 2013–02380 Filed 2–1–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1247 and 1248

[Docket No. EP 431 (Sub-No. 4)]

Review of the General Purpose Costing System

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: Through this Notice of Proposed Rulemaking, the Surface Transportation Board (Board) is proposing certain changes to its general purpose costing system, the Uniform Railroad Costing System (URCS). Specifically, the Board is proposing to adjust how URCS calculates certain system-average unit costs in Phase II, thereby obviating the need for URCS to apply a separate make-whole adjustment in Phase III. The Board is also proposing other related changes to URCS that would result in more accurate movement costs, as well as changes to two of its reporting requirements.

DATES: Comments are due by March 21, 2013; replies are due by April 22, 2013.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the ''E-Filing'' link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 431 (Sub-No. 4), 395 E Street SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: The Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: In 1989, the Board's predecessor, the Interstate Commerce Commission (ICC), adopted URCS as its general purpose costing system. *Adoption of the Unif. R.R. Costing Sys. as a Gen. Purpose Costing Sys. for All Regulatory Costing Purposes,* 5 I.C.C.2d 894 (1989). The Board uses URCS for a variety of regulatory functions. URCS is used to make the jurisdictional determination in railroad maximum rate reasonableness proceedings, as well as the revenue allocation methodology and rate prescription methodology. URCS is also used to develop variable costs for making cost determinations in abandonment proceedings; to provide the railroad industry and shippers with a standardized costing model; to cost the Board's Car Load Waybill Sample to develop industry cost information; and to provide interested parties with basic cost information. URCS develops a regulatory cost estimate that can be applied to a service that occurs anywhere on a rail carrier's system.

URCS develops these cost estimates through three distinct phases. In Phase I, which was completed one time when URCS was originally developed, regression analyses were performed using the annual reports submitted by Class I rail carriers (R–1 reports) at the time and equations linking expense account groupings with particular measures of railroad activities were estimated. In Phase II, which is performed annually, URCS takes the aggregated cost data provided by Class I carriers in their most recent R–1 reports and disaggregates them by calculating the system-average unit costs associated with specific rail activites. In Phase III, URCS takes the unit costs from Phase II and applies them to the characteristics of a particular movement in order to calculate the system-average variable and total costs of that movement.

The ICC and now the Board have made modest adjustments to URCS over the years.[1] In August 2009, the Senate Committee on Appropriations directed the Board to submit a report providing options for updating URCS. In the report submitted by the Board in May 2010, the Board identified the ''make-whole adjustment'' as one area that warranted further review.[2] This rulemaking is intended to address concerns with the make-whole adjustment in URCS.

The make-whole adjustment is applied by URCS to correct the fact that, when disaggregating data and calculating system-average unit costs in Phase II, URCS currently does not take into account the economies of scale realized from larger shipment sizes. The purpose of the make-whole adjustment, which is calculated and applied in Phase III, is to recognize the efficiency savings that a carrier obtains in its

[1] *See, e.g., Review of the Surface Transp. Bd.'s Gen. Costing Sys.,* EP 431 (Sub-No. 3) (STB served Apr. 6, 2009); *Review of Gen. Purpose Costing Sys.,* EP 431 (Sub-No. 2) (STB served Dec. 5, 1997); *Review of Gen. Purpose Costing Sys.,* EP 431 (Sub-No. 2) (STB served Oct. 1, 1997); *Review of Gen. Purpose Costing Sys.,* EP 431 (Sub-No. 2) (ICC served July 21, 1993).

[2] Surface Transp. Bd., *Surface Transportation Board Report to Congress Regarding the Uniform Rail Costing System,* 14, 18–19 (May 27, 2010).

higher-volume shipments and thus render more accurate unit costs.

URCS applies the make-whole adjustment through a three-step process. First, URCS assumes that a movement's costs are equal to that of a system-average movement. Next, URCS applies ''efficiency adjustments'' to higher-volume movements (multi-car and trainload), thereby reducing the system-average unit costs of such movements.[3] Last, URCS redistributes the total savings obtained in all of the higher-volume shipments (the ''shortfall'') across all of the lower-volume shipments (single-car and multi-car), such that the sum of variable costs across all of the carrier's movements remains the same. Currently, single-car shipments are defined as 1 to 5 cars, multi-car shipments are defined as 6 to 49 cars, and trainload shipments are defined as 50 or more cars.[4]

There are two primary concerns with how the make-whole adjustment is currently applied by URCS. The first concern involves the step function that results from the application of efficiency adjustments, which generally reduce the system-average unit costs by various set percentages depending on whether the movement is classified as trainload, multi-car, or single-car. For example, the system-average unit cost for a multi-car movement is the same whether it is a 6-car or 49-car shipment. The same is true for the unit cost for a trainload movement, whether it be a 50-car or 85-car shipment. At the same time, however, the system-average unit cost for a 49-car multi-car shipment is noticeably higher than a 50-car trainload shipment. In other words, ''break points'' exist between single-car and multi-car shipments, and between multi-car and trainload shipments. Our concern with respect to the efficiency adjustments is that there is a relatively large difference between the unit costs of a movement on one side of a break point compared to the unit costs just on the other side of a break point.

The second concern is with how the make-whole adjustment redistributes the shortfall across single-car and multi-car movements. Currently, the shortfall is distributed across lower volume movements on a per-car basis. For example, under the per-car method for switching related costs, costs are increased in proportion to the number of cars switched (i.e., a two-car movement is costed as twice as expensive to switch as a one-car movement, a three-car movement is three times as expensive to switch as a one-car movement, etc.). Yet the actual switching costs for two cars as opposed to one car are not likely to be twice as expensive because the time, equipment, and personnel involved do not double. By not decreasing the per-car costs as shipment size increases, the redistribution of savings does not adequately account for economies of scale. Additionally, the redistribution of savings creates a second step function because the add-ons increase costs per-car across single-car and multi-car shipments, but do not apply to trainload shipments. For example, under the current system, the costs are increased in proportion to the number of cars. If the shortfall redistribution for a one-car shipment is $1,000, then the shortfall redistribution for a 49-car shipment is $49,000. But because the add-ons do not apply to trainload shipments, there is no redistribution of costs to a 50-car shipment. This causes the costs of a 49-car shipment to be higher than a 50-car shipment, thus creating a step function. This second step function, in which there is a relatively large difference between the variable costs of a 49-car movement and a 50-car movement, is caused by the current per-car method of redistributing the shortfall.

Proposed Changes

Rather than attempting to refine the make-whole adjustment as it is currently applied, we believe that the best course of action is to more accurately calculate the system-average unit costs in Phase II. If the unit costs calculated in Phase II were to more accurately account for operating costs and economies of scale as shipment size increases, then it would no longer be necessary to apply a separate make-whole adjustment in Phase III. In other words, we propose to change how certain system-average unit costs are calculated in Phase II to better reflect railroad operations and to automatically reflect economies of scale as shipment size increases. This solution would thus obviate our concerns about the step functions, properly account for economies of scale, and ultimately render more accurate system-average unit costs.

With this goal in mind, we evaluated the three categories of costs for which efficiency adjustments are made to determine what changes would be needed in order to adjust the calculation of system-average unit costs in Phase II. These categories are: (1) Switching costs related to switch engine minutes; (2) equipment costs for the use of railroad-owned cars during switching; and (3) station clerical costs. After addressing each category below, we will then address several other proposed changes to further improve URCS.

Switching Costs Related to Switch Engine Minutes. This rulemaking proposes to adjust how URCS calculates the operating costs for switching cars, regardless of car ownership. These costs are referred to as ''switch engine minute'' (SEM) costs. Currently, in Phase II, URCS calculates SEM costs on a per-car basis, which we do not believe reflects actual railroad operations or economies of scale as shipment size increases. Instead, this rulemaking proposes to calculate SEM unit costs in Phase II on a per-shipment basis for all five types of switching accounted for by URCS, namely: (1) Industry switching; (2) inter-train & intra-train (I&I) switching; (3) interchange switching; (4) intraterminal switching; and (5) interterminal switching.[5]

Operationally, a shipment of rail cars is generally connected into a contiguous block of cars prior to loading, and is handled as a contiguous block from origin to destination. As such, the costs to switch a shipment of a four-car block should be the same as the costs to switch a shipment of an eight-car block. For this reason, the costs for each type of SEM switching are better accounted for on a per-shipment basis rather than a per-car basis. This change would not only better reflect actual operating costs, but the per-car cost of switching would drop as shipment size increases, thus properly reflecting economies of scale. As a result, URCS would no longer need to make a separate make-whole adjustment because the operating efficiencies of larger shipments would already be reflected in the unit costs.

In order to calculate SEM unit costs on a per-shipment basis, we also propose adjusting our reporting requirements accordingly. In order to

[3] There are 14 efficiency adjustments for multi-car and trainload movements, any number of which may apply to a particular movement.

[4] Single-car, multi-car, and trainload are the three basic categories for how shipments are treated under the make-whole adjustment. Because of its handling of the Empty/Loaded Ratio, however, URCS currently treats all trainload movements as dedicated unit train movements—that is, it assumes that every trainload movement travels from origination to destination and back to origination. Additionally, URCS treats intermodal traffic as a type of hybrid category. Prior to 1997, URCS treated intermodal traffic as single-car movements. In 1997, the Board concluded that more accurate costs would be obtained by applying to intermodal traffic many of the efficiency adjustments applicable to trainload movements. *Review of Gen. Purpose Costing Sys.,* EP 431 (Sub-No. 2), slip op. at 4–5 (STB served Oct. 1, 1997).

[5] Industry switching is switching that occurs at origin or destination points. I&I switching is switching that occurs at intermediate yards on a rail carrier's own lines, as opposed to interchange switching, which occurs between different carriers. Intraterminal switching is the switching of cars within a rail terminal, and interterminal switching is the switching of cars between rail terminals.

calculate the SEM unit costs on a per-shipment basis, we propose to adjust the reporting requirements of both the *Annual Report of Cars Loaded and Cars Terminated* (Form STB–54) and the *Quarterly Report of Freight Commodity Statistics* (Form QCS). Specifically, in addition to the information currently required by both forms, the Form STB–54 would require information on shipments loaded and terminated, while the Form QCS would require information on number of shipments.[6] For the purposes of both forms, a ''shipment'' would be defined as a block of one or more cars moving under the same waybill from origin to destination. *See, e.g.,* App. A (proposed § 1248.2(a)(3)); App. B (Form STB–54 Instructions). These new requirements should not pose a significant burden on the Class I rail carriers because it is likely that they are already tracking this information. The proposed rules governing the Form STB–54 and the Form QCS are set forth in Appendix A.[7] Additionally, the proposed changes to the Form STB–54 and Form QCS are set out in Appendix B and C, respectively.

Equipment Costs for the Use of Railroad-Owned Cars During Switching. Another category of system-average unit costs associated with switching pertains to the equipment costs for the use of railroad-owned cars. Currently, URCS calculates the costs for use of railroad-owned cars on a per-car basis in Phase II, and then applies the make-whole adjustment in Phase III to account for efficiencies in multi-car and unit-train movements. We believe that these costs, which are distance- and time-related,[8] are properly accounted for by URCS on a per-car basis. In other words, unlike SEM switching costs, we believe a two-car shipment will incur twice the car-miles and car-days as a one-car shipment. Therefore, we propose to continue calculating equipment costs for the use of railroad-owned cars during switching on a per-car basis, which in turn requires the continued reporting of number of cars that are interchanged.

Although we propose to continue calculating these costs on a per-car basis in Phase II, this proposal nonetheless would affect a change in how these costs are applied in Phase III. Under our new proposal, which eliminates a separate make-whole adjustment in Phase III, the costs for the use of railroad-owned cars would not receive a subsequent adjustment because it does not appear that there are efficiencies associated with these costs.

Station Clerical Costs. This rulemaking also proposes to adjust how URCS calculates station clerical costs, which are the administrative costs associated with a shipment. Currently, in Phase II, URCS calculates station clerical costs on a per-car basis, which we are concerned does not properly reflect actual railroad operations or economies of scale. We believe that, operationally, there is little difference in the administrative costs between shipments of different sizes. As such, we propose to also calculate station clerical costs in Phase II on a per-shipment basis. To implement this change, we would rely on the proposed changes to the Form QCS and the Form STB–54 described above, wherein Class I railroads would be required to report on the number of shipments.

Other Changes. In addition to the above changes to how URCS calculates system-average unit costs in Phase II, we also propose additional changes that would further our effort to more accurately calculate costs under URCS.

Car-Mile Costs. In order to calculate car-mile costs, URCS currently uses what is referred to as the Empty/Loaded Ratio (E/L Ratio) to adjust the number of miles in a particular movement. The E/L Ratio is used when costing all movements because, although there are costs associated with both empty miles and loaded miles, URCS only requires a user to input loaded miles to cost a movement. Thus, to account for the costs of a carrier's total miles, URCS multiplies loaded miles by the E/L Ratio. The E/L Ratio, which can be described as total miles divided by loaded miles, is a figure computed by URCS based on data supplied by the Class I carriers.

Currently, in Phase III, URCS uses the E/L Ratio for single-car and multi-car movements. For trainload movements, however, URCS replaces the E/L Ratio with the figure 2.0, which is meant to assume that a loaded car will return to its origination location, such that empty miles are equal to loaded miles. In other words, URCS treats all trainload movements as dedicated unit trains. Currently, if a rail carrier's E/L Ratio is less than 2.0 (i.e., there are fewer empty miles and thus more efficiencies), URCS will disregard that more efficient E/L ratio and apply the less efficient value of 2.0.[9]

We believe that the E/L Ratio computed from data supplied by the carriers is the best reflection of a railroad's actual operations and that it should not be replaced by the figure 2.0 in the case of a trainload movement. Therefore, we propose to adjust URCS so that it would apply the E/L Ratio to all types of movements. With this change, URCS would no longer treat all trainload movements as unit trains, but would instead reflect unit train service only to the extent that such service is indicated by the E/L Ratio.

I&I Switching Mileage. Currently, URCS assumes that single-car and multi-car shipments receive I&I switching every 200 miles. A number of years ago, the Board noted that this figure appeared to be outdated. *Review of Gen. Purpose Costing Sys.,* EP 431 (Sub-No. 2), slip op. at 5 n.18 (STB served Oct. 1, 1997). We now propose to update this figure to reflect the fact that, since the mergers of the 1990s, the average length of haul on individual railroads has increased. Based on a comparison of the average length of haul for the Class I railroads in 1990 (pre-mergers) and 2011 (post-mergers), we observed a 60% increase in the overall length of haul. We therefore propose to increase the distance between I&I

[6] Because we are proposing to add information regarding number of shipments, we are also proposing to change the title of Form STB–54 to *Annual Report of Cars and Shipments Originated and Terminated.*

[7] Because this rulemaking proposes changes to the Form QCS, we are taking this opportunity to propose a new instruction for the Form QCS related to Rule 11 movements, as the current instructions are silent on these types of movements. The proposed instruction, which would be located at 49 CFR 1248.4(o), is also set forth in Appendix A.

Additionally, we are making certain other modifications to update and clarify the existing regulations in 49 CFR parts 1247 and 1248 (subpart A), which govern the Form STB–54 and Form QCS, respectively. Consistent with the goals announced in *Improving Regulation and Regulatory Review,* EP 712, which seeks to ensure that existing regulations are current and effective, we seek comment on whether the Board could improve or update other language in parts 1247 and 1248 (subpart A). We do not, however, plan to address the car types listed in the Form STB–54 in this rulemaking. Any updates to the car types would be addressed in a separate rulemaking examining car types across all of our reporting requirements.

[8] In other words, the costs for using a railroad-owned car are based both on the distance it travels and the time it is being used during the switching process. For example, if a railroad-owned car travels two miles during an interchange switch, but is held at the interchange for three days, the costs for use of that car will be based both on the two-miles it traveled and the three-days it was held.

[9] A trainload movement's E/L ratio might be greater or less than 2.0 for a variety of reasons, including whether the shipment at issue is moved in railroad-owned cars or privately-owned cars. In the case of the former, where the rail carrier typically controls the movement of its cars across its network, a shipment may travel from point A (loading origin) to point B (unloading destination) to point C (next loading origin). If point C is closer to point B than point A, then the E/L Ratio would be less than 2.0. If, however, point C is farther from point B than point A, then the E/L Ratio would be greater than 2.0. This is in contrast to, for example, the latter case involving a unit train of privately-owned cars that cycles between point A and point B, such that the movement's E/L Ratio would be equal to 2.0.

switches by 60%, from 200 miles to 320 miles. We acknowledge that the actual average distance between I&I switches may be greater than 320 miles, and we encourage interested parties to submit data and comments on whether 60% is an appropriate increase, or whether the Board should consider an alternative distance between I&I switches that more accurately reflects railroad operations.

Definition of Trainload. Under this proposal to eliminate a separate make-whole adjustment in Phase III, URCS would no longer make percentage reductions in Phase III based on the number of cars per movement. As such, the distinction between single-car and multi-car would become largely irrelevant. The definition of trainload would, however, continue to play a role, despite the fact that the E/L Ratio would no longer be adjusted exclusively for trainload movements under our proposal, because URCS assumes that trainload movements receive no I&I switching. In other words, when distinguishing movements based on the number of cars per movement, the operative distinctions under our proposal would be ''trainload'' and ''non-trainload.'' It is, therefore, appropriate to consider the proper definition of trainload.

A trainload shipment is currently defined as a shipment consisting of 50 or more cars. Also inherent in the definition of trainload is the fact that a trainload shipment constitutes the only shipment on the particular train on which it moves. We propose to increase the number of cars in a trainload movement to account for the fact that train lengths have increased over the years due to a variety of factors, including higher horsepower engines and advances in distributive power. By way of example, today it is not unusual for a carrier to move 100 cars or more in one train, which is double the figure at which trainload is currently defined. If the railroads can routinely move two 50-car shipments on one train, then the current definition of trainload is likely inadequate, as a trainload movement is supposed to constitute the only shipment on the train.

Therefore, we propose to define trainload as consisting of 80 cars or more. The 80-car figure appears appropriate because the shipment size is large enough that rail carriers do not routinely move two 80-car shipments on one train.[10] In other words, an 80-car shipment is likely to be the minimum size shipment that a carrier would move as a single train, consistent with the definition of trainload where only one shipment is on a train. A survey of the 2011 Waybill Sample, which is the most recently available data and thus the best reflection of current railroad operations, reveals that, for shipment sizes between 50 and 90, there is a higher occurrence of 80-car movements than any other shipment size. This suggests that 80 cars may be an appropriate definition for trainload. Nevertheless, we encourage interested parties to submit data or comments on whether the Board should adopt the proposed definition or consider an alternate figure in defining trainload.

Locomotive Unit-Mile. Finally, this rulemaking proposes to adjust the locomotive unit-mile (LUM) cost allocation. Currently, the LUM cost allocation produces a third step function between multi-car and trainload shipments, such that the LUM costs assigned to a 49-car shipment (the maximum multi-car shipment under the current definition) are higher than the costs assigned to a 50-car shipment (the minimum number of cars under the current definition of trainload). The total locomotive unit-miles are calculated by multiplying the total distance of a movement by the average number of locomotives for a particular type of train. Because a single-car or multi-car shipment (i.e., non-trainload) should only incur a portion of the LUM costs for the entire train, as that train will contain other shipments, URCS allocates the LUM costs of the train to a shipment based on the gross tons of that shipment compared to the average gross tons of that entire train.[11]

We therefore propose two modifications to how URCS currently allocates LUM costs. First, the entire train's LUM costs would be allocated to the trainload shipment, regardless of the gross tons of the trainload shipment relative to the average gross tons of a particular train. This should be more accurate than the current approach because, by definition, a trainload shipment has no other shipments that should share the LUM costs of that train.

Second, the allocation of LUM costs for single and multi-car shipments would be based on the number of cars in the shipment relative to the minimum number of cars in a trainload shipment, which, as described above, we propose to be 80 cars. For example, a 20-car shipment would be allocated 25% (20/80) of the LUM costs.[12] While the current allocation of LUM costs to single and multi-car shipments is based on the gross tons of the shipment relative to the average gross tons of way trains and through trains, basing the allocation on the number of cars in the shipment should be sufficiently precise, particularly if most cars are homogenously loaded at or near the maximum weight. Moreover, whenever practical, we seek a smooth cost function, such that there is no large cost discrepancy between a 79-car multi-car movement and an 80-car trainload movement. Basing this allocation on the number of cars in the shipment should assign LUM costs consistently on a prorated share of the total LUM costs and produce a smooth cost function across all shipment sizes, including trainload shipments.

Conclusion

We believe that the proposed modifications to URCS described above would produce more accurate costs and would more accurately reflect the current state of rail industry operations. We also believe that the modifications to our reporting requirements, which update the existing regulations and add additional reporting requirements in order to implement the proposed changes to URCS, would not impose a significant burden on the railroads. We therefore invite public comment on each of the proposals described herein.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. 5 U.S.C. 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have

[10] Based on a review of the 2011 Waybill Sample, the most frequently occurring shipment size between 100 cars and 160 cars is 135 cars. These 135-car shipments represent a typical maximum train length for what is usually the longest train movement—unit coal trains.

[11] The average gross tons for different types of trains are calculated by dividing gross ton-miles by train-miles, both of which are reported by carriers in Schedule 755 of the R–1 annual reports.

[12] Because we also propose to modify the definition of trainload from 50 or more cars to 80 or more cars, the prorated share of LUM costs assigned to non-trainloads will be less than under the current definition of trainload. For example, under the current definition of trainload, a 10-car shipment would be assigned the prorated costs of 10 cars out of 50, whereas under our proposed definition, a 10-car shipment would be assigned the prorated costs of 10 cars out of 80.

a ''significant impact on a substantial number of small entities,'' § 605(b).

Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop. Ass'n* v. *Conner,* 553 F.3d 467, 478, 480 (7th Cir. 2009). An agency has no obligation to conduct a small entity impact analysis of effects on entities that it does not regulate. *United Dist. Cos.* v. *FERC,* 88 F.3d 1105, 1170 (DC Cir. 1996).

This proposal will not have a significant economic impact upon a substantial number of small entities, within the meaning of the RFA. The reporting requirements that we are proposing here are applicable only to Class I rail carriers, which, under the Board's regulations, have annual carrier operating revenues of $250 million or more in 1991 dollars. Class I carriers generally do not fall within the Small Business Administration's definition of a small business for the rail transportation industry. The purpose of our changes to URCS is to improve the Board's general purpose costing system, which is used to develop regulatory cost estimates for rail carriers. These changes will result in more accurate estimates of variable costs. Therefore, the Board certifies under 49 U.S.C. 605(b) that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), the Board seeks comments regarding: (1) Whether each of the collections of information (the Form QCS and the Form STB–54), as modified in the proposed rules and further described in Appendix D, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. The modified collections in this proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1247

Freight, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1248

Freight, Railroads, Reporting and recordkeeping requirements, Statistics.

It is ordered:

1. The Board proposes to adjust URCS and to amend its rules as detailed in this decision. Notice of this decision and the proposed rules will be published in the **Federal Register**.

2. Comments are due by March 21, 2013; replies are due by April 22, 2013.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. This decision is effective on its service date.

Decided: January 25, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

Raina S. White,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend parts 1247 and 1248 of title 49, chapter X, of the Code of Federal Regulations as follows:

■ 1. Revise part 1247 to read as follows:

PART 1247—REPORT OF CARS AND SHIPMENTS LOADED AND TERMINATED

Authority: 49 U.S.C. 721, 10707, 11144, 11145.

§ 1247.1 Annual Report of Cars and Shipments Originated and Terminated.

Each Class I railroad shall file Form STB–54, Annual Report of Cars and Shipments Originated and Terminated, together with the accompanying certification, with the Office of Economics, Surface Transportation Board, Washington, DC 20423, within 90 days after the end of the reporting year. Blank forms and instructions are available on the Board's Web site (*http://www.stb.dot.gov*) or can be obtained by contacting the Office of Economics.

PART 1248—FREIGHT COMMODITY STATISTICS

■ 2. The authority citation for part 1248 continues to read as follows:

Authority: 49 U.S.C. 721, 11144 and 11145.

■ 3. Revise the note to part 1248 to read as follows:

Note: The report forms prescribed by part 1248 are available upon request from the Office of Economics, Surface Transportation Board, Washington, DC 20423–0001.

■ 4. Amend § 1248.2 by revising paragraph (a)(2) and by adding paragraph (a)(3) to read as follows:

§ 1248.2 Items to be reported.

(a) * * *

(2) For each commodity code used in reporting, except that the number of carloads for commodity code 431, ''Small packaged freight shipments,'' shall be omitted, the following items:

Revenue freight originating on respondent's road:

Terminating on line:
Number of carloads.
Number of tons (2,000 pounds).
Number of shipments.
Delivered to connecting rail carriers:
Number of carloads.
Number of tons (2,000 pounds).
Number of shipments.

Revenue freight received from connecting rail carriers:

Terminating on line:
Number of carloads.
Number of tons (2,000 pounds).
Number of shipments.
Delivered to connecting rail carriers:
Number of carloads.
Number of tons (2,000 pounds).
Number of shipments.
Total revenue freight carried:
Number of carloads.
Number of tons (2,000 pounds).
Number of shipments.
Gross freight revenue.

(3) For the purpose of reporting number of shipments under this section, a *shipment* is defined as a block of one or more cars moving under the same waybill from origin to destination.

■ 5. Revise § 1248.3 to read as follows:

§ 1248.3 Carload and L.C.L. traffic defined.

(a) Commodity codes 01 through 422 and 44 through 462, named in § 1248.101, shall include only carload traffic. All carloads weighing less than 10,000 pounds shall be included in commodity code 431, ''Small packaged freight shipments.''

(b) A *carload* for the purpose of this order shall consist of a carload of not less than 10,000 pounds of one commodity. A mixed carload for the

purpose of this order shall be treated as a carload of that commodity which forms the majority of the weight. If a single shipment is loaded into more than one car, each car used shall be reported as a carload. If more than one *carload* shipment is loaded into one car, each shipment shall be reported separately as a carload.

■ 6. Amend § 1248.4 by revising paragraphs (a), (b), (d), (e), and (l); and by adding paragraph (o) to read as follows:

§ 1248.4 Originating and connecting line traffic.

(a) Revenue freight reported as *received from connecting rail carriers* shall include all carloads and shipments received from connecting rail carriers, either directly or indirectly, so far as apparent from information on the waybills or abstracts.

(b) Revenue freight reported as *originating on respondent's road* shall include carloads and shipments originating on line and carloads and shipments received from water lines and highway motor truck lines, except when identified as having had previous rail transportation, as provided in paragraph (a) of this section.

* * * * *

(d) Revenue freight reported as *delivered to connecting rail carriers* shall include carloads and shipments delivered to connecting rail carriers, either directly or indirectly, as far as apparent from information on waybills or abstracts.

(e) Revenue freight reported as *terminating on respondent's road* shall include carloads and shipments terminating on line and carloads and shipments delivered to water lines and highway motor truck lines, except when identified as to receive further rail transportation as provided in paragraph (d) of this section.

* * * * *

(l) Freight accorded transit privileges shall be reported as ''originated on respondent's road'' at the transit point, even though the outbound carload(s) or shipment may move under transit balances or proportional rates.

* * * * *

(o) Rail carriers originating a Rule 11 traffic movement shall report the movement as *originated and forwarded.* Rail carriers receiving a Rule 11 traffic movement and completing the movement to final destination shall report the movement as *received and terminated.* Rail carriers receiving a Rule 11 traffic movement and forwarding the movement to another rail carrier shall report the movement as *forwarded or received.*

■ 7. Remove the note to § 1248.5.

■ 8. Revise § 1248.5(a) to read as follows:

§ 1248.5 Report forms and date of filing.

(a) Reports required from Class I carriers by this section shall be filed in duplicate with the Office of Economics, Surface Transportation Board, Washington, DC 20423, on forms which will be furnished to the carriers. Data required under § 1248.2 shall be filed on Form QCS on or before the 60th day succeeding the close of the period for which they are compiled.

* * * * *

■ 9. Revise § 1248.6 to read as follows:

§ 1248.6 Public inspection—railroad reports.

The individual commodity statistics reports of Class I railroads, required to be filed under the terms of § 1248.1, will be open for public inspection. Such required commodity statistics reports, however, to the extent that they involve traffic of less than three shippers, reportable in one of the commodity reporting classes, may be excluded from a railroad's regular freight commodity statistics report and filed in a supplemental report which will not be open for public inspection, except that access to supplemental reports may be given upon approval by the Board.

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

ANNUAL REPORT OF CARS AND SHIPMENTS ORIGINATED AND TERMINATED

(FORM STB-54)

OMB CLEARANCE NO. 2140-0011
Expiration Date: 08-31-2015

Total car originations and terminations and total shipment originations and terminations, by type of car, revenue and non-revenue freight in revenue cars separated between railroad and private cars.

RAILROAD: _____

For year ending December 31, 20____

SECTION A: Cars Originated-on-Line				**SECTION B: Cars Terminated-on-Line**			
Freight Car Types (see instructions)	Total Cars Originated Revenue and Non-Revenue Freight			Freight Car Types (see instructions)	Total Cars Terminated Revenue and Non-Revenue Freight		
	Railroad Cars (A1)	Private Cars (A2)	Total Cars Originated (A3)		Railroad Cars (B1)	Private Cars (B2)	Total Cars Terminated (B3)
1.PLAIN 40 FT. BOX				1.PLAIN 40 FT. BOX			
2.PLAIN 50-59FT LESS 11FT DR				2.PLAIN 50-59FT LESS 11FT DR			
3.PLAIN 50-59FT OVER 11FT DR				3.PLAIN 50-59FT OVER 11FT DR			
4.PLAIN 60 FT OR LONGER				4.PLAIN 60 FT OR LONGER			
5.TOTAL PLAIN BOX				**5.TOTAL PLAIN BOX**			
6.ALL EQUIPPED BOX				6.ALL EQUIPPED BOX			
7.TOTAL ALL BOX				**7.TOTAL ALL BOX**			
8.COVERED HOPPERS UNDR 4000CU				8.COVERED HOPPERS UNDR 4000CU			
9.COVERED 4000CU & OVER				9.COVERED 4000CU & OVER			
10.TOTAL COVERED HOPPERS				**10.TOTAL COVERED HOPPERS**			
11.INSULATED EQUIPPED BOX				11.INSULATED EQUIPPED BOX			
12.REFRIGERATORS - NON-MECH				12.REFRIGERATORS - NON-MECH			
13.REFRIGERATORS - MECHANICAL				13.REFRIGERATORS - MECHANICAL			
14.TOTAL REFRIGERATORS				**14.TOTAL REFRIGERATORS**			
15.PLAIN GONDOLAS UNDER 61 FT.				15.PLAIN GONDOLAS UNDER 61 FT.			
16.PLAIN GONDOLAS 61 OR LONGER				16.PLAIN GONDOLAS 61 OR LONGER			
17.GT 36 FT AND OVER				17.GT 36 FT AND OVER			
18.EQUIPPED GONDOLAS				18.EQUIPPED GONDOLAS			
19.TOTAL GONDOLAS				**19.TOTAL GONDOLAS**			
20.HOPPERS (GENERAL SERVICE)				20.HOPPERS (GENERAL SERVICE)			
21.HOPPERS (SPECIAL SERVICE)				21.HOPPERS (SPECIAL SERVICE)			
22.TOTAL HOPPERS				**22.TOTAL HOPPERS**			
23.FLATS - (GENERAL SERVICE)				23.FLATS - (GENERAL SERVICE)			
24.FLATS - MULTI-LEVEL (FA)				24.FLATS - MULTI-LEVEL (FA)			
25.FLATS - TOFC-COFC (FC, FCA)				25.FLATS - TOFC-COFC (FC, FCA)			
26.FLATS - OTHER				26.FLATS - OTHER			
27.TOTAL FLATS				**27.TOTAL FLATS**			
28.TOTAL TANKS				28.TOTAL TANKS			
29.ALL OTHERS				29.ALL OTHERS			
30.GRAND TOTAL				**30.GRAND TOTAL**			

FORM STB-54 (CONTINUED)

RAILROAD: _____

For year ending December 31, 20____

SECTION C: Shipments Originated-on-Line				SECTION D: Shipments Terminated-on-Line			
Freight Car Types (see instructions)	Total Shipments Originated Revenue and Non-Revenue Freight			Freight Car Types (see instructions)	Total Shipments Terminated Revenue and Non-Revenue Freight		
	Shipments in Railroad Cars (C1)	Shipments in Private Cars (C2)	Total Shipments Originated (C3)		Shipments in Railroad Cars (D1)	Shipments in Private Cars (D2)	Total Shipments Terminated (D3)
1.PLAIN 40 FT. BOX				1.PLAIN 40 FT. BOX			
2.PLAIN 50-59FT LESS 11FT DR				2.PLAIN 50-59FT LESS 11FT DR			
3.PLAIN 50-59FT OVER 11FT DR				3.PLAIN 50-59FT OVER 11FT DR			
4.PLAIN 60 FT OR LONGER				4.PLAIN 60 FT OR LONGER			
5.TOTAL PLAIN BOX				**5.TOTAL PLAIN BOX**			
6.ALL EQUIPPED BOX				6.ALL EQUIPPED BOX			
7.TOTAL ALL BOX				**7.TOTAL ALL BOX**			
8.COVERED HOPPERS UNDR 4000CU				8.COVERED HOPPERS UNDR 4000CU			
9.COVERED 4000CU & OVER				9.COVERED 4000CU & OVER			
10.TOTAL COVERED HOPPERS				**10.TOTAL COVERED HOPPERS**			
11.INSULATED EQUIPPED BOX				11.INSULATED EQUIPPED BOX			
12.REFRIGERATORS - NON-MECH				12.REFRIGERATORS - NON-MECH			
13.REFRIGERATORS - MECHANICAL				13.REFRIGERATORS - MECHANICAL			
14.TOTAL REFRIGERATORS				**14.TOTAL REFRIGERATORS**			
15.PLAIN GONDOLAS UNDER 61 FT.				15.PLAIN GONDOLAS UNDER 61 FT.			
16.PLAIN GONDOLAS 61 OR LONGER				16.PLAIN GONDOLAS 61 OR LONGER			
17.GT 36 FT AND OVER				17.GT 36 FT AND OVER			
18.EQUIPPED GONDOLAS				18.EQUIPPED GONDOLAS			
19.TOTAL GONDOLAS				**19.TOTAL GONDOLAS**			
20.HOPPERS (GENERAL SERVICE)				20.HOPPERS (GENERAL SERVICE)			
21.HOPPERS (SPECIAL SERVICE)				21.HOPPERS (SPECIAL SERVICE)			
22.TOTAL HOPPERS				**22.TOTAL HOPPERS**			
23.FLATS - (GENERAL SERVICE)				23.FLATS - (GENERAL SERVICE)			
24.FLATS - MULTI-LEVEL (FA)				24.FLATS - MULTI-LEVEL (FA)			
25.FLATS - TOFC-COFC (FC, FCA)				25.FLATS - TOFC-COFC (FC, FCA)			
26.FLATS - OTHER				26.FLATS - OTHER			
27.TOTAL FLATS				**27.TOTAL FLATS**			
28.TOTAL TANKS				28.TOTAL TANKS			
29.ALL OTHERS				29.ALL OTHERS			
30.GRAND TOTAL				**30.GRAND TOTAL**			

FORM STB-54 INSTRUCTIONS

SECTION A: CARS ORIGINATED

Section A covers each time a revenue freight car (railroad or private) is loaded at origination with either revenue or non-revenue commodities. The types of cars to be included are listed below by mechanical designations, car type codes, and appropriate line code.

1. Report total number of cars loaded for initial road haul on your railroad, by types, separated between loads in railroad cars and loads in private cars, during the year ended at midnight December 31, including cars received under load from dependent short lines; also including company material of reporting road or other non-revenue freight when loaded in revenue cars. Cars loaded with empty trailers or containers, twenty (20) feet or over in length, should be included.
2. Cars loaded in switching service for initial road haul movement by connections to be reported by the road haul carrier performing the billing of the cars.
3. Cars loaded for intra- or inter-terminal switch movement only (no road haul) to be reported by the loading road.

SECTION B: CARS TERMINATED

Report total number of loads terminated on line, by types, separated between railroad cars and private cars, during the last calendar year ending at midnight December 31, including cars delivered to dependent short lines for unloading; also company material of reporting road or other non-revenue commodities when unloaded from revenue cars. Count should include cars from which empty piggyback trailers or containers, twenty (20) feet or over in length, are unloaded. Loaded cars delivered to a connection for switch delivery which received final road haul on your railroad should be reported as terminated on your line. Conversely, loaded cars which you receive from a connection for switch delivery should not be reported as terminated on your line. All loads which you originate in switch service for intra- and inter-terminal switch delivery should, also, be reported as terminated on your line.

SECTION C: SHIPMENTS ORIGINATED

Section C covers each time a revenue shipment (in railroad or privately owned equipment) is loaded at origination with either revenue or non-revenue commodities. For the purpose of this form, a shipment is defined as a block of one or more cars moving under the same waybill from origin to destination. The types of cars to be included are listed below by mechanical designations, car type codes, and appropriate line code.

1. Report total number of shipments loaded for initial road haul on your railroad, by types, separated between shipments in railroad cars and shipments in private cars, during the year ended at midnight December 31, including shipments received under load from dependent short lines; also including company material of reporting road or other non-revenue freight when loaded in revenue cars. Shipments loaded with empty trailers or containers, twenty (20) feet or over in length, should be included.
2. Shipments loaded in switching service for initial road haul movement by connections to be reported by the road haul carrier performing the billing of the shipments.
3. Shipments loaded for intra- or inter-terminal switch movement only (no road haul) to be reported by the loading road.

SECTION D: SHIPMENTS TERMINATED

Report total number of shipments terminated on line, by types, separated between shipments moving in railroad cars and private cars, during the last calendar year ending at midnight December 31, including shipments delivered to dependent short lines for unloading; also company material of reporting road or other non-revenue commodities when unloaded from revenue cars. Count should include shipments from which empty piggyback trailers or containers, twenty (20) feet or over in length, are unloaded. Shipments delivered to a connection for switch delivery which received final road haul on your railroad should be reported as terminated on your line. Conversely, shipments which you receive from a connection for switch delivery should not be reported as terminated on your line. All shipments which you originate in switch service for intra- and inter-terminal switch delivery should, also, be reported as terminated on your line.

TYPES OF REVENUE CARS REPORTED ON FORM STB-54

Report on Form Line	Mechanical Designation and Description	AAR Equipment Type Codes
	BOX	
1	Plain 40' XM, XMI - Less than 49' Inside Length	B1_ _, B2_ _
2	Plain 50' Narrow Door XM, XMI - 49' and Less than 59' Inside Length (less than 11' Door Opening)	B3_(0-4), B4_(0-4)
3	Plain 50' Wide Door XM, XMI - 49' and Less than 59' Inside Length (11' and over Door Opening)	B3_(5-7), B4_(5-7)
4	Plain 60' or Longer XM, XMI - 59' or Longer Inside Length	B(5-8)_ _
6	Equipped Box - XF, XL (except XLI), XP (except XPI)	A_0_, A_2_, A_3_
	COVERED HOPPERS	
8	Under 4,000 Cubic Feet LO, HTR (with UMLER Fitting Code FC) - Under 4,000 Cubic Feet	C_ _1, C_ _2
9	4,000 Cubic Feet and Over LO, HTR (with UMLER Fitting Code FC) - 4,000 Cubic Feet and Over	C_ _3, C_ _4
	REFRIGERATORS	
11	Insulated Equipped Box - XLI, XPI	A_1_, A_4_
12	Non-Mechanical - RB, RBL	R_0_, R_1_
13	Mechanical -- RC, RP, RPL	R_(6-7)_, R_9_
	GONDOLAS	
15	Under 61' - GA, GB, GD, GH, GS: Under 61' Inside Length	G(1-5)_ _
16	61' or Longer - GA, GB, GD, GH, GS: 61' or Longer Inside Length	G(6-7)_ _
17	GT 36' or Longer Inside Length	J_ _(1-4)
18	Equipped - GBR, GBS, GBSR, GDS, GSS, GTR, GTS, GWS, GWSR	E_ _ _
	HOPPERS	
20	General Service - HFA, HK, HM, HT, HTA	H_ _ _
21	Special Service - GT - Less than 36' Inside Length (Ore Jenny Cars), HKR, HKS, HMA, HMR, HMS, HMSR, HTR, HTS, HTSR	J_ _0, K_ _ _
	FLATS	
23	General Service FM (Load Limit of Less than 200,000 lbs.)	F(1-3)0_
24	Multi-Level - FA	V_ _ _
25	TOFC/COFC - FC, FCA	P_ _ _, Q_ _ _ (except Q8_ _), and S_ _ _
26	Other Class "F" except "FL" - FB, FBC, FBS, FD, FDC, FMS, FW, FM (Load Limit of 200,000 lbs. and Over)	F_(1-6)_, F_(8-9)_, F40_
	TANKS	
28	Tank - T, XT	T_ _ _
	ALL OTHERS	
29	All Others	All Other Codes

Notes:

1. Maintenance-of-way cars used as revenue equipment to be included with revenue cars of corresponding class.
2. Skeleton log flats used permanently in local log service are to be included with "All Others," but general service flat cars equipped for temporary log service should be included with general service flat cars.
3. Do not include: caboose cars, ballast or other cars permanently assigned to non-revenue service.

APPENDIX B
Proposed Form QCS

SURFACE TRANSPORTATION BOARD

QUARTERLY REPORT OF FREIGHT COMMODITY STATISTICS
(FORM QCS)

NAME OF RESPONDENT _____
MILES OF ROAD OPERATED IN FREIGHT SERVICE _____
PERIOD _____ QUARTER 20___

OMB Clearance No. 2140-0011
Expiration Date 06 31 2015

		REVENUE FREIGHT ORIGINATED ON REPORTING RAILROAD						REVENUE FREIGHT RECEIVED FROM CONNECTING CARRIERS									
		TERMINATED ON LINE			DELIVERED TO CONNECTING CARRIERS			TERMINATED ON LINE			DELIVERED TO CONNECTING CARRIERS			TOTAL REVENUE FREIGHT CARRIED			
CODE	DESCRIPTION	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	GROSS FREIGHT REVENUE (TOTAL DOLLARS)
01	FARM PRODUCTS																
011	FIELD CROPS																
0112	COTTON, RAW																
01129	RAW COTTON, NEC																
01131	BARLEY																
01132	CORN, EX POPCORN																
01133	OATS																
01134	RICE, ROUGH																
01135	RYE																
01136	SORGHUM GRAINS																
01137	WHEAT																
01138	GRAIN, NEC																
0114	OILSEED NUTS, ETC																
01144	SOYBEANS																
0115	FIELD SEEDS																
0119	MISC FIELD CROPS																
01192	LEAF TOBACCO																
01195	POTATOES, EX SWEET																
01197	SUGAR BEETS																
012	FRESH FRUITS & NUTS																
0121	CITRUS FRUITS																
0122	DECIDUOUS FRUITS																
01223	APPLES																
01228	GRAPES																
01229	PEACHES																
0123	TROPICAL FRUITS																
01232	BANANAS																
0129	MISC FRUITS & NUTS																
01295	COFFEE, GREEN																
013	FRESH VEGETABLES																
0131	BULBS, ROOTS, TUBERS																
01316	ONIONS, DRY																
0133	LEAFY VEGETABLES																
01334	CELERY																
01335	LETTUCE																
0134	DRY VEGET SEEDS																
01341	BEANS, DRY RIPE																
01343	PEAS, DRY																
0139	MISC FRESH VEGET																
01392	WATERMELONS																
01398	TOMATOES																
01399	MELONS, EX WATER																
014	LIVESTOCK & PRO																
0141	LIVESTOCK																
01411	CATTLE																
01413	SWINE, BARROW, BOAR																
01414	SHEEP AND LAMBS																
0142	DAIRY FARM PRODUCT																
0143	ANIMAL FIBERS																
01431	WOOL																
015	POULTRY & PRODUCTS																

		REVENUE FREIGHT ORIGINATING ON RESPONDENT'S RAIL ROAD						REVENUE FREIGHT RECEIVED FROM CONNECTING CARRIERS									
		TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TOTAL REVENUE FREIGHT CARRIED			
CODE	DESCRIPTION	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	ORIGINATED REVENUE TON-MILES
0151	LIVE POULTRY																
0152	POULTRY EGGS																
019	MISC FARM PRODUCTS																
0191	HORTICULTURAL SPEC																
0192	ANIMAL SPECIALTIES																
08	FOREST PRODUCTS																
084	GUMS & MASKS CRUDE																
08423	LATEX & ALLIED GUM																
089	MISC FOREST PRODS																
09	FISH & MARINE PRO																
091	FISH & MARINE PRO																
0912	FISH/WHALE PRO FRZ																
09131	SHELLS																
096	FISH HATCHERIES																
10	METALLIC ORES																
101	IRON ORES																
10112	GRADE ORE, CRUDE																
102	COPPER ORES																
103	LEAD & ZINC ORES																
1031	LEAD ORES																
1032	ZINC ORES																
104	GOLD & SILVER ORES																
105	BAUXITE/ALUM ORES																
106	MANGANESE ORES																
107	TUNGSTEN ORES																
108	CHROMIUM ORES																
109	MISC METAL ORES																
11	COAL																
111	ANTHRACITE																
11111	RAW ANTHRACITE																
11112	CLEAN/PREP ANTHRAC																
112	BITUM COAL/LIGNITE																
1121	BITUMINOUS COAL																
13	PETRO NAT GAS DRLN																
131	PETROLEUM/NATURAL GAS																
132	NATURAL GASOLINE																
14	NONMETALLIC MINERALS																
141	DIMENSION QUARRY																
142	CRUSHED STONE																
14211	AGRICUL LIMESTONE																
14212	FLUXING STONE/LIME																
14219	CRUSHED STONE NEC																
144	SAND AND GRAVEL																
14411	SAND(FOR/BALLAST)																
14412	GRAVEL(FOR/BALLAST)																
14419	INDUST SAND CRUDE																
145	CLAY CERAMIC REFRA																
14511	BENTONITE, CRUDE																
14512	FIRE CLAY, CRUDE																
14514	BALL & PADDLE CLAY																
147	CHEMICAL MINERALS																
14711	BARITE, CRUDE																
14713	BORATE/POTASH/SOAH																
14714	APATITE/PHOSPHATE																
14715	MISC CHEM MINERALS																

		REVENUE FREIGHT ORIGINATING ON RESPONDENT'S RAILROAD						REVENUE FREIGHT RECEIVED FROM CONNECTING CARRIERS									
		TERMINATED ON LINE			DELIVERED TO CONNECTING CARRIERS			TERMINATED ON LINE			DELIVERED TO CONNECTING CARRIERS			TOTAL REVENUE FREIGHT CARRIED			
CODE	DESCRIPTION	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	GROSS FREIGHT REVENUE (DOLLARS)
14718	SULPHUR CRUDE																
149	MISC NONMETALLIC MINE																
14911	ANTHRACITE CYFPLW																
14913	ASPHALT AND BITUMEN																
14914	PUMICE PUMICITE																
19	ORDNANCE ACCESSORIES																
191	GUNS HOWITZ MORTAR																
192	AMMUNITION >30 MM																
193	COMBAT VEHICLES																
194	FIGHTERS EQPT																
195	SMALL ARMS >30 MM																
196	SM ARMS AMMUNITION																
199	MISC ORDNANCE																
20	FOOD AND KINDRED PROD																
201	MEAT																
2011	MEAT FRESH CHILLED																
2012	MEAT FRESH FROZEN																
2013	MEAT PRODUCTS																
2014	ANIMAL BY PRODUCTS																
20141	HIDES SKINS PELTS																
2015	DRSD POULTRY FRESH																
2016	DRSD POULTRY FROZE																
2017	PROCESSED POULTRY																
202	DAIRY PRODUCTS																
2021	CREAMERY BUTTER																
2023	CONDENSED EVAP MILK																
2024	ICE CREAM AND FRZ DES																
2025	CHEESE DAIRY PROD																
2026	WHOLE SKIM MILK																
203	CAN FRUITS VEG SEA																
2031	CANNED CURED SEAFD																
2032	CANNED SPECIALT																
2033	CAN FRUITS VEGETB																
2034	DRSD FRUITS VEGETB																
2035	FRUIT & VEG SAUCE																
2036	FRESH FROZEN FISH																
2037	FROZ FRUITS JUICE																
2038	FROZEN SPECIALT																
2039	CANNA FRUITS VEGE																
204	GRAIN MILL PROD																
2041	FLOUR GRAIN MILL																
20411	WHEAT FLOUR																
20412	WHEAT BRAN																
20421	PREP ANIMAL FEED																
20423	CAN ANIMAL FEED																
2043	CEREAL PREPARATION																
2044	RICE FLOUR MEAL																
2045	BLEND PREPAR FLOUR																
2046	WET CORN MILL PRO																
20461	CORN SYRUP																
20462	CORN STARCH																
20463	CORN SUGAR																
20471	DOG CAT FD EXC CAN																
20472	CANNED DOG CAT FD																
205	BAKERY PRODUCTS																
206	SUGAR (BEET CANE)																
2061	SUGAR MILL PROD																
20611	RAW CANE BEET SGR																
20610	SUGAR MOLASSES																

		REVENUE FREIGHT ORIGINATING ON RESPONDENT'S RAILROAD						REVENUE FREIGHT RECEIVED FROM CONNECTING CARRIERS								
		TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TOTAL REVENUE FREIGHT CARRIED		
CODE	DESCRIPTION	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	GROSS FREIGHT REVENUE (DOLLARS)
2067	BLACKSTRAP MOLASSE																
2067	SUGAR REFINED CANE																
20673	SUGAR REFINED BEET																
20626	PULP MOLASSES BEET																
207	CONFECTIONERY PRD																
208	BEVERAGES EXTRACT																
20821	BEER ALE PORTER																
20822	MALT EXTRACT																
2083	MALT																
2084	WINE & BRANDY																
20851	DISTILLED LIQUORS																
20869	BV PRD OF LIQUOR																
2086	BTLD&CANNED DRINKS																
2087	MISC EXTRACTS SYRUP																
209	MISC FOOD PREP																
20911	COTTONSEED OIL																
20914	COTTONSEED CAKE																
20921	SOYBEAN OIL																
20923	SOYBEAN CAKE																
2093	VEG & NUT OILS																
2094	MARINE FATS/OILS																
2095	ROASTED COFFEE																
2096	SHRND, TABLE OILS																
2097	ICE NATURAL/ARTIFI																
2098	MACARONI SPAGHETTI																
21	TOBACCO PRODUCTS																
211	CIGARETTES																
212	CIGARS																
213	CHEWING&SMOKE TOBACCO																
214	STEMMED/RDRY TOBACC																
22	TEXTILE MILL PROD																
221	COTTON BROAD WOVEN																
222	MANMADE FIBER&SILK																
223	WOOL BROAD WOVEN F																
224	NARROW FABRICS																
225	KNIT FABRICS																
227	FLOOR COVER TEXTL																
228	YARN AND THREAD																
229	MISC TEXTILE GOODS																
2296	TIRE CORDS&FABRICS																
2297	WOOL AND MOHAIR																
2298	CORDAGE AND TWINE																
23	APPAREL&WSH TEXTL																
231	MEN&BOYS CLOTHING																
232	WOMEN&INFANT CLOTH																
235	MILLINERY HATS CAP																
237	FUR GOODS																
238	MISC APPARE&ACCES																
239	MISC FABRIC TEXTL																
24	LUMBER & WOOD PROD																
241	PRM FOREST PRD																
24114	PULPWOOD LOGS																
24115	PULPWOOD/WOOD CHIP																
24198	WOOD POSTS POLES																
242	SAWMILL/PLANMILL																
2421	LUMBER STOCK																
24212	SAWED TIES																

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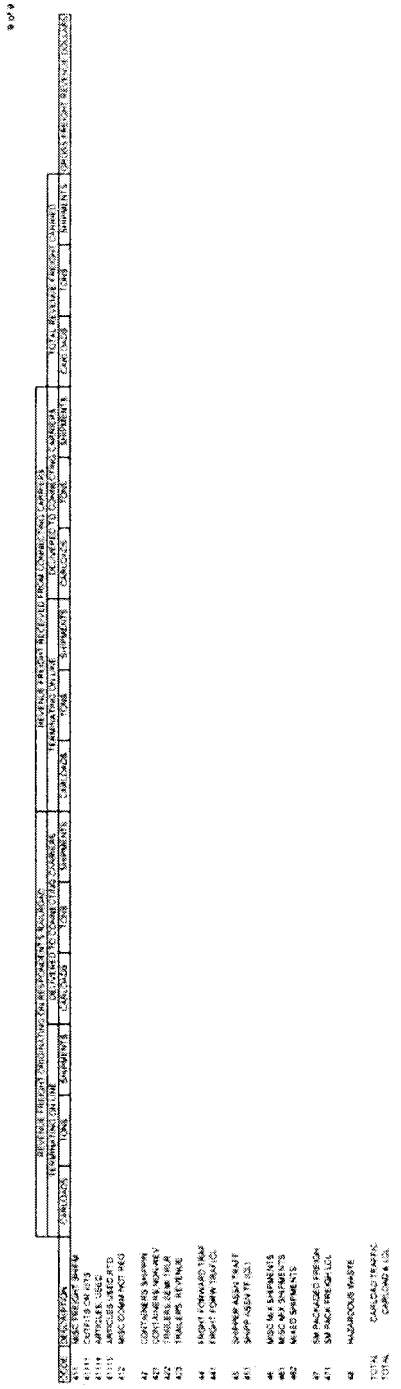
		REVENUE FREIGHT ORIGINATING ON RESPONDENT'S RAILROAD						REVENUE FREIGHT RECEIVED FROM CONNECTING CARRIERS									
		TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TOTAL REVENUE FREIGHT CARRIED			
CODE	DESCRIPTION	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	GROSS FREIGHT REVENUE (DOLLARS)
2429	MISC SAWMILL																
243	MILLWORK, PLYWOOD																
2431	MILLWORK																
2432	VENEER, PLYWOOD																
244	WOODEN CONTAINERS																
249	MISC WOOD PRODUCTS																
2491	UNMOUNTED WOOD																
25	FURNITURE FIXTURES																
251	HOUSEHOLD FURNITURE																
253	PUBLIC BLDG FURNIT																
254	PARTITION SHELVING																
259	MISC FURNITURE																
26	PULP, PAPER ALLIED																
263	PULP, PULP MILL PRO																
26311	PULP																
262	PAPER, EXCPT BUILD																
26211	NEWSPRINT																
26212	GROUND WOOD PAPER																
26213	PRINTING PAPER																
26214	WRAPPING PAPER																
26217	SPEC INDUST. PAPER																
26218	SANITARY TISSUE																
263	PAPERBOARD, PULP MFG																
264	CONVERTED PAPER																
2643	PAPER BAGS																
26471	SAN TISSUE/SHEALTH																
265	CONTAINERS & BOXES																
266	BUILDING PAPER/BRD																
26613	WALLBOARD																
27	PRINTED MATTER																
271	NEWSPAPERS																
272	PERIODICALS																
273	BOOKS																
274	MISC PRINT MATTER																
276	MANIFOLD BUSN FORM																
277	GREETING CARDS																
278	BLANKBOOK, BINDER																
279	PRINTING INDUST																
28	CHEMICAL PRODUCTS																
281	INDST CHEMICALS																
2812	SODIUM PTSM CHEMS																
28123	SODIUM CHT																
2813	INDGAS, COMPRESSE																
2814	CRUDE FROM COAL TAR																
2816	INORGANIC PIGMENTS																
2818	MISC IND ORG CHEMC																
28184	ALCOHOLS																
2819	MISC IND INOR CHEM																
28193	SULPHURIC ACID																
282	PLSTC MATERIAL SYN																
28212	SYNTHETIC RUBBER																
28213	SYNTHETIC FIBERS																
283	DRUGS, BIO PROD																
284	SOAP, DTRGNT, CLNG																
2841	SOAP & OTH DTRGNTS																
285	PAINTS, VRNSHS, LACQ																
286	GUM AND WOOD CHEM																

		REVENUE FREIGHT ORIGINATING ON RESPONDENT'S RAILROAD						REVENUE FREIGHT RECEIVED FROM CONNECTING CARRIERS									
		TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TOTAL REVENUE FREIGHT CARRIED			
CODE	DESCRIPTION	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS RECEIVED EMPTY AND RETURNED LOADED
2429	MISC SAWMILL																
243	MILLWORK, PLYWOOD																
2431	MILLWORK																
2432	VENEER, PLYWOOD																
244	WOODEN CONTAINERS																
249	MISC WOOD PRODUCTS																
2497	CRFT SOFTWOOD WOOD																
25	FURNITURE FIXTURES																
251	HOUSEHOLD FURN																
253	PUBLIC BLDG FURNT																
254	PARTITIONS, FIXTURES																
259	MISC FURNITURE																
26	PULP, PAPER, ALLIED																
261	PULP, PULP MILL PRD																
26111	PULP																
262	PAPER, EXCPT BOARD																
26211	NEWSPRINT																
26212	GROUND WOOD PAPER																
26213	PRINTING PAPER																
26214	WRAPPING PAPER																
26215	SPEC INDUST PAPER																
26219	SANITARY TISSUE																
263	PAPERBOARD PULPERS																
264	CONVERTED PAPER																
2643	PAPER BAGS																
26471	SAN TISSUES/HEALTH																
265	CONTAINERS & BOXES																
266	BUILDING PAPER/BRD																
26653	WALLBOARD																
27	PRINTED MATTER																
271	NEWSPAPERS																
272	PERIODICALS																
273	BOOKS																
274	MISC PRINT MATTER																
276	MANIFOLD BUSN FORM																
277	GREETING CARDS																
279	BLANK BOOK, BINDER																
279	PRO SERVICE INDUST																
28	CHEMICAL PRODUCTS																
281	INDST CHEMICALS																
2812	SODIUM PTSH CHEMS																
28123	SODIUM CHLI																
2813	INDGAS, COMPRESSD																
2814	CRUDE FROM COAL TAR																
2816	INORGANIC PIGMENTS																
2818	MISC IND ORG CHEMC																
28184	ALCOHOLS																
2819	MISC IND INOR CHEM																
28193	SULPHURIC ACID																
282	PLSTC MATERIAL SYN																
28212	SYNTHETIC RUBBER																
28215	SYNTHETIC FIBERS																
283	DRUG, BIO PRD																
284	SOAP, SYNDNS CLNG																
2841	SOAP & OTH DTRGNTS																
285	PAINTS, VRNSHS LACQ																
286	GUM AND WOOD CHEM																

		REVENUE FREIGHT ORIGINATING ON RESPONDENT'S RAILROAD						REVENUE FREIGHT RECEIVED FROM CONNECTING CARRIERS									
		TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TOTAL REVENUE FREIGHT CARRIED			
CODE	DESCRIPTION	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	GROSS FREIGHT REVENUE DOLLARS
329	ABRASIVES ASBESTOS																
3291	ABRASIVE PRODUCTS																
3299	NMETIC MNRLS,EART																
33	PRIMARY METAL PROD																
331	STEEL WORKS																
33111	PIG IRON																
33112	FURNACE SLAG																
33119	COKE OVEN PRD																
3312	PRIMARY IRON/STEEL																
33121	STEEL INGOT																
3313	ELECT/METALLURGICAL																
3315	STEEL WIRE, NAILS																
332	IRON/STEEL CASTING																
33211	IRON/STEEL CAST/MF																
333	NONFERROUS METALS																
3331	PRIM COPPER/BASE																
3332	PRIME LEAD SMELTER																
3333	PRIM ZINC SMELTER																
3334	PRIM ALUMINUM SHEL																
335	NONFERROUS METAL																
3351	COPPER,BRASS/BRONZ																
3352	ALUMINUM SHAPES																
3357	NONFERROUS METAL																
336	NONFERROUS/BASE																
3363	ALUMINUM/BASE,ALLO																
3362	BRASS/BRONZE,COPPE																
339	MISC PRIM METAL PR																
3391	IRON/STEEL FORGING																
3392	NONFERROUS FORGING																
34	FABRICATED METAL																
341	METAL CANS																
342	CUTLERY, HARDWARE																
343	PLUMB/HEATIN APP																
3433	HEATING EQUIPMENT																
344	FABRIC STRUC METAL																
3441	FABRIC STRUC METAL																
34411	FABRIC STRUC IRON																
345	BOLTS,NUTS,SCREWS																
346	METAL STAMPING																
348	MISC FABR WARE PRD																
349	MISC FAB METAL PRD																
3491	METAL SHIPPIN CONT																
3494	VALVES & PIPE FTG																
35	MACHINERY																
351	ENGINES/TURBINES																
352	FARM MACHINERY																
3524	GARDEN TRACTORS																
353	CONS MINING MATER																
3531	CONS MACHINERY																
3532	MINING MACHY EQPT																
3533	OIL FIELD MACHINER																
3537	IND TRUCKS TRACTOR																
354	METALWORKING MACHN																
355	SPEC INDTRY MACHN																
356	GEN INDTRL MACHNE																
357	OFFICE COMPUTING																
358	SERVICE IND MACHIN																
359	MISC MACHNRY/PARTS																

		REVENUE FREIGHT ORIGINATING ON RESPONDENT'S RAILROAD						REVENUE FREIGHT RECEIVED FROM CONNECTING CARRIERS						TOTAL REVENUE FREIGHT CARRIED			
		TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS			TERMINATING ON LINE			DELIVERED TO CONNECTING CARRIERS						
CODE	DESCRIPTION	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	CARLOADS	TONS	SHIPMENTS	GROSS FREIGHT REVENUE DOLLARS
36	ELECT MACHY EQPT																
361	ELECT TRANS & DIST																
362	ELECT INDUST APPAR																
363	HOUSEHOLD APPLIANC																
3631	HOUSEHOLD COOKING																
3632	HOUSEHOLD REFRIGE																
3633	HOUSEHOLD LAUNDRY																
364	ELECTRIC LIGHTING																
365	RADIO AND TV SETS																
366	COMMUNICATION EQUI																
367	ELECTRONIC COMPONE																
369	MISC ELECT MACHINE																
37	TRANSPORTATION EQP																
371	MOTOR VEHICLES EQP																
3711	MOTOR VEHICLES																
37111	PASSENGER CARS																
37112	TRUCK TRACT TRUCKS																
37113	MOTOR COACHES ASSC																
3712	PASSENGER CAR BODI																
3713	TRUCK AND BUS BODI																
3714	MOTOR VEHICLE PART																
37147	MOTOR VEHICLE BODY																
3715	TRUCK TRAILERS																
372	AIRCRAFT AND PARTS																
373	SHIPS AND BOATS																
374	RAILROAD EQUIPMENT																
37422	FREIGHT TRAIN CARS																
375	MOTORCYCLES BICYCL																
376	GUIDED MISS/SPAC VHL																
379	MISC TRANSPORTATIO																
38	INSTRUMENTS PHOTO																
381	ENGINEER LAB INST																
382	MEASURING CONTROL																
383	OPTICAL INSTRUMENT																
384	SURGICAL MEDICAL																
385	OPHTHALMIC GOODS																
386	PHOTOGRAPHIC EQUIP																
387	WATCHES CLOCKS																
39	MISC PROD OF MANUF																
391	JEWELRY SILVERWARE																
393	MUSICAL INSTRUMENT																
394	TOYS AMUSEMT SPORT																
3949	SPORTS ATHLET GOODS																
395	PENS PENCILS																
396	COSTUME JEWELRY																
399	MISC MANUFACTURED																
40	WASTE/SCRAP MATERI																
401	ASHES																
402	WASTE AND SCRAP																
4021	METAL SCRAP WASTE																
40211	IRON/STEEL SCRAP																
4022	TEXTIL WASTE SCRAP																
4024	PAPER WASTE SCRAP																
4026	RUBBER/PLASTIC SCRAP																
41	MISC FREIGHT SHIPM																



BILLING CODE 4915–01–C

Appendix C

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act of the two collections for which modifications are proposed in this proceeding:

Collection Number 1

OMB Control Number: 2140–0001.

Title: Quarterly Report of Freight Commodity Statistics (Form QCS).

Form Number: None.

Type of Review: Revision of currently approved collection.

Respondents: Class I railroads.

Number of Respondents: 7.

Estimated Time per Response: 217 hours, plus a one-time addition of 7.5 start-up hours.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: 7,613 hours annually (includes additional 2.5 hours per year per railroad, which is 7.5 start-up hours annualized over the three-year approval period).

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour burden'' costs associated with this collection have been identified.

Needs and Uses: This collection, which is based on information contained in carload waybills used by railroads in the ordinary course of business, reports car loadings and total revenues by commodity code for each commodity that moved on the railroad during the reporting period. *See* 49 CFR part 1248. While the public is the primary user of the quarterly data, the Board enters information from the annual report into URCS. The Board uses URCS as a tool in rail rate proceedings, in accordance with 49 U.S.C. 10707(d), to calculate the variable

costs associated with providing a particular service. The Board also uses this information to more effectively carry out other of its regulatory responsibilities, including: Acting on railroad requests for authority to engage in Board-regulated financial transactions such as mergers, acquisitions of control, and consolidations, *see* 49 U.S.C. 11323–11324; analyzing the information that the Board obtains through the annual railroad industry waybill sample, *see* 49 CFR 1244; measuring off-branch costs in railroad abandonment proceedings, in accordance with 49 CFR 1152.32(n); developing the ''rail cost adjustment factors,'' in accordance with 49 U.S.C. 10708; and conducting investigations and rulemakings. In addition, many other Federal agencies and industry groups depend on Form QCS for information regarding the cost of the movement of goods by railroads. The Board now proposes to modify this collection to require railroads to provide additional data regarding the number of shipments. This modification will provide the Board with information relevant to proposed changes in the way that URCS calculates switch engine minute costs and station clerical costs. There is no other source for the information contained in this report.

Collection Number 2

Title: Annual Report of Cars Loaded and Cars Terminated. (Under the proposal described in this proceeding, the name of this report would be changed to ''Annual Report of Cars and Shipments Originated and Terminated'' to reflect the substantive modifications to the reporting requirements.)

OMB Control Number: 2140–0011.

Form Number: Form STB–54.

Type of Review: Revision of currently approved collection.

Number of Respondents: 7.

Estimated Time per Response: 4 hours, plus a one-time addition of 9 start-up hours.

Frequency of Response: Annual.

Total Annual Hour Burden: 49 hours (includes additional 3 hour per year per railroad, which is 9 start-up hours annualized over the three-year approval period).

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour burden'' costs associated with this collection have been identified.

Needs and Uses: This collection reports the number of cars loaded and cars terminated on the reporting carrier's line. *See* 49 CFR part 247. Information in this report is entered into the Board's URCS, the uses of which are explained under Collection 1. The Board now proposes to modify this collection to require railroads to provide additional data regarding the number of shipments. This modification will provide the Board with information relevant to proposed changes in the way that URCS calculates switch engine minute costs and station clerical costs. There is no other source for the information contained in this report.

[FR Doc. 2013–02037 Filed 2–1–13; 8:45 am]

BILLING CODE 4915–01–P

Notices

Federal Register
Vol. 78, No. 23
Monday, February 4, 2013

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 29, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Risk Management Agency

Title: Federal Crop Insurance Program Delivery Cost Survey and Interviews.

OMB Control Number: 0563–NEW.

Summary of Collection: The Risk Management Agency (RMA) provides insurance to American producers through the Federal Crop Insurance Corporation (FCIC) that manages the Federal crop insurance program. The insurance is provided through cooperative financial assistance agreements with private insurance companies, known as Approved Insurance Providers (AIPs), who in turn work with insurance agencies/agents to sell Federal crop insurance. The insurance companies who sell and service FCIC policies are reimbursed for their administrative and operating (A&O) expenses directly by RMA on behalf of the policyholders. The Government Accountability Office (GAO) was directed by Congress to conduct a review of crop insurance delivery costs. GAO released Report GAO–09–445 and among its recommendations was that RMA conduct a ''study of the costs associated with selling and servicing crop insurance policies to establish a standard method for assessing agencies' reasonable costs in selling and servicing policies.''

Need and Use of the Information: RMA plans to conduct interviews with AIPs, insurance agents and insured farmers, and surveys to both insurance agents and insured farmers. RMA will use the information collected from the interviews and surveys in conjunction with the financials reported by AIPs to construct estimates of the cost of delivery for the Federal crop insurance program. The information will help identify opportunities for improvement (e.g., increased efficiency) in the delivery system. In addition, this information could also be used in RMA's program planning process before implementing any regulatory and programmatic changes in the future.

Description of Respondents: Business for-profit, farms.

Number of Respondents: 3,131.

Frequency of Responses: Reporting: Other (One time).

Total Burden Hours: 713.

Charlene Parker,
Departmental Information Clearance Officer.

[FR Doc. 2013–02317 Filed 2–1–13; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0102]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Certification Program for Imported Articles of Pelargonium spp. and Solanum spp. to Prevent the Introduction of Potato Brown Rot

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for a certification program for imported articles of *Pelargonium* spp. and *Solanum* spp. to prevent the introduction of potato brown rot into the United States.

DATES: We will consider all comments that we receive on or before April 5, 2013.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0102-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0102, 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-2012-0102* 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: For information on the regulations for the certification program for imported articles of *Pelargonium* spp. and *Solanum* spp. to prevent introduction of potato brown rot, contact Dr. Vedpal Malik, Senior Agriculturist, QPAS, PPQ, APHIS, 4700 River Road Unit 60, Riverdale MD 20737; (301) 851–2278. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Certification Program for Imported Articles of *Pelargonium* spp. and *Solanum* spp. to Prevent the Introduction of Potato Brown Rot.

OMB Number: 0579–0221.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds into the United States.

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in ''Subpart—Plants for Planting,'' §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for propagation. These restrictions on certain importations help to prevent the introduction of plant pests and diseases, such as *Ralstonia solanacearum* race 3 biovar 2, into the United States. *R. solanacearum* race 3 biovar 2 is a bacterium that causes potato brown rot, which causes potatoes to rot through, making them unusable and seriously affecting potato yields.

The regulations provide a certification program for articles of *Pelargonium* spp. and *Solanum* spp. imported from countries where *R. solanacearum* race 3 biovar 2 is known to occur. The requirements of the certification program were designed to ensure that *R. solanacearum* race 3 biovar 2 will not be introduced into the United States through the importation of articles of *Pelargonium* spp. and *Solanum* spp. The certification program requires information collection activities, including a phytosanitary certificate and additional declaration, trust fund, compliance agreement, and production site registration.

The information collection activities of a phytosanitary certificate, trust fund, and compliance agreement were approved by the Office of Management and Budget (OMB) under control number 0579–0221. However, when comparing the regulations with the information collection activities, we found that production site registration was omitted from previous information collections. This has resulted in a change of the estimated total annual burden from 1,022 hours to 1,027 hours.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

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

Respondents: Growers, importers, and foreign national plant protection organizations.

Estimated annual number of respondents: 37.

Estimated annual number of responses per respondent: 27.89.

Estimated annual number of responses: 1,032.

Estimated total annual burden on respondents: 1,027 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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

Done in Washington, DC, this 30th day of January 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–02355 Filed 2–1–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—State Administrative Expense Funds Regulations

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection related to State administrative expense funds expended in the operation of the Child Nutrition Programs (7 CFR parts 210, 215, 220, 226 and 250) administered under the Child Nutrition Act of 1966. This collection is a revision of a currently approved collection.

DATES: Written comments must be received on or before April 5, 2013.

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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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 use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Jon Garcia, Acting Branch Chief, Program Analysis and Monitoring Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, VA 22302. 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 during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Mr. Jon Garcia at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 235, State Administrative Expense Funds Regulations.

Form Numbers: FNS–74, FNS–525, FNS–777.

OMB Number: 0584–0067.

Expiration Date: 04/30/2013.

Type of Request: Revision of a currently approved collection.

Abstract: Section 7 of the Child Nutrition Act of 1966 (Pub. L. 89–642), 42 U.S.C. 1776, authorizes the Department to provide Federal funds to State agencies (SAs) for administering the Child Nutrition Programs (7 CFR parts 210, 215, 220, 226 and 250). State Administrative Expense Funds (SAE), 7 CFR part 235, sets forth procedures and recordkeeping requirements for use by SAs in reporting and maintaining records of their needs and uses of SAE funds. The reporting and recordkeeping burden associated with this revision is summarized in the charts below. The number of SAs participating in the CN programs decreased from 88 to 87 resulting in a decrease of 2 reporting burden hours and a decrease of 104 recordkeeping burden hours. A program adjustment to increase a recordkeeping requirement resulted in an increase of 129 burden hours for a net increase of (+23) total burden hours associated with this revision.

Total Burden Including Reporting and Recordkeeping

Affected Public: State Agencies.

Estimated Number of Respondents: 87.

Estimated Number of Responses per Respondent: 148.

Estimated Total Annual Responses: 12,890.

Estimate Time per Response: 1.05.

Estimated Total Annual Burden: 13,548.

Current OMB Inventory: 13,526.

Difference Burden Revisions Requested: +22.

Refer to the table below for estimated total annual burden for each type of respondent.

Affected public	Est. Number of respondents	Number of responses per respondent	Total annual responses	Est. total hours per response	Est. total burden
Reporting					
State Agencies	87	6.8621	597	1.335	797
Total Estimated Reporting Burden	87		597		797
Recordkeeping					
State Agencies	87	141.29885	12,293	1.03725	12,751
Total Estimated Recordkeeping Burden	87		12,293		12,751
Total of Reporting and Recordkeeping					
Reporting	87	6.8621	597	1.335	797
Recordkeeping	87	141.29885	12,293	1.03725	12,751
Total	87	148.16	12,890	1.05	13,548

Dated: January 25, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

Attachments

BILLING CODE 3410–30–P

Print

OMB APPROVED NO. 0584-0067
Expiration Date: XX/XX/XXXX

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a Collection of Information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0584-0067. The time required to complete this information collection is estimated to average 15 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

INSTRUCTIONS: Sign and submit the original and one copy of this Agreement to your FNS regional office. You must have original signatures on both copies of the agreement and the following attachments, which become part of this Agreement: Certification Regarding the Drug-Free Workplace Requirements (Form AD-1049); Certification Regarding Lobbying; and Disclosure of Lobbying Activities (Form SF-LLL).

FEDERAL-STATE AGREEMENT
CHILD NUTRITION AND FOOD DISTRIBUTION PROGRAMS
FOOD AND NUTRITION SERVICE
U.S. DEPARTMENT OF AGRICULTURE

1. What is the purpose of this agreement?

This agreement sets out the requirements for administering the Child Nutrition Programs and the Food Distribution Programs.

2. Who are the parties to this agreement?

The Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA) _____ (State agency). In consideration of the funds and commodities provided by FNS to the State agency and the services provided by the State agency, the parties agree to the provisions of this agreement.

3. What programs does this agreement cover?

This agreement covers the programs noted with an "x" in the chart below. If the State agency decides to discontinue or begin administration of any of these programs after signing this agreement, the State agency must provide FNS advance written notice, including the proposed effective date of the change. Upon approval of the request, FNS will enter into a new agreement or amend this agreement.

	National School Lunch Program	School Breakfast Program	Special Milk Program	Com-modity School Program	Child and Adult Care Food Program	Summer Food Service Program	Nutrition Education Training	Food Distri-bution Programs
Public schools	☐	☐	☐	☐	☐	☐	☐	☐
Private schools	☐	☐	☐	☐	☐	☐	☐	☐
Public residential child care institutions	☐	☐	☐	☐		☐	☐	☐
Private residential child care institutions	☐	☐	☐	☐		☐	☐	☐
Nonresidential child care institutions			☐		☐		☐	☐
Nonresidential adult care institutions					☐		☐	☐
Service institutions (including camps)			☐			☐	☐	☐
Charitable institutions								☐
Disasters and situations of distress								☐
CSFP								☐
FDPIR and FDPI in Oklahoma								☐
Nonprofit summer camps			☐					☐
TEFAP								☐
Other (describe)	☐	☐	☐	☐	☐	☐	☐	☐

4. What are the definitions for the terms used in this agreement?

The terms in this agreement have the same meaning as they are defined in the program statutes, program regulations, and the glossary in Appendix A to this agreement.

5. What is the authority for this agreement?

This agreement is authorized by the program statutes listed in Appendix A to this agreement.

6. What is the duration of this agreement?

This agreement is effective for the Federal Fiscal Year from October 1 , _____ to September 30, _____. This agreement may be extended by FNS. The extension will be in the form of the annual grant award document announcing the grant amounts for each program for each Federal Fiscal Year.

7. How may this agreement be terminated?

This agreement may be terminated in accordance with the program statutes, program regulations, and 7 CFR Parts 3015.124, 3016.43 and 3016.44.

8. May this agreement be amended?

This agreement may be amended only by FNS. However, either FNS or the State agency may propose amendments. FNS amendments are not subject to approval by the State agency. By continuing to operate the covered programs after an amendment to this agreement, the State agency agrees to comply with the amendment.

If the State agency does not wish to comply with an amendment, the State agency must seek to terminate the agreement in accordance with Section 7 of this agreement.

9. What are the requirements for FNS?

Subject to available appropriations, FNS will provide funds and commodities to the State agency for the programs covered by this agreement. In addition and also subject to available appropriations, FNS will provide State Administrative Expense funds and Cash-in-Lieu of Donated Foods (7 CFR Part 240) when the State agency is approved to administer a program for which those funds are available.

FNS will provide the funds and commodities in accordance with program statutes, program regulations, any FNS instructions, policy memoranda, guidance, and other written directives interpreting the program statutes and program regulations, and the other statutes and regulations cited in this agreement.

10. What are the requirements for the State agency?

A. Program Statutes, Program Regulations, Instructions, Policy Memoranda, and Guidance

The State agency will comply with the program statutes and program regulations applicable to the programs covered by this agreement. The State agency also will comply with any FNS instructions, policy memoranda, guidance, and other written directives interpreting the program statutes and program regulations applicable to those programs.

B. Departmental Regulations on Grants and Cooperative Agreements

The State agency will comply with the following USDA Regulations:

i. 7 CFR Part 3015, Uniform Federal Assistance Regulations;

ii. 7 CFR Part 3016, Uniform Administrative Requirements for Grants and Cooperative Agreements;

iii. 7 CFR Part 3019, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations, and Institutions;

iv. 7 CFR Part 3051, Audits of Institutions of Higher Education and Other Nonprofit Institutions;

v. 7 CFR Part 3052, Audits of States, Local Governments, and Nonprofit Organizations.

C. Debarment and Suspension

The State agency will comply with 7 CFR Part 3017, Subparts A-E, Governmentwide Debarment and Suspension (Nonprocurement). If this agreement covers Food Distribution Programs other than food distribution related to the Child Nutrition Programs, and the State agency has signed and attached to this agreement the Certificate Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions, the SA must submit an additional Certification to FNS by October 1 of each year.

D. Nondiscrimination and Equal Employment Opportunity

The State agency will comply with the following nondiscrimination statutes and regulations, any other related regulations, and any FNS and USDA nondiscrimination directives:

i. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 200d et seq.), USDA regulations at 7 CFR Part 15, Nondiscrimination, and Department of Justice regulations at 28 CFR Part 42, Nondiscrimination; Equal Employment Opportunity; Policies and Procedures;

ii. Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and USDA regulations at 7 CFR Part 15a, Education Programs or Activities Receiving or Benefitting from Federal Financial Assistance;

iii. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), USDA regulations at 7 CFR Part 15b, Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance, and Department of Justice regulations at 28 CFR Part 41, Implementation of Executive Order 12250, Nondiscrimination On The Basis of Handicap In Federally Assisted Programs; and

iv. The Age Discrimination Act of 1975 42 (U.S.C. 6101 et seq.),

The State agency assures that it will immediately take any measures necessary to effectuate the requirements in the laws, regulations, and directives. The State agency gives this assurance in consideration of and for the purpose of obtaining the funds and commodities provided under this agreement.

E. Lobbying

The State agency will comply with the 7 CFR Part 3018, New Restrictions on Lobbying and has signed and attached to this agreement the Certificate Regarding Lobbying and, if applicable, the Disclosure of Lobbying Activities (Forms SF-LLL) and annually will sign and submit a certificate, if applicable, Form SF-LLL to FNS.

F. Drug-Free Workplace

The State agency will comply with 7 CFR Part 3017, Subpart F, Drug-Free Workplace and will maintain a drug-free workplace in accordance with (check one):

_____ ☐ The current annual single State or State agency drug-free workplace certification statement that is on file with USDA.

_____ ☐ The Certification Regarding the Drug-Free Workplace Requirements (Form AD-1049) that the State agency has signed and attached to this agreement.

11. How do changed or new statutes, regulations, instructions, policy memoranda, and guidance affect this agreement?

By continuing to operate the covered programs after the enactment or issuance of any changed or new statutes or regulations applicable to the programs covered by this agreement and any changed or new instructions, policy memoranda, guidance, and other written directives interpreting these statutes or regulations, the State agency agrees to comply with them.

If the State agency does not wish to comply with any changes or new items, the State agency must seek to terminate the agreement in accordance with Section 7 of this Agreement.

12. Signatures

STATE AGENCY	USDA
By (Signature)	By (Signature)
TITLE	TITLE
DATE	DATE

Appendix A -- Glossary

"Child Nutrition Programs" means:

National School Lunch Program (NSLP)
Special Milk Program for Children (SMP)
School Breakfast Program (SBP)
Commodity School Program
Summer Food Service Program (SFSP)
Child and Adult Care Food Program (CACFP)
Nutrition Education and Training Program (NET)
State Administrative Expense Funds (SAE)

"Food Distribution Programs" means:

The commodity donation portion of the Child Nutrition Programs
Commodity assistance for charitable institutions
Commodity Supplemental Food Program (CSFP)
Commodity assistance for disasters and situations of distress
Food Distribution Program for households on Indian reservations (FDPIR)
Food Distribution Program for Indian households (FDPI) in Oklahoma
Commodity assistance for nonprofit summer camps
The Emergency Food Assistance Program (TEFAP)

"Program Statutes" means:

for the Child Nutrition Programs

Richard B. Russell, National School Lunch Act (42 U.S.C. 1751-69h)
Child Nutrition Act of 1966 (42 U.S.C. 1771-91)

for the Food Distribution Programs

general and charitable institutions

Commodity Distribution Reform Act and WIC Amendments of 1987 (7 U.S.C. 612c note)
Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c)
Section 416(a) of the Agricultural Act of 1949 (7 U.S.C. 1431(a))

CSFP

Sections 4(a) and 5 of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note)

Disasters and Situations of Distress

Section 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179-80)
Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note)

FDPIR

Section 4(b) of the Food Stamp Act of 1977 (7 U.S.C. 2013(b))
Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note)

FDPI for Oklahoma

Section 1336 of the Food Stamp and Commodity Distribution Amendments of 1981

Nonprofit Summer Camps for Children

Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note)

TEFAP

Emergency Food Assistance Act of 1983 (7 U.S.C. 7501-16)

"Program Regulations" means the regulations noted below:

7 CFR Part 210 National School Lunch Program
Part 215 Special Milk Program for Children
Part 220 School Breakfast Program
Part 225 Summer Food Service Program
Part 226 Child and Adult Care Food Program
Part 227 Nutrition Education and Training Program
Part 235 State Administrative Expense funds
Part 240 Cash in Lieu of donated foods
Part 245 Determining eligibility for free and reduced price meals and free milk in schools
Part 247 Commodity Supplemental Food Program
Part 250 Donation of foods for use in the United States, its territories and possessions and areas under its jurisdiction
Part 251 The Emergency Food Assistance Program
Part 253 Administration of the Food Distribution Program for households on Indian reservations
Part 254 Administration of the Food Distribution Program for Indian households in Oklahoma

Print

OMB APPROVED NO. 0584-0067
Expiration Date: XX/XX/XXXX

U.S. DEPARTMENT OF AGRICULTURE - FOOD AND NUTRITION SERVICE

STATE ADMINISTRATIVE EXPENSE FUNDS REALLOCATION REPORT

See Instructions on Reverse

GRANTEE NAME

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0584-0067. The time required to complete this information collection is estimated to average 12.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

CURRENT STATUS OF SAE FUNDS (to be completed by regional office)

CURRENT FISCAL YEAR _____

AUTHORIZED FUNDING LEVEL $ _____

I. USE OF AUTHORIZED FUNDING LEVEL	DOLLAR AMOUNT	TOTAL DOLLARS
A. Estimate of funds to be obligated by September 30 of the current fiscal year.	$ _____	
B. Funds from the Current Fiscal Year Grant to be carried over for obligation and expenditure during the next fiscal year.	$ _____	
II. TO INCREASE THE AUTHORIZED FUNDING LEVEL *(Justification Required)*		
TOTAL AMOUNT OF ADDITIONAL FUNDS REQUESTED IN EXCESS OF AUTHORIZED FUNDING LEVEL (MUST EQUAL A + B)		$ _____
A. Amount of these funds to be obligated by September 30 of the current fiscal year.	$ _____	
B. Amount of these funds to be carried over for obligation and expenditure during the next fiscal year.	$ _____	
III. TO DECREASE THE AUTHORIZED FUNDING LEVEL		
TOTAL AMOUNT OF FUNDS TO BE RETURNED TO FNS (MUST EQUAL A + B)		$ _____
A. Funds from the Current Fiscal Year Grant to be returned.	$ _____	
B. Funds from the Preceding Fiscal Year Grant to be returned.	$ _____	

IV. ASSURANCES

BY SIGNING BELOW, I (THE AUTHROIZED STATE OFFICIAL) ATTEST THAT THE STATE AGENCY:

A. Will need the total amount of additional funds indicated under Section II (Total Dollars) for the Current Fiscal Year Grant.

B. Authorizes release and hereby releases from its Current Fiscal Year Grant the amount entered on Line III, A and from its Preceding Fiscal Year Grant the amount entered on Line III, B making such funds available to FNS for reallocation to other State agencies.

V. SIGNATURES

AUTHORIZED STATE OFFICIAL	TITLE	DATE

REGIONAL ADMINISTRATOR OR DESIGNATED FNS OFFICIAL	DATE

FORM FNS-525 (06-11) Previous Editions Obsolete **SBU** Electronic Form Version Designed in Adobe 9.1 Version

INSTRUCTIONS FOR FNS-525

(All Items Are Self-Explanatory Unless Noted Below)

All State agencies (SAs) must complete this form. This must be done even if an SA is not requesting or returning funds.

DEFINITIONS (For purposes of this report)

1. AUTHORIZED FUNDING LEVEL - The amount of SAE funds available to an SA for a given fiscal year, including the Current Fiscal Year Grant plus previous fiscal year's carryover funds.

2. CARRYOVER FUNDS - SAE funds which are available to the SA for obligation and expenditure during the second year of the grant.

3. CURRENT FISCAL YEAR GRANT - SAE grant available for the current and next fiscal years, and expiring September 30 of the next fiscal year.

4. PRECEDING FISCAL YEAR GRANT - SAE grant available for the preceding and current fiscal years, and expiring September 30 of the current fiscal year.

5. OBLIGATION - This includes outlays and unliquidated obligations as reported on line "K" of the SF-269 report.

CURRENT STATUS OF SAE FUNDS

Review the information completed by the regional office for accuracy. Please contact the regional office if there is any discrepancy.

SECTION I - USE OF AUTHORIZED FUNDING LEVEL

Please note: Under Current Status of SAE Funds, the Authorized Funding Level should equal the sum of I, A and I, B and III. If these amounts are not equal, please provide an explanation for the difference.

Enter the best estimate of the amount of the Authorized Funding Level (under Current Status of SAE Funds) which will be obligated by September 30 of the current fiscal year.

SECTION II - TO INCREASE THE AUTHORIZED FUNDING LEVEL

Before any request for additional funds can be considered, an explanation for the planned use of carryover funds is necessary. Any carryover funds for the current fiscal year an SA anticipates having must be earmarked for an essential one-time only activity. Requests from SAs will be considered for funding only to the extent that anticipated carryover funds are insufficient to cover essential one-time only activities.

A written justification is required for each activity for which funds are requested. Only requests from an SA for one-time only activities that can be demonstrated to be essential to the administration of its program(s) will be considered for funding. The justification included with the request for reallocation funds must include the following:

1. Description of the use of funds - objectives and activities planned.

2. If more than one item is being requested, rank the items in descending order of priority.

3. Description of how the Child Nutrition Programs will be adversely affected if an SA does not receive reallocation funds.

4. For projects - a) time period during which project is to be completed; b) the methods to be used in evaluating the project; and c) the results to be obtained.

5. Itemized costs of activity, including (as applicable): a) salaries and fringe benefits, b) travel expenses, c) office equipment, d) training and education, e) general administrative costs (specify), f) other costs (specify and explain), g) total direct costs, h) total indirect costs, and i) total costs.

6. Sources of funding for activity, including (as applicable): a) local contribution, b) State contribution, and c) total amount of SAE request.

SECTION IV - ASSURANCES

A. Applicable only to those SAs requesting SAE funds.

B. Applicable only to those SAs returning SAE funds.

SECTION V - SIGNATURES

All SAs must sign this form. This must be done even if an SA is not requesting or returning funds.

Print

OMB APPROVED NO. 0584-0067
Expiration Date: XX/XX/XXXX

FINANCIAL STATUS REPORT	1. FEDERAL AGENCY & ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED FOOD AND NUTRITION SERVICE, USDA	FEDERAL GRANT OR OTHER NUMBER Letter of Credit No. 12-35-	2. FISCAL YEAR
3. RECIPIENT ORGANIZATION (Name and complete address, including Zip code. Also enter assigned State code.)	4. AGENCY DUNS NUMBER 5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER	6. FINAL REPORT ☐ YES ☐ NO	7. BASIS ☐ CASH ☐ ACCRUAL
	8. PROJECT/GRANT PERIOD	9. PERIOD COVERED BY THIS REPORT	

10. STATUS OF FUNDS	CHILD AND ADULT CARE PROGRAM					SUMMER PROGRAM				ADVANCES
PROGRAMS/FUNCTIONS/ACTIVITIES	1 MEAL SERVICE	2 SPONSOR ADMIN.	3 AUDIT	4 START-UP & EXPANSION	5 CASH FOR COMMODITIES	6 MEAL SERVICE	7 SPONSOR ADMIN.	8 INSPECTION	9 STATE ADMIN. FUNDS	10 TOTAL (Add Cols. 1, 2, 6 & 7)
a. Net outlays previously reported										
b. Total outlays this report period										
c. Less: Program Income credits										
d. Net outlays this report period *(Line b minus line c)*										
e. Net outlays to date *(Line a plus line d)*										
f. Less: Non-Federal share of outlays										
g. Total Federal share of outlays *(Line e minus line f)*										
h. Total unliquidated obligations										
i. Less: Non-Federal share of unliquidated obligations shown on line h										
j. Federal share of unliquidated obligations										
k. Total Federal share of outlays and unliquidated obligations										
l. Total cumulative amount of Federal funds authorized										
m. Unobligated balance of Federal funds										
n. Advances Only										

11. INDIRECT EXPENSE	a. TYPE	b. RATE	c. PERIOD FROM	PERIOD TO	d. BASE	e. AMOUNT CHARGED	f. FEDERAL SHARE
				g. TOTALS			

12. REMARKS: Attach any explanation deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.			13. CERTIFICATION: I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE REPORT SUBMITTED
STAMP DATE	LAST UPDATED BY	LAST UPDATE ON		NAME	TITLE	TELEPHONE NO. AREA CODE NUMBER

No further monies or other benefits may be paid out under this program unless this report is completed and filed as required by existing regulation (34 C.F.R 256)

NOTE: When reordering this form specify "FNS-777 Child Nutrition"

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Department of Agriculture, Food and Nutrition Services, Office of Research and Analysis (0584-0067), Alexandria, VA 22302. Do not return the completed form to this address.

FORM FNS-777 (10-12) Previous Editions Obsolete

SBU

Electronic Form Version Designed in Adobe 10.0 Version

OMB APPROVED NO. 0584-0067
Expiration Date: XX/XX/XXXX

FINANCIAL STATUS REPORT	1. FEDERAL AGENCY & ORGANIZATIONAL ELEMENT TO WHICH REPORT IS SUBMITTED FOOD AND NUTRITION SERVICE, USDA	FEDERAL GRANT OR OTHER NUMBER Letter of Credit No. 12-35-	2. FISCAL YEAR
3. RECIPIENT ORGANIZATION (Name and complete address, including Zip code. Also enter assigned State code.)	4. AGENCY DUNS NUMBER / 5. RECIPIENT ACCOUNT NUMBER OR IDENTIFYING NUMBER	6. FINAL REPORT ☐ YES ☐ NO	7. BASIS ☐ CASH ☐ ACCRUAL
	8. PROJECT/GRANT PERIOD	9. PERIOD COVERED BY THIS REPORT	

10. STATUS OF FUNDS	SAE		SCHOOL PROGRAMS							TOTALS
PROGRAMS/FUNCTIONS/ACTIVITIES	11 SAE	12 SAE (FD ONLY)	13 SPECIAL MILK	14 SCHOOL LUNCH	15 SCHOOL BREAKFAST	16 SCH. CASH FOR COMMOD.	17 SUMMER CASH FOR COMMOD.	18	19	20 (Add Cols. 1-9, 11, 13-17)
a. Net outlays previously reported										
b. Total outlays this report period										
c. Less: Program Income credits										
d. Net outlays this report period *(Line b minus line c)*										
e. Net outlays to date *(Line a plus line d)*										
f. Less: Non-Federal share of outlays										
g. Total Federal share of outlays *(Line e minus line f)*										
h. Total unliquidated obligations										
i. Less: Non-Federal share of unliquidated obligations shown on line h										
j. Federal share of unliquidated obligations										
k. Total Federal share of outlays and unliquidated obligations										
l. Total cumulative amount of Federal funds authorized										
m. Unobligated balance of Federal funds										
Enter amount federal outlays & unpaid obligations for special developmental project funds used or obligated by program. (Amounts included in item k)			SMP	NSLP	SBP	CACFP	SFSP			

11. INDIRECT EXPENSE	a. TYPE	b. RATE	c. PERIOD FROM	PERIOD TO	d. BASE	e. AMOUNT CHARGED	f. FEDERAL SHARE
				g. TOTALS			

12. REMARKS: Attach any explanation deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.			13. CERTIFICATION: I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	DATE REPORT SUBMITTED
STAMP DATE	LAST UPDATED BY	LAST UPDATE ON		NAME / TITLE	TELEPHONE NO. AREA CODE NUMBER

No further monies or other benefits may be paid out under this program unless this report is completed and filed as required by existing regulation (34 C.F.R 256)

NOTE: When reordering this form specify "FNS-777 Child Nutrition"

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: U.S. Department of Agriculture, Food and Nutrition Services, Office of Research and Analysis (0584-0067), Alexandria, VA 22302. Do not return the completed form to this address.

INSTRUCTIONS

Please note that the instructions given below may be used as appropriate for completing forms FNS-777 State Administrative Expense (SAE) and/or FNS-777 (CN).

Items 1, 2, 3, 6, 7, 9, 10d, 10e, 10g, 10i, 10l and 12 are self-explanatory; specific instructions for other items as follows:

Item Entry

4. Enter the State agency DUNS Number.

5. This space is reserved for an account number or other identifying numbers that may be assigned by the State agency.

8. Enter the month, day, and year of the beginning and ending of this Project/Grant period.

10. The purpose of vertical columns (1) through (20) is to provide financial data for each program, function, and activity for which the State agency received Federal program funds.

10a. Enter the cumulative net outlays previously reported. This amount should be the same as the amount reported in Line 10e of the last report. If there has been an adjustment to the amount shown previously, please attach explanation. Show zero if this is the initial report.

10b. Enter the total gross program outlays (less rebates, refunds, and other discounts) for this calendar quarter, including disbursements of cash realized as program income. For reports that are prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to contractors and subgrantees. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the State agency for goods and other property received and for services performed by employees, contractors, subgrantees, and other payees.

10c. Enter the amount of all program income realized in this quarter that is required by the terms and conditions of the Federal grant to be deducted from total program costs. For reports prepared on a cash basis, enter the amount of cash income received during the reporting period. For reports prepared on an accrual basis, enter the amount of income earned since the beginning of the reporting period. When the terms or conditions allow program income to be added to the total award, explain in remarks, the source, amount and disposition of the income.

10f. Enter the amount pertaining to the non-Federal share of program outlays included in the amount on line e. For all columns except 11 and 12 (SAE), this entry should be zero.

10h. Enter total amount of unliquidated obligations for this program. Included in unliquidated obligations are:
Cash basis – obligations incurred but not paid;
Accrual basis – obligations incurred but for which an outlay has not been recorded.
Do not include any amounts that have been included on lines a through g. On the final report, line h should have a zero balance. If it does not, the State agency's justification must accompany the final report.

10j. Enter the Federal share of unliquidated obligations shown on line h. The amount shown on this line should be the difference between the amounts on lines h and i.

10k. Enter the sum of the amounts shown on lines g and j. If the report is final, the report should not contain any unliquidated obligations.

10m. Enter the unobligated balance of Federal funds. This amount should be the difference between lines k and l.

10n. Enter the amount of the advance which has not been offset by valid claims. (As per 7 CFR Part 226.2, advanced payments mean financial assistance made available to an institution for its Program costs prior to the month in which such costs will be incurred).

11. Indirect Expense: This section captures information on indirect costs assessed against the State agency's direct program costs. Indirect cost can be charged only to the following Federal funding sources: Child and Adult Care Food Program Audit (column 3), Summer Food Service Program State Administrative Costs (column 9), and SAE (columns 11 and 12). Complete this information in accordance with the following instructions. If there are no indirect costs to report, you may enter zero or leave the field blank.

11a. Type of Rate(s): State whether each indirect cost rate is Provisional, Predetermined, Final, or Fixed.

11b. Rate: Enter the indirect cost rate(s) in effect during the reporting period.

11c. Period From; Period To: Enter the beginning and ending effective dates for the rate(s).

11d. Base: Enter the amount of the direct cost base against which each rate was applied.

11e. Amount Charged: Enter the amount of the indirect costs charged during the time period specified (Multiply 11b. x 11d.)

11f. Federal Share: Enter the Federal share of the amount in 11e.

11g. Totals: Enter the totals for columns 11d, 11e, and 11f.

[FR Doc. 2013–02254 Filed 2–1–13; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Emergency Food Assistance Program; Availability of Foods for Fiscal Year 2013

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the surplus and purchased foods that the Department expects to make available for donation to States for use in providing nutrition assistance to the needy under the Emergency Food Assistance Program (TEFAP) in Fiscal Year (FY) 2013. The foods made available under this notice must, at the discretion of the State, be distributed to eligible recipient agencies (ERAs) for use in preparing meals and/or for distribution to households for home consumption.

DATES: *Effective Date:* October 1, 2012.

FOR FURTHER INFORMATION CONTACT: Anne Fiala, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

In accordance with the provisions set forth in the Emergency Food Assistance Act of 1983 (EFAA), 7 U.S.C. 7501, *et seq.,* and the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Department makes foods available to States for use in providing nutrition assistance to those in need through TEFAP. In accordance with section 214 of the EFAA, 7 U.S.C. 7515, 60 percent of each State's share of TEFAP foods is based on the number of people with incomes below the poverty level within the State and 40 percent on the number of unemployed persons within the State. State officials are responsible for establishing the network through which the foods will be used by ERAs in providing nutrition assistance to those in need and for allocating foods among those ERAs. States have full discretion in determining the amount of foods that will be made available to ERAs for use in preparing meals and/or for distribution to households for home consumption.

The types of foods the Department expects to make available to States for distribution through TEFAP in FY 2013 are described below.

Surplus Foods

Surplus foods donated for distribution under TEFAP are Commodity Credit Corporation (CCC) foods purchased under the authority of section 416 of the Agricultural Act of 1949, 7 U.S.C. 1431 (section 416) and foods purchased under the surplus removal authority of section 32 of the Act of August 24, 1935, 7 U.S.C. 612c (section 32). The types of foods typically purchased under section 416 include dairy, grains, oils, and peanut products. The types of foods purchased under section 32 include meat, poultry, fish, vegetables, dry beans, juices, and fruits.

Approximately $274.5 million in surplus foods acquired in FY 2012 are being delivered to States in FY 2013. These foods include beans (dried, canned), blueberries, carrots, catfish, chicken (leg quarters, thighs/drumsticks), cranberry sauce, grape juice, lamb (leg, shoulder), mixed fruit, orange juice, peaches, pears, pork (canned, frozen), potatoes, and tomatoes (diced, juice, sauce). Other surplus foods may be made available to TEFAP throughout the year. The Department would like to point out that food acquisitions are based on changing agricultural market conditions; therefore, the availability of foods is subject to change.

Purchased Foods

In accordance with section 27 of the Food and Nutrition Act of 2008, 7 U.S.C. 2036, the Secretary is directed to purchase $265.75 million worth of foods in FY 2013 for distribution through TEFAP. These foods are made available to States in addition to those surplus foods which otherwise might be provided to States for distribution under TEFAP.

For FY 2013, the Department anticipates purchasing the following foods for distribution through TEFAP: dehydrated potatoes, dried plums, raisins, frozen ground beef, frozen whole chicken, frozen ham, frozen turkey roast, blackeye beans, garbanzo beans, great northern beans, light red kidney beans, lentils, lima beans, pinto beans, egg mix, shell eggs, lowfat bakery mix, egg noodles, white and yellow corn grits, spaghetti, macaroni, oats, peanut butter, roasted peanuts, brown and white rice, whole grain rotini, whole grain macaroni, whole grain spaghetti, vegetable oil, ultra high temperature fluid 1 percent milk, bran flakes, corn flakes, oat cereal, rice cereal, corn cereal, and corn and rice cereal; the following canned items: green beans, blackeye beans, kidney beans, refried beans, vegetarian beans, carrots, cream corn, whole kernel corn, peas, sliced potatoes, pumpkin, spaghetti sauce, spinach, sweet potatoes, tomatoes, diced tomatoes, tomato sauce, mixed vegetables, tomato soup, vegetable soup, cream of chicken and mushroom soups, apricots, applesauce, mixed fruit, peaches, pears, beef, beef stew, chicken, pork, and salmon; and the following bottled juices: apple, cherry apple, cran-apple, grape, grapefruit, orange, and tomato. The amounts of each item purchased will depend on the prices the Department must pay, as well as the quantity of each item requested by the States. Changes in agricultural market conditions may result in the availability of additional types of foods or the non-availability of one or more types listed above.

Dated: January 25, 2013.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2013–02255 Filed 2–1–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program; 2013 Reimbursement Rates

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children. These adjustments address changes in the Consumer Price Index, as required under the Richard B. Russell National School Lunch Act. The 2013 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures. The 2013 rates are also presented individually, as separate operating and administrative rates of reimbursement, to show the effect of the Consumer Price Index adjustment on each rate.

DATES: *Effective Date:* January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Tina Namian, Section Head, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Suite 1206, Alexandria, Virginia 22302, 703–305–2590.

SUPPLEMENTARY INFORMATION:

The Summer Food Service Program (SFSP) is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, and final rule-related

notice published at 48 FR 29114, June 24, 1983.)

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3518, no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This notice is not a rule as defined by the Regulatory Flexibility Act, 5 U.S.C. 601–612, and thus is exempt from the provisions of that Act. Additionally, this notice has been determined to be exempt from formal review by the Office of Management and Budget under Executive Order 12866.

Definitions

The terms used in this notice have the meaning ascribed to them under 7 CFR Part 225 of the SFSP regulations.

Background

This notice informs the public of the annual adjustments to the reimbursement rates for meals served in SFSP. In accordance with sections 12(f) and 13, 42 U.S.C. 1760(f) and 1761, of the Richard B. Russell National School Lunch Act (NSLA) and SFSP regulations under 7 CFR Part 225, the United States Department of Agriculture announces the adjustments in SFSP payments for meals served to participating children during calendar year 2013.

The 2013 reimbursement rates are presented as a combined set of rates to highlight simplified cost accounting procedures. Reimbursement is based solely on a ''meals times rates'' calculation, without comparison to actual or budgeted costs.

Sponsors receive reimbursement that is determined by the number of reimbursable meals served multiplied by the combined rates for food service operations and administration. However, the combined rate is based on separate operating and administrative rates of reimbursement, each of which is adjusted differently for inflation.

Calculation of Rates

The combined rates are constructed from individually authorized operating and administrative reimbursements. Simplified procedures provide flexibility, enabling sponsors to manage their reimbursements to pay for any allowable cost, regardless of the cost category. Sponsors remain responsible, however, for ensuring proper administration of the Program, while providing the best possible nutrition benefit to children.

The operating and administrative rates are calculated separately. However, the calculations of adjustments for both cost categories are based on the same set of changes in the *Food Away From Home* series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor. They represent a 2.56 percent increase in this series for the 12 month period, from November 2011 through November 2012 (from 234.046 in November 2011 to 240.038 in November 2012).

Table of 2013 Reimbursement Rates

Presentation of the 2013 maximum per meal rates for meals served to children in SFSP combines the results from the calculations of operational and administrative payments, which are further explained in this notice. The total amount of payments to State agencies for disbursement to SFSP sponsors will be based upon these adjusted combined rates and the number of meals of each type served. These adjusted rates will be in effect from January 1, 2013 through December 31, 2013.

SUMMER FOOD SERVICE PROGRAM 2013 REIMBURSEMENT RATES (COMBINED)

Per meal rates in whole or fractions of U.S. dollars	All States except Alaska and Hawaii		Alaska		Hawaii	
	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	1.9800	1.9425	3.2100	3.1500	2.3200	2.2750
Lunch or Supper	3.4700	3.4125	5.6325	5.5425	4.0650	4.0000
Snack	0.8200	0.8000	1.3350	1.3050	0.9650	0.9425

Operating Rates

The portion of the SFSP rates for operating costs is based on payment amounts set in section 13(b)(1) of the NSLA, 42 U.S.C.1761(b)(1). They are rounded down to the nearest whole cent, as required by section 11(a)(3)(B) of the NSLA, 42 U.S.C. 1759a(a)(3)(B).

SUMMER FOOD SERVICE PROGRAM OPERATING COMPONENT OF 2013 REIMBURSEMENT RATES

Operating rates in U.S. dollars, rounded down to the nearest whole cent	All states except Alaska and Hawaii	Alaska	Hawaii
Breakfast	1.80	2.92	2.11
Lunch or Supper	3.14	5.10	3.68
Snack	0.73	1.19	0.86

Administrative Rates

The administrative cost component of the reimbursement is authorized under section 13(b)(3) of the NSLA, 42 U.S.C.1761(b)(3). Rates are higher for sponsors of sites located in rural areas and for ''self-prep'' sponsors that prepare their own meals, at the SFSP site or at a central facility, instead of purchasing them from vendors. The administrative portion of SFSP rates are adjusted, either up or down, to the nearest quarter-cent.

SUMMER FOOD SERVICE PROGRAM ADMINISTRATIVE COMPONENT OF 2013 REIMBURSEMENT RATES

Administrative rates in U.S. dollars, adjusted, up or down, to the nearest quarter-cent	All states except Alaska and Hawaii		Alaska		Hawaii	
	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites	Rural or self-prep sites	All other types of sites
Breakfast	0.1800	0.1425	0.2900	0.2300	0.2100	0.1650
Lunch or Supper	0.3300	0.2725	0.5325	0.4425	0.3850	0.3200
Snack	0.0900	0.0700	0.1450	0.1150	0.1050	0.0825

Authority: Sections 9, 13, and 14, Richard B. Russell National School Lunch Act, 42 U.S.C. 1758, 1761, and 1762a, respectively.

Dated: January 29, 2013.

Audrey Rowe,

Administrator.

[FR Doc. 2013–02231 Filed 2–1–13; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–955]

Certain Magnesia Carbon Bricks From the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 4, 2013.

FOR FURTHER INFORMATION CONTACT: Hilary Sadler or Dana Mermelstein, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4340 or (202) 482–1391, respectively.

Background

On September 4, 2012, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the countervailing duty (CVD) order on certain magnesia carbon bricks (MCBs) from the People's Republic of China (PRC) covering the period January 1, 2011, through December 31, 2011.[1] The Department received a timely request for review of Yingkou Bayuquan Refractories Co., Ltd. (BRC) from Vesuvius USA Corporation (Vesuvius), a U.S. importer of MCBs from the PRC.[2] Fengchi Imp. & Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City (together, Fengchi) also timely requested a review of itself.[3] On October 31, 2012, the Department published a notice of initiation of an administrative review of the CVD order on MCBs from the PRC with respect to Fengchi and BRC.[4] On December 21, 2012, Fengchi timely withdrew its request for review of itself.[5] On January 7, 2013, Vesuvius timely withdrew its request for review of BRC.[6]

Rescission

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Both parties timely submitted withdrawal requests within the 90-day period (*i.e.,* before January 29, 2013). Because we received no other requests for review of Fengchi and BRC and no other requests for review of the CVD order on MCBs from the PRC with respect to other companies subject to the order, we are rescinding this administrative review of the CVD order on MCBs from the PRC in full, consistent with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. Fengchi and BRC shall be assessed countervailing duties at rates equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2011, through December 31, 2011, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Orders

This notice also serves as a final reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: January 25, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–02213 Filed 2–1–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 77 FR 53863, 53864 (September 4, 2012).

[2] *See* Letter to the Department from Fengchi ''Magnesia Carbon Bricks from China, Case No. C–570–955: Request for Countervailing Duty Administrative Review,'' dated October 1, 2012.

[3] *See* Letter to the Department from Fengchi ''Magnesia Carbon Bricks from China, Case No. C–570–955: Request for Countervailing Duty Administrative Review,'' dated October 1, 2012.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 77 FR 65858 (October 31, 2012).

[5] *See* Letter to the Department from Fengchi ''Magnesia Carbon Bricks from China, Case No. C–570–955: Withdrawal of Request for Countervailing Duty Administrative Review'' dated December 21, 2012.

[6] *See* Letter to the Department from Vesuvius ''Magnesia Carbon Bricks from China, Case No. C–570–955: Withdrawal of Request for Countervailing Duty Administrative Review'' dated January 7, 2013.

DEPARTMENT OF COMMERCE

International Trade Administration

Trade Mission to Egypt and Kuwait

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Replacement Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. and Foreign

Commercial Service is replacing the Notice regarding the Trade Mission to Egypt and Kuwait March 10–14, 2013, published at 77 FR 71777, December 4, 2012, to cancel the Kuwait portion of the mission, and reschedule the Egypt portion to April 14 to 16, and the application deadline to March 14.

SUPPLEMENTARY INFORMATION: In June 2012 the Department of Commerce initiated recruitment for participation in the U.S. Trade Mission to Egypt and Kuwait March 10–14, 2013, published at 77 FR 33439, June 6, 2012. In 77 FR 71777, December 4, 2012, the Department of Commerce announced that the application deadline for the mission was extended until January 18, 2013. Since then, due to unforeseen circumstances, the Kuwait portion of the mission has been cancelled, and Trade Mission to Egypt will be April 14 to 16 and the application deadline March 14. Interested firms that have not already submitted an application are encouraged to apply. Applications will be accepted after the deadline only to the extent that space remains and scheduling constraints permit.

Replacement

The Trade Mission to Egypt and Kuwait is replaced to read as follows:

Business Development Mission to Trade Mission to Cairo, Egypt

April 14–16, 2013.

Mission Description

The U.S. Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Trade Mission to Cairo, Egypt to explore opportunities in the following sectors: electric power infrastructure, building products and design and construction, and safety and security.

Led by a senior executive of the Department of Commerce or other U.S. Government agency, the trade mission will include one-on-one business appointments with pre-screened potential buyers, agents, distributors and joint venture partners; meetings with national and regional government officials, chambers of commerce, and business groups; and networking receptions for companies and trade associations representing companies interested in expansion into the North African and Middle Eastern markets. Meetings will be offered with government authorities that can address questions about policies, tariff rates, incentives, grid interconnection, regulation, etc.

The mission will help participating firms and trade associations gain market insights, make industry contacts, solidify business strategies, and advance specific projects, with the goal of increasing U.S. exports to Egypt. Participating in an official U.S. industry delegation, rather than traveling to Egypt on their own, will enhance the companies' ability to secure meetings in Egypt.

Commercial Setting

Egypt is strategically located at the gateway of trade for Africa and the Middle East. It is a prime location for the transit of goods, as well as a key destination for American companies seeking to do business in the region. Egypt has experienced profound political changes over the past year. On February 11, 2011, President Hosni Mubarak's 30-year rule came to an end. In January 2012, Egypt seated its first freely and fairly elected parliament, and has held a Presidential election. In the meantime, the United States remains committed to a strong partnership with Egypt.

As the largest Arab country with a population of 90 million, Egypt is the fourth largest export market for U.S. products and services in the Middle East. The United States is Egypt's largest bilateral trading partner, and the second largest investor. In 2011, bilateral trade reached $8.2 billion. The gross domestic product (GDP) grew over five percent from 2009 to 2010. According to Business Monitor International's forecasts, Egypt's real GDP is expanding 2.1% in FY2011/12 and projected to grow 4.9% in FY2012/13 (Egypt's fiscal year is July through June). Egyptian law requires that foreign companies retain Egyptian commercial agents for public tenders, but they may work directly with private companies. Most foreign companies have found it beneficial, however, to engage a local agent for private sector transactions as well because of their familiarity of the language, law and general business practices. Based on geographical location or product basis, a firm can appoint multiple agents in Egypt to further enhance its success.

Best Sector Prospects

Electric Power Infrastructure

Egypt is one of the largest electrical energy producing countries in the Middle East. Over the next ten years, Egypt plans to expand its electricity capacity to 60,000 megawatts through a combination of traditional, renewable, and energy production to diversify energy resources and preserve the country's limited oil and gas reserves. Opportunities exist for U.S. providers of gas turbines, steam turbines, hydro and wind turbines, blades, and other equipment, as well as development and project management. Best prospects in the energy sector include circuit breakers of more than 66kv, power transformers of more than 25MVA–66kva, power transmission lines, turbine generator units with associated equipment, and vibration dampers.

The US&FCS will organize meetings for the mission delegates with the Ministry of Electricity and Energy, and the New and Renewable Energy Authority government officials who can address questions about policies, tariff rates, incentives, grid interconnection, price subsidy, and regulations.

Building Products and Design and Construction

The Government of Egypt (GOE) directed $1.9 billion to Egypt's infrastructure in 2010. With over 50 percent of the population under the age of 25 and a strong tourism market, there has been increased pressure on Egypt's roads, bridges, railroads, power stations, water and sewage, hospitals, and schools. According to the GOE, growth in the construction sector reached 4.25% in 2010 and will rise to 5.63% in 2014. It is expected to grow by a robust 4.91% year-on-year from 2010 to 2014, reaching a total value of $15.8 billion. Such growth is expected to attract investments of around $7.3 billion by 2015. Demand in the sector is on the rise mainly because of rapid demographic growth and housing shortages, particularly in the low- and middle-income segments. Construction accounts for around 8% of total employment, with a workforce of 1.2 million people in the sector.

As an active importing and exporting country with a trade volume reaching $19.5 billion in 2011, there is an ongoing need for state-of-the-art logistics centers, intermodal connecting systems, cold storage, and river transportation. Logistics centers are considered critical to the global supply chain and will affect logistics decisions ranging from shipping routes to warehouse locations.

In 2012, the Egyptian government's General Authority for Investment announced the following major plans for infrastructure development:

- The 6th of October Wastewater Treatment Plant: design, construction operation and maintenance of a new 150,000 m3/day plant, valued at $15–29 million
- Abu Rawash Wastewater Treatment Plant: upgrading of the plant, valued at $990 million

• East Port Said Port: includes a duty free zone area, road and rail networks, a power station, communication center, value-added services, valued at $1.5 billion

• Alexandria Medical City: a medical center project for which the Egyptian government seeks private investment for financing, designing, constructing, equipping, furnishing, maintenance, operating and providing non-clinical facility services for two University Hospitals and a blood bank, valued at $1.45 billion

Some projects will be awarded based on the Egyptian government's ''Public Private Partnership'' (PPP) program, a multi-faceted initiative to attract private sector investment for infrastructure projects.

Safety and Security

The safety and security industry is booming throughout Egypt as the country deals with increased security issues ranging from private citizen safety to transaction fraud. Safety and security imports to Egypt have increased 10–15% annually for the past few years and U.S. brands are well received. This is primarily a government market, dominated by the Ministry of Interior and Ministry of Defense.

As the country works to increase tourism over the next few years (a government priority post-revolution), airports and seaports will need upgraded security systems. Police and customs authorities will also have an increased need for such systems. Egypt has eight major ports and three cross-country borders that require significant security measures. In its fight against drug smuggling and counterfeit products, Egypt requires container scanning and shipment tracking devices. Egypt is also looking at container scanning upgrades and seafarer identification cards for more secure identification and synchronizing systems to coordinate security measures and responses. Accordingly, opportunities exist for U.S firms providing short-range radar systems, surveillance cameras, infrared and radiological detectors, vessel tracking MIS, biometric scanners, personnel databases, computer peripherals, and systems integration equipment. Companies that can provide proven, cutting-edge technologies will have an advantage in these export opportunities.

Mission Goals

The goal of the trade mission is to provide U.S. participants with first-hand market information, access to government decision makers as appropriate and one-on-one meetings with business contacts, including potential agents, distributors and partners, so they can position themselves to enter or expand their presence in the Egypt.

Mission Scenario

Cairo is the capital of Egypt and the largest city in Africa. The business week runs from Sunday through Thursday.

Proposed Timetable

Saturday, 13 April, Arrival in Cairo.

Sunday, 14 April, Orientation and market briefings, business luncheon with American Chamber of Commerce and U.S. Ambassador's networking reception.

Monday, 15 April, One-on-one business appointments; business lunch—General Authority For Investment and Free Zones presentation on major public-private partnership projects; group dinner.

Tuesday, 16 April, One-on-one business appointments.

End of Mission

Participation Requirements

All parties interested in participating in the Trade Mission to Egypt must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 15 U.S. companies and/or trade associations and maximum of 20 companies and/or trade associations will be selected to participate in the mission from the applicant pool. U.S. companies or trade associations already doing business with Egypt, as well as U.S. companies or trade associations seeking to enter these countries for the first time may apply.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The fee for one representative to participate in the mission is $1400 for an SME and $2100 for large firms or trade associations. The fee for each additional company or association representative (SME or large firm) is $400. Expenses for travel, lodging, most meals, interpreters, and incidentals are the responsibility of each mission participant. Participants may be able to take advantage of Embassy rates for hotel rooms.

Conditions for Participation

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content. In the case of a trade association or trade organization, the applicant must certify that, for each company to be represented by the trade association or trade organization, the products and services the represented company seeks to export are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

• Suitability of the company's (or, in the case of a trade association or trade organization, represented companies') products or services to the targeted markets

• Applicant's (or, in the case of a trade association or trade organization, represented companies') potential for business in the target markets, including likelihood of exports resulting from the mission

• Consistency of the applicant's goals and objectives with the stated scope of the mission

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including posting Export.gov—and other Internet Web sites; publication in trade publications and association newsletters; direct outreach to the Department's clients; posting in the **Federal Register**; and

announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin January 28, 2013 and conclude no later than March 14, 2013. The U.S. Department of Commerce will review applications and make selection decisions on a rolling basis until the maximum of twenty participants is reached. We will inform all applicants of selection decisions as soon as possible after the applications are reviewed. Applications received after the March 14 deadline will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT:

U.S. Commercial Service Cairo, Egypt
Dennis Simmons, Deputy Senior Commercial Officer
U.S. Commercial Service
Embassy of the United States of America
Email: Dennis.Simmons@trade.gov
Tel: (202) 2797–2610

U.S. Commercial Service Washington, DC
Anne Novak
U.S. Commercial Service
Washington, DC
Tel: (202) 482–8178
Email: Anne.Novak@trade.gov

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2013–02262 Filed 2–1–13; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC477

Marine Mammals; File No. 17754

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Sea World, Inc., 9205 South Park Circle, Suite 400, Orlando, FL 32819, has applied in due form for a permit to import one female, captive-born Pacific white-sided dolphin (*Lagenorhynchus obliquidens*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before March 6, 2013.

ADDRESSES: The application 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

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. 17754 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kristy Beard, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests authorization to import one female captive-born Pacific white-sided dolphin from Kamogawa SeaWorld 1404–18 Higashi-cho, Kamogawa, Chiba, Japan to Sea World San Antonio. The applicant requests this import for the purpose of public display. The receiving facility, Sea World San Antonio, 10500 SeaWorld Drive, San Antonio, TX 78251, is: (1) Open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the AZA and the Alliance for Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number 74–C–0180, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. 2131—59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

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, 2013.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–02235 Filed 2–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC476

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Receipt of two permit applications and one permit modification request for scientific research and enhancement.

SUMMARY: Notice is hereby given that NMFS has received two scientific research and enhancement permit applications and one permit modification request relating to anadromous species listed under the Endangered Species Act (ESA). The proposed research activities are intended to increase knowledge of the species and to help guide management and conservation efforts. The applications and related documents may be viewed online at: *https://apps.nmfs.*

noaa.gov/preview/preview_open_for_comment.cfm. These documents are also available upon written request or by appointment by contacting NMFS by phone (916) 930–3706 or fax (916) 930 3629.

DATES: Written comments on the permit applications or modification request must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on March 6, 2013.

ADDRESSES: Written comments on the applications or modification request should be submitted to the Protected Resources Division, NMFS, 650 Capitol Mall, Room 5–100, Sacramento, CA 95814. Comments may also be submitted via fax to (916) 930–3629 or by email to *FRNpermits.SR@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Amanda Cranford, Sacramento, CA (ph.: 916–930–3706, email.: *Amanda.Cranford@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

This notice is relevant to federally threatened California Central Valley steelhead (*Oncorhynchus mykiss*), threatened Central Valley spring-run Chinook salmon (*O. tshawytscha*), endangered Sacramento River winter-run Chinook salmon (*O. tshawytscha*), and the threatened southern distinct population segment of North American (SDPS) green sturgeon (*Acipenser medirostris*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA of 1973 (16 U.S.C. 1531–1543) and regulations governing listed fish and wildlife permits (50 CFR parts 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on the applications or permit modification request listed in this notice should set out the specific reasons why a hearing on the application(s) would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 17299

The NMFS Southwest Fisheries Science Center, Fisheries Ecology Division (SWFSC) is requesting a 5-year scientific research and enhancement permit to take adult, smolt and juvenile CCV steelhead, SR winter-run Chinook salmon, CV spring-run Chinook salmon, and adult and juvenile SDPS green sturgeon associated with research activities in the Central Valley, California. Incidental mortality of ESA-listed species is not expected to exceed two percent of the total take for Permit 17299. The overall goal of this project is to provide critical information in support of conservation and management of California's salmon stocks. The SWFSC will conduct comparative studies on salmonid ecology across all Central Valley habitats (streams, rivers and Delta) to increase our knowledge of California's Chinook salmon and steelhead life histories.

The studies proposed for Permit 17299 will follow three directions: (1) Telemetry studies to assess river habitat use, behavior, and survival, (2) predator impacts on salmon, and (3) physiological measurements of aerobic scope across stocks. The results of these studies will be integrated into life-cycle modeling efforts at the SWFSC and provide guidance to NMFS, Southwest Region and other Central Valley agencies for their resource management efforts.

In situations where the SWFSC are unable to rely on collaborators to capture fish through rotary screw trapping, collection methods will include fyke nets, backpack electrofishing, beach seining, tangle netting, DIDSON observations, and hook and line. Handling will typically involve sedation of juveniles (MS–222), measurements, tissue sampling (fin clips and scales from most, stomach lavage [subset] and tagging [PIT tags, acoustic tags]) followed by release of live fish. Another group of hatchery produced salmonids will be tested in the laboratory to measure aerobic scope under a range of temperature and flow combinations. A small subset of those hatchery produced fish will be sacrificed to collect otoliths for age and growth measurements, organ tissue for isotope analysis, biochemical and genomic expression assays, and tag effects/retention studies.

Permit 17777

David Vogel, Senior Scientist with Natural Resource Scientists, Inc. (NRSI) is requesting a 2-year scientific research and enhancement permit to take entrained juvenile CCV steelhead, SR winter-run Chinook salmon, CV spring-run Chinook salmon, and SDPS green sturgeon associated with research activities at the Sycamore diversion site on the middle Sacramento River, Colusa County, California.

This research is part of an ongoing effort to develop criteria to prioritize fish screening projects on the Sacramento River and experiment with devices to reduce fish entrainment into unscreened diversions. The site was selected by state and federal agencies. Sampling will involve the use of fyke nets positioned at the diversion outfall in the irrigation canal. The diversion has been screened with two retractable screens. The UC-Davis Hydraulics Laboratory has designed an alternative device to reduce fish entrainment for placement over the two riverine intakes in lieu of the two fish screens. Fish sampling will occur every day with the behavioral devices in place and removed on alternating days throughout the irrigation season. The effectiveness of the behavioral device will be determined by comparing the numbers of fish entrained each day with the devices in place and removed.

Fish captured on the outfall side of the pumped diversions are not expected to be alive or salvageable since fish will be mortally injured by the pumps, lethally stressed in pressurized pipes and warm water, or otherwise lost to the water distribution systems. Dead or moribund fish will be identified to species, enumerated, measured, and the carcasses put back into the canals at the sampling site. To the extent practicable, any captured live ESA-listed species will be immediately returned to the river. This study will also incorporate an ongoing process to correlate fish entrainment with physical, hydraulic, and habitat variables at diversion sites. Results from this research should assist in providing the technical basis to determine the effectiveness of the behavioral devices, as well as developing criteria for ranking and prioritizing diversions for future screening opportunities.

Modification Request Received

Permit 16543–M1

Permit 16543 was issued to the California Department of Water Resources (CDWR) on October 2, 2012 for take of adult CCV steelhead, SR winter-run Chinook salmon, CV spring-run Chinook salmon, and adult, subadult, and juvenile SDPS green sturgeon associated with research

activities in the Sacramento-San Joaquin Delta, California.

This project examines predation by introduced fishes and native resident fishes on migrating native fishes across a variety of habitats and migration corridors in the northern Sacramento-San Joaquin Delta. Results provide information on spatial and environmental patterns of predation; critical information for guiding future restoration projects on conditions likely to support or discourage higher predation rates on endangered and native fishes. Sampling is conducted April, June and December in the Sacramento River above Rio Vista, Georgiana, Steamboat, Miner, and Cache sloughs, and the Sacramento Deep Water Ship Channel. Predators are sampled using trammel nets, with the goal of genetically analyzing gut contents for the DNA of various prey items. While listed species are not the target of the sampling program, incidental take may occur and will provide valuable information on abundance, habitat use, and migration timing.

CDWR is requesting a modification of Permit 16543. The proposed changes include; an additional monitoring site at Liberty Island in the Sacramento-San Joaquin Delta and an increase in juvenile, sub-adult, and adult SDPS green sturgeon take across all locations. Incidental mortality estimates will remain at zero.

The monitoring carried out under Permit 16543 represents the initial field effort for a brand new project. The take estimates for SDPS green sturgeon for Permit 16543 was purely an estimate based on the expectation that SDPS green sturgeon densities are very low in the region. However, preliminary monitoring attempts by CDWR were met with higher than anticipated catches of SDPS green sturgeon. Given the paucity of information on the location and behavior of SDPS green sturgeon in the Delta, continued sampling will provide new data on the movements and locations of SDPS green sturgeon and further assist NMFS and other agencies in their management of this species.

Dated: January 29, 2013.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–02305 Filed 2–1–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC475

Council Coordination Committee Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: NMFS will host a meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council chairs, vice chairs, and executive directors in February 2013. The intent of this meeting is to discuss issues of relevance to the Councils, including FY 2013 budget allocations and budget planning for FY 2014 and beyond, National Standard One update, fisheries allocation, Managing Our Nations Fisheries III Conference, electronic monitoring of fisheries, and other topics related to implementation of the Magnuson-Stevens Fishery Conservation and Management Act (MSA).

DATES: The meeting will begin at 9 a.m. on Wednesday, February 20, 2013, recess at 5:30 p.m. or when business is complete; and reconvene at 9 a.m. on Thursday, February 21, 2013, and adjourn by 5 p.m. or when business is complete.

ADDRESSES: The meeting will be held at the Sheraton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20001, telephone 301–589–0800, fax 301–589–4791.

FOR FURTHER INFORMATION CONTACT: William D. Chappell: Telephone 301–427–8505 or email at *William.Chappell@noaa.gov;* or Tara Scott: Telephone 301–427–8505 or email at *Tara.Scott@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) of 2006 established the Council Coordination Committee (CCC) by amending Section 302 (16 U.S.C. 1852) of the MSA. The committee consists of the chairs, vice chairs, and executive directors of each of the eight Regional Fishery Management Councils authorized by the MSA or other Council members or staff. NMFS will host this meeting and provide reports to the CCC for its information and discussion. All sessions are open to the public.

Proposed Agenda

Wednesday, February 20, 2013

9 a.m.—Morning Session Begins

9 a.m.–9:20—Welcome and introductions

9:20–9:30—Report on Kona meeting actions and issues

9:30–10:30—Council reports on status of implementing MSA provisions and other current activities of interest (10 min/Council)

- Top three priorities
- New species status designations, rebuilding plans, or management approaches
- Problems/concerns/other issues

10:30–10:45—Break

10:45–11:15—Council reports (continued)

11:15–12:15—Management and Budget Update

- FY2012: Status, Council funding
- FY2013: Update
- Longer term discussion
- National Appeals Office

12:15—Lunch

1:45—Afternoon Session Begins

1:45–2:30—Councils/Marine Fisheries Advisory Committee Endangered Species Act (ESA) Working Group update

2:30–3:30—MSA—National Standard One update

3:30–3:45—Break

3:45–4:30—NOAA/NOAA Fisheries Policy on National Environmental Protection Act (NEPA)

4:30–5:30—Fisheries allocation

5:30—Adjourn for the day

Thursday, February 21, 2013

9 a.m.—Morning Session Begins

9 a.m.–9:45—Update on Inspector General Report on MSA Rulemaking

9:45–10:15—National science programs review

10:15–10:30—Break

10:30–11:30—Electronic monitoring of fisheries

11:30–12 p.m.—Fisheries litigation update

12 p.m.—Lunch

1:30—Afternoon Session Begins

1:30–2:30—Council records retention, Freedom of Information Act (FOIA), and meeting guidance

2:30–3:15—MSA Reauthorization

3:15–3:30—Break

3:30–4:15—Managing Our Nation's Fisheries (MONF) III Conference

- Conference structure review
- CCC consideration of (MONF) III results
- Questions

4:15–4:30—Recognition of service to fisheries
- Steve Bortone
- Paul Howard
- Gloria Thompson

4:30–5 p.m.—Other Business, updates, and next annual CCC Meeting
5 p.m.—Adjourn

The order in which the agenda items are addressed may change. The CCC will meet as late as necessary to complete scheduled business.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tara Scott at 301–427–8505 at least five working days prior to the meeting.

Dated: January 30, 2013.

Emily H. Menashes,

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

[FR Doc. 2013–02373 Filed 2–1–13; 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 on spectrum management policy matters.

DATES: The meeting will be held on February 21, 2013 from 9:00 a.m.to 12:00 p.m., Pacific Standard Time.

ADDRESSES: The meeting will be held at the Stanford Institute for Economic Policy Research (SIEPR), Room 130, 366 Galvez Street, Stanford, CA 94305. 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 *spectrumadvisory@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//page/2011/csmac-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 from designated committee members on the recommendations of working groups (WGs) which were established to facilitate collaboration efforts between industry and government stakeholders to develop proposed relocation, transition, and sharing arrangements and plans for the 1695—1710 MHz and the 1755—1850 MHz bands:

1. WG1 1695–1710 MHz Weather Satellite Receive Earth Stations,
2. WG2 1755–1850 MHz Law Enforcement Surveillance and other short-range fixed,
3. WG3 1755–1850 MHz Satellite Control Links and Electronic Warfare,
4. WG4 1755–1850 MHz Fixed Point-to-Point and Tactical Radio Relay, and
5. WG5 1755–1850 MHz Airborne Operations.

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 advisory committee regarding agenda items. During the portion of the meeting when the public may make an oral presentation, speakers may address only matters the subject of which are on the agenda. (See policy: *http://www.ntia.doc.gov/category/CSMAC.*) There also will be an opportunity for public comment at the meeting.

Time and Date: The meeting will be held on February 21, 2013, from 9:00 a.m. to 12:00 p.m., Pacific Standard Time. The times and the agenda topics are subject to change. The meeting may be webcast or made available via audio link. 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 Stanford Institute for Economic Policy Research (SIEPR) Room 130, 366 Galvez Street, Stanford, CA 94305. 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 ten (10) 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 this meeting must send them to NTIA's Washington, DC office at the above-listed address and comments must be received by close of business on February 15, 2013, to provide sufficient time for review. Comments received after February 15, 2013, 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 HTML, ASCII, Word, or WordPerfect format (please specify version). CDs should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments may be submitted electronically to *spectrumadvisory@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 29, 2013.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2013–02246 Filed 2–1–13; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Cooperation Treaty

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before April 5, 2013.

ADDRESSES: You may submit comments by any of the following methods:

- *Email: InformationCollection@uspto.gov.* Include ''0651–0021 comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–272–7728; or by email to *Raul.Tamayo@uspto.gov.* Additional information about this collection is also available at *http://www.reginfo.gov under ''Information Collection Review.''*

SUPPLEMENTARY INFORMATION

I. Abstract

This collection of information is required by the provisions of the Patent Cooperation Treaty (PCT), which became operational in June 1978 and is administered by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) in Geneva, Switzerland. The provisions of the PCT have been implemented by the United States in Part IV of Title 35 of the U.S. Code (Chapters 35–37) and Subpart C of Title 37 of the Code of Federal Regulations (37 CFR 1.401–1.499). The purpose of the PCT is to provide a standardized filing format and procedure that allows an applicant to seek protection for an invention in several countries by filing one international application in one location, in one language, and paying one initial set of fees.

The information in this collection is used by the public to submit a patent application under the PCT and by the United States Patent and Trademark Office (USPTO) to fulfill its obligation to process, search, and examine the application as directed by the treaty. The USPTO acts as the United States Receiving Office (RO/US) for international applications filed by residents and nationals of the United States. These applicants send most of their correspondence directly to the USPTO, but they may also file certain documents directly with the IB. The USPTO serves as an International Searching Authority (ISA) to perform searches and issues an international search report (ISR) and a written opinion on international applications. The USPTO also issues an international preliminary report on patentability (IPRP Chapter II) when acting as an International Preliminary Examining Authority (IPEA).

The USPTO is updating this information collection to reflect the current practice and fee structure for PCT applications entering the national stage at the USPTO. The USPTO is removing two items, extensions of time and priority documents, because the information is no longer being collected.

II. Method of Collection

By mail, hand delivery, or electronically to the USPTO.

III. Data

OMB Number: 0651–0021.

Form Number(s): PCT/RO/101, PCT/RO/134, PCT/IB/372, PCT/IPEA/401, PTO–1382, PTO–1390, PTO/SB/61/PCT, PTO/SB/64/PCT.

Type of Review: Revision of a currently approved collection.

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

Estimated Number of Respondents: 353,669 responses per year. The USPTO estimates that approximately 16,275 of these responses will be from small entities.

Estimated Time per Response: The USPTO estimates that it will take the public from 15 minutes (0.25 hours) to 8 hours to gather the necessary information, prepare the appropriate form or documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours: 348,686 hours.

Estimated Total Annual Respondent Cost Burden: $129,362,506. The USPTO expects that the information in this collection will be prepared by attorneys at an estimated rate of $371 per hour. Therefore, the USPTO estimates that the respondent cost burden for this collection will be approximately $129,362,506 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Request and Fee Calculation Sheet (Annex and Notes) (PCT/RO/101)	1 hour	48,285	48,285
Description/claims/drawings/abstracts	3 hours	48,285	144,855
Application Data Sheet (35 U.S.C. 371 applications)	23 minutes	51,539	19,585
Transmittal Letter to the United States Receiving Office (RO/US) (PTO–1382)	15 minutes	43,457	10,864
Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) Concerning a Submission Under 35 U.S.C. 371 (PTO–1390)	15 minutes	66,462	16,616
PCT/Model of Power of Attorney	15 minutes	4,829	1,207
PCT/Model of General Power of Attorney	15 minutes	483	121
Indications Relating to a Deposited Microorganism (PCT/RO/134)	15 minutes	1	0
Response to invitation to correct defects	2 hours	13,286	26,572
Request for rectification of obvious errors	30 minutes	713	357
Demand and Fee Calculation Sheet (Annex and Notes) (PCT/IPEA/401)	1 hour	1,459	1,459
Amendments (Article 34)	1 hour	1,459	1,459
Fee Authorization	15 minutes	43,457	10,864
Requests to transmit copies of international application	15 minutes	700	175
Withdrawal of international application (PCT/IB/372)	15 minutes	905	226
Translations	2 hours	21,180	42,360

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unavoidably Under 37 CFR 1.137(a) (PTO/SB/61/PCT)	8 hours	27	216
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b) (PTO/SB/64/PCT)	1 hour	1,354	1,354
Petitions to the Commissioner for international applications	4 hours	164	656
Petitions to the Commissioner in national stage examination	4 hours	4,877	19,508
Acceptance of an unintentionally delayed claim for priority (37 CFR 1.78(a)(3))	2 hours	294	588
Request for the restoration of the right of priority	3 hours	453	1,359
Totals		353,669	348,686

Estimated Total Annual Non-hour Respondent Cost Burden: $309,719,541. This collection has annual (non-hour) costs in the form of translations, drawings, fees, and postage costs.

Under the terms of the PCT, the USPTO may require documents submitted for a PCT application to be translated into English when necessary. This requirement may carry additional costs for the applicant to contract for a translation of the documents in question. The USPTO believes that the average length of the documents to be translated will be 10 pages and that it will cost approximately $150 per page for the translation, for an average translation cost of $1,500 per document. The USPTO estimates that it receives approximately 21,180 English translations annually, for a total cost of $31,770,000 per year for English translations of non-English language documents for PCT applications.

Applicants may also incur costs for drawings that are submitted as part of PCT applications. Some applicants may produce their own drawings, while others may contract out the work to various patent illustration firms. For the purpose of estimating burden for this collection, the USPTO will consider all applicants to have their drawings prepared by these firms. The USPTO estimates that drawings may cost an average of $58 per sheet to produce and that on average 11 sheets of drawings are submitted per application, for an average total cost of $638 to produce a set of drawings for an application. The USPTO expects that approximately 91% of the estimated 48,285 applications per year will have drawings filed with them, for a total of 43,939 sets of drawings with a total cost of $28,033,082 per year.

The estimated filing fees for this collection are calculated in the accompanying table. The fees listed for Requests and Demands represent an estimate of the average fees for filing the appropriate items associated with those requirements for an international application. The basic national fee under 37 CFR 1.492(a) for an international application entering the national stage is fixed at $390 ($195 for small entities). The search and examination fees under 37 CFR 1.492(b)–(c) vary depending on the outcome of the written opinion prepared by the ISA/US, the international preliminary examination report prepared by the IPEA/US, and other related factors as noted in the accompanying table. The basic national fee, search fee, examination fee as well as the fees for petitions to revive unavoidably or unintentionally abandoned international applications are discounted for small entities.

Item	Estimated annual responses	Fee amount	Estimated annual filing costs
Request and Fee Calculation Sheet (Annex and Notes) (PCT/RO/101)	48,285	$3,574.00	$172,570,590.00
Description/claims/drawings/abstracts	48,285	0.00	0.00
Application Data Sheet (35 U.S.C. 371 applications)	51,539	0.00	0.00
Transmittal Letter to the United States Receiving Office (RO/US) (PTO–1382)	43,457	0.00	0.00
Transmittal Letter to the United States Designated/Elected Office (DO/EO/US) (PTO–1390)—U.S. was the ISA or IPEA and all claims satisfy PCT Article 33(1)–(4); includes $390 basic fee, $0 search fee, and $0 examination fee	60	390.00	23,400.00
Transmittal Letter to the DO/EO/US (PTO–1390)—U.S. was the ISA or IPEA and all claims satisfy PCT Article 33(1)–(4); includes $195 basic fee, $0 search fee, and $0 examination fee for small entity	47	195.00	9,165.00
Transmittal Letter to the DO/EO/US (PTO–1390)—U.S. was the ISA; includes $390 basic fee, $120 search fee, and $250 examination fee	1,852	760.00	1,407,520.00
Transmittal Letter to the DO/EO/US (PTO–1390)—U.S. was the ISA; includes $195 basic fee, $60 search fee, and $125 examination fee for small entity	2,155	380.00	818,900.00
Transmittal Letter to the DO/EO/US (PTO–1390)—International search report prepared by other than the U.S. and provided to the USPTO or previously communicated to the U.S. by the IB; includes $390 basic fee, $500 search fee, and $250 examination fee	47,907	1,140.00	54,613,980.00
Transmittal Letter to the DO/EO/US (PTO–1390)—International search report prepared by other than the U.S. and provided to the USPTO or previously communicated to the U.S. by the IB; includes $195 basic fee, $250 search fee, and $125 examination fee for small entity	12,876	570.00	7,339,320.00
Transmittal Letter to the DO/EO/US (PTO–1390)—All other situations; includes $390 basic fee, $630 search fee, and $250 examination fee	996	1,270.00	1,264,920.00
Transmittal Letter to the DO/EO/US (PTO–1390)—All other situations; includes $195 basic fee, $315 search fee, and $125 examination fee for small entity	569	635.00	361,315.00
PCT/Model of Power of Attorney	4,829	0.00	0.00
PCT/Model of General Power of Attorney	483	0.00	0.00
Indications Relating to a Deposited Microorganism (PCT/RO/134)	1	0.00	0.00
Response to invitation to correct defects	13,286	0.00	0.00

Item	Estimated annual responses	Fee amount	Estimated annual filing costs
Request for rectification of obvious errors	713	0.00	0.00
Demand and Fee Calculation Sheet (Annex and Notes) (PCT/IPEA/401)	1,459	840.00	1,225,560.00
Amendments (Article 34)	1,459	0.00	0.00
Fee Authorization	43,457	0.00	0.00
Requests to transmit copies of international application	700	0.00	0.00
Withdrawal of international application (PCT/IB/372)	905	0.00	0.00
Translations	21,180	0.00	0.00
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unavoidably Under 37 CFR 1.137(a) (PTO/SB/61/PCT)	13	630.00	8,190.00
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unavoidably Under 37 CFR 1.137(a), small entity (PTO/SB/61/PCT)	14	315.00	4,410.00
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b) (PTO/SB/64/PCT)	740	1,890.00	1,398,600.00
Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b), small entity (PTO/SB/64/PCT)	614	945.00	580,230.00
Petitions to the Commissioner for international applications	164	130.00	21,320.00
Petitions to the Commissioner in national stage examination	4,877	200.00	975,400.00
Acceptance of an unintentionally delayed claim for priority (37 CFR 1.78(a)(3))	294	1,410.00	414,540.00
Request for the restoration of the right of priority	453	1,410.00	638,730.00
Totals	353,669	.....	243,676,090.00

In addition to the filing fees listed in the table, applicants may also incur fees for late filings (for filing after thirty months from the priority date), multiple dependent claims, and lengthy applications. The fee for the late filing of a search fee, examination fee, or oath or declaration under 37 CFR 1.492(h) is $130 for large entities and $65 for small entities. The USPTO estimates that it will receive approximately 22,677 of these late payment fees for large entities and 9,331 for small entities per year, for a total of $3,554,525. The fee for the late filing of an English translation of an international application under 37 CFR 1.492(i) is $130. The USPTO estimates that it will receive approximately 2,118 of these late translation fees per year, for a total of $275,340. The fee for applications containing a multiple dependent claim is $460 for large entities and $230 for small entities. The USPTO estimates that it will receive approximately 2,946 of these multiple dependent claim fees for large entities and 1,127 for small entities per year, for a total of $1,614,370. Applications with specifications and drawings that exceed 100 pages may be subject to an application size fee of $320 (or $160 for small entities) for each additional 50 pages or fraction thereof. The USPTO estimates that it will receive approximately 2,047 of the $320 size fees from large entities and approximately 831 of the $160 size fees from small entities per year, for a total of $788,000. The total estimated fees for this collection, including filing fees and other additional fees, will be approximately $249,908,325 per year.

Customers may incur postage costs when submitting the information in this collection to the USPTO by mail. The USPTO estimates that the average first-class postage cost for a mailed submission will be 46 cents and that up to 17,683 submissions (approximately 5% of responses) will be mailed to the USPTO per year, for a total estimated postage cost of $8,134 per year.

The total annual (non-hour) respondent cost burden for this collection associated with translations, drawings, fees, and postage is estimated to be $309,719,541 per year.

IV. Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

The USPTO is soliciting public comments to:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: January 29, 2013.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2013–02263 Filed 2–1–13; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2013–0005]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration Card Effectiveness Survey

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the proposed collection of information for a report on the effectiveness of product registration cards in facilitating product recalls.

DATES: Submit written or electronic comments on the collection of information by April 5, 2013.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2013–0005, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (email), except through *www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in writing to the Office of the Secretary.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert H. Squibb, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7815, or by email to: *rsquibb@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the proposed collection to OMB for approval. To comply with this requirement, the CPSC is publishing notice of the proposed collection of information set forth in this document.

Section 104(d) of Consumer Product Safety Improvement Act of 2008 (CPSIA) requires durable infant or toddler product manufacturers to provide product registration cards with each product sold. The Commission established such requirements for consumer registration of durable infant or toddler products under 16 CFR part 1130. Section 104(d)(4) also requires the Commission to prepare a report of the effectiveness of product registration cards in facilitating product recalls, which is to be presented to the appropriate congressional committees. 15 U.S.C. 2056a(d)(4). In order to prepare the report to Congress, CPSC staff will conduct a survey that will be sent out to infant or toddler product manufacturers who have conducted recalls since June 28, 2010, the date when the final rule concerning product registration cards went into effect. The survey seeks information about the recall, how many consumers registered their products, and how many consumers the firm attempted to contact about the recall. A copy of the draft survey may be viewed on: *http://www.regulations.gov* under Docket No. CPSC–2013–0005, Supporting and Related Material. The report will aggregate the information received from the manufacturers to assess the effectiveness of product registration cards in facilitating product recalls.

The average estimated time required for each manufacturer to complete the survey is 1 hour. The survey will be distributed to a maximum of 50 manufacturers, creating a maximum estimated burden across manufacturers of 50 hours. CPSC staff estimates that the hourly compensation for the time required to complete the survey is $27.55 (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' March 2012, Table 9, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*). Therefore, the estimated total combined annual cost for all surveyed manufacturers associated with the proposed requirements is $1,377.50 ($27.55 per hour × 50 hours = $1,377.50).

The estimated cost of the information collection to the Federal government is approximately $2,068, which includes 25 CPSC staff hours to examine and evaluate the information. This is based on a GS–14 level salaried employee. The average hourly wage rate for a mid-level salaried GS–14 employee in the Washington, DC metropolitan area (effective as of January 2012) is $57.33 (GS–14, step 5). Based on wages that represent 69.3 percent of total compensation with an additional 30.7 percent for benefits, the average hourly compensation for a mid-level salaried GS–14 employee would be approximately $82.72. (U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' June 2012, Table 1, percentage of wages and salaries for all civilian management, professional, and related employees: *http://www.bls.gov/ncs/*). Assuming that approximately 25 hours will be required, this results in an estimated annual cost of $2,068 to the federal government.

B. Requests for Comments

The Commission invites comments on the proposed collection of information including:

- Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic, or other technological collection techniques, or other forms of information technology.

Dated: January 30, 2013.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2013–02350 Filed 2–1–13; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Forbearance Request for National

Service Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Bruce Kellogg, at (202) 606–6954 or email to *bkellogg@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on October 25, 2012. This comment period ended December 23, 2012. No public comments were received from this Notice.

Description: CNCS is seeking approval of the Forbearance Request for National Service Form, which is used by AmeriCorps members to request forbearances based on their AmeriCorps service, by schools and lenders to verify their eligibility, and by both parties to satisfy certain legal requirements.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Forbearance Request for National Service Form.

OMB Number: 3045–0030.

Agency Number: None.

Affected Public: AmeriCorps members, school staff, and lenders.

Total Respondents: 3800.

Frequency: One per loan per term of service.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 633 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 23, 2013.

Maggie Taylor Coates,

Chief, Trust Operations.

[FR Doc. 2013–02316 Filed 2–1–13; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled National Service Trust Voucher & Payment Request Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Bruce Kellogg, at (202) 606–6954 or email to *bkellogg@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on October 25, 2012. This comment period ended December 23, 2012. No public comments were received from this Notice.

Description: CNCS is seeking approval of the National Service Trust Voucher & Payment Request Form, which is used by AmeriCorps members to request Segal Education Award payments, by schools and lenders to verify their eligibility, and by both parties to satisfy certain legal requirements.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Service Trust Voucher & Payment Request Form.

OMB Number: 3045–0014.

Agency Number: None.

Affected Public: AmeriCorps members, school staff, and lenders.

Total Respondents: 142,000.

Frequency: One or more per member award.

Average Time per Response: 5 minutes.

Estimated Total Burden Hours: 11,833 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 23, 2013.

Maggie Taylor Coates,

Chief, Trust Operations.

[FR Doc. 2013–02318 Filed 2–1–13; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled National Service Trust Interest Payment Form for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Bruce Kellogg, at (202) 606–6954 or email to *bkellogg@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on October 25, 2012. This comment period ended December 23, 2012. No public comments were received from this Notice.

Description: CNCS is seeking approval of the National Service Trust Interest Payment Form, which is used by AmeriCorps members to request interest payments on qualified loans based on their AmeriCorps service, by schools and lenders to verify their eligibility, and by both parties to satisfy certain legal requirements.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Service Trust Interest Payment Form.

OMB Number: 3045–0053.

Agency Number: None.

Affected Public: AmeriCorps members, school staff, and lenders.

Total Respondents: 14,000.

Frequency: One per loan per term of service.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 2,333 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 25, 2013.

Maggie Taylor Coates,

Chief, Trust Operations.

[FR Doc. 2013–02314 Filed 2–1–13; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled NCCC Project Sponsor Application Title for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Colleen Clay (202) 606.7561 or email to *cclay@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on Tuesday, July 17, 2012. This comment period ended 8–15–12. No public comments were received from this Notice.

Description: CNCS is seeking approval of NCCC Project Sponsor Application, which is used by eligible non-profit and

governmental organizations to apply to host an NCCC team of 8–12 AmeriCorps NCCC members for a period of up to eight weeks to perform direct service to address local community needs.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: NCCC Project Sponsor Application.

OMB Number: 3045–0010.

Agency Number: 3045.

Affected Public: Non-profits, community organizations.

Total Respondents: 1200 annually.

Frequency: Rolling application process.

Average Time per Response: 7.5 hours

Estimated Total Burden Hours: 9000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 25, 2013.

Kate Raftery,

Director, National Civilian Community Corps.

[FR Doc. 2013–02311 Filed 2–1–13; 8:45 am]

BILLING CODE 6050–$$–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled the President's Volunteer Service Awards (PVSA), parts A, B, C, D, E and F for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, David Premo, at (202) 606–6717 or email to *dpremo@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on

October 19, 2012. This comment period ended December 21, 2012. One public comment was received. The commenter noticed the omission of clarifying information on one of the forms, which has been incorporated in the final forms. The commenter also suggested changing the personal identifying information we plan to collect. We responded that this information is necessary to confirm eligibility and identity.

Description: CNCS is seeking approval of the President's Volunteer Service Awards (PVSA), parts A, B, C, D, E and F, which is used by certifying entities to verify, certify and order the President's Volunteer Service Awards.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: President's Volunteer Service Awards (PVSA), forms A, B, C, D, E and F.

OMB Number: 3045–0086.

Agency Number: None.

Affected Public: General public.

Total Respondents: 200,000.

Frequency: On occasion.

Average Time per Response: Averages 20 minutes.

Estimated Total Burden Hours: 66,666.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: January 24, 2013.

Rhonda Taylor,

Senior Advisor for Public Engagement.

[FR Doc. 2013–02313 Filed 2–1–13; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Submission of Data by State Educational Agencies; Submission Dates for State Revenue and Expenditure Reports for Fiscal Year (FY) 2012, Revisions to Those Reports, and Revisions to Prior Fiscal Year Reports

AGENCY: National Center for Education Statistics, Institute of Education Sciences, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces dates for the submission by state educational agencies (SEAs) of expenditure and revenue data and average daily attendance statistics on ED Form 2447 (the National Public Education Financial Survey (NPEFS)) for FY 2012. The Secretary sets these dates to ensure that data are available to serve as the basis for timely distribution of Federal funds. The U.S. Census Bureau is the data collection agent for the National Center for Education Statistics (NCES). The data will be published by NCES and will be used by the Secretary in the calculation of allocations for FY 2014 appropriated funds.

DATES: SEAs can begin submitting data on Wednesday, January 30, 2013. The deadline for the final submission of all data, including any revisions to previously submitted data for FY 2011 and FY 2012, is Thursday, August 15, 2013. Any resubmissions of FY 2011 or FY 2012 data by SEAs in response to requests for clarification, reconciliation, or other inquiries by NCES or the Census Bureau must be completed by Tuesday, September 3, 2013. All outstanding data issues must be reconciled or resolved by the SEAs, NCES, and the Census Bureau prior to September 3, 2013.

ADDRESSES AND SUBMISSION INFORMATION: SEAs may mail ED Form 2447 to: U.S. Census Bureau, ATTENTION: Governments Division, Washington, DC 20233–6800.

SEAs may submit data online using the interactive survey form (NPEFS Web form) at: *http://surveys.nces.ed.gov/ccdnpefs*. The NPEFS Web form includes a digital confirmation page where a personal identification number (PIN) may be entered. A successful entry of the PIN serves as a signature by the authorizing official. A certification form also may be printed from the Web site, signed by the authorizing official, and mailed to the Governments Division of the Census Bureau at the address listed under **ADDRESSES AND SUBMISSION INFORMATION**. This signed form must be mailed within five business days of submission of the NPEFS Web form.

Alternatively, SEAs may hand-deliver submissions by August 15, 2013, at 4:00 p.m. (Eastern Time) to: Governments Division, U.S. Census Bureau, 4600 Silver Hill Road, Suitland, MD 20746.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Q. Cornman, NPEFS Project Director, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Telephone: (202) 502–7338 or by email: *stephen.cornman@ed.gov;* or Mr. Jumaane Young, NPEFS Project Manager; or an NPEFS team member (Census Bureau). Telephone: 1–800–437–4196 or (301) 763–1571 or email: *Govs.npefs.list@census.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under the authority of section 153(a)(1)(I) of the Education Sciences Reform Act of 2002, 20 U.S.C. 9543, which authorizes NCES to gather data on the financing of education, NCES collects data annually from SEAs through ED Form 2447. The report from SEAs includes attendance, revenue, and expenditure data from which NCES determines a State's ''average per-pupil expenditure'' (SPPE) for elementary and secondary education, as defined in section 9101(2) of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7801(2)).

In addition to using the SPPE data as general information on the financing of elementary and secondary education, the Secretary uses these data directly in calculating allocations for certain formula grant programs, including, but not limited to, Title I, Part A of the ESEA, Impact Aid, and Indian Education programs. Other programs, such as the Education for Homeless Children and Youth program under Title VII of the McKinney-Vento Homeless Assistance Act and the Teacher Quality State Grants program (Title II, Part A of the ESEA), make use of SPPE data indirectly because their formulas are based, in whole or in part, on State Title I, Part A allocations.

In January 2013, the Census Bureau, acting as the data collection agent for NCES, will email to SEAs ED Form 2447 with instructions and request that SEAs commence submitting FY 2012 data to the Census Bureau on Wednesday, January 30, 2013. SEAs are urged to submit accurate and complete data by Friday, March 15, 2013, to facilitate timely processing. Submissions by SEAs to the Census Bureau will be analyzed for accuracy and returned to each SEA for verification. SEAs must submit all data, including any revisions to FY 2011 and FY 2012 data, to the Census Bureau no later than Thursday, August 15, 2013. Any resubmissions of FY 2011 or FY 2012 data by SEAs in response to requests for clarification, reconciliation, or other inquiries by NCES or the Census Bureau must be completed by Tuesday, September 3, 2013. Between August 15, 2013, and September 3, 2013, SEAs may also, on their own initiative, resubmit data to resolve issues not addressed in their final submission of NPEFS data by August 15, 2013. All outstanding data issues must be reconciled or resolved by the SEAs, NCES, and the Census Bureau prior to September 3, 2013.

In order to facilitate timely submission of data, the Census Bureau will send reminder notices to SEAs in June and July of 2013.

Having accurate and consistent information on time is critical to an efficient and fair allocation process and to the NCES statistical process. To ensure timely distribution of Federal education funds based on the best, most accurate data available, NCES establishes, for program funding allocation purposes, Thursday, August 15, 2013, as the final date by which the NPEFS Web form or ED Form 2447 must be submitted. Any resubmissions of FY 2011 or FY 2012 data by SEAs in response to requests for clarification, reconciliation, or other inquiries by NCES or the Census Bureau must be completed through the NPEFS Web form or ED Form 2447 by Tuesday, September 3, 2013. If an SEA submits revised data after the final deadline that result in a lower SPPE figure, the SEA's allocations may be adjusted downward or the Department may direct the SEA to return funds. SEAs should be aware that all of these data are subject to audit and that, if any inaccuracies are discovered in the audit process, the Department may seek recovery of overpayments for the applicable programs.

Note: The following are important dates in the data collection process for FY 2012:

January 30, 2013	SEAs can begin to submit accurate and complete data for FY 2011 and FY 2012.
March 15, 2013	SEAs are urged to submit accurate and complete data for FY 2011 and FY 2012.
August 15, 2013	Mandatory final submission date for FY 2011 and FY 2012 data to be used for program funding allocation purposes.
September 3, 2013	Response by SEA's to requests for clarification, reconciliation or other inquiries by NCES or the Census Bureau. All data issues to be resolved.

If an SEA's submission is received by the Census Bureau after August 15, 2013, the SEA must show one of the following as proof that the submission was mailed on or before that date:

1. A legibly dated U.S. Postal Service postmark.

2. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

3. A dated shipping label, invoice, or receipt from a commercial carrier.

4. Any other proof of mailing acceptable to the Secretary.

If the SEA mails ED Form 2447 through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

1. A private metered postmark.

2. A mail receipt that is not dated by the U.S. Postal Service.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an SEA should check with its local post office.

Accessible Format: Individuals with disabilities may obtain this document in an accessible format (e.g., Braille, large print, audiotape, or compact disc) on request to: Mr. Stephen Q. Cornman, NPEFS Project Director, National Center for Education Statistics, Institute of Education Sciences, U.S. Department of Education. Telephone: (202) 502–7338 or email: *stephen.cornman@ed.gov*.

Electronic Access to This Document: The official version of this document is the document published in the **Federal**

Register. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: 20 U.S.C. 9543.

Dated: January 30, 2013.

John Q. Easton,

Director, Institute of Education Sciences.

[FR Doc. 2013–02376 Filed 2–1–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, February 21, 2013, 6:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Rachel Blumenfeld, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks taken as appropriate.

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Rachel Blumenfeld as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Rachel Blumenfeld at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Rachel Blumenfeld at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2013Meetings.html.*

Issued at Washington, DC on January 29, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–02357 Filed 2–1–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–2–000]

Commission Information Collection Activities (FERC–729); Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(a)(1)(D), the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection, FERC–729 (Electric Transmission Facilities), to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 67638, 11/13/2012) requesting public comments. FERC received no comments on the FERC–729 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by March 6, 2013.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0238, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC13–2–000, by either of the following methods:

- *eFiling at Commission's Web site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov*, by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–729 (Electric Transmission Facilities).

OMB Control No.: 1902–0238.

Type of Request: Three-year extension of the FERC–729 information collection requirements with no changes to the reporting requirements.

Abstract: This information collection implements the Commission's mandates under EPAct 2005 Section 1221 which authorizes the Commission to issue permits under FPA Section 216(b) for electric transmission facilities and the Commission's delegated responsibility to coordinate all other federal authorizations under FPA Section 216(h). The related FERC regulations seek to develop a timely review process for siting of proposed electric transmission facilities. The regulations provide for (among other things) an extensive pre-application process that will facilitate maximum participation from all interested entities and individuals to provide them with a reasonable opportunity to present their views and recommendations, with respect to the need for and impact of the facilities, early in the planning stages of the proposed facilities as required under FPA Section 216(d).

Additionally, FERC has the authority to issue a permit to construct electric transmission facilities if a state has withheld approval for more than a year or has conditioned its approval in such a manner that it will not significantly reduce transmission congestion or is not economically feasible.[1] FERC envisions that, under certain circumstances, the Commission's review of the proposed facilities may take place after one year of the state's review. Under Section 50.6(e)(3) the Commission will not accept applications until one year after the state's review and then from applicants who can demonstrate that a state may withhold or condition approval of proposed facilities to such an extent that the facilities will not be constructed.[2] In cases where FERC's jurisdiction rests on FPA section 216(b)(1)(C),[3] the pre-filing process should not commence until one year after the relevant State applications have been filed. This will give states one full year to process an application without any intervening Federal proceedings, including both the pre-filing and application processes. Once that year is complete, an applicant may seek to commence FERC's pre-filing process. Thereafter, once the pre-filing process is complete, the applicant may submit its application for a construction permit.

Type of Respondents: Electric transmission facilities.

Estimate of Annual Burden:[4] The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–729—ELECTRIC TRANSMISSION FACILITIES

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A)×(B)=(C)	Average burden hours per response (D)	Estimated total annual burden (C)×(D)
Electric Transmission Facilities	1	1	1	9,600	9,600

The total estimated annual cost burden to respondents is $662,492.31 [9,600 hours ÷ 2080[5] hours per year = 4.61538 * $143,540/year[6] = $662,492.31]

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: January 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02240 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2351–017]

Public Service Company of Colorado; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2351–017.

c. *Date Filed:* February 27, 2012.

d. *Applicant:* Excel Energy Services, Inc. on behalf of Public Service Company of Colorado.

e. *Name of Project:* Cabin Creek Pumped Storage Project.

f. *Location:* The existing project is located on the South Clear Creek and its tributary Cabin Creek in Clear Creek County, Colorado. The project, as currently licensed, is located on 267 acres of U.S. Forest Service lands within the Arapahoe National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Christine E. Johnston, Xcel Energy, 4653 Table Mountain Drive, Golden, CO 80403; (720) 497–2156.

i. *FERC Contact:* David Turner, (202) 502–6091.

j. Deadline for filing motions to intervene and protests, comments,

[1] FPA section 216(b)(1)(C).

[2] However, the Commission will not issue a permit authorizing construction of the proposed facilities until, among other things, it finds that the state has, in fact, withheld approval for more than a year or had so conditioned its approval.

[3] In all other instances (i.e. where the state does not have jurisdiction to act or otherwise to consider interstate benefits, or the applicant does not qualify to apply for a permit with the State because it does not serve end use customers in the State), the pre-filing process may be commenced at any time.

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[5] 2080 hours/year = 40 hours/week * 52 weeks/year

[6] Average annual salary plus benefits per employee in 2012.

recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The Project Description:* The existing project includes the following facilities: (1) A 210-foot-high, 1,458-foot-long concrete-faced rockfill Upper Dam across Cabin Creek; (2) a 25.4 acre upper reservoir with 1,087 acre-feet of usable storage between the maximum operating elevation of 11,196 feet mean sea level (msl) and the minimum operating elevation of 11,140 feet msl; (3) a 95-foot-high, 1,195-foot-long earthfill and rockfill Lower Dam across South Clear Creek; (4) a 44.8-acre lower reservoir with 1,221 acre-feet of usable storage between the maximum operating elevation of 10,002 feet msl and 9,975 feet msl; (5) a 145-foot-long auxiliary spillway constructed in the embankment of the lower reservoir with a crest elevation of 10,013 feet; (6) an intake structure located near the bottom of the upper reservoir; (7) a 12 to 15-foot-diameter, 4,143-foot-long power tunnel; (8) two 75-foot-long, 8.5-foot-diameter penstocks directing flow from the power tunnel to the powerhouse turbines; (9) a powerhouse installed at the lower reservoir containing two reversible turbine-generator units rated at 150 megawatts (nameplate capacity) each; (10) a switchyard located next to the powerhouse; (11) three miles of gravel access roads; and (12) appurtenant facilities.

Cabin Creek is a pumped storage project. The normal daily operation cycle involves pumping water from the lower reservoir to the upper reservoir during off-peak periods of energy demand and generating electricity with water released from the upper reservoir during the high energy demand part of the day. Under the current license, the applicant is required to provide a continuous release from the lower reservoir of three cubic feet per second or inflow, whichever is less, to South Clear Creek.

The applicant proposes the following changes to the project: (1) Upgrade the pump-generation equipment; (2) raise the usable storage capacity of the upper reservoir 75 acre-feet by raising the height of the dam 4.5 feet; and (3) increase the project boundary by 59 acres.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule:

The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Ready for Environmental Analysis and Application Acceptance	Thursday, January 24, 2013.
Comments, Interventions, recommendations, prescriptions due	Wednesday, March 27, 2013.
Requests 401 Certification	Monday, March 25, 2013.
Reply Comments due	Thursday, May 09, 2013.
Issue single EA	Wednesday, July 24, 2013.
Comments on EA due	Friday, August 23, 2013.

Milestone	Target date
Modified 4(e) and Fishway Prescriptions	Wednesday, October 23, 2013.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: January 25, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02241 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2785–081]

Boyce Hydro Power, LLC; Notice of Application Accepted for Filing, Soliciting Motions To Intervene, Protests, and Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to License.

b. *Project No:* 2785–081.

c. *Date Filed:* September 11, 2012.

d. *Applicant:* Boyce Hydro Power, LLC.

e. *Name of Project:* Sanford Hydroelectric Project.

f. *Location:* On the Tittabawassee River in Midland County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lee W. Mueller, Boyce Hydro Power, LLC, 6000 S. M–30, Edenville, MI 48620, (989) 689–3161.

i. *FERC Contact:* B. Peter Yarrington, (202) 502–6129 or *peter.yarrington@ferc.gov.*

j. Deadline for filing motions to intervene, protests, and comments is 15 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 85.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2785–081) on any motions, protests, or comments filed.

k. *Description of Application:* The licensee proposes to replace one of the project's three existing turbine/generator units with a new unit. The project's maximum hydraulic capacity would remain the same but the new unit would be able to operate over a greater range of flows and the licensee intends to release the required minimum flow through this unit rather than over the spillway. The proposal would raise the project's total installed capacity from 3,300 to 3,600 kilowatts.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call (866) 208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Motions to Intervene, Protests, and Comments:* Anyone may submit a motion to intervene, protest, or comments in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any motions to intervene, protests, or comments must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must: (1) Bear in all capital letters the title ''MOTION TO INTERVENE,'' ''PROTEST,'' or ''COMMENTS'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person intervening, protesting, or commenting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All motions to intervene, protests, or comments must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All motions to intervene, protests, or comments should relate to project works which are the subject of the application. Agencies may obtain copies of the application directly from the applicant. A copy of any motion to intervene or protest must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 18 CFR 385.2010.

Dated: January 24, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02250 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance at MISO Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and Commission staff may attend the following MISO-related meetings:

- Advisory Committee (10:00 a.m.–1:00 p.m., Local Time)
  - February 20 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - March 27
  - April 24
  - May 22
  - July 24
  - August 21 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 25
  - October 23
  - November 20
  - December 11
- Board of Directors Audit & Finance Committee
  - February 20 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
- 3:30 p.m.–4:45 p.m.
  - April 24 (1:00 p.m.–3:00 p.m.)
  - August 21 (St. Paul Hotel, 350 Market St., St. Paul, MN, 2:00 p.m.–3:00 p.m.)
  - October 23 (3:15 p.m.–4:45 p.m.)
  - November 20 (10:00 a.m.–1:00 p.m.)
- Board of Directors (8:30 a.m.–10:00 a.m., Local Time)
  - February 21 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - April 25
  - June 20 (Grand Traverse Lodge, 100 Grand Traverse Village Blvd., Acme, MI)
  - August 22 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - October 24
  - December 12
- Board of Directors Markets Committee (8:00 a.m.–10:00 a.m., Local Time)
  - February 20 (Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - March 27
  - April 24
  - May 15
  - June 19 (Grand Traverse Lodge, 100 Grand Traverse Village Blvd., Acme, MI)
  - July 24
  - August 21 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 25
  - October 23
  - November 27
  - December 11
- Board of Directors System Planning Committee
  - February 19 (5:15 p.m.–6:15 p.m.)(Windsor Court Hotel, 300 Gravier Street, New Orleans, LA)
  - April 24 (3:30 p.m.–5:15 p.m.)
  - June 18 (11:15 a.m.–12:45 p.m.) (Grand Traverse Lodge, 100 Grand Traverse Village Blvd., Acme, MI)
  - August 21 (5:00 p.m.–6:30 p.m.) (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - October 22 (4:00–5:30 p.m.)
  - November 21 (10 a.m.–12 p.m.)
  - December 11 (3:15–5:15 p.m.)
- MISO Informational Forum (3:00 p.m.–5:00 p.m., Local Time)
  - February 19
  - March 26
  - April 23
  - May 21
  - July 23
  - August 20 (St. Paul Hotel, 350 Market St., St. Paul, MN)
  - September 24
  - October 22
  - November 19
  - December 17
- MISO Market Subcommittee (9:00 a.m.–4:00 p.m., Local Time)
  - February 5
  - March 5
  - April 2
  - April 30
  - June 4
  - July 9
  - August 6
  - September 3
  - October 1
  - October 29
  - December 3
- MISO Supply Adequacy Working Group (9:00 a.m.–5:00 p.m., Local Time)
  - February 7
  - March 7
  - April 4
  - May 2
  - June 6
  - July 11
  - August 8
  - September 5
  - October 3
  - October 31
  - December 5
- MISO Regional Expansion Criteria and Benefits Task Force (9:00 a.m.–5:00 p.m., Local Time)
  - January 31
  - February 28
  - March 21
  - April 18
  - May 16
  - June 27
  - August 1
  - August 29
  - September 19
  - October 17
  - November 14
  - December 19

Except as noted, all of the meetings above will be held at: MISO Headquarters 701 City Center Drive, 720 City Center Drive, and Carmel, IN 46032

Further information may be found at *www.midwestiso.org.*

The above-referenced meetings are open to the public.

The discussions at each of the meetings described above may address matters at issue in the following proceedings:

Docket Nos. ER04–691, EL04–104 and ER04–106, *et al., Midwest Independent Transmission System Operator, Inc., et al.*

Order No. 890, *Preventing Undue Discrimination and Preference in Transmission Service*

Docket Nos. ER06–18, *et al., Midwest Independent Transmission System Operator, Inc.*

Order Nos. 693 and 693–A, *Mandatory Reliability Standards for Bulk-Power System*

Docket No. AD07–12, *Reliability Standard Compliance and Enforcement in Regions with Independent System Operators and Regional Transmission Organizations*

Docket No. ER08–394, *Midwest Independent Transmission System Operator, Inc.*

Docket No. RM08–19, *Mandatory Reliability Standards for the Calculation of Available Transfer, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, and Existing Transmission Commitments and Mandatory Reliability Standards for the Bulk Power System*

Docket No. AD09–10, *National Action Plan on Demand Response*

Docket No. AD09–15, *Version One Regional Reliability Standard for Resource and Demand Balancing*

Docket No. ER09–1049, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER09–1074, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER09–1431, *Midwest Independent Transmission System Operator, Inc.*

Docket No. AD10–5, *RTO/ISO Performance Metrics*

Docket No. AD10–14, *Reliability Standards Development and NERC and Regional Entity Enforcement*

Docket Nos. ER10–9, 10–73, 10–74, *Dairyland Power Cooperative v. Midwest Independent Transmission System Operator, Inc.*

Docket Nos. ER10–209, EL10–12, and ER10–640, *Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. v. Midwest Independent Transmission System Operator, Inc.*
Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc. and the Midwest ISO Transmission Owners*
Docket No. ER10–2283, *Midwest Independent Transmission System Operator, Inc.*
Docket No. RM10–11, *Integration of Variable Energy Resources*
Docket No. RM10–13, *Credit Reforms in Organized Wholesale Electric Markets*
Docket No. RM10–17 and EL09–68, *Demand Response Compensation in Organized Wholesale Energy Markets*
Docket No. RM10–23 and Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*
Docket No. ER11–2275, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–3279, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–4081, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–33, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–351, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–3415, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–451, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL12–11, *Rail Splitter Wind Farm v. Ameren and MISO*
Docket No. ER13–506, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1179, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2617, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–536, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–150, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–543, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–668, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–678, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–545, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1663, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2302, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–596, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–603, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–715, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–263, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2706, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–817, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–242, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–636, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–665, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–674, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL13–13, *ITC Midwest, LLC*
Docket No. ER13–37, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–38, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–708, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–669, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–187, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–186, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–101, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–89, *MidAmerican Energy Company*
Docket No. ER12–2129, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1266, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1265, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–427, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1564, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1194, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–971, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Patrick Clarey, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov,* or Christopher Miller, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov.*

Dated: January 25, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02243 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at National Association of Regulatory Utility Commissioners Winter Committee Meetings

The Federal Energy Regulatory Commission (FERC or Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meeting:

FERC/National Association of Regulatory Utility Commissioners Sunday Morning Collaborative

February 3, 2013 (8:30 a.m.–11:45 a.m.)

Renaissance Washington Hotel, 999 Ninth Street NW., Washington, DC 20001.

Further information may be found at *http://winter.narucmeetings.org/program.cfm.*

The discussions at this meeting, which is open to the public, may address matters at issue in the following Commission proceedings:

Docket No. ER13–414, East Kentucky Power Cooperative, Inc.

Docket No. ER13–478, East Kentucky Power Cooperative, Inc.

Docket No. ER13–708, Midwest Independent Transmission System Operator, Inc.

Dated: January 28, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02239 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation, Member Representatives Committee and Board of Trustees Meetings, Board of Trustees Compliance Committee, Corporate Governance and Human Resources Committee, and Standards Oversight and Technology Committee Meetings.

Hotel del Coronado, 1500 Orange Avenue, Coronado, CA, 92118.

Feb. 6 (7:00 a.m.–5:00 p.m.) and Feb. 7 (8:00 a.m.–1:00 p.m.), 2013.

Further information regarding these meetings may be found at: *http://www.nerc.com/calendar.php*.

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RC11–5, North American Electric Reliability Corporation

Docket No. RC11–6, North American Electric Reliability Corporation

Docket No. RR08–4, North American Electric Reliability Corporation

Docket No. RR13–1, North American Electric Reliability Corporation

Docket No. RD09–11, North American Electric Reliability Corporation

Docket No. RD10–2, North American Electric Reliability Corporation

Docket No. RD12–3, North American Electric Reliability Corporation

Docket No. RD12–5, North American Electric Reliability Corporation

Docket No. RD13–1, Tri-State Generation and Transmission Association, Inc. v. Western Electric Coordinating Council and North American Electric Reliability Corporation

Docket No. RD13–2, North American Electric Reliability Corporation

Docket No. RD13–3, North American Electric Reliability Corporation

Docket No. EL13–22, PacifiCorp v. Western Electricity Coordinating Council and Los Angeles Department of Water and Power

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov*.

Dated: January 24, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02249 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–42–000]

Cargill Power Markets, LLC v. NV Energy, Inc., Notice of Complaint

Take notice that on January 18, 2013, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2012) and section 206 of the Federal Power Act (FPA), 16 U.S.C. 824(e) (2006), Cargill Power Markets, LLC (Complainant or CPM) filed a formal complaint against NV Energy, Inc. (Respondent or NVE), alleging that NVE is engaging in unjust, unreasonable, and unduly discriminatory and/or preferential behavior that is in violation of section 206 of the FPA; through the manner in which NVE has processed CPM's Transmission Service Request, as more fully described in the complaint.

The Complainant certifies that a copies of the complaint were served on the contacts for the Respondents as listed in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on February 7, 2013.

Dated: January 24, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02248 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–773–000]

CCI Roseton LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of CCI Roseton LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and

assumptions of liability is February 13, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 24, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02251 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–779–000]

SmartEnergy Holdings, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of SmartEnergy Holdings, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is February 13, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 24, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02247 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14480–000]

Alaska Electric Light and Power Company; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 11, 2013, Alaska Electric Light and Power Company filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Sheep Creek Hydroelectric Project (Sheep Creek Project or project) to be located on Sheep Creek, near the City and Borough of Juneau, Alaska. The project would not affect federal lands. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A 10-foot-high, 75-foot-long concrete diversion dam at an elevation of 620 feet above mean sea level; (2) an overflow spillway; (3) a 4,750-foot-long, 36-inch-diameter penstock; (4) a powerhouse containing a single, 3.3-megawatt generating unit; (5) a tailrace that would discharge directly into Sheep Creek; (6) a switchyard, located adjacent to the powerhouse, consisting of a single 3.5-megavolt-ampere (MVA) transformer to adjust voltage to 23 kilovolts; and (7) appurtenant facilities. The project would generate an estimated average of 13,317 megawatt-hours annually.

Applicant Contact: Mr. Scott Willis, Alaska Electric Light & Power, 5601 Tonsgard Ct., Juneau, AK 99801; phone: (907) 463–6396.

FERC Contact: Adam Beeco; phone: (202) 502–8655.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/*

efiling.asp. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14480) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 25, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02242 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following joint stakeholder meeting related to the Joint and Common Market (JCM) initiative of PJM Interconnection, L.L.C. (PJM) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO):

PJM/Midwest ISO JCM

January 29, 2013 (10:00am–3:00pm)

The above-referenced meeting is open to stakeholders and will be held at: The PJM Conference & Training Center, 2750 Monroe Boulevard, Norristown, PA 19403.

For additional information, see: *http://www.pjm.com/committees-and-groups/stakeholder-meetings/stakeholder-groups/pjm-miso-joint-common.aspx.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket Nos. ER13–195, ER13–198 and ER13–90, *PJM Interconnection, L.L.C.*

Docket Nos. ER13–186 and ER13–187, *Midwest Independent Transmission System Operator, Inc. and the MISO Transmission Owners*

Docket No. AD12–16, *Capacity Deliverability Across the Midwest Independent Transmission System Operator, Inc./PJM Interconnection, L.L.C. Seam*

For more information, contact Jesse Hensley, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6228 or *Jesse.Hensley@ferc.gov.*

Dated: January 25, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–02244 Filed 2–1–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Base Charge and Rates.

SUMMARY: The Western Area Power Administration (Western), a power marketing administration within the Department of Energy (DOE), is proposing an adjustment to the Boulder Canyon Project (BCP) electric service base charge and rates. The current base charge and rates expire September 30, 2013, under Rate Schedule BCP–F8. The current base charge is not sufficient to cover all annual costs including operation, maintenance, replacements, interest expense, and to repay investment obligations within the required period. The proposed base charge will provide sufficient revenue to cover all annual costs and to repay investment obligations within the allowable period. A detailed rate package that identifies the reasons for the base charge and rates adjustment will be available in March 2013. The proposed base charge and rates are scheduled to become effective October 1, 2013, and will remain in effect through September 30, 2014. This **Federal Register** notice initiates the formal process for the proposed base charge and rates.

DATES: The consultation and comment period will begin today and will end May 6, 2013. Western will present a detailed explanation of the proposed base charge and rates at a public information forum March 27, 2013, beginning at 10:30 a.m. Mountain Standard Time (MST), in Phoenix, Arizona. Western will accept oral and written comments at a public comment forum April 10, 2013, beginning at 10:30 a.m. MST, at the same location. Western will accept written comments any time during the consultation and comment period.

ADDRESSES: The public information forum and public comment forum will be held at the Desert Southwest Customer Service Regional Office, located at 615 South 43rd Avenue, Phoenix, Arizona, on the dates cited above. Written comments should be sent to Darrick Moe, Regional Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, email *moe@wapa.gov.* Written comments may also be faxed to (602) 605–2490, attention: Jack Murray. Western will post the principle documents used in developing the rates on its web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.* Western will also post official comments received via letter, fax, and email to this web site.

As access to Western facilities is controlled, any U.S. citizen wishing to attend any meeting held at Western must present an official form of picture identification, such as a U.S. driver's license, U.S. passport, U.S. Government ID, or U.S. Military ID, at the time of the meeting. Foreign nationals should contact Western 30 days in advance of the meeting to obtain the necessary form for admittance to Western.

FOR FURTHER INFORMATION CONTACT: Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, email *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: The proposed base charge and rates for BCP electric service are designed to recover an annual revenue requirement that includes the investment repayment, interest, operation and maintenance, replacements, payments to states, visitor services, and uprating payments. The total costs are offset by the projected revenue from water sales, visitor center, ancillary services, and late fees. The annual revenue requirement is the base charge for electric service and is divided equally between capacity and energy. The annual composite rate is the base charge divided by the annual energy sales.

Rate Schedule BCP–F8, Rate Order No. WAPA–150 was approved on an interim basis by the Deputy Secretary of

Energy on September 16, 2010, for a 5-year period beginning on October 1, 2010, and ending September 30, 2015.[1] The schedule received final approval from the Federal Energy Regulatory Commission (FERC) on December 9, 2010.[2] Western's existing rate formula for electric service requires recalculation of the base charge and rates annually based on updated financial and hydrology data. The proposed base charge for fiscal year (FY) 2014 under Rate Schedule BCP–F8 is $86,440,816, and the proposed composite rate is 22.39 mills/kilowatthour.

The proposed BCP electric service base charge and composite rate represent increases of approximately 5 percent compared to the FY 2013 base charge and composite rate. The 5 percent increase in the base charge is based on the most current financial data available at this time, which was taken from the latest rate-base power repayment study. The 5-percent increase in the composite rate is based on current hydrology conditions and the corresponding Lake Mead elevations. The following table compares the existing and proposed base charge and composite rate. This proposal, effective October 1, 2013, is preliminary and is subject to change upon publication of final formula rates.

COMPARISON OF EXISTING AND PROPOSED BASE CHARGE AND COMPOSITE RATE

	Existing October 1, 2012 through September 30, 2013	Proposed October 1, 2013 through September 30, 2014	% Change
Base Charge ($)	82,379,637	86,440,816	5
Composite Rate (mills/kWh)	21.28	22.39	5

The increase in the proposed base charge is due to increases in the annual visitor center costs, uprating program principal payments, capital investments principal payments and replacement costs. Currently, there is no projected year-end carryover from FY 2012 and FY 2013 resulting in an overall increase in the base charge for FY 2014. However, these results are based on preliminary data and subject to change upon receipt of audited FY end financial information. The projected increase in the composite rate is due to the projected increase in the base charge and lower energy projections resulting from the current hydrology conditions and Lake Mead elevations.

Legal Authority

Since the proposed rates constitute a major rate adjustment as defined by 10 CFR part 903, Western will hold both a public information forum and a public comment forum. After review of public comments, Western will take further action on the Proposed Base Charge and Rates consistent with 10 CFR parts 903 and 904.

Western is establishing an electric service base charge and rates for BCP under the DOE Organization Act (42 U.S.C. 7152); the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)); and other acts that specifically apply to the project involved. By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985 (50 FR 87835).

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western initiates or uses to develop the proposed rates are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona. Many of these documents and supporting information are also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321–4347); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866. Accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: December 20, 2012.

Anita J. Decker,

Acting Administrator.

[FR Doc. 2013–02333 Filed 2–1–13; 8:45 am]

BILLING CODE 6450–01–P

[1] 75 FR 57912 (September 23, 2010).

[2] 133 FERC ¶ 62,229.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9775–4]

Notice of Administrative Settlement Agreement for Recovery of Past Response Costs Pursuant to Section 122(H) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed administrative settlement agreement for recovery of past response costs (''Proposed Agreement'') associated with the Rehrig-United International Superfund Site, Chesterfield County, Virginia was

executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against Bank of America, N.A., (''Settling Party''). The Proposed Agreement would require Settling Party to reimburse EPA $80,398.48 for past response costs incurred by EPA for the Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before March 6, 2013.

ADDRESSES: The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Robin E. Eiseman (3RC41), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Rehrig-United International Superfund Site, Proposed Settlement Agreement for Recovery of Past Response Costs'' and ''EPA Docket No. CERCLA–03–2013–0018DC,'' and should be forwarded to Robin E. Eiseman at the above address.

FOR FURTHER INFORMATION CONTACT: Robin E. Eiseman (3RC41), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2612; *eiseman.robin@epa.gov*.

Dated: January 24, 2013.

Karen Melvin,

Acting Director, Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III.

[FR Doc. 2013–02396 Filed 2–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2012–0258; FRL–9527–4]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Notification of Chemical Exports—TSCA Section 12(b)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew the current approval for the ICR entitled ''Notification of Chemical Exports—TSCA Section 12(b)'' and identified as EPA ICR No. 0795.14 and OMB Control No. 2070–0030). The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost, and is available in the docket for additional public review and comment.

DATES: Additional comments may be submitted on or before March 6, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPPT–2012–0258, to (1) EPA online using *www.regulations.gov* (our preferred method), by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, *and* (2) OMB via email to *oira_submission@omb.eop.gov*. Address comments to OMB Desk Officer for EPA. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Pamela Myrick, Deputy Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics, Mail code: 7408–M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–554–1404; fax number: 202–564–8251; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures under the PRA (44 U.S.C. 3501 *et seq.*), as prescribed in 5 CFR 1320.12. On May 7, 2012 (77 FR 26750), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received one comment, which is addressed in the ICR package submitted to OMB. As required by the PRA, EPA is hereby soliciting additional comments on this ICR, which should be submitted to EPA and OMB within 30 days of this notice.

Title: Notification of Chemical Exports—TSCA Section 12(b)

ICR numbers: EPA ICR No. 0795.14, OMB Control No. 2070–0030.

ICR Status: EPA is requesting the renewal of the currently approved ICR, which is currently approved through March 31, 2013. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 12(b)(2) of the Toxic Substances Control Act (TSCA) requires that any person who exports or intends to export to a foreign country a chemical substance or mixture that is regulated under TSCA sections 4, 5, 6 and/or 7 submit to EPA notification of such export or intent to export. Upon receipt of notification, EPA will advise the government of the importing country of the U.S. regulatory action with respect to that substance. EPA uses the information obtained from the submitter via this collection to advise the government of the importing country. This information collection addresses the burden associated with industry reporting of export notifications. The respondent may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA and 40 CFR Part 2.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to be 1.1 hours per response. Burden is defined in 5 CFR 1320.3(b). The ICR provides a detailed explanation of this estimate, which is only briefly summarized here:

Respondents/affected entities: Entities potentially affected by this action are

companies that export chemical substances.

Respondent's obligation to respond: Mandatory.

Estimated number of respondents: 240 (total).

Frequency of response: On occasion.

Total estimated annual burden: 4,025 hours per year.

Total estimated annual cost: $245,246 per year, includes $0 annualized capital or operation and maintenance costs.

Changes in the Estimates: There is a decrease of 825 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease represents the net effect of a decrease in the estimated number of notices sent to EPA and a decrease in the number of firms sending notices, which is based on EPA's recent experience with TSCA section 12(b) notices. This change is an adjustment. The Supporting Statement provides additional detail concerning the change in burden estimate.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–02323 Filed 2–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0793; FRL–9527–3]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Pesticide Environmental Stewardship Program Annual Measures Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Pesticide Environmental Stewardship Program Annual Measures Reporting'' (EPA ICR No. 2415.01, OMB Control No. 2070–XXXX) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is request for approval of a new collection. Public comments were previously requested via the **Federal Register** (75 FR 66084) on October 27, 2010 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before March 6, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OPP–2010–0793, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *opp.ncic@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lily G. Negash, Field & External Affairs Division, 7506P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–347–8515; fax number: 703–305–5884; email address: *negash.lily@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Pesticide Environmental Stewardship Program (PESP or ''the program'' hereinafter) is an EPA voluntary program implemented by Environmental Protection Agency's (EPA) Office of Pesticide Programs (OPP). PESP's goal is to promote environmental stewardship to protect human health and the environment in accordance with Section 2(b) of the Pollution Prevention Act of 1990, 42 U.S.C. 13101(b) that ''pollution should be prevented or reduced at the source whenever feasible,'' and Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) which requires EPA to regulate pesticides to prevent ''unreasonable adverse effects.'' The program encourages the use of integrated pest management (IPM) strategies to make the best stewardship choices from a series of pest management practices. It allows for economical pest management, and does so with the least possible hazard to people, property, and the environment.

This new information collection request (ICR) enables EPA to implement IPM through partnerships with its members which are pesticide user entities, and organizations which focus on training, educating, or influencing pesticide users. To become a PESP member, a pesticide user entity or an organization submits an application and a five-year strategy. The program uses the information collected to establish partner membership, develop stewardship strategies, offer technical assistance, measure progress towards stewardship goals, and award incentives. The stewardship strategy outlines how environmental and human health risk reduction goals will be achieved through the implementation of IPM, or through educating others on IPM. PESP encourages its members to track progress towards IPM goals: Reduced use of unnecessary pesticides, realize cost reductions, and share knowledge about IPM methodologies.

EPA has implemented procedures to protect any confidential, trade secret or proprietary information from disclosure that provide strict instructions regarding access to and contact with documents confidential business information (CBI). These procedures comply with EPA's CBI regulations at 40 CFR part 2.

Form Numbers: PESP Membership Application Form (EPA Form 9600–02); *Strategy/Reporting Form for PESP Members that are Not Commercial/Residential Pest Control Services* (EPA Form No. 9600–01); *PESP Strategy/Progress Reporting Form for Residential/Commercial Pest Control Service Providers* (EPA Form No. 9600–03).

Respondents/affected entities: Pesticide user companies and organizations, or entities that represent them, that are committed to reducing risks from pests and pesticides by practicing IPM; companies or organizations that promote the use of IPM through education and training. Below is a list of North American Industry Classification System (NAICS) codes and associated industries that may be affected by information collection requirements covered under this ICR. This list is intended to be illustrative; entities from other industries may elect to apply for recognition through PESP. However, EPA expects that most applications will come from the following industries:

NAICS code	Affected industry
11	Agriculture, Forestry, Fishing and Hunting.
111	Crop Production.
11142	Nursery and Floriculture Production.
111421	Nursery and Tree Production.
113	Forestry and Logging.
22	Utilities.
2211	Electric Power Generation, Transmission and Distribution.
5617	Services to Buildings and Dwellings.
56171	Exterminating and Pest Control Services.
56172	Janitorial Services.
56173	Landscaping Services.
6111	Elementary and Secondary Schools.
6112	Junior Colleges.
6113	Colleges, Universities, and Professional Schools.
622	Hospitals.
6244	Child Day Care Services.
71391	Golf Courses and Country Clubs.
813312	Environment, Conservation and Wildlife Organizations.

Respondent's obligation to respond: Required to obtain or retain a benefit.

Estimated number of respondents: 424 total PESP members.

Frequency of response: Varies depending on one of three required activities, which are, one-time membership application, annual reports, and five-year strategy updates.

Total estimated burden: 43,023 hours (per year). Burden is defined at 5 CFR 1320.03(b).

T*otal estimated cost:* $2,755,363 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in the total estimated respondent burden. This is a new ICR.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–02322 Filed 2–1–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9776–1]

Office of Environmental Information; Announcement of Availability and Comment Period for the Draft Quality Standard for Environmental Data Collection, Production, and Use by Non-EPA (External) Organizations and Two Associated QA Handbooks; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: The Environmental Protection Agency published a document in the **Federal Register** of December 26, 2012, concerning request for comments for the Draft Quality Standard for Environmental Data Collection, Production, and Use by Non-EPA (External) Organizations and two associated QA Handbooks. The notice of availability is being extended to a 62 day review and comment period to provide more time for external reviewers to provide comments. This document extends the comment period for 17 days, from February 11, 2013, to February 28, 2013.

DATES: Comments must be submitted on or before February 11, 2013.

FOR FURTHER INFORMATION CONTACT: John Warren, Environmental Protection Agency, 1200 Pennsylvania Avenue, MC 2811R, Washington, DC 20460; Phone: 202–564–6876; email address: *quality@epa.gov*.

Dated: January 29, 2013.

Monica D. Jones,

Director, Quality Staff.

[FR Doc. 2013–02378 Filed 2–1–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Emergency Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before February 19, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email at *Nichlos_A._Fraser@omb.eop.gov* or fact at (202) 395–5197, and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: The Commission is requesting emergency OMB processing of the information collection requirement(s) contained in this notice and has requested OMB approval 30 days after the collection is received at OMB. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

OMB Control Number: 3060–xxxx.

Title: Section 64.604(c)(9), Emergency Interim Rule for Registration and Documentation of Disability for Eligibility to Use IP Captioned Telephone Service, CG Docket Nos. 13–24 and 03–123.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; individuals or households.

Annual Number of Respondents and Responses: 12,004 respondents; 24,000 responses.

Estimated Time per Response: 30 minutes (.50 hours) to 1 hour.

Frequency of Response: On-going reporting requirement; One-time reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is Sec. 225 [47 U.S.C. 225] Telecommunications Services for Hearing-Impaired and Speech-Impaired Individuals; The Americans with Disabilities Act of 1990 (ADA), Public Law 101–336, 104 Stat. 327, 366–69, enacted on July 26, 1990.

Total Annual Burden: 18,000 hours.

Total Annual Cost: $600,000.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: In the Emergency Interim Order (IP CTS Interim Order) the Commission finds good cause to adopt on an emergency basis interim rules requiring each Internet Protocol Captioned Telephone Service (IP CTS) provider, in order to be eligible for compensation from the Interstate Telecommunications Relay Service (TRS) Fund (Fund) for providing service to each new IP CTS user to register each new IP CTS user. As part of the registration process, each IP CTS provider must obtain from each user a self-certification that (1) the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users; (2) the user understands that the captioning service is provided by a live communications assistant (CA); and (3) the user understands that the cost of the IP CTS calls is funded by the TRS Fund. Where the consumer accepts IP CTS equipment at a price below $75 from any source other than a governmental program, the IP CTS provider must also obtain from the user a certification from an independent, third-party professional attesting to the same. IP CTS providers are required to maintain the confidentiality of the registration and certification information that they obtain, as well as the content of such information, except as required by law. The Commission takes this action to prevent the unnecessary subscription to and use of the service by consumers without a hearing loss that necessitates the use of IP CTS to obtain functionally equivalent telephone service. If left unchecked, the TRS Fund that disburses to IP CTS providers may be compromised due to an unprecedented growth in new IP CTS consumers. The action taken in this IP CTS Interim Order will enable the Commission to better control the level of TRS disbursements and protect the programmatic, legal, and financial integrity of the TRS program. Conversely, failing to take immediate action to stem such practices could well threaten the availability of the IP CTS service and other relay services that are supported by the Fund for the benefit of legitimate users.

The interim rules requiring providers to register and obtain certification from each new user will become effective upon publication in the **Federal Register** of a notice announcing the approval of such requirements by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The interim rules will sunset on a common date, which is 180 days after the effective date for the interim rules on registration and certification or on the effective date of final rules on these issues, whichever date comes sooner.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–02371 Filed 2–1–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; FCC Announces Further Details for the First Post-Superstorm Sandy Field Hearing, Tuesday, February 5, 2013

AGENCY: Federal Communications Commission.

ACTION: Sunshine notice.

SUMMARY: In the wake of Superstorm Sandy, Federal Communications Chairman Julius Genachowski announced plans to convene a series of field hearings to examine challenges to the nation's communications networks during natural disasters and in other times of crisis.

The first hearing will facilitate a wider national dialogue about the resiliency of communications networks by focusing on the impact of Superstorm Sandy, and help inform recommendations and actions to strengthen wired and wireless networks in the face of such large-scale emergencies.

DATES: Tuesday, February 5, 2013 starting at 9 a.m.–1 p.m. (Morning Session); 2:30 p.m.–6:30 p.m. (Afternoon Session).

ADDRESSES: Alexander Hamilton U.S. Customs House, 1 Bowling Green, Manhattan, New York, NY 10004 (Morning Session); Stevens Institute of Technology, Babbio Center, River Street, Hoboken, NJ 07030 (Afternoon Session).

FOR FURTHER INFORMATION CONTACT: Gene Fullano, Federal Communications Commission, Public Safety and Homeland Security Bureau, at (202)—418–0492 or *genaro.fullano@fcc.gov.*

SUPPLEMENTARY INFORMATION: The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

To the extent it applies, the Commission is waiving the sunshine period prohibition contained in § 1.1203 of the Commission's rules, 47 CFR 1.1203. The sunshine period prohibition will not be deemed to be triggered by the release of this Sunshine Agenda.

We also take this opportunity to remind the public that presentations to decision-making personnel—including those that address network reliability and resiliency in the wake of Superstorm Sandy—that go to the merits or outcome of the Commission's pending permit-but-disclose proceeding regarding network reliability and resiliency, see Reliability and Continuity of Communications Networks, Including Broadband

Technologies, Notice of Inquiry, 26 FCC Rcd 5614 (2011), must comply with the Commission's ex parte rules, *see, e.g.,* 47 CFR 1.1200 *et seq.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–02476 Filed 1–31–13; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 the renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comment on renewal of the information collection described below.

DATES: Comments must be submitted on or before April 5, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov*. Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collection of Information

Title: Qualifications for Failed Bank Acquisitions.

OMB Number: 3064–0169.

Estimated Number of Respondents:

Investor Reports on Affiliates: 20.

Maintenance of Business Records: 5.

Disclosures Regarding Investors and Entities in Ownership Chain: 20.

Frequency of Response:

Investor Reports on Affiliates: 12.

Maintenance of Business Records: 4.

Disclosures Regarding Investors and Entities in Ownership Chain: 4

Average hours per response:

Investor Reports on Affiliates: 2 hours.

Maintenance of Business Records: 2 hours.

Disclosures Regarding Investors and Entities in Ownership Chain: 4 hours.

Total annual burden: 840 hours.

General Description of Collection: The FDIC's Statement of Policy on Qualifications for Failed Bank Acquisitions provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 29th day of January 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–02285 Filed 2–1–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2013–02]

Filing Dates for the South Carolina Special Elections in the 1st Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special elections.

SUMMARY: South Carolina has scheduled special elections to fill the U.S. House seat in the 1st Congressional District vacated by Senator Tim Scott. There are three possible special elections, but only two may be necessary.

- Primary Election: March 19, 2013.
- Possible Runoff Election: April 2, 2013. In the event that one candidate does not achieve a majority vote in his/her party's Special Primary Election, the top two vote-getters will participate in a Special Runoff Election.
- General Election: May 7, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

Special Primary Only

All principal campaign committees of candidates who *only* participate in the South Carolina Special Primary shall file a 12-day Pre-Primary Report on March 7, 2013. (See chart below for the closing date for the report.)

Special Primary and General Without Runoff

If only two elections are held, all principal campaign committees of candidates participating in the South Carolina Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on March 7, 2013; a Pre-General Report on April 25, 2013; and a Post-General Report on June 6, 2013. (See chart below for the closing date for each report.)

Special Primary and Runoff Elections

All principal campaign committees of candidates *only* participating in the South Carolina Special Primary and Special Runoff Elections shall file a 12-day Pre-Primary Report on March 7, 2013; and a Pre-Runoff Report on March 21, 2013. (See chart below for the closing date for each report.)

Special Primary, Runoff and General Elections

All principal campaign committees of candidates participating in the South Carolina Special Primary, Special Runoff and Special General Elections shall file a 12-day Pre-Primary Report on March 7, 2013; a Pre-Runoff Report on March 21, 2013; a Pre-General Report on April 25, 2013; and a Post-General Report on June 6, 2013. (See chart below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a semi-annual basis in 2013 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the South Carolina Special Primary, Special Runoff or Special General Elections by the close of books for the applicable report(s). (See chart below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the South Carolina Special Primary, Special Runoff or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the South Carolina Special Elections may be found on the FEC Web site at *http://www.fec.gov/info/report_dates.shtml*.

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and Leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the special election reporting periods (see charts below for closing date of each period). 11 CFR 104.22(a)(5)(v).

The lobbyist bundling disclosure threshold for calendar year 2012 was $16,700. This threshold amount may change in 2013 based upon the annual cost of living adjustment (COLA). Once the adjusted threshold amount becomes available, the Commission will publish it in the **Federal Register** and post it on its Web site.

CALENDAR OF REPORTING DATES FOR SOUTH CAROLINA SPECIAL ELECTIONS

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Quarterly Filing Committees Involved in *Only* the Special Primary (03/19/13) Must File:			
Pre-Primary	02/27/13	03/04/13	03/07/13
April Quarterly	03/31/13	04/15/13	04/15/13
Semi-Annual Filing Committees Involved in *Only* the Special Primary (03/19/13) Must File:			
Pre-Primary	02/27/13	03/04/13	03/07/13
Mid-Year	06/30/13	07/31/13	07/31/13
If Only Two Elections Are Held, Quarterly Filing Committees Involved in the Special Primary (03/19/13) and Special General (05/07/13) Must File:			
Pre-Primary	02/27/13	03/04/13	03/07/13
April Quarterly	WAIVED		
Pre-General	04/17/13	04/22/13	04/25/13
Post-General	05/27/13	06/06/13	06/06/13
July Quarterly	06/30/13	07/15/13	07/15/13
If Only Two Elections Are Held, Semi-Annual Filing Committees Involved in the Special Primary (03/19/13) and Special General (05/07/13) Must File:			
Pre-Primary	02/27/13	03/04/13	03/07/13
Pre-General	04/17/13	04/22/13	04/25/13
Post-General	05/27/13	06/06/13	06/06/13
Mid-Year	06/30/13	07/31/13	07/31/13
If Three Elections Are Held, Quarterly Filing Committees Involved in the Special Primary (03/19/13) and Special Runoff (04/02/13) Must File:			
Pre-Primary	02/27/13	03/04/13	03/07/13
Pre-Runoff	03/13/13	[2] 03/21/13	03/21/13
April Quarterly	03/31/13	04/15/13	04/15/13
If Three Elections Are Held, Semi-Annual Filing Committees Involved in the Special Primary (03/19/13) and Special Runoff (04/02/13) Must File:			
Pre-Primary	02/27/13	03/04/13	03/07/13
Pre-Runoff	03/13/13	[2] 03/21/13	03/21/13
Mid-Year	06/30/13	07/31/13	07/31/13
If Three Elections Are Held, Quarterly Filing Committees Involved in the Special Primary (03/19/13), Special Runoff (04/02/13) and Special General (05/07/13) Must File:			
Pre-Primary	02/27/13	03/04/13	03/07/13
Pre-Runoff	03/13/13	[2] 03/21/13	03/21/13
April Quarterly	WAIVED		
Pre-General	04/17/13	04/22/13	04/25/13

CALENDAR OF REPORTING DATES FOR SOUTH CAROLINA SPECIAL ELECTIONS—Continued

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Post-General	05/27/13	06/06/13	06/06/13
July Quarterly	06/30/13	07/15/13	07/15/13
If Three Elections Are Held, Semi-Annual Filing Committees Involved in the Special Primary (03/19/13), Special Runoff (04/02/13) and Special General (05/07/13) Must File:			
Pre-Primary	02/27/13	03/04/13	03/07/13
Pre-Runoff	03/13/13	[2] 03/21/13	03/21/13
Pre-General	04/17/13	04/22/13	04/25/13
Post-General	05/27/13	06/06/13	06/06/13
Mid-Year	06/30/13	07/31/13	07/31/13
Quarterly Filing Committees Involved in *Only* the Special Runoff (04/02/13) Must File:			
Pre-Runoff	03/13/13	[2] 03/21/13	03/21/13
April Quarterly	03/31/13	04/15/13	04/15/13
Semi-Annual Filing Committees Involved in *Only* the Special Runoff (04/02/13) Must File:			
Pre-Runoff	03/13/13	[2] 03/21/13	03/21/13
Mid-Year	06/30/13	07/31/13	07/31/13
Quarterly Filing Committees Involved in *Only* the Special General (05/07/13) Must File:			
April Quarterly	WAIVED		
Pre-General	04/17/13	04/22/13	04/25/13
Post-General	05/27/13	06/06/13	06/06/13
July Quarterly	06/30/13	07/15/13	07/15/13
Semi-Annual Filing Committees Involved in *Only* the Special General (05/07/13) Must File:			
Pre-General	04/17/13	04/22/13	04/25/13
Post-General	05/27/13	06/06/13	06/06/13
Mid-Year	06/30/13	07/31/13	07/31/13

[1] These dates indicate the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee with the Commission up through the close of books for the first report due.

[2] The mailing deadline is the same as the filing deadline because the computed mailing deadline would fall one day before the primary is held.

On behalf of the Commission,

Dated: January 29, 2013.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2013–02257 Filed 2–1–13; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 28, 2013.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Penns Woods Bancorp, Inc.,* Williamsport, Pennsylvania; to merge with Luzerne National Bank Corporation, and thereby indirectly acquire Luzerne Bank, both in Luzerne, Pennsylvania.

Board of Governors of the Federal Reserve System, January 29, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–02228 Filed 2–1–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 1, 2013.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Investors Bancorp, MHC and Investors Bancorp, Inc.,* both in Short Hills, New Jersey, to acquire Roma Financial Corporation MHC, and Roma Financial Corporation, both in Robbinsville, New Jersey, and indirectly acquire Roma Bank, Robbinsville, New Jersey, and RomAsia Bank, South Brunswick Township, New Jersey, and thereby engage in operating savings associations, pursuant to section 225.28(b)(4)(ii).

Board of Governors of the Federal Reserve System, January 30, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–02351 Filed 2–1–13; 8:45 am]

BILLING CODE 6210–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Health Information Technology Policy Committee Nomination Letters

AGENCY: Government Accountability Office (GAO).

ACTION: Notice on letters of nomination of candidates.

SUMMARY: The American Recovery and Reinvestment Act of 2009 (ARRA) established the Health Information Technology Policy Committee (Health IT Policy Committee) and gave the Comptroller General responsibility for appointing 13 of its 20 members.

As the result of terms ending in April 2013, GAO is accepting nominations of individuals for two openings on the committee in the following categories of representation or expertise required in ARRA: advocate for patients or consumers, and a member from a labor organization representing health care workers. For appointments to the HIT Policy committee to be made by April 1, 2013 in these categories, I am announcing the following: Letters of nomination and resumes should be submitted between February 1 and 22, 2013 to ensure adequate opportunity for review and consideration of nominees.

ADDRESSES: GAO: *HITCommittee@gao.gov;* GAO: 441 G Street NW., Washington, DC 20548.

FOR MORE INFORMATION CONTACT: GAO: Office of Public Affairs, (202) 512–4800. 42 U.S.C. 300jj –12.

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2013–02104 Filed 2–1–13; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary; Office of the Assistant Secretary for Preparedness and Response; Statement of Organization, Functions, and Delegations of Authority

Part A, Office of the Secretary, Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS) is being amended at Chapter AN, Office of the Assistant Secretary for Preparedness and Response (ASPR), as last amended at 75 Fed. Reg. 35035–38, dated June 21, 2010. This organizational change is to realign the Division of Emergency Care Coordination Center (ECCC) (ANC5) from under the Office of Preparedness and Emergency Operations (ANC) to operating under the Division of Health Systems Policy (ANE3) under the Office of Policy and Planning (ANE). The change is as follows.

I. Under Part A, Chapter AN, Section AN.20, Functions, Paragraph C, Office of Preparedness and Emergency Operations (ANC), delete the following component ''Division of Emergency Care Coordination Center (ECCC) (ANC5)'' in its entirety.

II. Delegations of Authority. All delegations and redelegations of authority made to officials and employees of affected organizational components will continue in them or their successors pending further redelegation, provided they are consistent with this reorganization.

Dated: January 24, 2013.

E.J. Holland, Jr.,

Assistant Secretary for Administration.

[FR Doc. 2013–02385 Filed 2–1–13; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1145]

Draft Guidance for Industry on Enrichment Strategies for Clinical Trials To Support Approval of Human Drugs and Biological Products; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period for the draft guidance for industry entitled ''Enrichment Strategies for Clinical Trials to Support Approval of Human Drugs and Biological Products'' that appeared in the **Federal Register** of December 17, 2012 (77 FR 74670). In the document, FDA announced the availability of this draft guidance and explained that the comment period would close on February 15, 2013. The Agency is taking this action to allow interested persons additional time to submit comments.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 18, 2013.

ADDRESSES: Submit electronic comments to http://www.regulations.gov. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number

found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Robert Temple, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4212, Silver Spring, MD 20993–0003, 301–796 2270; or

Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210; or

Robert L. Becker, Center for Device and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5674, Silver Spring, MD 20993–0003, 301–796–5450.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 17, 2012 (77 FR 74670), FDA announced the availability of this draft guidance and explained that the comment period would close on February 15, 2013. The Agency is extending the comment period to March 18, 2013, to allow more time for public comments.

This document provides guidance to industry on enrichment strategies that can be used in clinical trials intended to support effectiveness and safety claims in new drug applications and biologics license applications. Similar approaches could be used in clinical trials in earlier phases of drug development. This draft guidance defines and discusses three enrichment strategies: Decreasing heterogeneity, predictive enrichment, and prognostic enrichment. The guidance also discusses general clinical trial design considerations, provides examples of potential clinical trial designs, and discusses regulatory considerations when using enrichment strategies.

II. Submission of Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**) . It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: January 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–02293 Filed 2–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0711]

Request for Comments and Information on Initiating a Risk Assessment for Establishing Food Allergen Thresholds; Establishment of Docket; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending to May 13, 2013, the comment period for the notice entitled ''Request for Comments and Information on Initiating a Risk Assessment for Establishing Food Allergen Thresholds; Establishment of Docket,'' that appeared in the **Federal Register** of December 14, 2012 (77 FR 74485). In that document, we requested comments relevant to conducting a risk assessment to establish regulatory thresholds for major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA). The document requested comments (including data) that we can use to design and carry out a quantitative risk assessment for establishing regulatory thresholds for major food allergens. We are extending the comment period in response to a request from an industry association.

DATES: Submit either electronic or written comments by May 13, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–N–0711, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following way:

• *Mail/Hand delivery/Courier (for paper or CD–ROM 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–2012–N–0711. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), 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, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Steven M. Gendel, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1056.

SUPPLEMENTARY INFORMATION

I. Background

In the **Federal Register** of December 14, 2012 (77 FR 74485), we published a document entitled ''Request for Comments and Information on Initiating a Risk Assessment for Establishing Food Allergen Thresholds; Establishment of Docket.'' In that document, we requested comments relevant to conducting a risk assessment to establish regulatory thresholds for major food allergens as defined in FALCPA (Title II of Pub. L. 108–282). The document requested comments (including data) that we can use to design and carry out a quantitative risk assessment for establishing regulatory thresholds for major food allergens.

Section 201(qq) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(qq)) defines a ''major food allergen'' as ''[m]ilk, egg, fish (e.g., bass, flounder, or cod), Crustacean shellfish (e.g., crab, lobster, or shrimp), tree nuts (e.g., almonds, pecans, or walnuts), wheat, peanuts, and soybeans'' and also as a food ingredient that contains protein derived from such foods, (exempting highly refined oils). FALCPA establishes that foods regulated under the FD&C Act are misbranded unless they declare the presence of major food allergens on the product label using the common or usual name of that major food allergen. FALCPA also provides two mechanisms through which ingredients may become

exempt from the major food allergen labeling requirement. An individual may petition for an exemption by providing scientific evidence, including the analytical method used, that an ingredient ''does not cause an allergic response that poses a risk to human health.'' (21 U.S.C. 403(w)(6)(C)). Alternatively, an individual may submit a notification that contains either scientific evidence showing that an ingredient ''does not contain allergenic protein'' or that a determination has previously been made through a premarket approval process that the ingredient ''does not cause an allergic response that poses a risk to human health.'' (21 U.S.C. 403(w)(7)(A)).

In addition to their intended use as ingredients, the unintended presence of major food allergens in foods may occur through cross-contact. Cross-contact describes the inadvertent introduction of an allergen into a product that would not intentionally contain that allergen as an ingredient. Most cross-contact can be avoided by controlling the production environment. While we have used several risk management strategies to reduce the risk of exposure to unlabeled major food allergens, we have not established regulatory thresholds or action levels for major food allergens. The establishment of regulatory thresholds or action levels for major food allergens would help us determine whether, or what type of, enforcement action is appropriate when specific problems are identified and also help us establish a clear standard for evaluating claims in FALCPA petitions that an ingredient ''does not cause an allergic response that poses a risk to human health'' or ''does not contain allergenic protein.'' Regulatory thresholds also would help industry to conduct allergen hazard analyses and develop standards for evaluating the effectiveness of allergen preventive controls. We have previously evaluated the approaches that could be used for establishing thresholds for food allergens, as we reported in March 2006. Since the publication of that report, there have been significant advances in both scientific tools and data resources related to food allergens. Therefore, we intend to determine if the currently available data and analysis tools are sufficient to support a quantitative risk assessment and, if so, to use these data and tools to evaluate the public health impact of establishing specific regulatory thresholds for one or more of the major food allergens.

We recently received requests from trade associations for an extension of the comment period until either April 1, 2013, or May 13, 2013. These requests conveyed the concern that the current 60-day comment period does not allow sufficient time to collect responsive information and data to submit to FDA.

We considered the requests and, through this notice, are extending the comment period for all interested persons until May 13, 2013.

II. Request for Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

III. References

FDA has placed the following reference on display. To view the reference, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box. The reference may also be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

1. Threshold Working Group. 2006. Approaches to Establish Thresholds for Major Food Allergen and for Gluten in Food. Available at *http://www.fda.gov/Food/LabelingNutrition/FoodAllergensLabeling/GuidanceComplianceRegulatoryInformation/ucm106108.htm.*

Dated: January 30, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–02319 Filed 2–1–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0068]

International Conference on Harmonisation; Draft Guidance on S10 Photosafety Evaluation of Pharmaceuticals; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''S10 Photosafety Evaluation of Pharmaceuticals.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation (ICH) of Technical Requirements for Registration of Pharmaceuticals for Human Use. The draft guidance includes criteria for initiation of and triggers for additional photosafety testing and should be read in conjunction with the ICH M3(R2) guidance, section XIV(14) Photosafety Testing. The purpose of the draft guidance is to recommend international standards for photosafety assessment and to harmonize such assessments that support human clinical trials and marketing authorization for pharmaceuticals.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by March 21, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Abigail Jacobs, Center for Drug Evaluation and Research (ONDIO), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6484, Silver Spring, MD 20993–0002, 301–796–0174.

Regarding the ICH: Michelle Limoli, Center for Drug Evaluation and Research, International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 3342, Silver Spring, MD 20993–0002, 301–796–8377.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry

associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory Agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In November 2012, the ICH Steering Committee agreed that a draft guidance entitled ''S10 Photosafety Evaluation of Pharmaceuticals'' should be made available for public comment. The draft guidance is the product of the S10 Expert Working Group of the ICH. Comments about this draft will be considered by FDA and the S10 Expert Working Group.

The ICH S10 draft guidance provides guidance on when photosafety testing is warranted, and on possible testing strategies. It represents the consensus that exists regarding assessment of photosafety to support clinical development and marketing authorization of pharmaceuticals. It supplements the ICH M3(R2) guidance,[1] which (1) provides certain information regarding timing of photosafety testing relative to clinical development and (2) recommends that an initial assessment of photoreactive potential be conducted and, if appropriate, an experimental evaluation be undertaken before exposure of large numbers of subjects. However, the ICH M3(R2) guidance does not address testing strategies.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov* or *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

Dated: January 29, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–02296 Filed 2–1–13; 8:45 am]

BILLING CODE 4160–01–P

[1] See the ICH guidance ''M3(R2) Nonclinical Safety Studies for the Conduct of Human Clinical Trials and Marketing Authorization for Pharmaceuticals,'' available on the Internet at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Loan Repayment Program for Repayment of Health Professions Educational Loans

Announcement Type: Initial

CFDA Number: 93.164

Key Dates: February 15, 2013 first award cycle deadline date; August 16, 2013 last award cycle deadline date; September 13, 2013 last award cycle deadline date for supplemental loan repayment program funds; September 30, 2013 entry on duty deadline date.

I. Funding Opportunity Description

The Indian Health Service (IHS) estimated budget request for Fiscal Year (FY) 2013 includes $20,179,074 for the IHS Loan Repayment Program (LRP) for health professional educational loans (undergraduate and graduate) in return for full-time clinical service as defined in the IHS LRP policy clarifications at *http://www.ihs.gov/loanrepayment/documents/LRP_Policy_Updates.pdf*, in Indian health programs.

This program announcement is subject to the appropriation of funds. This notice is being published early to coincide with the recruitment activity of the IHS, which competes with other Government and private health management organizations to employ qualified health professionals.

This program is authorized by 25 U.S.C. Section 1616a.

II . Award Information

The estimated amount available is approximately $20,179,074 to support approximately 455 competing awards averaging $44,270 per award for a two year contract. One year contract continuations will receive priority consideration in any award cycle. Applicants selected for participation in the FY 2013 program cycle will be expected to begin their service period no later than September 30, 2013.

III. Eligibility Information

1. Eligible Applicants

Pursuant to Section 108(b), to be eligible to participate in the LRP, an individual must:

(1) (A) Be enrolled—

(i) In a course of study or program in an accredited institution, as determined by the Secretary, within any State and be scheduled to complete such course of study in the same year such individual applies to participate in such program; or

(ii) In an approved graduate training program in a health profession; or

(B) Have a degree in a health profession and a license to practice in a state; and

(2) (A) Be eligible for, or hold an appointment as a Commissioned Officer in the Regular Corps of the Public Health Service (PHS); or

(B) Be eligible for selection for service in the Regular Corps of the PHS; or

(C) Meet the professional standards for civil service employment in the IHS; or

(D) Be employed in an Indian health program without service obligation; and

(E) Submit to the Secretary an application for a contract to the LRP. The Secretary must approve the contract before the disbursement of loan repayments can be made to the participant. Participants will be required to fulfill their contract service agreements through full-time clinical practice at an Indian health program site determined by the Secretary. Loan repayment sites are characterized by physical, cultural, and professional isolation, and have histories of frequent staff turnover. Indian health program sites are annually prioritized within the Agency by discipline, based on need or vacancy. The IHS LRP's ranking system gives high site scores to those sites that are most in need of specific health professions. Awards are given to the applications that match the highest priorities until funds are no longer available.

Any individual who owes an obligation for health professional service to the Federal Government, a State, or other entity is not eligible for the LRP unless the obligation will be completely satisfied before they begin service under this program.

Section 108 of the IHCIA, as amended, authorizes the IHS LRP and provides in pertinent part as follows:

(a)(1) The Secretary, acting through the Service, shall establish a program to be known as the Indian Health Service Loan Repayment Program (hereinafter referred to as the Loan Repayment Program) in order to assure an adequate supply of trained health professionals necessary to maintain accreditation of, and provide health care services to Indians through, Indian health programs.

Section 1603(10) of the IHCIA provides that:

''Health Profession'' means allopathic medicine, family medicine, internal medicine, pediatrics, geriatric medicine, obstetrics and gynecology, podiatric medicine, nursing, public health nursing, dentistry, psychiatry, osteopathy, optometry, pharmacy, psychology, public health, social work, marriage and family therapy, chiropractic medicine, environmental health and engineering, an allied health profession, or any other health profession.

For the purposes of this program, the term ''Indian health program'' is defined in Section 108(a)(2)(A), as follows:

(A) The term Indian health program means any health program or facility funded, in whole or in part, by the Service for the benefit of Indians and administered—

(i) Directly by the Service;

(ii) By any Indian Tribe or Tribal or Indian organization pursuant to a contract under—

(I) The Indian Self-Determination Act, or

(II) Section 23 of the Act of April 30, 1908, (25 U.S.C. 47), popularly known as the Buy Indian Act; or

(iii) By an urban Indian organization pursuant to Title V of this act.

Section 108 of the IHCIA, as amended, authorizes the IHS to determine specific health professions for which IHS LRP contracts will be awarded. Annually, the Director, Division of Health Professions Support sends a letter to the Director, Office of Public Health, tribal leaders, and urban Indian health programs directors to request a list of positions for which there is a need or vacancy. The list of priority health professions that follows is based upon the needs of the IHS as well as upon the needs of American Indians and Alaska Natives.

(a) Medicine: Allopathic and Osteopathic.

(b) Nurse: Associate, B.S., and M.S. Degree.

(c) Clinical Psychology: Ph.D. and Psy.D.

(d) Counseling Psychology: Ph.D.

(e) Social Work: Masters level only.

(f) Chemical Dependency Counseling: Baccalaureate and Masters level.

(g) Counseling: Masters level only.

(h) Dentistry: DDS and DMD.

(i) Dental Hygiene.

(j) Dental Assistant: Certified.

(k) Pharmacy: B.S., Pharm.D.

(l) Optometry: O.D.

(m) Physician Assistant: Certified.

(n) Advanced Practice Nurses: Nurse Practitioner, Certified Nurse Midwife, Doctor of Nursing, Registered Nurse Anesthetist (Priority consideration will be given to Registered Nurse Anesthetists.).

(o) Podiatry: D.P.M.

(p) Physical Rehabilitation Services: Physical Therapy, Occupational Therapy, Speech-Language Pathology, and Audiology: M.S. and D.P.T.

(q) Diagnostic Radiology Technology: Certificate, Associate, and B.S.

(r) Medical Laboratory Scientist, Medical Technology, Medical Laboratory Technician: Associate, and B.S.

(s) Public Health Nutritionist/ Registered Dietitian.

(t) Engineering (Environmental): B.S. (Engineers must provide environmental engineering services to be eligible.).

(u) Environmental Health (Sanitarian): B.S. and M.S.

(v) Health Records: R.H.I.T. and R.H.I.A.

(w) Certified Professional Coder: AAPC or AHIMA.

(x) Respiratory Therapy.

(y) Ultrasonography.

(z) Chiropractors: Licensed.

(aa) Naturopathic Medicine: Licensed.

(bb) Acupuncturists: Licensed.

2. Cost Sharing or Matching

Not applicable.

3. Other Requirements

Interested individuals are reminded that the list of eligible health and allied health professions is effective for applicants for FY 2013. These priorities will remain in effect until superseded.

IV. Application and Submission Information

1. Content and Form of Application Submission

Each applicant will be responsible for submitting a complete application. Go to *http://www.ihs.gov/loanrepayment* for more information on how to apply electronically. The application will be considered complete if the following documents are included:

- Employment Verification—Documentation of your employment with an Indian health program as applicable:
  - Commissioned Corps orders, Tribal employment documentation or offer letter, or notification of Personnel Action (SF–50B)—For current Federal employees.
- License to Practice—A photocopy of your current, non-temporary, full and unrestricted license to practice (issued by any state, Washington, DC or Puerto Rico).
- Loan Documentation—A copy of all current statements related to the loans submitted as part of the LRP application.
- If applicable, if you are a member of a Federally recognized Tribe or Alaska Native (recognized by the Secretary of the Interior), provide a certification of Tribal enrollment by the Secretary of the Interior, acting through the Bureau of Indian Affairs (BIA) (Certification: Form 4432 Category A—Members of Federally-Recognized Indian Tribes, Bands or Communities).

2. Submission Dates and Address

Applications for the FY 2013 LRP will be accepted and evaluated monthly beginning February 15, 2013, and will continue to be accepted each month thereafter until all funds are exhausted for FY 2013. Subsequent monthly deadline dates are scheduled for Friday of the second full week of each month until August 16, 2013.

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; and

(b) All documentation as describe above are submitted on or before the deadline date. (Applicants should

request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing).

Applications submitted after the monthly closing date will be held for consideration in the next monthly funding cycle. Applicants who do not receive funding by September 30, 2013, will be notified in writing.

Application documents should be sent to: IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852.

3. Intergovernmental Review

This program is not subject to review under Executive Order 12372.

4. Funding Restrictions

Not applicable.

5. Other Submission Requirements

New applicants are responsible for using the online application. Applicants requesting a continuation must do so in writing as early in the fiscal year in which they are reapplying.

V. Application Review Information

1. Criteria

The IHS has identified the positions in each Indian health program for which there is a need or vacancy and ranked those positions in order of priority by developing discipline-specific prioritized lists of sites. Ranking criteria for these sites may include the following:

(a) Historically critical shortages caused by frequent staff turnover;

(b) Current unmatched vacancies in a health profession discipline;

(c) Projected vacancies in a health profession discipline;

(d) Ensuring that the staffing needs of Indian health programs administered by an Indian Tribe or Tribal health organization or urban Indian organization receive consideration on an equal basis with programs that are administered directly by the Service; and

(e) Giving priority to vacancies in Indian health programs that have a need for health professionals to provide health care services as a result of individuals having breached LRP contracts entered into under this section.

Consistent with this priority ranking, in determining applications to be approved and contracts to accept, the IHS will give priority to applications made by American Indians and Alaska Natives and to individuals recruited through the efforts of Indian Tribes or Tribal or Indian organizations.

2. Review and Selection Process

Loan repayment awards will be made only to those individuals serving at facilities which have a site score of 70 or above during the first quarter of FY 2013, if funding is available.

One or all of the following factors may be applicable to an applicant, and the applicant who has the most of these factors, all other criteria being equal, will be selected.

(a) An applicant's length of current employment in the IHS, Tribal, or urban program.

(b) Availability for service earlier than other applicants (first come, first served).

(c) Date the individual's application was received.

3. Anticipated Announcement and Award Dates

Not applicable.

VI. Award Administration Information

1. Award Notices

Notice of awards will be mailed on the last working day of each month. Once the applicant is approved for participation in the LRP, the applicant will receive confirmation of his/her loan repayment award and the duty site at which he/she will serve his/her loan repayment obligation.

2. Administrative and National Policy Requirements

Applicants may sign contractual agreements with the Secretary for two years. The IHS may repay all, or a portion of the applicant's health profession educational loans (undergraduate and graduate) for tuition expenses and reasonable educational and living expenses in amounts up to $20,000 per year for each year of contracted service. Payments will be made annually to the participant for the purpose of repaying his/her outstanding health profession educational loans. Payment of health profession education loans will be made to the participant within 120 days, from the date the contract becomes effective. The effective date of the contract is calculated from the date it is signed by the Secretary or his/her delegate, or the IHS, Tribal, urban, or Buy Indian health center entry-on-duty date, whichever is more recent.

In addition to the loan payment, participants are provided tax assistance payments in an amount not less than 20 percent and not more than 39 percent of the participant's total amount of loan repayments made for the taxable year involved. The loan repayments and the tax assistance payments are taxable income and will be reported to the Internal Revenue Service (IRS). The tax assistance payment will be paid to the IRS directly on the participant's behalf. LRP award recipients should be aware that the IRS may place them in a higher tax bracket than they would otherwise have been prior to their award.

3. Contract Extensions

Any individual who enters this program and satisfactorily completes his or her obligated period of service may apply to extend his/her contract on a year-by-year basis, as determined by the IHS. Participants extending their contracts may receive up to the maximum amount of $20,000 per year plus an additional 20 percent for Federal withholding.

VII. Agency Contact

Please address inquiries to Ms. Jacqueline K. Santiago, Chief, IHS Loan Repayment Program, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852, Telephone: 301/443–3396 [between 8:00 a.m. and 5:00 p.m. (EST) Monday through Friday, except Federal holidays].

VIII. Other Information

IHS Area Offices and Service Units that are financially able are authorized to provide additional funding to make awards to applicants in the LRP, but not to exceed $35,000 a year plus tax assistance. All additional funding must be made in accordance with the priority system outlined below. Health professions given priority for selection above the $20,000 threshold are those identified as meeting the criteria in 25 U.S.C. 1616a(g)(2)(A) which provides that the Secretary shall consider the extent to which each such determination:

(i) Affects the ability of the Secretary to maximize the number of contracts that can be provided under the LRP from the amounts appropriated for such contracts;

(ii) Provides an incentive to serve in Indian health programs with the greatest shortages of health professionals; and

(iii) Provides an incentive with respect to the health professional involved remaining in an Indian health program with such a health professional shortage, and continuing to provide primary health services, after the completion of the period of obligated service under the LRP.

Contracts may be awarded to those who are available for service no later than September 30, 2013, and must be in compliance with any limits in the

appropriation and Section 108 of the IHCIA not to exceed the amount authorized in the IHS appropriation (up to $32,000,000 for FY 2013). In order to ensure compliance with the statutes, Area Offices or Service Units providing additional funding under this section are responsible for notifying the LRP of such payments before funding is offered to the LRP participant.

Should an IHS Area Office contribute to the LRP, those funds will be used for only those sites located in that Area. Those sites will retain their relative ranking from the national site-ranking list. For example, the Albuquerque Area Office identifies supplemental monies for dentists. Only the dental positions within the Albuquerque Area will be funded with the supplemental monies consistent with the national ranking and site index within that Area.

Should an IHS Service Unit contribute to the LRP, those funds will be used for only those sites located in that Service Unit. Those sites will retain their relative ranking from the national site-ranking list. For example, Whiteriver Service Unit identifies supplemental monies for nurses. The Whiteriver Service Unit consists of two facilities, namely the Whiteriver PHS Indian Hospital and the Cibecue Indian Health Center. The national ranking will be used for the Whiteriver PHS Indian Hospital (Score = 79) and the Cibecue Indian Health Center (Score = 95). With a score of 95, the Cibecue Indian Health Center would receive priority over the Whiteriver PHS Indian Hospital.

Dated: January 28, 2013.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2013–02356 Filed 2–1–13; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Initial Review Group; Subcommittee J—Career Development.

Date: March 5–6, 2013.

Time: 4:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Ilda F. S. Melo, Ph.D. Scientific Review Officer, Resources and Training Review Branch, Division Of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8111, Bethesda, MD 20892–8328, 301–496–7481, *mckennai@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/irg/irg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02281 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin 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: Arthritis and Musculoskeletal and Skin Diseases Initial Review Group; Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: March 7–8, 2013.

Time: 6:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Helen Lin, Ph.D., Scientific Review Officer, NIH/NIAMS/RB, 6701 Democracy Blvd., Suite 800, Plaza One, Bethesda, MD 20817, 301–594–4952, *linh1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 29, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02275 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Skeletal Biology Structure and Regeneration Overflow.

Date: February 22, 2013.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Daniel F McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Hemostasis and Thrombosis Study Section.

Date: February 25, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Bukhtiar H Shah, Ph.D., DVM, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1233, *shahb@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetics of Health and Disease Study Section.

Date: February 25–26, 2013.

Time: 8:30 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Cheryl M Corsaro, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Rare Diseases.

Date: February 25, 2013.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Richard A Currie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1108, MSC 7890, Bethesda, MD 20892, (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk, Prevention and Intervention for Addictions: Overflow.

Date: March 1, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Understanding and Promoting Health Literacy.

Date: March 1, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Riverwalk, 420 W Market Street, San Antonio, TX 78205.

Contact Person: Rebecca Henry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, 301–435–1717, *henryrr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Bioinformatics in Surgical Sciences, Imaging, and Independent Living.

Date: March 1, 2013.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Surgical Sciences, Biomedical Imaging and Bioengineering.

Date: March 1, 2013.

Time: 12:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170, *luow@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02284 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Resource related research project on genetically modified rats.

Date: February 28, 2013.

Time: 9:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shelley S. Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301–435–0303, *ssehnert@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Conference Grant Review.

Date: February 28–March 1, 2013.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Kristen Page, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02278 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: February 27–28, 2013.

Time: 8:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue NW., Washington, DC 20005.

Contact Person: Joanne T Fujii, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Immunology.

Date: February 28–March 1, 2013.

Time: 8:00 a.m. to 10:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; AREA: Immunology.

Date: March 1, 2013.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846- 93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02283 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; SBIR Contract Proposal Passive MRI Guidewire.

Date: February 27, 2013.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Suite 7184, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: YingYing Li-Smerin, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Resource-Related Research Projects.

Date: February 27, 2013.

Time: 3:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tony L Creazzo, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzotl@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; SBIR Contract Proposal MRI Myocardinal Biopsy Forceps.

Date: February 27, 2013.

Time: 4:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: YingYing Li-Smerin, Ph.D., MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7184, Bethesda, MD 20892–7924, 301–435–0277, *lismerin@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02279 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: February 25–26, 2013.

Open: February 25, 2013, 8:00 a.m. to 5:00 p.m.

Agenda: To discuss and provide updates on sleep and circadian research developments and the NIH sleep research plan. Members of the public unable to attend the meeting in person may hear the public portion of all discussions by dialing 888–790–2021, passcode 26102. Briefing materials and slide presentations can be accessed electronically after the meeting starts using the internet link below. *https://webmeeting.nih.gov/sdrab-2013-Feb/.*

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Open: February 26, 2013, 8:00 a.m. to 12:00 p.m.

Agenda: To discuss and provide updates on sleep and circadian research developments and the NIH sleep research plan. Members of the public unable to attend the meeting in person may hear the public portion of all discussions by dialing 888–790–2021, passcode 26102. Briefing materials and slide presentations can be accessed electronically after the meeting starts using the internet link below. *https://webmeeting.nih.gov/sdrab-2013-Feb/.*

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Michael J Twery, Ph.D., Director, National Center on Sleep Disorders Research, Division of Lung Diseases, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Suite 10038, Bethesda, MD 20892–7952, 301–435–0199, *twerym@nhlbi.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02269 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK R24 Applications.

Date: March 12, 2013.

Time: 12:00 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02273 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Program Project on Differentiation of GI Tract.

Date: April 3, 2013.

Time: 3:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02272 Filed 2–1–13; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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 Peer Review Meeting.

Date: February 25–26, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Sheraton—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Maryam Feili-Hariri, Ph.D., Scientific Review Officer, Immunology Review Branch, Scientific Review Program, DHHS/NIH/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–3243, *haririmf@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 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02276 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, March 11, 2013, 8:00 a.m. to March 12, 2013, 5:00 p.m., Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852 which was published in the **Federal Register** on January 17, 2013, 78 FR 3901.

This notice is being amended to change the title from ''NCI OmniBus Review Meeting'' to ''Cancer Detection and Screening (Omnibus)''. The meeting is closed to the public.

Dated: January 29, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02280 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Palliative Care Research Co-Operative.

Date: March 8, 2013.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Mario Rinaudo, MD, Scientific Review Officer, Office of Review, National Institute of Nursing Research, National Institutes of Health, 6701 Democracy Blvd. (DEM 1), Suite 710, Bethesda, MD 20892, 301–594–5973, *mrinaudo@mail.nih.gov.*

Name of Committee: National Institute of Nursing Research Special Emphasis Panel, Fellowship & Mentored Research Scientist Development.

Date: March 8, 2013.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary A. Kelly, DEA/OR, NINR/NIH, 6701 Democracy Blvd., Suite 700, Bethesda, MD 20892, 301–496–0235, *mary.kelly@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: January 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02270 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of Clinical (L30) and Pediatric (L40) NIH Loan repayment applications.

Date: February 27, 2013.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Victor Henriquez, Ph.D., Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; R34/U01 Grant Application Review MH10.

Date: March 12, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: January 29, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02274 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Sentinel Animal Study for Public Health.

Date: February 27, 2013.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, Ph.D., Scientific Review Administrator, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709, (919) 541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 29, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02271 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel; Review of a resource grant application in rat embryonic stem cell lines.

Date: February 21, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shelley S Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892–7924, 301–435–0303, *ssehnert@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02277 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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/or contract Proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: February 25–26, 2013.

Closed: February 25, 2013, 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Room B2C03, Bethesda, MD 20892.

Open: February 26, 2013 9:00 a.m. to 3:00 p.m.

Agenda: Discussions will focus on new directions for Fogarty International Center non-communicable diseases portfolio and strengthening collaborations between researchers and implementers and policymakers.

Place: National Institutes of Health, Lawton L. Chiles International House, Bethesda, MD 20892.

Contact Person: Robert Eiss, Public Health Advisor, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2c02, Bethesda, MD 20892, (301) 496–1415, *EISSR@MAIL.NIH.GOV.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nih.gov/fic/about/advisory.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health HHS)

Dated: January 29, 2013.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02282 Filed 2–1–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118);

April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, requires strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281

DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800–235–4890

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609

Fortes Laboratories, Inc., 25749 SW. Canyon Creek Road, Suite 600, Wilsonville, OR 97070, 503–486–1023

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.,)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories)

Redwood Toxicology Laboratory, 3650 Westwind Blvd., Santa Rosa, CA 95403, 707–570–4434

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273

U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2013–02310 Filed 2–1–13; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0005]

Homeland Security Information Network Advisory Committee (HSINAC)

AGENCY: OPS/OCIO, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Information Network Advisory Committee (HSIN AC) will meet on February 27th–28th, 2013 in Washington, DC. The meeting will be open to the public.

DATES: HSIN AC will meet Wednesday, February 27th, 2013 from 9 a.m. to 5 p.m. and on Thursday, February 28th, 2013 from 9 a.m. to 2 p.m. Please note that the meeting may end early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Ronald Reagan International Trade Center (Ronald Reagan Building), 1300 Pennsylvania Ave. NW., Washington DC 20004. All visitors to the Ronald Reagan International Trade Center are required to show government identification for admittance to the building. In the event of inclement weather affecting the Washington, DC area, creating a delay in the opening of Federal offices, the contingency plan will be to hold the conference via a teleconference call and if possible Adobe Connect session, requesting that all participants and visitors participate virtually. If the Federal government is closed, the meeting will be rescheduled. Please provide your name, telephone number and email by close of business on February 25th, 2013, to the contact person listed in **FOR FURTHER INFORMATION CONTACT** below. Teleconference lines will be available for this meeting.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact David Steigman, *david.steigman@hq.dhs.gov,* 202–357–7809, as soon as possible.

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. Comments must be submitted in writing no later than February 20, 2013 and must be identified by docket number: DHS–2013–0005 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* David Steigman, *david.steigman@hq.dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* 202–357–7678.
- *Mail:* David Steigman, Department of Homeland Security, OPS CIO–D Stop 0426, 245 Murray Lane, SW., BLDG 410, Washington, DC 20528–0426.

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.

Docket: For access to the docket to read background documents or comments received by the (Homeland Security Information Network Advisory Committee), go to *http://www.regulations.gov.*

Short public comment periods will be held during the meeting following presentations. Those providing comments are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker. Documents will be distributed to the committee members during the meeting and made available to the public on February 27, 2013 on the **Federal Register** Web site at: *https://www.federalregister.gov/agencies/homeland-security-department.* These documents will be formatted in the Microsoft Suite software applications.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, David Steigman, *david.steigman@hq.dhs.gov*, Phone: 202–357–7809, Fax: 202–357–7678, or Alternate Designated Federal Officer, Sarah Schwettman, *sarah.schwettman@hq.dhs.gov*, Phone: 202–357–7882.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act,* 5 U.S.C. App. (Pub. L. 92–463).

The HSINAC provides advice and recommendations to the U.S. Department of Homeland Security (DHS) on matters relating to HSIN. These matters include system requirements, operating policies, community organization, knowledge management, interoperability and federation with other systems, and any other aspect of HSIN that supports the operations of DHS and its Federal, State, territorial, local, tribal, international, and private sector mission partners. The HSINAC provides independent advice and recommendations to the leadership

of DHS regarding HSIN. The duties of the HSINAC are solely advisory in nature.

The HSINAC will meet to review, discuss and make recommendations on key messaging to stakeholder community showcasing the vision of HSIN and its progressive development efforts.

Agenda

1. Opening and introductions
2. Federal Advisory Committee Act 101; Ethics
3. Discuss the revised HSINAC Charter.
4. How Far We've Come: Provide an update on HSIN program status since the August 2010 HSIN AC Meeting, including the OMB TechStat Review and HSIN Business Case.
5. The HSIN Release 3 Value Proposition: The development of the revised program upgrade known as HSIN Release 3 and a review of related program technology.
6. HSIN's Alignment to the National Information Sharing and Safeguarding Strategy and how HSIN aligns to the Federal Information Sharing Environment.
7. How We've Acted on Your Recommendations: Provide a review of updates across the HSIN Work Streams the Analysis of Alternatives, HSIN Business Case, and the Tech Stat Review and how those program reviews led to the decision to proceed with HSIN Release 3.
8. Respectfully request the development of recommendations for submission to the HSIN Program Management Office and DHS leadership going forward. The HSIN Program Management Office seeks guidance on HSIN Release 3's identity proofing process, communication messaging and training guidance on the suggested topics of identity proofing, migration, two-factor authentication, federated users and community of interest (COI) charter implementation.

Dated: January 28, 2013.

James Lanoue,

HSIN Acting Program Manager.

[FR Doc. 2013–02344 Filed 2–1–13; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2012–0074]

Privacy Act of 1974; Department of Homeland Security U.S. Immigration and Customs Enforcement—010 Confidential and Other Sources of Information System of Records

AGENCY: Department of Homeland Security, Privacy Office.

ACTION: Notice of Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue a current Department of Homeland Security system of records titled, ''Department of Homeland Security/U.S. Immigration and Customs Enforcement—010 Confidential and Other Sources of Information System of Records.'' This system of records allows the Department of Homeland Security/U.S. Immigration and Customs Enforcement to collect and maintain records concerning the identities of and information received from documented Confidential Informants and other sources who supply information to U.S. Immigration and Customs Enforcement regarding possible violations of law or otherwise in support of law enforcement investigations and activities. With the publication of this updated system of records, several changes are being made: (1) The categories of individuals are being updated; (2) new categories of records are being added; (3) routine uses are being updated; (4) new routine uses are being added to allow ICE to share information from the system; and (5) the retention period of records related to confidential and other sources is being updated. The exemptions for the existing system of records notice will continue to be applicable for this system of records notice. This updated system will continue to be included in the Department of Homeland Security's inventory of record systems.

Dates and Comments: Submit comments on or before March 6, 2013. In particular, comments are requested concerning the application of the exemptions to the newly added categories of records. This updated system will be effective March 6, 2013.

ADDRESSES: You may submit comments, identified by docket number DHS–2012–0074 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:* Jonathan R. Cantor, Acting 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, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact: Lyn Rahilly, Privacy Officer, Immigration and Customs Enforcement, (202) 732–3300, 500 12th Street SW., Washington, DC 20536–5004. For privacy questions, please contact: Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, (202) 343–1717, 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) U.S. Immigration and Customs Enforcement (ICE) proposes to update and reissue a current DHS system of records titled, ''DHS/ICE—010 Confidential and Other Sources of Information (COSI) System of Records,'' 73 FR 237 (Dec. 9, 2008). This System of Records Notice (SORN) will update the categories of individuals, add new categories of records in the system, add and update routine uses, and update the retention period of records related to confidential and other sources. As a law enforcement investigatory agency, ICE collects and maintains information regarding possible violations of law from a number of sources, including Confidential Informants; federal, state, local, tribal, territorial, and foreign law enforcement agencies; and members of the public. This system of records allows ICE to collect and maintain records concerning the identities of and information received from documented Confidential Informants and other sources who supply information to ICE regarding possible violations of law or otherwise in support of law enforcement investigations and activities.

Categories of individuals have been updated in the DHS/ICE—010 COSI SORN to more accurately describe the individuals about whom ICE collects information. Previously categorized as ''Non-Confidential Informants,''

individuals who are not documented as Confidential Informants, but report information to ICE, are now considered ''Sources of Information,'' while government personnel acting in their personal or professional capacities and law enforcement officers acting in their professional capacity are now separate categories of individuals.

Additionally, new categories of records have been added to more accurately reflect the types of information collected and maintained on Confidential Informants, Sources of Information, and government personnel and law enforcement officers. For Confidential Informants, fingerprints, handwriting samples, Alien Registration Numbers, copies of passports(s), immigration records, bank account information, date, informant was deactivated, special skills, and internal ICE memoranda and other reports have been added. For Sources of Information, criminal history information, date and place of birth, immigration history, documentation of information received and monetary payment, and internal ICE memoranda and other reports have been added. For government personnel and law enforcement officers, individual's name, addresses, agency, nationality, and occupational information have been added.

Routine uses B and C are no longer being used in the DHS/ICE—010 COSI SORN. As a result, the lettering of the routine uses has been amended, and all routine uses following B and C have been shifted up two letters. Furthermore, new routine uses have been added to allow ICE to share information regarding confidential and other sources of information. Below is a summary of the new routine uses and their corresponding letters:

F. To federal, state, local, tribal, territorial, foreign, or international agencies for the purpose of obtaining information relevant and necessary to ICE's decision whether an individual may act as a Confidential Informant;

G. To courts, magistrates, administrative tribunals, parties, and witnesses, in the course of immigration, civil, or criminal proceedings and when DHS determines that use of such records is relevant and necessary to the litigation before a court or adjudicative body;

H. To prospective claimants and their attorneys for the purpose of negotiating the settlement of an actual of prospective claim against DHS or its current or former employees, in advance of the initiation of formal litigation or proceedings;

I. To a former employee of DHS for purposes of responding to an official inquiry or facilitating communications with a former employee that may be relevant for personnel-related or other official purposes;

J. To international, foreign, intergovernmental, and multinational government agencies, authorities, and organizations to facilitate the testimony of a Confidential Informant in a criminal, civil, or administrative case;

K. To federal, state, local, tribal, territorial, or foreign government agencies, as well as to other individuals and organizations during the course of an investigation by DHS or during a proceeding within the purview of the immigration and nationality laws;

L. To federal, state, local, tribal, territorial, foreign, or international criminal, civil, or regulatory law enforcement authorities when the information is necessary for collaboration, coordination, and de-confliction of investigative matters, prosecutions, and/or other law enforcement actions;

N. To the Department of State when it requires information to consider and/or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about an alien or an enforcement operation with transnational implications.

Finally, the retention period for records pertaining to Confidential Informants has been updated. Previously, the SORN stated that all records pertaining to confidential and other sources of information were maintained until the end of the fiscal year in which the related investigative file was closed, and records were transferred to the Federal Records Center five (5) years after the end of that fiscal year. ICE is proposing that electronic and paper records pertaining to Confidential Informants are maintained in active form at ICE Headquarters for five (5) years past the date of a Confidential Informant's deactivation in order to assist with any ongoing ICE investigations. The records will then be archived and retained at ICE Headquarters for an additional fifty (50) years, following which the records will be destroyed.

Portions of the DHS/ICE–010 COSI System of Records are exempt from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. Individuals may request information about records pertaining to them stored in the DHS/ICE–010 COSI System of Records as outlined in the ''Notification Procedure'' section below. ICE reserves the right to exempt various records from release. Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). In addition, to the extent a record contains information from other exempt systems of records, ICE will rely on the exemptions claimed for those systems. The exemptions for the existing system of records notice will continue to be applicable for this system of records notice as published in the **Federal Register** on August 31, 2009 (74 FR 45083). In the context of this updated SORN, DHS is requesting comment on the application of these exemptions to the newly added categories of records. This system will continue to be included in the DHS's inventory of record systems.

Consistent with DHS' information-sharing mission, information stored in the DHS/ICE–010 COSI 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 federal, state, local, tribal, territorial, foreign, or international government agencies consistent with the routine uses set forth in this system of records notice.

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 for which information is retrieved by the name of an individual or by some identifying number, symbol, or other particular identifier 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 where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

Below is the description of the DHS/ICE–010 COSI 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)/U.S. Immigration and Customs Enforcement (ICE)-010

SYSTEM NAME:

DHS/ICE–010 Confidential and Other Sources of Information (COSI)

SECURITY CLASSIFICATION:

Unclassified. Law Enforcement Sensitive (LES).

SYSTEM LOCATION:

Records are maintained at ICE Headquarters in Washington, DC and at ICE field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals covered by this system include:

(1) Confidential Informants: Individuals who have been documented as Confidential Informants and report information to ICE regarding possible violations of law or other information in support of law enforcement investigations and activities. Confidential Informants are members of the public acting in either their personal or professional capacities.

(2) Sources of Information: Individuals who are not documented as Confidential Informants as described in (1) above who report information to ICE regarding possible violations of law or other information in support of law enforcement investigations and activities. These individuals are cooperating defendants to a criminal, civil, or administrative case or members of the public acting in either their personal or professional capacities.

(3) Federal, state, local, tribal, territorial, or foreign government personnel acting in their personal or professional capacities.

(4) Federal, state, local, tribal, territorial, or foreign law enforcement officers acting in their professional capacities.

(5) Individuals reported by Confidential Informants and Sources of Information or federal, state, local, tribal, territorial or foreign government personnel or law enforcement officers acting in their professional capacities: Individuals whose information is provided to ICE by the individuals described in (1), (2), and (3) above. These individuals are typically persons who are alleged to have engaged in, witnessed, or otherwise been associated with suspected illegal activity.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system may include:

For Confidential Informants:

- Individual's name (actual or assumed);
- ICE Confidential Informant (identifying) number;
- Date ICE Informant number assigned;
- Date Informant was deactivated;
- Addresses;
- Nationality;
- Occupational information;
- Date and place of birth;
- Physical description of identifying features;
- Special skills (e.g., languages spoken, special certifications, areas of expertise);
- Photograph of Informant;
- Fingerprints;
- Handwriting sample;
- Identifying numbers, such as Social Security Number, Alien Registration Number, driver's license number, FBI number, and passport number;
- Immigration history;
- Criminal history information;
- Copy of driver's license;
- Copy of alien registration card;
- Copy of passport(s);
- Bank account information;
- Documentation of information received and the amount and date of any monetary payment made to the Informant; and
- Internal ICE memoranda and other reports pertinent to a confidential informant's eligibility, suitability, and identity.

For Sources of Information:

- Individual's name (actual or assumed);
- Addresses;
- Nationality;
- Occupational information;
- Criminal History Information;
- Date and place of birth;
- Immigration history;
- Documentation of information received and the amount and date of any monetary payment made to the Source; and
- Internal ICE memoranda and other reports pertinent to a Source's eligibility, suitability and identity.

For federal, state, local, tribal, territorial or foreign government personnel or law enforcement officers:

- Individual's Name (actual or assumed);
- Addresses;
- Agency;
- Nationality; and
- Occupational Information.

For individuals about whom information is provided:

- Individual's name (alleged violator, witness, interested parties, those connected with the investigation);
- Aliases;
- Addresses;
- Nationality;
- Occupational information;
- Date and place of birth;
- Physical description of identifying features;
- Photograph of the individual;
- Fingerprints;
- Handwriting sample;
- Identifying numbers, such as Social Security Number, Alien Registration Number, driver's license number, FBI/National Crime Information Center (NCIC) number, and passport number;
- Telephone numbers;
- Emergency contact information;
- Association/Organization memberships;
- Copy of alien registration card;
- Copy of driver's license;
- Registration number of vehicle, vessel, or aircraft;
- ICE Investigative case number;
- Internal DHS/ICE memoranda and related materials regarding possible violations of law;
- Criminal record information;
- Financial record information;
- Documentation of information received from Confidential Informants, agencies and other individuals;
- The ICE office receiving the information; and
- ICE Duty Agent Log of information received, which contains some or all of the specific data listed above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1357 and 19 U.S.C. 1589a.

PURPOSE(S):

The purpose of this system is to document and manage the identities of and information received from a number of sources, including Confidential Informants, regarding possible violations of law or other information in support of law enforcement investigations and activities conducted by ICE.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records of 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 U.S. Attorney Offices, or other federal agency conducting litigation or in proceedings before any court, adjudicative, or administrative body, when it is relevant and 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 where DOJ or DHS has agreed to represent the employee; or

4. the United States, or any agency thereof.

B. To an agency, organization, or individual 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.

C. 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 other systems 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.

D. 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.

E. Where a record, either on its face or in conjunction with other information, indicates a violation of law, rule, regulation, or order, which includes criminal, civil, or regulatory violations, and such disclosure is proper and consistent with the official duties of the person making the disclosure, a disclosure may be made to federal, state, local, tribal, territorial, international, or foreign law enforcement agencies or other appropriate authorities charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order.

F. To federal, state, local, tribal, territorial, foreign, or international agencies for the purpose of obtaining information relevant and necessary to ICE's decision whether an individual may act as a Confidential Informant.

G. To courts, magistrates, administrative tribunals, parties, and witnesses, in the course of immigration, civil, or criminal proceedings (including discovery, presentation of evidence, and settlement negotiations) and when DHS determines that use of such records is relevant and necessary to the litigation before a court or adjudicative body when any of the following is a party to or have an interest in the litigation:

(1) DHS or any component thereof;

(2) any employee of DHS in his/her official capacity;

(3) any employee of DHS in his/her individual capacity where the government has agreed to represent the employee; or

(4) the United States, where DHS determines the litigation is likely to affect DHS or any of its components.

H. To prospective claimants and their attorneys for the purpose of negotiating the settlement of an actual of prospective claim against DHS or its current or former employees, in advance of the initiation of formal litigation or proceedings.

I. To a former employee of DHS for purposes of responding to an official inquiry by federal, state, local, tribal, or territorial government agencies or professional licensing authorities or facilitating communications with a former employee that may be relevant and necessary for personnel-related or other official purposes where DHS requires information nor consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

J. To international, foreign, intergovernmental, and multinational government agencies, authorities, and organizations to facilitate the testimony of a Confidential Informant in a criminal, civil, or administrative case in which the Confidential Informant is a cooperating witness or party.

K. To federal, state, local, tribal, territorial, or foreign government agencies, as well as to other individuals and organizations during the course of an investigation by DHS or the processing of a matter under DHS's jurisdiction, or during a proceeding within the purview of the immigration and nationality laws, when DHS deems that such disclosure is necessary to carry out its functions and statutory mandates or to elicit information required by DHS to carry out its functions and statutory mandates.

L. To federal, state, local, tribal, territorial, foreign, or international criminal, civil, or regulatory law enforcement authorities when the information is necessary for collaboration, coordination, and de-confliction of investigative matters, prosecutions, and/or other law enforcement actions to avoid duplicative or disruptive efforts and to ensure the safety of law enforcement officers who may be working on related law enforcement matters.

M. To federal and foreign government intelligence or counterterrorism agencies or components where DHS becomes aware of an indication of a threat or potential threat to national or international security, or where such disclosure is to support the conduct of national intelligence and security investigations or to assist in anti-terrorism efforts.

N. To the Department of State when it requires information to consider and/or provide an informed response to a request for information from a foreign, international, or intergovernmental agency, authority, or organization about an alien or an enforcement operation with transnational implications.

O. 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.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Records for Confidential Informants are retrieved by ICE by their numerical identifier or the associated ICE investigative case number. Other source records are retrieved by ICE investigative case number, individual's name or alias (source, subject or other person connected with the investigation), the ICE field office which received the information, and the date the information was received.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. 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:

ICE is seeking approval for a records retention schedule for the records described in this system of records. ICE proposes to maintain both electronic and paper-based records pertaining to Confidential Informants in active form at ICE Headquarters for five (5) years past the date of an individual's deactivation from being a Confidential Informant. The records will then be archived and retained at ICE Headquarters for an additional fifty (50) years, following which the records will be destroyed.

The retention and disposal period listed in the existing system of records notice will continue to be applicable for paper-based records pertaining to Confidential Informants maintained at ICE field offices as well as records pertaining to Non-Confidential Sources and individuals reported by Confidential Informants and Non-Confidential Sources. Records are maintained until the end of the fiscal year in which the related investigative file is closed. The records are then transferred to the Federal Records Center five (5) years after the end of that fiscal year. The records are then destroyed fifty (50) years after the end of the fiscal year in which the related investigative file is closed. Disposal of paper files occurs by burning or shredding; electronic data is disposed of using methods approved by the DHS Chief Information Security Officer.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Director, Investigative Services Division, Office of Investigations, ICE Headquarters, Potomac Center North, 500 12th St. SW., Washington, DC 20024.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, DHS/ICE will consider individual requests to determine whether or not information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to ICE's FOIA Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.'' If an individual believes more than one component maintains Privacy Act records concerning him or her, the individual may submit the request to the Chief Privacy Officer and Chief Freedom of Information Act Officer, U.S. Department of Homeland Security, 245 Murray Drive SW., Building 410, STOP–0550, 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/foia* 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 pertaining to 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) will 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 other federal, state, local, tribal, and territorial law enforcement agencies, Confidential Informants, and any other sources of information including members of the public.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to exemption 5 U.S.C. 552a(j)(2) of the Privacy Act, portions of this system are exempt from 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5) and (e)(8); (f), and (g). Pursuant to 5 U.S.C. 552a(k)(2), this system is exempt from the following provisions of the Privacy Act, subject to the limitations set forth in those subsections: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f). When a record received from another system has been exempted in that source system under 5 U.S.C. 552a(j)(2), DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Dated: January 24, 2013.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–02343 Filed 2–1–13; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Allowance in Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0007.

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: Application for Allowance in Duties (CBP Form 4315). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 73038) on December 7, 2012, 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, 2013.

ADDRESSES: Interested persons are invited to submit written comments on this 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 U.S. 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 affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application for Allowance in Duties.

OMB Number: 1651–0007.

Form Number: CBP Form 4315.

Abstract: CBP Form 4315, *''Application for Allowance in Duties,''* is submitted to CBP in instances of claims of damaged or defective imported merchandise on which an allowance in duty is made in the liquidation of the entry. The information on this form is used to substantiate an importer's claim for such duty allowances. CBP Form 4315 is authorized by 19 U.S.C. 1506 and provided for by 19 CFR part 158, and authorized by 19 U.S.C. 1506, Tariff Act of 1930. This form is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_4315.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form 4315.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 12,000.

Estimated Number of Total Annual Responses: 12,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 1,600.

Dated: January 29, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–02330 Filed 2–1–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application-Permit-Special License Unlading-Lading-Overtime Services

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0005.

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: Application-Permit-Special License Unlading-Lading-Overtime Services (CBP Form 3171). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This information collection was previously published in the **Federal Register** (77 FR 69649) on November 20, 2012, 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, 2013.

ADDRESSES: Interested persons are invited to submit written comments on this 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 U.S. 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 affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application-Permit-Special License Unlading-Lading-Overtime Services.

OMB Number: 1651–0005.

Form Number: CBP Form 3171.

Abstract: The Application-Permit-Special License Unlading-Lading-Overtime Services (CBP Form 3171) is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers. It is also used to request overtime services from CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment not to be reladen. CBP Form 3171 is authorized by 19 U.S.C. 1446, 1447, 1448, 1449, 1450, 1451, 1452, 1453, 1454, 1455, 1456 and 1551. It is provided for 19 CFR 4.10, 4.30, 4.37, 4.39, 4.91, 10.60, 24.16, 122.29, 122.38, 123.8, 146.32 and 146.34. This form is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_3171.pdf.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form 3171.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,500.

Estimated Number of Annual Responses per Respondent: 266.

Estimated Number of Total Annual Responses: 399,000.

Estimated Time per Response: 8 minutes.

Estimated Total Annual Burden Hours: 51,870.

Dated: January 29, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–02327 Filed 2–1–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Privacy Act of 1974; as amended; Notice to Amend an Existing System of Records

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of an amendment to an existing system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice of its intent to amend the Bureau of Indian Affairs Privacy Act system of records, ''National Irrigation Information Management System (NIIMS), Interior, BIA–34,'' to update the system location, categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, routine uses, storage, safeguards, retention and disposal, system manager and address, and records source categories. The National Irrigation Information Management System is a collection, debt management, and billing system utilized by various Indian irrigation projects operated by the Bureau of Indian Affairs. The system facilitates the revenue and collections business cycle, including billing for the construction, operation and maintenance costs of the project which are reimbursable to the Federal government.

DATE: Comments must be received by March 18, 2013.

ADDRESSES: Any person interested in commenting on this notice may do so by: submitting comments in writing to Willie Chism, Indian Affairs Privacy Act Officer, 12220 Sunrise Valley Drive, Reston, Virginia 20191; hand-delivering comments to Willie Chism, Indian Affairs Privacy Act Officer, 12220 Sunrise Valley Drive, Reston, Virginia 20191; or emailing comments to *Willie.Chism@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Program Manager, Bureau of Indian Affairs, Office of Trust Services, Division of Water and Power, Denver West Office Park, Building 54, 13922 Denver West Parkway, Suite 300, Lakewood, Colorado 80401, or telephone number (303) 231–5246.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Indian Affairs (BIA) maintains the ''National Irrigation Information Management System (NIIMS), Interior, BIA–34'' system of records. The primary purpose of this system is to facilitate billing, debt management, and collection of construction, operation and maintenance costs for irrigation projects that are reimbursable to the Federal government. The changes to the system include updating the system location, categories of individuals covered by the system, categories of records in the system, authority for maintenance of the system, routine uses, storage, safeguards, retention and disposal, system manager and address, and records source categories. The system notice was last published in the **Federal Register** on July 15, 2008 (Volume 73, Number 136).

The amendments to the system notice will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received which would require a contrary determination. The Department of the Interior (DOI) will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended (5 U.S.C. 552a), embodies fair information principles in a statutory framework governing the means by which Federal Agencies collect, maintain, use, and disseminate individuals' personal information. 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 for 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 U.S. citizens or lawful permanent residents. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act regulations, 43 CFR part 2.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains and the routine uses of each system to make agency record-keeping practices transparent, notify individuals regarding the uses of their records, and assist individuals to more easily find such records within the agency. Below is the description of the Bureau of Indian Affairs ''National

Irrigation Information Management System (NIIMS), Interior, BIA–34,'' system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 16, 2013.

Willie S. Chism,

Indian Affairs Privacy Act Officer, Office of the Assistant Secretary for Indian Affairs.

SYSTEM NAME:

National Irrigation Information Management System (NIIMS), Interior, BIA–34.

SYSTEM LOCATION:

The system is located at the Bureau of Indian Affairs, Office of Information Operations (OIO), 1011 Indian School Road NW., Suite 177, Albuquerque, NM 87104. Records may also be located at the BIA, Office of Trust Services, Division of Water and Power, Denver West Office Park, Building 54, 13922 Denver West Parkway, Suite 300, Lakewood, Colorado 80401; BIA Regions, agencies; and other BIA locations responsible for billing, debt collection, and debt management for customers of Indian irrigation, operation and maintenance, and construction projects operated by the BIA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include current and former landowners and lessees, Federal employees, state and local government employees, Tribal government officials, and other individuals responsible for reimbursing the government for the construction of Indian Irrigation Projects or to whom the operation and maintenance costs of the projects have been or will be assessed, and other individuals with whom business is conducted.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) This system contains records such as, deeds, maps, land surveys, leases, land designation, land re-designation records reflecting current and former owners of land and lessees on which Indian Irrigation projects are constructed, including name, social security number, account/ID, whether the owner is a Federal entity (exempt from certain collection actions), Indian (pertinent to revenue classification), or whether the land is fee or trust, tax identification number, Indian identification number, owner or customer identification number, phone number, name, address, permits and leases; 2) billing information, including name of debtor, address, tax identification number, social security number, ownership interests, rate billed, amount charged, interest and penalty, collection actions, name of the person who remits payment, check number, and amount paid; and 3) information about land on which irrigation projects are constructed, including land construction data, county assigned district identifier, acreage, description of location, name of owner or lessee, water delivery location, time and date of requested water delivery, duration of water delivery, rate of water flow, crop statistics, and the value of the construction debt allocated to the land.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

25 U.S.C. Chapter 11, Irrigation of Allotted Lands; 31 U.S.C. 3711, Collection and Compromise; and 25 CFR Part 171, Irrigation Operations and Maintenance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purpose of the system is for billing, to properly account for realized receivables (stemming from costs reimbursable to the Federal government) and to demand payment for them. The system is also routinely used for tracking account balances, reporting, and for debt management including collections and other actions (such as write-off), to facilitate financial accounting, compliance, collections and debt management.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, disclosures outside DOI may be made as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(4) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(5) To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(6) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(7) To state and local governments and tribal organizations to provide

information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(8) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(9) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(10) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(11) To the Department of the Treasury to recover debts owed to the United States.

(12) To the news media when the disclosure is compatible with the purpose for which the records were compiled.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. § 3711(e)(1), have been met.

(14) To owners of land on which Indian irrigation projects are constructed, operated and maintained (including individual Indian and non-Indians and private sector parties (businesses)) to verify receipt of their payment.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are maintained in paper form in file folders stored in file cabinets, and electronic media such as computers, magnetic disk, diskette, and computer tapes. The electronic records are contained in removable drives, computer servers, email and databases.

RETRIEVABILITY:

Customer records are retrieved by name or customer identification number. Ownership information is retrieved by owner name, unit serial number, or owner identification number. Land information is retrieved by unit serial number.

SAFEGUARDS:

Records are maintained in accordance with 43 CFR 2.51, Privacy Act safeguards for records. Access is provided on a need-to-know basis. During working hours, paper records are maintained in locked file cabinets under the control of authorized personnel.

Electronic records are safeguarded by permission set to ''Authenticated Users,'' which requires password login. The computer servers in which records are stored are located in Department of the Interior facilities that are secured by alarm systems and off-master key access. Access granted to individuals is password protected. The Department's Privacy Act Warning notice appears on the monitor screens when users access the System. The tapes are kept on the Data Center floor for several weeks and then shipped to Iron Mountain, a secure off site location. Access to the Data Center floor is controlled by key card and only a select number of people have access. The Security Plan addresses the Department's Privacy Act minimum safeguard requirements for Privacy Act systems at 43 CFR 2.51. A Privacy Impact Assessment was conducted to ensure that Privacy Act requirements and safeguard requirements are met. The assessment verified that appropriate controls and safeguards are in place. Personnel authorized to access the system must complete all Security, Privacy, and Records management training and sign the Rules of Behavior.

RETENTION AND DISPOSAL:

Paper records are covered by Indian Affairs Records Schedules records series 4900, and have been scheduled as permanent records under National Archives and Records Administration (NARA) Job No. N1–075–0406 approved on November 21, 2003. Records are maintained for a maximum of 5 years or when no longer needed for current business operations and then retired to the American Indian Records Repository, which is a Federal Records Center. In accordance with the Indian Affairs Records Schedule, the subsequent legal transfer of records to the National Archives of the United States will be as jointly agreed to between the United States Department of the Interior and the NARA.

Electronic records in this system are covered by Indian Affairs Records Schedules records series 2200–NIIMS, and have been scheduled as permanent records under NARA Job N1–075–07–4 approved on September 10, 2007. Records are maintained for a maximum of 2 years or when no longer needed for current business operations and then retired to the American Indian Records Repository. Data backups or copies captured on magnetic disk, diskette and computer tapes that are maintained separately from database files are temporary and are retained in accordance with General Records Schedules 20/8 and 24/4(a).

SYSTEM MANAGER AND ADDRESS:

Program Manager, Bureau of Indian Affairs, Office of Trust Services, Division of Water and Power, Denver West Office Park, Building 54, 13922 Denver West Parkway, Suite 300, Lakewood, Colorado 80401.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should both be clearly marked ''PRIVACY ACT INQUIRY.'' A request for notification must meet the requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

An individual requesting records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request should describe the records sought as specifically as possible. The request envelope and letter should both be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS.'' A request for access must meet the requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or the removal of material from his or her records should send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Information in the system is obtained directly from current and former landowners and lessees, state and local government employees, and other individuals responsible for reimbursing the government for the construction of Indian Irrigation Projects or to whom the operation and maintenance costs of the projects have been or will be assessed, and other individuals with

whom business is conducted. Information may also be manually extracted from other in-house BIA records such as realty and probate records, records obtained from county assessors and title companies, from tribal documents, from information collected from the U.S. Department of the Treasury, and information extracted from native allotment files by authorized BIA employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2013–02359 Filed 2–1–13; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14908–A, F–14908–B; LLAK944000–L14100000–KC0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to Sitnasuak Native Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate in these lands will be conveyed to Bering Straits Native Corporation when the surface estate is conveyed to Sitnasuak Native Corporation. The lands are in the vicinity of Nome, Alaska, and are located in:

Lot 1, Mineral Survey No. 2315, Alaska.
Containing 8.30 acres.
Lot 1, Mineral Survey No. 2316, Alaska.
Containing 20 acres.
Lot 4, U.S. Survey No. 8729, Alaska.
Containing approximately 5 acres.
Kateel River Meridian, Alaska
T. 11 S., R. 33 W.,
Secs. 11, 12, and 13;
Secs. 18, 19, and 20;
Secs. 23 and 24;
Secs. 29 to 32, inclusive.
Containing approximately 719 acres.
T. 11 S., R. 34 W.,
Secs. 13, 24, and 36.
Containing 6.20 acres.
Aggregating approximately 759 acres.

Notice of the decision will also be published four times on consecutive weeks in the *Nome Nugget.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 6, 2013 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Eileen Bryant,

Land Transfer Resolution Specialist, Land Title Section.

[FR Doc. 2013–02362 Filed 2–1–13; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14900–A; LLAK940000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision will be issued by the Bureau of Land Management (BLM) to The Kuskokwim Corporation. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601, *et seq*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to The Kuskokwim Corporation. The lands are in the vicinity of Napaimute, Alaska, and are located in:

Seward Meridian, Alaska

T. 16 N., R. 51 W.,
Secs. 6, 7, and 8;
Secs. 17, 18, and 20.
Containing 3,286.81 acres.
T. 17 N., R. 51 W.,
Sec. 34.
Containing 460.99 acres.
T. 16 N., R. 52 W.,
Sec. 1.
Containing 640.00 acres.
T. 17 N., R. 52 W.,
Secs. 1, 12, and 13;
Secs. 24 and 25.
Containing 2,918.74 acres.
T. 17 N., R. 53 W.,
Secs. 5 to 9, inclusive.
Containing 2,128.37 acres.
Aggregating 9,434.91 acres.

Notice of the decision will also be published four times on consecutive weeks in the *Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision in accordance with the requirements of 43 CFR part 4 within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until March 6, 2013 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at 907–271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service

(FIRS) at 1–800–877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM. The BLM will reply during normal business hours.

Ralph L. Eluska, Sr.,

Land Transfer Resolution Specialist, Branch of Alaska Lands.

[FR Doc. 2013–02363 Filed 2–1–13; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB00000 L71220000 EX0000 LVTFF1206210 241A; NVN–090702; 13–08807; MO# 4500046118; TAS: 14X8069]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Buffalo Valley Mine Project, Lander and Humboldt Counties, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Mount Lewis Field Office, Battle Mountain, Nevada, intends to prepare an Environmental Impact Statement (EIS) to analyze and disclose impacts associated with the Buffalo Valley Mine Project, a proposed open pit gold mine, mill, and associated facilities, located on public and private lands in Lander and Humboldt counties, Nevada, and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until March 6, 2013. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers, and the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html*. In order to be considered during the preparation of the Draft EIS, all comments must be received prior to the close of the 30 day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the proposed Buffalo Valley Mine Project by any of the following methods:

- *Web site: http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html.*
- *Email: BLM_NV_BMDO_BuffaloValleyMineProject@blm.gov.*
- *Fax:* 775–635–4034.
- *Mail:* BLM, Mount Lewis Field Office, 50 Bastian Road, Battle Mountain, NV 89820.

Documents pertinent to this proposal may be examined at the Mount Lewis Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Andrea Dolbear, Environmental Protection Specialist, telephone 775–635–4017; address,50 Bastian Road, Battle Mountain, NV 89820; email *asdolbear@blm.gov*.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Newmont Mining Corporation, in a joint venture with Fairmile Gold, proposes to construct, operate, reclaim, and close an open pit, heap leach, precious-metal, mining operation known as the Buffalo Valley Mine Project. The proposed project would be located 20 miles southwest of Battle Mountain, Nevada, and 12 miles northwest of Newmont's Phoenix Mine in Lander and Humboldt counties. The legal land description for the proposed project area is:

Mount Diablo Meridian

T. 31 N., R. 42 E.,
Secs 3, 4, 5, and 6;
T. 32 N., R. 42 E.,
Secs 27, 28, 29, 30, 31, 32, 33, and 34.

The area described contains 5,968 acres, more or less, in Lander and Humboldt counties, Nevada.

The proposed project area would be comprised of approximately 5,968 acres, of which 3,662 acres are public land administered by the BLM. Approximately 2,274 of the 3,662 acres are in Lander County and managed by the BLM Mount Lewis Field Office and approximately 1,388 acres are in Humboldt County and managed by the BLM Winnemucca District, Humboldt River Field Office. The Battle Mountain District, Mount Lewis Field Office will manage all of the public lands on this proposed project. Approximately 2,306 acres within the proposed project area are private land controlled by Newmont.

The Buffalo Valley Mine Project is in conformance with the 1986 Shoshone-Eureka Resource Area Resource Management Plan (RMP) and Record of Decision (ROD). The ROD states that all public land in the planning areas will be open for mining and prospecting unless withdrawn or restricted from mineral entry. One of the objectives of the RMP is to make available and encourage development of mineral resources to meet the national, regional, and local needs consistent with national objectives, for an adequate supply of minerals. The proposed project also conforms to the BLM Winnemucca District, 1982 Sonoma-Gerlach Management Framework Plan at Section .42 Minerals, Objective M1 to make all public lands and other federally owned minerals available for the exploration and development of mineral and material commodities.

The proposed project is estimated to produce approximately 40 million tons of ore grade material from an estimated 226 million tons of material to be extracted using conventional open pit mining methods of drilling and blasting. The proposed project would consist of the following components: 2 open pits; mine dewatering system; 3 waste rock storage areas; crushing system; heap leach pad; process facility; high-grade ore stockpile; process ponds; borrow pit; storm water pond and diversion ditches; small shop/office and maintenance facility; fuel facility; access and haul roads; top soil (growth media) stockpiles; powerline; water supply well; and exploration.

The Buffalo Valley Mine Road is a county road located in both Lander and Humboldt counties on the east side of Buffalo Valley. It bisects the proposed project area and would be rerouted to the west around the proposed project facilities. The plan of operation is to haul ore for crushing and leaching with a dilute cyanide solution. The life of the mine would be approximately 10 years. Newmont anticipates a workforce of 120 employees during the production phase of the mine.

An interdisciplinary approach will be used to develop the EIS in order to consider the variety of resource issues and concerns identified during the scoping period. Potential direct, indirect, residual, and cumulative impacts from the proposed action will be analyzed in the EIS.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including potential alternatives, and the extent to

which those issues and impacts will be analyzed in the EIS. At present, the BLM has identified the following preliminary issues: pit lake formation post closure, mine dewatering, wildlife, and socioeconomic concerns.

The BLM will follow the NEPA public participation requirements to satisfy the public involvement requirements under Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470(f)) pursuant to 36 CFR 800.2(d)(3). Any information about historic and cultural resources within the area potentially affected by the proposed project will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA.

The BLM will consult with Indian tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed Buffalo Valley Mine Project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7

Christopher J. Cook,

Field Manager, Mount Lewis Field Office.

[FR Doc. 2013–02361 Filed 2–1–13; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP070000; L14300000.EU0000; WYW–168374]

Notice of Realty Action: Proposed (Non-Competitive) Direct Sale of Public Land in Campbell County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) is considering the (non-competitive) direct sale of 4.15 acres of public land in Campbell County, Wyoming, at not less than the appraised fair market value to the Craig G. and Peggy S. Means Revocable Trust.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by March 21, 2013.

ADDRESSES: Address all written comments concerning this Notice to Field Manager, the BLM, Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834.

FOR FURTHER INFORMATION CONTACT: Claire Oliverius, Realty Specialist, at the above address, 307–684–1178, or email to *doliveri@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. 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 following-described public land in Campbell County, Wyoming, is proposed for direct sale, subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR Parts 2711 and 2720:

Sixth Principal Meridian, Wyoming

T. 56 N., R. 73 W.,
Sec. 8, lot 17.

The area described contains 4.15 acres, according to the official plat of the survey of the said land, on file with the BLM.

The proposed (non-competitive) direct sale is in conformance with the BLM Buffalo Resource Management Plan (RMP) approved on October 4, 1985. The parcel is identified for disposal in the RMP Record of Decision, pages 13 and 14 and Map 5 because the lands are isolated public lands surrounded by private lands under single ownership. These isolated lands are difficult and uneconomic for the Federal Government to manage. Additionally, Maintenance Plan Change #20120720 was added to comply with guidelines of the Department of the Interior and the BLM. The Maintenance Plan Change updated the land disposal map and included a text version of all legal descriptions for parcels identified for consideration for disposal. The land, if offered, would be through a (non-competitive) direct sale to the Craig G. and Peggy S. Means Revocable Trust as the final resolution to the unauthorized use, pursuant to 43 CFR 2710.0–6(c)(3)(iii) and 43 CFR 2711.3–3(a)(5). In addition, the Craig G. and Peggy S. Means Revocable Trust are the sole owners of the private lands surrounding the identified parcel of Federal land and pursuant to 43 CFR 2710.0–6(c)(3)(iii) and 43 CFR 2711.3–3(a)(4) a direct sale is appropriate. Conveyance of the identified public land would be subject to valid existing rights and encumbrances of record. Conveyance of any mineral interests, pursuant to Section 209 of the FLPMA, was not proposed, but would be analyzed during processing of the proposed sale.

On February 4, 2013, the above-described land will be segregated from all forms of appropriation under the public land laws, including the mining laws and the mineral leasing laws, except for the sale provisions of the FLPMA. Until completion of the sale action, the BLM is no longer accepting land use applications affecting the identified public land. The temporary segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or February 4, 2015, unless extended by the BLM Wyoming State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

For a period until March 21, 2013, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to the Field Manager, BLM Buffalo Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Electronic mail (email) will also be accepted and should be sent to *buffalo_wymail@blm.gov* with ''Campbell County Land Sale'' inserted in the subject line. Comments, including names and street addresses of respondents, will be available for public review at the BLM Buffalo Field Office during regular business hours, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask in your comment to withhold from public review your personal identifying information, we

cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2 and 43 CFR 2720.1–1(b)

Dated: January 29, 2013.

Donald A. Simpson,

State Director, Wyoming.

[FR Doc. 2013–02320 Filed 2–1–13; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYP070000; L14300000.EU0000; WYW–168342]

Notice of Realty Action: Proposed (Non-Competitive) Direct Sale of Public Lands in Sheridan County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) is considering eight parcels of public land totaling 208.12 acres in Sheridan County, Wyoming, for direct sale under the provisions of the Federal Land Policy Management Act of 1976 (FLPMA), at no less than the appraised fair market value.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by March 21, 2013.

ADDRESSES: Address all comments concerning this notice to Field Manager, Bureau of Land Management (BLM), Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834. Comments may also be emailed to *buffalo_wymail@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Claire Oliverius, Realty Specialist, BLM, Buffalo Field Office at the above address or phone 307–684–1178.

SUPPLEMENTARY INFORMATION: The following-described public land in Sheridan County, Wyoming, is being considered for direct sale under the authority of Section 203 FLPMA, (90 Stat. 2750, 43 U.S.C. 1713):

Sixth Principal Meridian

T. 56 N., R. 79 W.,
Tract 51 B;
Sec. 17, lot 1;
Sec. 23, lot 1;
Sec. 26, lots 1 and 2.
T. 55 N., R. 80 W.,
Sec. 23, NE1/4SE1/4;
Sec. 24, SW1/4SW1/4;
Sec. 26, NE1/4SW1/4.

The areas described aggregate 208.12 acres in Sheridan County, Wyoming.

The 1985 BLM Buffalo Resource Management Plan identifies these parcels of public land as suitable for disposal. Conveyance of the identified public land will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities.

Farmland Reserve, Inc., has submitted a formal proposal for the acquisition of 208.12 acres of public land in Sheridan County. A direct sale was initiated to purchase only lands solely within the boundaries of a ranch where there is no legal access or adjacent landowners. The parcels are difficult for the BLM to manage. The lands would continue to be used for ranching operations. The proposed sale of the identified public land is in the initial stages of processing.

On February 4, 2013, the above-described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public land, except applications for the amendment of previously-filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or February 4, 2015, unless extended by the BLM State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments

For a period until March 21, 2013, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to Field Manager, BLM Buffalo Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this Notice. Comments transmitted via email will not be accepted. Comments, including names and street addresses of respondents, will be available for public review at the BLM Buffalo Field Office during regular business hours, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.

Donald A. Simpson,

State Director, Wyoming.

[FR Doc. 2013–02360 Filed 2–1–13; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Dam Adaptive Management Work Group (AMWG) makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

DATES: The meeting will be held on Wednesday, February 20, 2013, from approximately 9:30 a.m. to approximately 5:30 p.m., and Thursday, February 21, 2013, from approximately 8:00 a.m. to approximately 12 p.m.

ADDRESSES: The meeting will be held at the Fiesta Resort Conference Center, 2100 South Priest Drive, Tempe, Arizona.

FOR FURTHER INFORMATION CONTACT: Glen Knowles, Bureau of Reclamation, telephone (801) 524–3781; facsimile (801) 524–3858; email at *gknowles@usbr.gov.*

SUPPLEMENTARY INFORMATION: The Glen Canyon Dam Adaptive Management Program (AMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102–575) of 1992. The AMP includes a Federal advisory committee, the AMWG, a technical work group (TWG), a Grand Canyon Monitoring and Research Center, and independent review panels. The TWG is a subcommittee of the AMWG and provides technical advice and recommendations to the AMWG.

Agenda: The primary purpose of the meeting will be for the AMWG to hear

preliminary results from the high flow experiment conducted in November 2012. They will also receive updates on the Long Term Experimental and Management Plan environmental impact statement, current basin hydrology and Glen Canyon Dam operational changes, and project updates from the Grand Canyon Monitoring and Research Center. The AMWG will address other administrative and resource issues pertaining to the AMP.

To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's Web site at *http://www.usbr.gov/uc/rm/amp/amwg/mtgs/13feb20.html.* Time will be allowed at the meeting for any individual or organization wishing to make formal oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Glen Knowles, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah, 84138; telephone 801–524–3781; facsimile 801–524–3858; email at *gknowles@usbr.gov* at least five (5) days prior to the meeting. Any written comments received will be provided to the AMWG members.

Public Disclosure of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 29, 2013.

Anamarie Gold,

Deputy Regional Director, Upper Colorado Regional Office, Salt Lake City, Utah.

[FR Doc. 2013–02365 Filed 2–1–13; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Omega-3 Extracts From Marine or Aquatic Biomass and Products Containing the Same,* DN 2936; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Neptune Technologies & Bioressources Inc. and Acasti Pharma Inc. on January 29, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain Omega-3 extracts from marine or aquatic biomass and products containing same. The complaint names as respondents Aker BioMarine AS of Norway; Aker BioMarine Antarctic USA, Inc. of Issaquah, WA; Aker BioMarine Antarctic AS of Norway; Enzymotec Limited of Israel; Enzymotec USA, Inc. of Morristown, NJ; Olympic Seafood AS of Norway; Olympic Biotec Ltd of New Zealand; Avoca, Inc. of Merry Hill, NC; Rimfrost USA, LLC of Merry Hill, NC; and Bioriginal Food & Science Corp. of Canada.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2936'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: January 29, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–02286 Filed 2–1–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1103–NEW]

Agency Information Collection Activities; Proposed new Collection; Comments Requested: COPS Survey on Police Consolidation and Shared Services

ACTION: 60-Day Notice.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) 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 revision of a previously approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until April 5, 2013. 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 Danielle Ouellette, Department of Justice Office of Community Oriented Policing Services, 145 N Street NE., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Proposed new collection; comments requested

(2) *Title of the Form/Collection:* COPS Survey on Police Consolidation and Shared Services

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* In collaboration with the Michigan State University's School of Criminal Justice, the purpose of this one-time survey with is to conduct the first-ever census of public safety departments, which includes agencies that have at consolidated police and fire functions into a single organization. The survey will identify the nature, structure, function, organizational characteristics, and community policing activities of these departments. This information will be used to assess the implementation and variation of these departments, support a framework to advance further research on this type of agency and form of public safety delivery, and facilitate peer-to-peer information sharing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 135 respondents annually will complete the form within 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 135 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: January 29, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–02252 Filed 2–1–13; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0329]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Office of Justice Programs' Solicitation Template

ACTION: 60-Day notice.

The Department of Justice (DOJ), Office of Justice Programs (OJP), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRSA) of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days (60) until April 5, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments 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: Maria Swineford, (202) 616–0109, Office of Audit, Assessment, and Management, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 or *maria.swineford@usdoj.gov*.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information

(1) *Type of Information Collection:* Renewal of a currently approved collection (1121–0329 and 1121–0188).

(2) *The Title of the Form/Collection:* OJP Solicitation Template

(3) *The Agency Form Number, if any, and the Applicable Component of the Department Sponsoring the Collection:* No form number available. Office of Justice Programs, Department of Justice.

(4) *Affected Public Who Will be Asked or Required to Respond, as well as a Brief Abstract:* The primary respondents are state agencies, tribal governments, local governments, colleges and universities, non-profit organizations, for-profit organizations, and faith-based organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (e.g., project activities, project abstract, project timeline, proposed budget, etc.); outlines program evaluation and performance measures; explains selection criteria and the review process; and provides registration dates, deadlines, and instructions on how to apply within the designated application system. This collection is also incorporating the previously approved collection for the OJP Budget Detail Worksheet (1121–0188). The Budget Detail Worksheet is only required during the application process, and therefore should be included in this collection with the solicitation template, reducing the number of OMB PRA reviews and approvals needed. The primary respondents are the same, as listed above, and the worksheet provides auto calculated fields and instructions for the necessary budget information required for each application submission (e.g. personnel/benefits, travel, indirect cost rates, etc.). The form is not mandatory and is recommended as guidance to assist the applicant in preparing their budget as authorized in 28 CFR part 66 and 28 CFR part 70

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond:* It is estimated that information will be collected annually from approximately 10,000 applicants. Annual cost to the respondents is based on the number of hours involved in preparing and submitting a complete application package. Mandatory requirements for an application include a program narrative and budget details and narrative (formerly 1121–0188). Optional requirements can be imposed depending on the type of program to include, but not limited to: Project abstract, indirect cost rate agreement, tribal authorizing resolution, timelines, logic models, memoranda of understanding, letters of support, resumes, disclosure of pending applications, and research and evaluation independence and integrity. Public reporting burden for this collection of information is estimated at up to 32 hours per application. The 32-hour estimate is based on the amount of time to prepare a research and evaluation proposal, one of the most time intensive types of application solicited by OJP. The estimate of burden hours is based on OJP's prior experience with the research application submission process.

(6) *An Estimate of the Total Public Burden (in hours) Associated with the collection:* The estimated public burden associated with this application is 320,000 hours.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 3W–1407–B, Washington, DC 20530.

Dated: January 29, 2013.

Jerri Murray,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2013–02234 Filed 2–1–13; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–57]

Sanjay Trivedi, M.D.; Decision and Order

On September 25, 2012, Administrative Law Judge (ALJ) Gail A. Randall issued the attached recommended decision. Neither party filed exceptions to the decision. Having reviewed the entire record, I have decided to adopt the ALJ's rulings, findings of fact, conclusions of law, and recommended Order.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration FT0896754, issued to Sanjay Trivedi, M.D., be, and it hereby is, revoked. I further order that any pending application of Sanjay Trivedi, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective immediately.[1]

Dated: January 25, 2013.

Michele M. Leonhart,

Administrator.

Michelle F. Gillice, Esq., for the Government.
Matthew R. Kachergus, Esq., for the Respondent.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Facts

Gail A. Randall, Administrative Law Judge. The Administrator, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause and Immediate Suspension of Registration (''Order'') dated June 25, 2012, proposing to revoke the DEA Certificate of Registration, No. FT0896754, of Sanjay Trivedi, M.D. (''Respondent''), as a practitioner, pursuant to 21 U.S.C. 824(a)(4) (2006), and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f) (2006), because the continued registration of the Respondent would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f). The Respondent's registration will expire by its own terms on November 30, 2013.

Specifically, the Order alleged that the Respondent dispensed at least

[1] For the same reason I ordered that Respondent's registration be immediately suspended, I conclude that the public interest necessitates that this Order be effective immediately. *See* 21 CFR 1316.67.

226,752 dosage units of controlled substance prescriptions between April 24, 2011, and April 25, 2012. [Order at 2]. The Order alleged that the controlled substances most frequently prescribed during the year time period were: oxycodone 30mg; hydrocodone/apap 10–500mg; and oxycodone/apap 10–325mg. [*Id.*]. The Order further alleged that the Respondent prescribed controlled substances to undercover law enforcement officers between October and November 2011 in violation of Federal, State, and local law because the prescriptions were not for a legitimate medical purpose. [*Id.* 2–3]. Additionally, the Order alleged that the Respondent prescribed excessive and unnecessary doses of controlled substances to the undercover law enforcement officers without a clinical basis to do so, without conducting adequate physical examinations, without providing legitimate referrals for evaluations, and without giving proper attention to the possibility of misuse or diversion of controlled substances. [*Id.* at 3]. Lastly, the Order alleged that the Respondent is involved in a conspiracy in which controlled substances are prescribed to patients throughout the state of Florida without a legitimate medical purpose. [*Id.* at 4].

On July 27, 2012, the Respondent, through counsel, filed a letter with the Court requesting an extension of time (''Respondent's Request'') to respond to the Order to Show Cause. [Respondent's Request at 1]. Specifically, the Respondent requested that in order to properly respond to the Order to Show Cause, the Respondent needed to obtain the patient records at issue and these records had been seized by law enforcement in conjunction with the criminal prosecution. [*Id.*].

On July 30, 2012, the Court issued an Order Granting Respondent's Request for Extension of Time (''Court's Order''). Therein, the Court found that the Respondent had demonstrated good cause to justify granting a thirty-day extension of time to respond to the Order to Show Cause. [Court's Order at 1].

On August 31, 2012, the Respondent, through counsel, filed a letter with the Court requesting an extension of time (''Respondent's Second Request'') to respond to the Order to Show Cause. [Respondent's Second Request at 1]. Specifically, the Respondent explained that he needed additional time to respond to the Order to Show Cause because the requested patient files at issue in the above-captioned matter had not yet been received since law enforcement had seized the records in conjunction with the criminal prosecution. [*Id.*]. That same day, the Court issued an Order Granting Respondent's Request for Extension of Time (''Court's Second Order''). Therein, the Court found that Respondent had demonstrated good cause to justify granting a second brief extension of time. [Court's Second Order at 2]. The Court ordered that the Respondent must clearly indicate his desire for a hearing on or before September 7, 2012. [*Id.*].

On September 7, 2012, the Respondent, through counsel, timely filed a Request for Hearing in the above-captioned matter.

On September 10, 2012, the Government filed a Motion for Summary Disposition and Motion to Stay Proceedings (''Government's Motion''). Therein, the Government requested that the Court summarily revoke Respondent's DEA registration because the Respondent's Florida state medical license is under an emergency suspension order. [Government's Motion at 1]. The Government stated that the Respondent was no longer authorized to handle controlled substances in Florida, the state where the Respondent is registered with the DEA. [*Id.* at 1–2]. The Government attached to its motion, a State of Florida Department of Health Order of Emergency Suspension of License (''Emergency Suspension''), filed June 27, 2012, in which the State of Florida Department of Health ordered the emergency suspension of the Respondent's license. [Government's Motion at Exhibit A]. The Government argues, therefore, that in accordance with Agency precedent, the DEA is barred by statute from continuing the Respondent's registration because his state medical license was suspended. [*Id.* at 1–2].

On September 11, 2012, the Court issued an Order for Prehearing Statements and an Order for Respondent's Response to Government's Motion for Summary Disposition and to Stay Proceedings.

On September 19, 2012, the Respondent, through counsel, filed Respondent's Response to Motion for Summary Disposition and Motion to Stay Proceedings and Request for Extension of Time for Further Response (''Respondent's Response''). Therein, the Respondent argues that the Court should grant him a thirty-day extension to respond to the Government's Motion because the Respondent is currently involved in settlement negotiations with the Florida Department of Health in which his Florida medical state license will be restored. [Respondent's Response at 1–3].

On September 19, 2012, the Government filed Government's Reply to Respondent's Response to Motion for Summary Disposition and Motion to Stay Proceedings and Request for Extension of Time for Further Response (''Government's Reply''). Therein, the Government argues that the only due process that need be afforded to the Respondent is an ''opportunity to oppose a motion for summary disposition by showing that his state authority has not been suspended or revoked.'' [Government's Reply at 1]. The Government further argues that because there has not been a showing that Respondent's state license is valid, the Respondent currently lacks state authority to handle controlled substances and thus, the Respondent cannot remain registered by the DEA. [*Id.* at 2].

For the reasons set forth below, I will grant the Government's Motion and recommend that the Administrator revoke the Respondent's DEA Certificate of Registration. But, I note that, pursuant to 21 CFR 1301.13(a) (2012), the Respondent may apply for a new DEA Certificate of Registration at any time.

II. Discussion

A. Respondent Currently Lacks Authority To Handle Controlled Substances In Florida

The DEA will not maintain a controlled substances registration if the registrant is without state authority to handle controlled substances in the state in which the registrant practices. The Controlled Substances Act (''CSA'') provides that obtaining a DEA registration is conditional on holding a state license to handle controlled substances. *See* 21 U.S.C. 802(21) (2006) (defining ''practitioner'' as ''a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''); 21 U.S.C. 823(f) (2006) (''the Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices''). The DEA, therefore, has consistently held that the CSA requires the DEA to revoke the registration of a practitioner who no longer possesses a state license to handle controlled substances. *See* 21 U.S.C. 824(a)(3) (2006) (stating ''a registration may be suspended or revoked by the Attorney General upon a finding that the registrant has had his State license or

registration suspended, revoked or denied by competent State authority''); *Beverley P. Edwards, M.D.,* 75 FR 49,991 (DEA 2010); *Joseph Baumstarck, M.D.,* 74 FR 17,525 (DEA 2009).

In this case, the Respondent does not dispute that he currently lacks state authority to handle controlled substances. However, the Respondent argues that his current state medical license suspension is temporary, as he and the Florida Department of Health are currently involved in settlement negotiations in which he anticipates that he will regain his Florida medical license. [Respondent's Response at 1–3]. Respondent argues that his DEA registration should not be revoked because he will soon likely regain his state medical license in the state of Florida. [*Id.* at 2–3]. However, the Emergency Suspension from the Florida Department of Health effectively suspends the Respondent's license to practice medicine in the state of Florida. Regardless of whether the Respondent and the Florida Department of Health eventually decide upon a settlement agreement in which the Respondent's state license is reinstated, the Respondent currently lacks the necessary state authority to practice medicine and handle controlled substances in Florida. Consequently, his DEA registration must be revoked. *See Joseph Baumstarck, M.D.,* 74 FR 17,525, 17,527 (DEA 2009) (stating that ''a practitioner may not maintain his DEA registration if he lacks state authority to handle controlled substances under the laws of the state in which he practices''); *Treasure Coast Specialty Pharmacy,* 76 FR 66,965 (DEA 2011); *Roy Chi Lung, M.D.,* 74 FR 20,346 (DEA 2009); *Gabriel Sagun Orzame, M.D.,* 69 FR 58,959 (DEA 2004).

While the Respondent argues that his state license may be reinstated in the future, this possibility is immaterial in light of the Respondent's current lack of state registration. Indeed, the CSA and Agency precedent make clear that as a prerequisite to registration the Respondent must have state authority to handle controlled substances, and that without such authority all other issues before this forum are moot. *See* 21 U.S.C. 802(21); 21 U.S.C. 823(f); *Joseph Baumstarck, M.D.,* 74 FR at 17,527 (DEA 2009). Thus, because there is no dispute that the Respondent lacks state authority to handle controlled substances, the Respondent's registration must be revoked.

B. Respondent Is Entitled To Reapply for Registration With the DEA

Any person who is required to register with the DEA may apply for registration at any time. 21 CFR 1301.13(a) (2012) (''Any person who is required and who is not registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person'').

The Respondent is permitted to reapply for a Certificate of Registration with the DEA at any time in the future. 21 CFR 1301.13(a). However, the Respondent will not be permitted to engage in activity for which a registration is required until his application is granted by the DEA. *Id.*

III. Conclusion, Order, and Recommendation

Consequently, there is no genuine dispute of material fact regarding the Respondent's lack of state authority to handle controlled substances. Thus, summary disposition for the Government is appropriate. It is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. *See Michael G. Dolin, M.D.,* 65 FR 5,661 (DEA 2000). Here, there is no genuine dispute that the Respondent currently lacks state authority to practice medicine and to handle controlled substances in Florida.

Accordingly, I hereby

grant the Government's Motion for Summary Disposition.

I also forward this case to the Administrator for final disposition. I recommend that the Respondent's DEA Certificate of Registration, Number FT0896754, be revoked.[2]

Dated: September 25, 2012.

Gail A. Randall,

Administrative Law Judge.

[FR Doc. 2013–02232 Filed 2–1–13; 8:45 am]

BILLING CODE 4410–09–P

[2] The sole basis of my recommendation is the loss of Respondent's state licensure. I make no findings or conclusions concerning the other allegations asserted in the Order to Show Cause.

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Gamma Radiation Surveys

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Mine Safety and Health Administration (MSHA) sponsored information collection request (ICR) titled, ''Gamma Radiation Surveys,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before March 6, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–MSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Regulations 30 CFR 57.5047 requires a covered mine operator to maintain a record of cumulative individual gamma radiation exposure to ensure that annual exposure does not exceed five (5) Rems. This requirement protects the health of workers in mines with radioactive ores.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1219–0039. The current approval is scheduled to expire on February 28, 2013; however, it should be noted that existing information

collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on October 12, 2012 (77 FR 62267).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1219–0039. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–MSHA.

Title of Collection: Gamma Radiation Surveys.

OMB Control Number: 1219–0039.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 4.

Total Estimated Number of Responses: 4.

Total Estimated Annual Burden Hours: 8.

Total Estimated Annual Other Costs Burden: $0.

Dated: January 29, 2013.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2013–02397 Filed 2–1–13; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (13–008)]

NASA Advisory Council; Aeronautics Committee; Unmanned Aircraft Systems Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Unmanned Aircraft Systems (UAS) Subcommittee of the Aeronautics Committee of the NASA Advisory Council. The meeting will be held for the purpose of soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Tuesday, February 26, 2013, 8:30 a.m. to 4:30 p.m., Local Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, Room 6E40B, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda L. Mulac, Executive Secretary for the UAS Subcommittee of the Aeronautics Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–1578, or *brenda.l.mulac@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Any person interested in participating in the meeting by WebEx and telephone should contact Ms. Brenda L. Mulac at (202) 358–1578 for the web link, toll-free number and passcode. The agenda for the meeting includes the following topics:

- Overview of UAS Aviation Rulemaking Committee Activities and NASA's UAS Project Involvement
- Overview of the NASA UAS Systems Analysis
- Review of UAS in the National Airspace System Project Integration of Subprojects
- Development and review of 2013 Work Plan

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. U.S. citizens will need to show a valid, officially-issued picture identification such as driver's license to enter the NASA Headquarters building (West Lobby—Visitor Control Center) and must state that they are attending the NASA Advisory Council Aeronautics Committee UAS Subcommittee meeting in conference room 6B42 before receiving an access badge. All non-U.S. citizens must fax a copy of their passport, and print or type their name, current address, citizenship, company affiliation (if applicable) to include address, telephone number, and their title, place of birth, date of birth, U.S. visa information to include type, number, and expiration date, U.S. Social Security Number (if applicable), Permanent Resident green card number and expiration date (if applicable), and place and date of entry into the U.S., to Ms Brenda L. Mulac, NASA Advisory Council Aeronautics Committee UAS Subcommittee Executive Secretary, fax 202–358–3602, by no less than 8 working days prior to the meeting. Non-U.S. citizens will need to show their Passport or Permanent Resident green card to enter the NASA Headquarters building. For questions, please call Ms Brenda L. Mulac at (202) 358–1578.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–02331 Filed 2–1–13; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0021]

Quality Assurance Program Requirements (Operations)

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–1300, ''Quality Assurance Program Requirements (Operations).''

DATES: Submit comments by April 1, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or

improvements in all published guides are encouraged at any time.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0021. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0021. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR ADDITIONAL INFORMATION CONTACT: Paul Prescott, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3026 or email: *Paul.Prescott@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0021 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0021.

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. The draft regulatory guide is available in ADAMS under Accession Number ML12276A071. The regulatory analysis may be found in ADAMS under Accession No. ML12276A072.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

- *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–2013–0021 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 that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter 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. Additional Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' (RG) series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

This RG describes methods that the NRC staff considers acceptable for complying with the provision of part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR) ''Domestic Licensing of Production and Utilization Facilities,'' 10 CFR 50.34(b)(6)(ii), Contents of applications; technical information, and 10 CFR Part 52 ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' 10 CFR 52.79(a)(27), Contents of applications; technical information in final safety analysis report. Both sections require compliance with 10 CFR Part 50, Appendix B, ''Quality Assurance Criteria for Nuclear power Plants and Fuel Reprocessing Plants,'' which, in part, requires the establishment of Quality Assurance (QA) controls for the implementation of managerial and administrative controls to assure safe operation.

The draft regulatory guide, entitled, ''Quality Assurance Program Requirements (Operations),'' is temporarily identified by its task number, DG–1300. The DG–1300 is proposed revision 3 of Regulatory Guide 1.33, dated Febuary 1978.

This revision (Revision 3) of RG 1.33 endorses ANSI/ANS 3.2–2012, ''Managerial, Administrative, and Quality Assurance Controls for Operational Phase of Nuclear Power Plants,'' which is an update to the standard that was endorsed in Revision 2, ANS 3.2/ANSI N18.7–1976, ''Administrative Controls and Quality Assurance for the Operational Phase of Nuclear Power Plants.'' The updated standard incorporates operational experience since the original standard was developed, and is better focused on QA of plant operations because information on QA of design and construction was moved to another standard. The NRC staff has reviewed ANSI/ANS 3.2–2012 and determined that the revised standard provides acceptable guidance on QA of plant operations. The staff's review is documented in the ANS 3.2 Side-By-Side Comparison (ML12276A076).

III. Backfitting and Issue Finality

Issuance of this final regulatory guide 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. As discussed in the ''Implementation'' section of this regulatory guide, the NRC has no current intention to impose this regulatory guide on holders of current operating licenses or combined licenses.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the

issuance of the regulatory guide. Such action does not constitute backfitting as defined in 10 CRF 50.109(a)(1) or is otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in part 52.

Dated at Rockville, Maryland, this 25th day of January 2013.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2013–02349 Filed 2–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–331; NRC–2013–0022]

Duane Arnold Energy Center; Application for Amendment to Facility Operating License

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal.

ADDRESSES: Please refer to Docket ID NRC–2013–0022 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0022. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *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.

FOR FURTHER INFORMATION CONTACT: Karl D. Feintuch, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: 301–415–3079; *email: karl.feintuch@nrc.gov.*

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of NextEra Energy Duane Arnold, LLC (the licensee) to withdraw its March 22, 2012, application (ADAMS Accession No. ML12082A105) for proposed amendment to Renewed Facility Operating License No. DPR–49 for the Duane Arnold Energy Center, located in Iowa, Linn County.

The proposed amendment would have revised the technical specifications regarding the battery terminal and charger voltages and amperage provided in surveillance requirements (SR) SR 3.8.4.1 and SR 3.8.4.6.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 30, 2012 (77 FR 65724). However, by letter dated November 16, 2012, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 22, 2012, and the licensee's letter dated November 16, 2012, which withdrew the application for the license amendment (ADAMS Accession No. ML12321A435).

Dated at Rockville, Maryland, this 24th day of January 2013.

For the Nuclear Regulatory Commission.

Karl Feintuch,

Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–02340 Filed 2–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Export Radioactive Waste

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request for an export license amendment. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.rnc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this export license amendment application follows.

NRC EXPORT LICENSE AMENDMENT APPLICATION

[Description of material]

Name of applicant; date of application; date received; application no.; docket No.	Material type	Total quantity	End use	Recipient country
Eastern Technologies, Inc.; December 28, 2012; January 2, 2013; XW016/01; 11005825.	Class A radioactive waste as slightly contaminated secondary waste resulting from the dissolving and decontamination of polyvinyl alcohol (PVA) dissolvable protective clothing and related items (e.g., zippers, hook & loop material, elastic, etc.) along with the process filters used to decontaminate the dissolved clothing retrieved from the Class A radioactive waste imported in accordance with NRC license IW016/02.	The total quantity authorized for export will not exceed quantities imported in accordance with NRC license IW016/02.	Amend to: 1) Remove ''Other U.S. Party(ies) to Export,'' 2) revise ''Description of Materials or Facilities'' to remove Impact Services as the U.S. third party waste processing company; and 3) extend the expiration date from December 31, 2012 to December 31, 2015. Following processing at the Eastern Technologies, Inc. (ETI) facility, the secondary waste will either be returned directly to Laguna Verde, or shipped to a licensed third party waste processor for further volume reduction processing and return to ETI for export back to Laguna Verde.	Mexico.

For the Nuclear Regulatory Commission.

Dated this 24th day of January 2013 at Rockville, Maryland.

Janice E. Owens,

Acting Director, Office of International Programs.

[FR Doc. 2013–02338 Filed 2–1–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request to Amend a License to Import Radioactive Waste

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request to amend an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link http://www.nrc.gov/reading-rm.html at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 Fed. Reg 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by email at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this import license amendment application follows.

NRC IMPORT LICENSE AMENDMENT APPLICATION

[Description of material]

Name of applicant; date of application; date received; application no.; docket No.	Material type	Total quantity	End use	Country; from
Eastern Technologies, Inc.; December 28, 2012; January 2, 2013; IW016/02; 11005602.	Class A radioactive waste including various materials (e.g., polyvinyl alcohol (PVA) based protective clothing and related products, including zippers, hook and loop closure material, elastic and non-PVA thread, contaminated with low-levels of source, special nuclear, and/or byproduct materials resulting from nuclear power plant operations and maintenance). The radioactive contaminants will consist of mixed fission products and/or corrosion activation products including Cobalt-60, Cobalt-58, and Manganese-54.	Up to a maximum total of (5) curies over the duration of the license.	Amend to: 1) Revise "End Use" to remove Impact Services as the U.S. third party waste processing company; and 2) extend the expiration date from December 31, 2012 to December 31, 2015. Laundering and decontamination of protective clothing and related products from the Laguna Verde Nuclear Power Plant located in Mexico. Following processing at Eastern Technologies, Inc. (ETI) facility, the secondary waste resulting will either be returned directly to Laguna Verde, or shipped to a licensed third party waste processor for further volume reduction processing and return to ETI for export back to Laguna Verde under NRC export license XW016/01.	Mexico.

For the Nuclear Regulatory Commission.

Dated this 24th day of January 2013 at Rockville, Maryland.

Janice E. Owens,

Acting Director, Office of International Programs.

[FR Doc. 2013–02346 Filed 2–1–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Notice of Intelligent Mail Indicia Performance Criteria

AGENCY: Postal Service™.

ACTION: Notice of final changes.

SUMMARY: The Postal Service is updating and consolidating the submission procedures and performance criteria for Postage Evidencing Systems (PES).

DATES: Copies of the Intelligent Mail® Indicia (IMI) Performance Criteria (PC) will be available effective February 4, 2013. Projected implementation dates for the new criteria are set forth in the **SUPPLEMENTARY INFORMATION** section below.

ADDRESSES: To receive a copy of the IMI PC, mail or deliver written requests to: USPS® Payment Technology/Attn: Marlo Kay Ivey, 475 L'Enfant Plaza SW., Room 3660, Washington, DC 20260–4110.

FOR FURTHER INFORMATION CONTACT: Marlo Kay Ivey, Business Programs Specialist, Payment Technology, U.S. Postal Service, at 202–268–7613.

SUPPLEMENTARY INFORMATION:

Overview

Current product submission procedures, the Performance Criteria and Security Architecture for Open Information Based Indicia (IBI) Postage Evidencing Systems and the Performance Criteria and Security Architecture for Closed Information Based Indicia (IBI) Postage Evidencing Systems (collectively known as the PCIBI) are approximately 10 years old, and since their inception have had little or no substantive updates since being initially provided to the Postage Evidencing System (PES) industry. The PES environment has changed substantially with the availability of new PES products designed to meet new customer needs for access to postage. In addition, changes within the United States Postal Service® (USPS®) infrastructure provide enhanced opportunities for PES providers to propose new concepts, methods, and processes to create, distribute, and enable customers to print pre-paid evidence of postage while improving Postal Service operations efficiency and effectiveness.

On March 30, 2011, the Postal Service published (and requested comments on) a proposed change that will replace the current PES product submission procedures and the PCIBI with the proposed IMI PC document (''IMI PC'' or ''Document''). This Document is comprised of four volumes to support the United States Postal Service® (USPS®) PES Test and Evaluation Program (the ''Program''). The intent is for the volumes to fully support each other without being redundant in content.

Description of Replacement Document

Volume I—PES Requirements. Provides the PES industry and test laboratories with detailed information, requirements, and the guidance necessary to develop new PES technology compliant with current USPS® requirements.

Volume II—IMI Requirements. Provides the minimum required information, both human-readable and machine readable, for all postage evidence produced by a PES. This volume also provides the reporting requirements for all supporting data systems used by USPS® to manage the program.

Volume III—Test and Evaluation Requirements. Provides guidance on additional test and evaluation procedures that a PES must undergo to receive USPS® approval, as well as providing guidance for testing laboratories certified by National Institute of Standards and Technology (NIST) to perform Federal Information Processing Standard (FIPS) 140–X testing and USPS® approved PES testing entities (PTE).

Volume IV—PES Test and Evaluation Program Requirements. Provides the Program and logistical processes required for a new PES to obtain approval from the USPS® as well as the requirements for the evaluation and submission of changes and updates to a previously approved PES.

Annexes A through M provide detailed requirements to support the four volumes described above.

Annex K—Self Service Postage Dispensing (Kiosk) System Requirements. The Kiosk requirements were created for USPS® branded Kiosks only and did not fully consider other unbranded kiosks. This Annex will be updated and expanded to define requirements for both. This annex will be recirculated for comment by April 1, 2013.

Implementation Schedule

New IBI product Concepts of Operation (Con-Ops) may be submitted under the PCIBI if Alpha testing is completed by September 30, 2013.

Effective February 1, 2013, new product submissions must follow the submission and testing processes in Volumes 3 and 4.

For existing IBI Products—Processes in the IMI remain the same as in the IBI.

Effective October 1, 2013, new product submissions must adhere to requirements in Volumes 1 and 2.

Existing IBI Products—These products will continue under PCIBI but must maintain valid FIPS certification.

With the exception of Annex K, as mentioned previously, all annexes will become effective with the Volume they support.

Summary of Comments and Responses

Comments regarding the proposed criteria were received by providers, USPS personnel, and other industry professionals. To review the comments, a Change Control Board (CCB) was formed with various Postal stakeholders represented. The merits of each comment were discussed and reviewed. To receive a copy of the comments and how we addressed them, mail or deliver written requests to: USPS Payment Technology/Attn: Marlo Kay Ivey, 475 L'Enfant Plaza SW., Room 3660, Washington, DC 20260–4110.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–01759 Filed 2–1–13; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Public Availability of Railroad Retirement Board FY 2012 Service Contract Inventory

AGENCY: Railroad Retirement Board (RRB).

ACTION: Notice of Public Availability of FY 2012 Service Contract Inventory.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), Railroad Retirement Board is publishing this notice to advise the public of the availability of the FY 2012 Service Contract inventories. This inventory provides information on service contract actions, over $25,000, which the RRB awarded during FY 2012. The information is organized by function to show how contracted resources were used by the agency to support its mission. The inventory has been developed in accordance with guidance issued on November 5, 2010 by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP), as updated by OFPP memorandum dated December 19, 2011. OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.* The Railroad Retirement Board has posted (1) its FY 2012 inventory and (2) a summary of the FY 2012 inventory, as well as (3) RRB's planned analysis of its selected special interest functions from the FY 2012 Service Contract inventory, and finally (4) the analysis report on its FY 2011 Service Contract Inventory special interest functions, on the Railroad Retirement Board homepage at the following link: *http://www.rrb.gov/mep/agency_mgt.asp.*

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory and analysis reports should be directed to Paul Ahern in the Acquisition Management Division, Office of Administration at 312–751–7130 or *paul.ahern@rrb.gov.*

Dated: January 24, 2013.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2013–02154 Filed 2–1–13; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30371; File No. 812–14084]

Allianz Variable Insurance Products Fund of Funds Trust, *et al.;* Notice of Application

January 29, 2013.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit open-end management investment companies relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: Allianz Variable Insurance Products Fund of Funds Trust (''FOF Trust''), Allianz Variable Insurance Products Trust (''VIP Trust'' and, together with FOF Trust, the ''Trusts''), Allianz Investment Management LLC (''AIM''), and Allianz Life Financial Services, LLC (''ALFS'').

DATES: *Filing Date:* The application was filed on October 16, 2012.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on February 25, 2013, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: 5701 Golden Hills Drive, Minneapolis, MN 55416–1297.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 551–6876, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each of FOF Trust and VIP Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. AIM, a Minnesota corporation, is an indirect, wholly owned subsidiary of Allianz SE, and an investment adviser registered under the Investment Advisers Act of 1940 (''Advisers Act''). AIM currently serves

as investment adviser to each existing Fund of Funds (as defined below). ALFS, a Minnesota corporation, is an indirect, wholly owned subsidiary of Allianz SE, and a broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act''). ALFS serves as the distributor for each existing Fund of Funds.

2. Applicants request the exemption to the extent necessary to permit any existing or future series of the Trusts or any other existing or future registered open-end management investment company or series thereof that: (i) Is advised by AIM or an entity controlling, controlled by, or under common control with AIM (any such adviser, or AIM, an ''Adviser'')[1]; (ii) invests in other registered open-end management investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act; and (iii) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each, a ''Fund of Funds''), to also invest, to the extent consistent with its investment objectives, policies, strategies and limitations, in financial instruments which may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[2] Applicants also request that the order exempt any entity controlling, controlled by or under common control with ALFS that now or in the future acts as principal underwriter with respect to the transactions described in the application.

3. Consistent with its fiduciary obligations under the Act, each Fund of Funds' board of trustees will review the advisory fees charged by the Fund of Funds' Adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund of Funds may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides, in part, that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or 12(d)(1)(G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (i) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (ii) securities (other than securities issued by an investment company); and (iii) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the Funds of Funds will comply with rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Funds of Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02304 Filed 2–1–13; 8:45 am]

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[1] Any other Adviser also will be registered under the Advisers Act.

[2] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68748; File No. SR–NYSEARCA–2013–02]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.11, Which Provides for Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, Extending the Effective Date of the Pilot Until the Earlier of the Initial Date of Operations of the Regulation NMS Plan To Address Extraordinary Market Volatility or February 4, 2014

January 28, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2013, NYSE Arca, Inc. (''NYSE

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.11, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of February 4, 2013, until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.11, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of February 4, 2013,[3] until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. The pilot will continue to operate as to individual securities until such security is subject to the Regulation NMS Plan to Address Extraordinary Market Volatility.

NYSE Arca Equities Rule 7.11 requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a ''Trading Pause.'' The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all NMS stocks and specified exchange-traded products.[4]

The extension proposed herein would allow the pilot to continue to operate without interruption until implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility.[5] The Exchange anticipates that the Regulation NMS Plan to Address Extraordinary Market Volatility will not begin initial operations on February 4, 2013 as currently planned, but will be delayed. If the Regulation NMS Plan to Address Extraordinary Market Volatility has an initial date of operations before February 4, 2014, the proposed pilot for trading pauses would expire at that time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Additionally, extension of the pilot until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot, which contributes to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to extend the operation of the trading pause pilot until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014

[3] *See* Securities Exchange Act Release No. 67565 (August 1, 2012), 77 FR 47144 (August 7, 2012) (SR–NYSEArca–2012–78).

[4] The Exchange notes that the other national securities exchanges and the Financial Industry Regulatory Authority have adopted the pilot in substantially similar form. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). *See also* Securities Exchange Act Release No. 63496 (December 9, 2010), 75 FR 78285 (December 15, 2010) (SR–NYSEArca–2010–114). A proposal to, among other things, expand the pilot to include all NMS stocks not already included therein was implemented on August 8, 2011. *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; and SR–Phlx–2011–64).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

would allow the pilot to continue to operate without interruption until implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same trading pause requirements specified in the Plan. Thus, the proposed changes will not impose any burden on competition while providing trading pause requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing. [12]

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–NYSEARCA–2013–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2013–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEARCA–2013–02 and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02291 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68747; File No. SR–NYSE–2013–08]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending the Attestation Requirement of Rule 107C To Allow a Retail Member Organization To Attest That ''Substantially All'' Orders Submitted To The Retail Liquidity Program Will Qualify As ''Retail Orders''

January 28, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 17, 2012, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the attestation requirement of Rule 107C to

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

allow a Retail Member Organization (''RMO'') to attest that ''substantially all'' orders submitted to the Retail Liquidity Program (the ''Program'') will qualify as ''Retail Orders.'' Rule 107C(b)(2)(C) currently requires RMOs to attest that ''any order'' will so qualify, effectively preventing certain significant retail brokers from participating in the Program due to operational constraints. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing an amendment to Rule 107C to provide that an RMO may attest that ''substantially all'' of the orders it submits to the Program are Retail Orders, as defined in Rule 107C, replacing the requirement that the RMO must attest that all submitted orders qualify as Retail Orders.

Under current Rule 107C(b)(2), a member organization wishing to become an RMO must submit: (A) An application form; (B) supporting documentation; and (C) an attestation that ''any order'' submitted as a Retail Order will qualify as such under Rule 107C.[4]

The Exchange believes that the categorical nature of the current attestation language is preventing certain member organizations with retail customers from participating in the Program. In particular, the Exchange understands that some member organizations wishing to participate in the Program represent both ''Retail Orders,'' as defined in Rule 107C(a)(3), as well as other agency flow that may not meet the strict definition of ''Retail Order.'' The Exchange further understands that limitations in order management systems and routing networks used by such member organizations may make it infeasible for them to isolate 100% of Retail Orders from other agency, non-Retail Order flow that they would direct to the Program. Unable to make the categorical attestation required by the current language of Rule 107C, some member organizations have chosen not to participate, notwithstanding that substantially all order flow from such member organizations would be Retail Orders. This limitation has the effect of preventing their retail customers from benefiting from the enhanced price competition and transparency of the Program.

Accordingly, the Exchange is proposing a de minimis relaxation of the RMO attestation requirement in order to accommodate these system limitations and expand the access of retail customers to the benefits of the Program.

Specifically, as proposed an RMO would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under existing definitions of the Program.

The Exchange will issue a Trader Notice to make clear that the ''substantially all'' language is meant to permit the presence of only isolated and de minimis quantities of agency orders that do not qualify as Retail Orders that cannot be segregated from Retail Orders due to systems limitations. In this regard, an RMO would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the RMO applicant to attest that ''substantially all'' of its orders will qualify as Retail Orders. The slight relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted to the Program would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated member organizations who have only slight differences in the capability of their systems will be able to equally benefit from the Program.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow member organizations, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still participate in the Program. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the price improvement and transparency offered by the Program and thereby potentially stimulate further price competition for retail orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the amendment, by increasing the level of participation in the program, will increase the level of competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements.

[4] A Retail Order is defined in Rule 107C(a)(3) as ''an agency order that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

[5] The Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will review a member organization's compliance with these requirements.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2013–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–08. 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 the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2013–08 and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02290 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68752; File No. SR–BATS–2013–003]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend BATS Rules in Connection With the Elimination of Discretionary Orders for BATS Options

January 29, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2013, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this 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)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend BATS Rule 21.1, entitled ''Definitions,'' to remove an order type, a Discretionary Order, from the types of orders allowed by the BATS options market (''BATS Options'').

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend BATS Rule 21.1 to remove Discretionary Orders from the types of orders allowed by BATS Options.

As currently offered, Discretionary Orders allow Exchange Users[5] to enter orders that have a displayed price and size, as well as a non-displayed discretionary price range, at which the entering party, if necessary, is also willing to buy or sell. The Exchange adopted the Discretionary Order order type for BATS Options based on

[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)(iii).

[5] As defined in BATS Rule 1.5(cc), the term ''User'' means ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to BATS Rule 11.3.''

experience with an identical order type offered on the Exchange's cash equities platform. Although the Exchange believed that Discretionary Orders would translate well to BATS Options, Discretionary Orders have not been widely used on BATS Options; to the extent Discretionary Orders have been used on BATS Options, BATS has observed that it does not appear that the Discretionary Order order type incentivizes Exchange Users to enter aggressively priced, displayed liquidity that effectively contributes to the price discovery process. Accordingly, the Exchange proposes to remove the ability to submit a Discretionary Order to BATS Options, and thus, to delete reference to Discretionary Orders in Rule 21.1. The Exchange does not propose any difference to the existing discretionary functionality for the Exchange's cash equities trading platform.

2. Statutory Basis

The rule change proposed in this submission is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[6] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[7] because it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system, and, in general, protect investors and the public interest. Specifically, the Exchange believes that elimination of Discretionary Orders for BATS Options will enhance price discovery and aggressively priced, displayed liquidity on BATS Options, which will have potential benefits for all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition. As noted above, the proposal would eliminate an order type that is not offered by any other options exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay because the Exchange plans to stop supporting the Discretionary Order order type as of February 1, 2013. Furthermore, the Exchange notes that the Discretionary Order order type is not widely used on the BATS Options market and, as such, the Exchange does not believe that discontinuing its availability would negatively affect Exchange Users or the Exchange's market. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–BATS–2013–003 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–BATS–2013–003. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2013–003 and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02298 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68758; File No. SR–NYSEArca–2013–04]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule To Revise Qualification Thresholds for Tiered Customer Posting Credits

January 29, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 15, 2013, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') to revise the qualification thresholds for tiered Customer posting credits for electronic executions in Penny Pilot issues. The Exchange proposes to make the fee change operative on February 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to revise the qualification thresholds for tiered Customer[4] posting credits for electronic executions in Penny Pilot issues.[5] The Exchange proposes to make the fee change operative on February 1, 2013.

Currently, the Exchange provides credits for posted electronic Customer executions in Penny Pilot issues for OTP Holders and OTP Firms that meet the following execution thresholds:

Tier	Qualification basis (average electronic executions per day)			Credit applied to posted electronic customer executions in Penny Pilot issues
Base				($0.25)
Tier 1	15,000 Contracts from Customer Posted Orders in Penny Pilot Issues.			($0.38)
Tier 2	25,000 Contracts from Customer Posted Orders in Penny Pilot Issues, or	75,000 Contracts from Posted Orders in Penny Pilot Issues, all account types.*		($0.40)
Tier 3	50,000 Contracts from Customer Posted Orders in Penny Pilot Issues.			($0.43)
Tier 4	65,000 Contracts from Customer Posted Orders in Penny Pilot Issues Plus 0.3% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market,* or	100,000 Contracts from Posted Orders in Penny Pilot Issues, all account types,* or	100,000 Contracts from Customer Posted and Removing Orders in Penny Pilot Issues.	($0.44)

* Includes transaction volume from the OTP Holder's or OTP Firm's affiliates.

The Exchange proposes to revise the qualification thresholds for tiered Customer posting credits for electronic executions in Penny Pilot issues so that the qualification thresholds for tiered Customer posting credits will be based not on a fixed number of contracts but instead on a percentage of average daily volume (''ADV'') of Customer electronic equity and ETF option contracts executed by an OTP Holder or OTP Firm on the Exchange relative to the overall Total Industry Customer equity and ETF option ADV.[6] The Exchange

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Under NYSE Arca Options Rule 6.1(b)(29), the term ''Customer'' has the same definition as Rule 15c3–1(c)(6) under the Act, which excludes certain broker-dealers.

[5] As provided under NYSE Arca Options Rule 6.72, options on certain issues have been approved to trade with a minimum price variation of $0.01 as part of a pilot program that is currently scheduled to expire on March 31, 2013. *See* Securities Exchange Act Release No. 68426, (December 13, 2012) 77 FR 75224 (December 19, 2012) (SR–NYSEArca–2012–135).

[6] The OCC provides volume information in two product categories: Equity and ETF volume and index volume, and the information can be filtered to show only Customer, firm, or market maker account type. Equity and ETF Customer volume numbers are available directly from the OCC each morning, or may be transmitted, upon request, free of charge from the Exchange. Equity and ETF Customer volume is a widely followed benchmark of industry volume and is indicative of industry market share. Total Industry Customer equity and ETF option ADV is comprised of those equity and ETF option contracts that clear in the customer account type at OCC, including Exchange-Traded Fund Shares, Trust Issued Receipts, Partnership

proposes the following qualification thresholds for tiered Customer posting credits for electronic executions in Penny Pilot issues:

Tier	Qualification basis (average electronic executions per day)			Credit applied to posted electronic customer executions in Penny Pilot issues
Base				($0.25)
Tier 1	At least 0.15% of Total Industry Customer equity and ETF option ADV from Customer Posted Orders in Penny Pilot Issues.			($0.38)
Tier 2	At least 0.25% of Total Industry Customer equity and ETF option ADV from Customer Posted Orders in Penny Pilot Issues, or	At least 0.70% of Total Industry Customer equity and ETF option ADV from Posted Orders in Penny Pilot Issues, all account types.*		($0.40)
Tier 3	At least 0.50% of Total Industry Customer equity and ETF option ADV from Customer Posted Orders in Penny Pilot Issues.			($0.43)
Tier 4	At least 0.65% of Total Industry Customer equity and ETF option ADV from Customer Posted Orders in Penny Pilot Issues Plus 0.3% of U.S. Equity Market Share Posted and Executed on NYSE Arca Equity Market,* or	At least 0.95% of Total Industry Customer equity and ETF option ADV from Posted Orders in Penny Pilot Issues, all account types,* or	At least 0.95% of Total Industry Customer equity and ETF option ADV from Customer Posted and Removing Orders in Penny Pilot Issues.	($0.44)

* Includes transaction volume from the OTP Holder's or OTP Firm's affiliates.

The Exchange notes that the calculations for the qualification thresholds for tiered Customer posting credits only include electronic executions. Qualified Contingent Cross (''QCC'') orders are neither posted nor taken; thus QCC transactions are not included in the calculation of posted or taken execution volumes. Orders routed to another market for execution are not included in the calculation of taking volume. In addition, Customer equity and ETF option ADV will not include executions from Electronic Complex Order Executions.[7]

The Exchange notes that the proposed percentages are generally equivalent to the current fixed thresholds at current volume levels, but will have the advantage of fluctuating with industry volume. The Exchange does not propose to amend the credits associated with these tiers or other requirements for the tiers.

The Exchange notes that the proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that OTP Holders and OTP Firms would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] in particular, because it is 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 mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposal to revise the qualification thresholds for tiered Customer posting credits for electronic executions in Penny Pilot issues so that they are based on the ADV of Total Industry Customer electronic equity and ETF option contracts on the Exchange is

Units, and Index-Linked Securities such as Exchange-Traded Notes (*see* NYSE Arca Options Rule 5.3(g)–(j)), and does not include contracts that clear in either the firm or market maker account type at OCC or contracts overlying a security other than an equity or ETF security. The Exchange notes that there is one Penny Pilot issue, Mini NDX 100 Stock Index, that does not overlie an equity or ETF security that is eligible for the Customer posing [sic] credit. This Penny Pilot issue is not included in equity and ETF option ADV; however, the Exchange expects that the effect on the calculations for the qualification thresholds for tiered Customer posting credits to be negligible. Under the proposed rule change, Total Industry Customer equity and ETF option ADV will be that which is reported for the month by OCC in the month in which the credits may apply. For example, February 2013 Total Industry Customer equity and ETF option ADV will be used in determining what, if any, credit an OTP Holder or OTP Firm may be eligible for based on the Customer electronic equity and ETF option ADV it transacts on the Exchange in February 2013.

[7] The Exchange previously amended its Fee Schedule to exclude Electronic Complex Order volume from counting toward the qualification thresholds for tiered Customer posting credits for electronic executions in Penny Pilot issues. *See* Securities Exchange Act Release No. 68405, (December 11, 2012) 77 FR 74719 (December 17, 2012) (SR–NYSEArca–2012–137). The Exchange proposes to amend endnote 8 to explicitly exclude Electronic Complex Order Executions from the qualification thresholds for tiered Customer posting credits.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

reasonable because it is designed to attract additional Customer electronic equity and ETF option volume to the Exchange, which would benefit all participants by offering greater price discovery, increased transparency and an increased opportunity to trade on the Exchange. Additionally, the Exchange believes that the proposed credits are reasonable because they would incentivize OTP Holders and OTP Firms to submit Customer electronic equity and ETF option orders to the Exchange and would result in credits that are reasonably related to the Exchange's market quality that is associated with higher volumes.

The Exchange also believes that the proposed qualification thresholds for tiered Customer posting credits are reasonable because the Exchange has continued to provide more than one method of qualifying for certain of the tiers. For example, in addition to posting Customer orders in Penny Pilot issues, the Tier 2 credit can alternatively be reached by posting a certain volume of orders in all account types, and the Tier 4 credit can be reached by posting a certain volume of orders on the NYSE Arca Equity Market, posting a certain volume of orders in all account types, or posting or removing a certain volume of orders in Penny Pilot issues. The Exchange believes that the aspect of the proposed change related to the activity of an affiliated ETP Holder on NYSE Arca Equities is reasonable because it would encourage increased trading activity on both the NYSE Arca equity and option markets.

The Exchange believes that using a percentage based threshold rather than a fixed threshold is reasonable because it would allow the threshold to account for fluctuating industry volume. The Exchange also believes that the proposed qualification thresholds for tiered Customer posting credits are reasonable because they will reward OTP Holders and OTP Firms with a greater credit for posted electronic Customer executions in Penny Pilot issues when they bring a larger number of orders to the Exchange.

The Exchange believes that the proposed credits are equitable and not unfairly discriminatory because they will be available to all OTP Holders and OTP Firms that execute posted electronic Customer orders on the Exchange on an equal and non-discriminatory basis, in particular because they would be based on a variable rather than a fixed threshold. The Exchange believes that providing methods for achieving the credits not based solely on posted electronic Customer Executions in Penny Pilot issues is equitable and not unfairly discriminatory because it would continue to result in more OTP Holders and OTP Firms qualifying for the credits and therefore reducing their overall transaction costs on the Exchange. The Exchange also believes that the proposed credits are not new or novel because at least one other exchange has a customer tier based on Total Industry Customer equity and ETF option volume.[11] The Exchange believes that the aspect of the proposed change related to the activity of an affiliated ETP Holder on NYSE Arca Equities is equitable and not unfairly discriminatory because it is designed to continue to bring additional posted order flow to NYSE Arca Equities, so as to provide additional opportunities for all ETP Holders to trade on NYSE Arca Equities.[12]

The Exchange believes that the proposed changes are designed to incent all market participants, thereby removing impediments to and perfecting the mechanism of a free and open market system. In addition, for the reasons stated above, the proposed changes are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it is designed to attracted [sic] additional volume, in particular posted electronic Customer executions, to the Exchange, which would promote price discovery and transparency in the securities markets thereby benefitting competition in the industry. As stated above, the Exchange believes that the proposed change would impact all similarly situated OTP Holders and OTP Firms that post electronic Customer executions on the Exchange equally, and as such, the proposed change would not impose a disparate burden on competition either among or between classes of market participants. In addition, providing an alternative qualification basis for certain tiers by including volume from affiliates allows a firm with a diverse business structure, but not a concentration on Customers orders only, to earn a higher credit for their Customers by posting order flow that improves the overall market quality, and encourages posting competitive prices, which result in better available markets for Customer orders.[13] The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change promotes a competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [14] of the Act and subparagraph (f)(2) of Rule 19b–4 [15] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [16] of the Act to determine whether the proposed rule change should be approved or disapproved.

[11] *See* NYSE Amex Options Fee Schedule, dated December 1, 2012, *available at https://globalderivatives.nyx.com/sites/globalderivatives.nyx.com/files/nyse_amex_options_fee_schedule_12_01_12__.pdf. See also* Securities Exchange Act Release No. 68036 (October 11, 2012), 77 FR 63900 (October 17, 2012) (SR–NYSEMKT–2012–50).

[12] The Exchange notes that this aspect of the proposed change related to the activity of an affiliated ETP Holder on NYSE Arca Equities has been previously included in an immediately effective filing. *See* Securities Exchange Act Release No. 67020, (May 18, 2012) 77 FR 31050 (May 24, 2012) (SR–NYSEArca–2012–41).

[13] The Exchange notes that the Commission has not previously determined that this aspect of the proposed change related to the activity of an affiliated ETP Holder on NYSE Arca Equities would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. *See id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(2).

[16] 15 U.S.C. 78s(b)(2)(B).

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–NYSEArca–2013–04 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–NYSEArca–2013–04. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2013–04, and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02300 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68762; File No. SR–NASDAQ–2013–012]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Rule 4756 and Rule 4763 Regarding Modification of Previously Entered Orders

January 29, 2013.

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 18, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend NASDAQ Rule 4756 (Entry and Display of Quotes and Orders) and Rule 4763 (Short Sale Price Test Pursuant to Rule 201 of Regulation SHO) to stipulate how Participants in the NASDAQ Market Center System may modify previously entered orders and to describe how modified orders are processed. NASDAQ proposes to implement the proposed rule change 30 days after the date of the filing or shortly thereafter.

The text of the proposed rule change is below. Proposed new language is italicized; deletions are bracketed.

4756. Entry and Display of Quotes and Orders

(a) Entry of Orders—Participants can enter orders into the System, subject to the following requirements and conditions:

(1)–(2) No change.

(3) Orders can be entered into the System (or previously entered orders cancelled *or modified*) from 7:00 a.m. until 8:00 p.m. Eastern Time. *Participants may modify a previously entered order without cancelling it or affecting the priority of the order on the book solely for the purpose of modifying the marking of a sell order as long, short, or short exempt; provided, however, that if an order is redesignated as short, a Short Sale Period is in effect under Rule 4763, and the order is not priced at a Permitted Price or higher under Rule 4763(e), the order will be cancelled. In addition, a partial cancellation of an order to reduce its share size will not affect the priority of the order on the book. Except as provided in Rule 4761, all other modifications of orders will result in the replacement of the original order with a new order with a new time stamp.*

(b)–(c) No change.

* * * * *

4763. Short Sale Price Test Pursuant to Rule 201 of Regulation SHO

(a)–(d) No change.

(e) Re-pricing of Orders during Short Sale Period. *Except as provided below,* [D]*d*uring the Short Sale Period, short sale orders that are limited to the national best bid or lower and short sale market orders will be re-priced by the System one minimum allowable price increment above the current national best bid (''Permitted Price''). To reflect declines in the national best bid, the Exchange will continue to re-price a short sale order at the lowest Permitted Price down to the order's original limit price, or if a market order, until the order is filled. Non-displayed orders between the NASDAQ bid and offer at the time of receipt will also be re-priced upward to a Permitted Price to correspond with a rise in the national best bid.

(1)–(2) No change.

(3) During the Short Sale Period, if an order was entered as a long sale order or a short sale exempt order but is subsequently marked pursuant to NASDAQ Rule 4756(a)(3) as a short sale order, the System will cancel the order unless it is priced at a Permitted Price or higher.

(f)–(g) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to stipulate how Participants in the NASDAQ Market Center System may modify previously entered orders and to describe how modified orders are processed. Currently, Rule 4756 permits previously entered orders to be cancelled, a fact that has been interpreted by NASDAQ to allow a Participant to cancel an order in full or in part. However, new language is being added to the rule to make it clear that a partial cancellation of an order (*i.e.,* a reduction in the share size of the order) does not cause the order to lose priority on the NASDAQ Market Center book. NASDAQ believes that it is reasonable to allow the partial cancellation of an order without the order losing priority because the Participant that entered the order continues to express its willingness to trade at the price entered when the order first came onto the book. Moreover, if the order is displayed, other Participants quoting at the same price are aware of the priority of their orders relative to the partially cancelled order. While a partial cancellation may provide these other Participants with greater opportunities to provide a fill, NASDAQ does not believe that it would be reasonable for the Participants to jump ahead of an order with time priority merely because the size of the order has been reduced. Similarly, if the partially cancelled order is non-displayed, other Participants would have no awareness of its price, its original size, or its reduced size. Again, while other Participants at that price may have an increased opportunity to provide a fill when the order's size is reduced, they would not have an expectation that the priority of their orders would change vis-à-vis that of an order that arrived on the book at an earlier time. Finally, with respect to Participants seeking to access liquidity, the reduced size of the order would be disseminated (if a displayed order) or not disseminated (if a non-displayed order) via market data feeds, but these Participants would be indifferent as to the order's priority vis-à-vis other orders with the same price.

In addition, NASDAQ is modifying Rule 4756 to provide that a sell order may be modified in order to change its marking as long, short, or short exempt without affecting its priority on the book.[3] Participants sometimes wish to modify the marking of a sell order on the book due to changes in the Participant's holdings of the security in question. At present, such a modification may only be achieved by the cancellation of the existing order and its replacement with a new order with a different time stamp. NASDAQ believes that it is reasonable to allow the modification of an order for this purpose without affecting its priority, since the order's marking has no bearing on the timing of its entry onto the book vis-à-vis other orders at the same price.[4] In the event, however, that a long or short exempt order is redesignated as a short sale order and the security that is the subject of the order is in a Short Sale Period, as provided for in Rule 4763 and Rule 201 under Regulation SHO,[5] the order will be evaluated to determine whether its price would be a Permitted Price within the meaning of Rule 4763(e). If not, the order will be cancelled rather than repriced.[6] NASDAQ believes that cancelling the order under these circumstances is preferable to repricing it, because it alerts the Participant entering the order to the existence of the Short Sale Period and forces the Participant to evaluate its intentions with regard to the order.

Finally, NASDAQ is amending Rule 4756 to make it clear that, except as provided in Rule 4761,[7] all other modifications of previously submitted orders, including increases in size[8] and changes in price, will result in the cancellation of the original order and its replacement with a new order with a new time stamp. Although the addition of this rule language does not reflect a change in the way the NASDAQ system currently operates, NASDAQ believes that the clarity of the rule will be enhanced by including the new language. NASDAQ further believes that the functionality described by the rule language is important to ensuring that Participants cannot use an existing order unfairly to retain priority with respect to a materially different order.

2. Statutory Basis

NASDAQ believes that its proposal is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Specifically, NASDAQ believes that permitting Participants to change the marking of sell orders without affecting their priority on the NASDAQ book will eliminate an aspect of the NASDAQ Market Center system that had unnecessarily made it more difficult for posted sell orders to execute. Thus, the change will enhance the fairness and efficiency of the NASDAQ market without affecting the ability of Participants to comply with applicable regulatory requirements. In addition, the changes to the rule that describe the effect of a partial order cancellation promote the clarity of the rule with respect to the ability of a Participant to reduce the size of an existing order without affecting its priority. NASDAQ further believes that allowing an order to retain priority under these conditions is consistent with the operation of a free and open market and the protection of investors and the public interest, since the Participant that entered an order that is partially cancelled has nevertheless expressed a continued willingness to trade at a specified price, and therefore should retain priority over Participants that joined that price at a later time. Finally, NASDAQ believes that the proposed addition of language to clearly stipulate that all other order modifications will result in the cancellation and replacement of the original order with a new order with new time priority is consistent with the protection of investors and the public interest because the new language will make clear an existing feature of the market that NASDAQ believes is important to ensuring that Participants cannot use an existing order unfairly to

[3] The proposed rule does not affect Participants' obligations contained in Regulation SHO under the Act, and Participants must continue to comply with such obligations, including the order marking and locate requirements. *See* 17 CFR 242.200 *et seq.*

[4] A change to the marking of the order would be effected through the submission of a ''modify order'' message.

[5] 17 CFR 242.201.

[6] If an order originally marked as long or short is marked as short exempt, the order will not be cancelled or repriced. Rule 4763(g).

[7] Rule 4761 provides for automatic adjustment of open orders in response to issuer corporate actions related to a dividend, payment, or distribution.

[8] NASDAQ reminds Participants that if a seller increases the size of a pending sell order, the resulting modified order is considered a new order and must be marked by the broker-dealer to reflect the seller's net position at the time of order modification pursuant to Rule 200 of Regulation SHO.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

retain priority with respect to a materially different order.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, NASDAQ believes that the change with respect to allowing Participants to modify the long, short, or short exempt marking of a sell order without affecting its priority will assist NASDAQ in competing with the BATS Exchange and the BATS Y-Exchange, which already allow their Participants to do so. NASDAQ further believes that the other changes will not have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative 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 public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] 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.

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–012. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–012 and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02303 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68744; File No. SR–NYSEMKT–2013–04]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 80C—Equities, Which Provides for Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, Extending the Effective Date of the Pilot Until the Earlier of the Initial Date of Operations of the Regulation NMS Plan To Address Extraordinary Market Volatility or February 4, 2014

January 28, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2013, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 80C—Equities, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of February 4, 2013, until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 80C—Equities, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of February 4, 2013,[3] until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. The pilot will continue to operate as to individual securities until such security is subject to the Regulation NMS Plan to Address Extraordinary Market Volatility.

Rule 80C—Equities requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a ''Trading Pause.'' The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all NMS stocks and specified exchange-traded products.[4]

The extension proposed herein would allow the pilot to continue to operate without interruption until implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility.[5] The Exchange anticipates that the Regulation NMS Plan to Address Extraordinary Market Volatility will not begin initial operations on February 4, 2013 as currently planned, but will be delayed. If the Regulation NMS Plan to Address Extraordinary Market Volatility has an initial date of operations before February 4, 2014, the proposed pilot for trading pauses would expire at that time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Additionally, the extension of the pilot until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot, which contributes to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to extend the operation of the trading pause pilot until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014 would allow the pilot to continue to operate without interruption until implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same trading pause requirements specified in the Plan. Thus, the proposed changes will not impose any burden on competition while providing trading pause requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which

[3] *See* Securities Exchange Act Release No. 67568 (August 1, 2012), 77 FR 47140 (August 7, 2012) (SR–NYSEMKT–2012–27).

[4] The Exchange notes that the other national securities exchanges and the Financial Industry Regulatory Authority have adopted the pilot in substantially similar form. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). *See also* Securities Exchange Act Release No. 63501 (December 9, 2010), 75 FR 78307 (December 15, 2010) (SR–NYSEAmex–2010–117). A proposal to, among other things, expand the pilot to include all NMS stocks not already included therein was implemented on August 8, 2011. *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; and SR–Phlx–2011–64).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[12]

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–NYSEMKT–2013–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–04. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2013–04 and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02287 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68759; File No. SR–BOX–2013–06]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Rule Change to List and Trade Option Contracts Overlying 1,000 Shares of the SPDR S&P 500 Exchange-Traded Fund

January 29, 2013.

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 18, 2013, BOX Options Exchange LLC (''Exchange'' or ''BOX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to define certain contract terms for trading option contracts overlying 1,000 SPDR® S&P 500® exchange-traded fund (''SPY ETF''),[3] (''SPY'') Shares. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 5050 (Series of Contracts Open for Trading) to define certain contract terms for trading option contracts overlying 1,000 SPDR® S&P 500® exchange-traded fund (''SPY ETF''),[4] (''SPY'') Shares. In

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''SPDR®,'' ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,''a and ''Standard & Poor's 500'' are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

[4] ''SPDR®,'' ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' and ''Standard& Poor's 500''a are registered trademarks of Standard & Poor's Financial Services LLC. The SPY ETF represents ownership in the

Continued

order to list these option contracts overlying 1,000 SPY Shares (''Jumbo options'') the Exchange is initially proposing to restrict the listing of Jumbo options to the SPY ETF, and also proposing to define how strike prices and bids and offers will be expressed for Jumbo option contracts by further amending Rule 5050.

First, the Exchange proposes to add to Rule 5050(e) a provision to permit BOX to list Jumbo contracts on SPY for all expirations applicable to options overlying 100 shares of SPY. Note that SPY options are currently the most actively traded option class in terms of average daily volume (''ADV'').[5] The Exchange proposes to designate this most active ETF as eligible for 1,000 share contracts, and restrict Jumbo contracts to SPY, for which the Securities and Exchange Commission (the ''Commission'') has approved the elimination of any Position Limit.

Contract Terms

To avoid investor confusion with SPY options that overly [sic]100 shares, the Exchange further proposes to amend Rule 5050 to define how strike prices will be set and how bids and offers will be defined for Jumbo options. The Exchange proposes that bids and offers shall be expressed in terms of dollars per 1/1000th part of the total value of the contract.

Rule 5050(e)(2) proposes that strike prices be set at the same level as for regular options. Thus, a Jumbo option contract to deliver an ETF at $145 per share would carry a total deliverable value of $145,000, and the strike price would be set at $145. Proposed Rule 5050(e)(3) provides that bids and offers in Jumbo option contracts shall be expressed in terms of dollars per 1/1000th part of the total value of the contract. Thus, if an ETF with a Jumbo option strike price of $145 was trading at $146 per share, the intrinsic $1 per share value would denote a total contract value of $1,000, and be expressed as a bid or offer quote around such intrinsic value.

The table below demonstrates the difference between a Jumbo option contract and a standard option contract to call or put shares at $45 per share, with a bid or offer of $3.20 per share:

	Standard	Jumbo
Shares Deliverable Upon Exercise	100 shares	1,000 shares
Strike Price if underlying is $45 per share	45	45
Bid or Offer	3.20	3.20
Premium Multiplier	$100	$1,000
Total Value of Deliverable	$4,500	$45,000
Total Value of Contract	$320	$3,200

Additionally, the Exchange believes that price protection would not apply across standard and Jumbo SPY options on an intramarket basis, as these are separate products. While the Exchange recognizes that trading different options products that overlie the same security or index could disperse trading interest across the products to some extent, with highly-liquid options on the liquid SPY, there generally exists a critical mass of willing buyers and sellers for both the options and the underlying securities to mitigate the price protection concerns. Further, the Exchange believes that because of the liquidity in SPY and options on SPY, existing market forces should keep the prices between standard contracts and Jumbo SPY options contracts consistent. With respect to the related arbitrage, the Exchange understands that the OCC's portfolio margining process will be set to have positions in a standard contract and a Jumbo options contract set against each other, and that consistent cross margining will be available between standard contracts and Jumbo options contracts. Accordingly, the Exchange believes that the availability of Jumbo SPY options contracts is likely to result in more efficient pricing through arbitrage with standard contracts.

Additionally, the Exchange will designate Jumbo SPY options contracts with a different trading symbol (SPYJ) than the related standard contract. Moreover, the Exchange believes the terms of Jumbo SPY options contracts are consistent with the terms of the Options Disclosure Document.

With regard to the impact of this proposal on system capacity, BOX has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of Jumbo SPY options contracts. The Exchange has further discussed the proposed listing and trading of Jumbo SPY options contracts with the OCC, which has represented that it is able to accommodate the proposal.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change is also consistent with Section 6(b)(8) of the Act in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In particular, the Exchange believes this proposed rule change will benefit investors by providing additional methods to trade highly liquid options on SPY, and providing greater ability to mitigate risk in managing large portfolios. Specifically, the Exchange believes that investors would benefit from the introduction and availability of Jumbo SPY options by making options on large blocks of the SPY ETF more available as an investing tool, particularly for institutional investors. As noted above, the proposed rule change intends to adopt a different

SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

[5] SPY ADV was 2,156,482 contracts in April 2012. ADV for the same period for the next four most actively traded options was: Apple Inc. (option symbol AAPL)—1,074,351; S&P 500 Index (option symbol SPX)—656,250; PowerShares QQQ Trust[SM], Series 1 (option symbol QQQ)—573,790; and iShares® Russell 2000® Index Fund (option symbol IWM)—550,316. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

trading symbol to distinguish Jumbo SPY options from the related regular option contracts and therefore, ease any investor confusion as to the product they are trading.

The Exchange also believes Jumbo SPY options will provide investors with an additional tool for hedging risk in the highly liquid ETF. Further, the proposed rule change is limited to just the SPY ETF, a single, high-priced, highly liquid security.

Finally, the Exchange notes that the Commission previously approved option contracts on ETFs that overly [sic] 1,000 shares for NYSE Amex.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes this proposed rule change will benefit investors by providing additional methods to trade options on the liquid SPY, and providing greater ability to mitigate risk in managing large portfolios. Specifically, the Exchange believes that investors would benefit from the introduction and availability of Jumbo SPY options by making options on large blocks of the SPY ETF more available as an investing tool, particularly for institutional investors. The Exchange also believes Jumbo SPY options will provide investors with an additional tool for hedging risk in the highly liquid ETF. Further, the proposed rule change is limited to just the SPY ETF, a single, high-priced, highly liquid security. Finally, the Exchange is not proposing any limitations regarding market participants that will be able to trade Jumbo SPY options if they choose.

For all the reasons stated, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, and believes the proposed change will enhance competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2013–06 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–BOX–2013–06. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–06 and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02301 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[8] *See* Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (Order Approving SR-Amex-96–44).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68751; File No. SR–C2–2013–005]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amending the Fees Schedule

January 29, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is provided below.

(additions are italicized; deletions are [bracketed])

* * * * *

C2 OPTIONS EXCHANGE, INCORPORATED

FEES SCHEDULE

JANUARY 1*8*[1], 2013

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

3. Access Fees

Type of permit	Cost per month
Market-Maker Permit	$5,000.
Electronic Access Permit.	$1,000.
SPXPM Tier Appointment.	$4,000 (waived through March 31, 2013).

Market-Maker Permit- Entitles the holder to act as a Market-Maker. This permit provides an appointment credit of 1.0, a quoting and order entry bandwidth allowance, up to three logins and Trading Permit Holder status. The quoting bandwidth allowance for a Market-Maker Permit is equivalent to a maximum of 156,000,000 quotes over the course of a trading day.

Electronic Access Permit- Entitles the holder to access to the Exchange. Holders must be broker-dealers registered with the Exchange and are allowed to submit orders to the Exchange. The EAP provides an order entry bandwidth allowance, up to three logins and Trading Permit Holder status.

SPXPM Tier Appointment- In order for a Market-Maker Permit to be used to act as a Market-Maker in SPXPM, the Trading Permit Holder must obtain an SPXPM Tier Appointment (Registration) for that Market-Maker Permit. The SPXPM Tier Appointment fee will be assessed to any Market-Maker Permit Holder that has an SPXPM Tier Appointment at any time during a calendar month.

Access fees are non-refundable and are assessed through the integrated billing system during the first week of the following month. If a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. Trading Permits will be renewed automatically for the next month unless the Trading Permit Holder submits written notification to the Registration Services Department by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) to cancel the Trading Permit effective at or prior to the end of the applicable month. *If cancellation of a Trading Permit is effective prior to the end of the applicable month, and the cancelling Trading Permit Holder later requests issuance of the same type of Trading Permit for the remainder of that month, the Exchange may issue the same type of Trading Permit (provided that a Trading Permit is available) but will not impose the additional prorated access fee for that month.*

* * * * *

The text of the proposed rule change is also available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule.[3] More specifically, the Exchange is proposing to make changes to the section ''Access Fees.'' Pursuant to that section, the Exchange charges a Trading Permit Holder a monthly fee to use a Trading Permit, the amount of which fee is based on the type of Trading Permit.

Currently, the Exchange charges the following access fees:

Type of permit	Cost per month
Market-Maker Permit[4].	$5,000.
Electronic Access Permit[5].	1,000.
SPXPM Tier Appointment[6].	4,000 (waived through March 31, 2013).

Pursuant to the Fees Schedule, the Exchange assesses the access fees in arrears during the first week of the following month. For example, a Trading Permit Holder will be billed in February for use of a Trading Permit in January. The Fees Schedule further provides that if a Trading Permit is issued during a calendar month after the first trading day of the month, the access fee for the Trading Permit for that calendar month is prorated based on the remaining trading days in the calendar month. A Trading Permit will be renewed automatically for the next month unless the Trading Permit Holder submits written notification to the Registration Services Department by the 25th day of the prior month (or the preceding business day if the 25th is not a business day) to cancel the Trading Permit effective at or prior to the end of the applicable month.

Under the Fees Schedule, if a Trading Permit Holder cancels a Trading Permit effective prior to the end of the applicable month, the Trading Permit Holder will still be assessed the full access fee for that month (the same amount it would pay if the Trading Permit Holder had cancelled the Trading Permit effective at the end of the month). However, if the Trading Permit Holder later requests that the Exchange issue the same type of Trading Permit for the remainder of that same month, pursuant to the Fees Schedule, the Exchange will assess a prorated access fee based on the remaining trading days in that month. Thus, the Trading Permit Holder would be double-paying the access fee for that remaining portion of the month.

The purpose of the proposed rule change is to prevent a Trading Permit Holder from double-paying a portion of the monthly access fee in this situation. The proposed rule change amends the Access Fees section of the Fees Schedule to provide that if cancellation of a Trading Permit is effective prior to the end of the applicable month, and the cancelling Trading Permit Holder later requests issuance of the same type of Trading Permit for the remainder of that same month, the Exchange may issue the same type of Trading Permit (assuming one is available)[7] but will not

[3] *See* Exchange Rule 2.1, which authorizes fees to Participants to be ''fixed from time to time by the Exchange.''

[4] A Market-Maker Permit entitles the holder to act as a Market-Maker. This permit provides an appointment credit of 1.0, a quoting and order entry bandwidth allowance, up to three logins and Trading Permit Holder status. The quoting bandwidth allowance for a Market-Maker Permit is equivalent to a maximum of 156,000,000 quotes over the course of a trading day.

[5] An Electronic Access Permit entitles the holder to access the Exchange. Holders must be broker-dealers registered with the Exchange and are allowed to submit orders to the Exchange. The permit provides an order entry bandwidth allowance, up to three logins and Trading Permit Holder status.

[6] An SPXPM Tier Appointment must be obtained by a Market-Maker for its Market-Maker Permit in order for the Market-Maker to act as a Market-Maker in SPXPM. The SPXPM Tier Appointment fee will be assessed to any Market-Maker that has an SPXPM Tier Appointment at any time during a calendar month.

[7] The Exchange will determine whether to issue a Trading Permit to the Trading Permit Holder in the same manner that it issues any Trading Permit pursuant to Rule 3.1, including subject to any

impose the additional prorated access fee for the remainder of that month.[8] The proposed rule change results in a Trading Permit Holder that cancels a Trading Permit prior to the end of the month but then has the same type of Trading Permit issued during that same month paying the same monthly access fee amount as it would if it had cancelled its Trading Permit effective at the end of a month.

For example, if a Trading Permit Holder cancels a Market-Maker Permit effective January 18, 2013, but upon request of the Trading Permit Holder issues [sic] a Maker-Maker [sic] Permit effective January 23, 2013, the Trading Permit Holder will be billed a total of $5,000 for use of the Market-Maker Permit during January (which will be billed during the first week of February).[9] Without the proposed rule change, the Trading Permit Holder would be billed $5,000 for use of the Market-Maker Permit for the trading days in January through January 18 plus a prorated amount of $1,666.67 for use of the Market-Maker Permit for the trading days in January between January 23 and January 31. Thus, with the proposed rule change, the Trading Permit Holder will pay the same amount in access fees for January as it would if it had cancelled the Market-Maker Permit effective at the end of January.

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.[10] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] 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 facilitation [sic] 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)[12] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[13] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

In particular, the proposed rule change is equitable and not unfairly discriminatory as it applies to all Trading Permit Holders that cancel a Trading Permit effective prior to the end of a month and request issuance of the same type of Trading Permit during that same month. The Exchange believes the proposed rule change protects investors and the public interest, as it prevents a Trading Permit Holder from paying the monthly access fee twice during the same month for a Trading Permit in the event that the Trading Permit Holder cancels the Trading Permit effective prior to the end of the month but later requests issuance of the same type of Trading Permit during that month. The Exchange believes that the proposed rule change is fair and reasonable, because it results in a Trading Permit Holder that cancels a Trading Permit prior to the end of the month but then has the same type of Trading Permit issued that month paying the same amount in access fees for that month as a Trading Permit Holder that cancels a Trading Permit effective at the end of a month. A Trading Permit Holder is able to trade the same amount in either situation; therefore, the Exchange believes it is reasonable that the Trading Permit Holder pay the same amount in either situation.

B. Self-Regulatory Organization's Statement on Burden on Competition

C2 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 proposed rule change applies in the same manner to all Trading Permit Holders that request the issuance of a Trading Permit during the same month they cancelled the same type of Trading Permit. Additionally, the proposed rule change results in a Trading Permit Holder that cancels a Trading Permit effective prior to the end of the month but then has the same type of Trading Permit issued that same month paying the same amount in access fees as a Trading Permit Holder that cancels a Trading Permit effective at the end of a month. Thus, these Trading Permit Holders would pay the same access fee during the month for the same allowable trading activity in each situation. The proposed rule change does not change the amounts of the access fees imposed on Trading Permit Holders for the use of Trading Permits.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and paragraph (f) of Rule 19b–4[15] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2013–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

announced limit on the number of Trading Permits that may be issued.

[8] The proposed rule change does not change the amounts of the access fees imposed on Trading Permit Holders for the use of Trading Permits.

[9] At that point, the Trading Permit will be subject to the auto-renewal provision described above unless the Trading Permit Holder requests that the Trading Permit not be automatically renewed at the end of the applicable month.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *Id.*

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

All submissions should refer to File Number SR–C2–2013–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 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. 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–C2–2013–005, and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02297 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68745; File No. SR–NYSE–2013–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 80C, Which Provides For Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, Extending the Effective Date of the Pilot Until the Earlier of the Initial Date of Operations of the Regulation NMS Plan To Address Extraordinary Market Volatility or February 4, 2014

January 28, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 2013, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to proposes to amend NYSE Rule 80C, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of February 4, 2013, until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 80C, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of February 4, 2013,[3] until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014. The pilot will continue to operate as to individual securities until such security is subject to the Regulation NMS Plan to Address Extraordinary Market Volatility.

NYSE Rule 80C requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a ''Trading Pause.'' The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all NMS stocks and specified exchange-traded products.[4]

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67556 (August 1, 2012), 77 FR 47156 (August 7, 2012) (SR–NYSE–2012–31).

[4] The Exchange notes that the other national securities exchanges and the Financial Industry Regulatory Authority have adopted the pilot in substantially similar form. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). *See also* Securities Exchange Act Release No. 63500 (December 9, 2010), 75 FR 78309 (December 15, 2010) (SR–NYSE–2010–81). A proposal to, among other things, expand the pilot to include all NMS stocks not already included

The extension proposed herein would allow the pilot to continue to operate without interruption until implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility.[5] The Exchange anticipates that the Regulation NMS Plan to Address Extraordinary Market Volatility will not begin initial operations on February 4, 2013 as currently planned, but will be delayed. If the Regulation NMS Plan to Address Extraordinary Market Volatility has an initial date of operations before February 4, 2014, the proposed pilot for trading pauses would expire at that time.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Additionally, extension of the pilot until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot, which contributes to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to extend the operation of the trading pause pilot until the earlier of the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility or February 4, 2014 would allow the pilot to continue to operate without interruption until implementation of the Regulation NMS Plan to Address Extraordinary Market Volatility, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same trading pause requirements specified in the Plan. Thus, the proposed changes will not impose any burden on competition while providing trading pause requirements specified in the Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the pilot program to continue uninterrupted. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[12]

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–NYSE–2013–05 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.

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therein was implemented on August 8, 2011. *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; and SR–Phlx–2011–64).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc.).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–NYSE–2013–05. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSE–2013–05 and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02288 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68746; File No. SR–NYSEMKT–2013–07]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the Attestation Requirement of Rule 107C—Equities To Allow a Retail Member Organization To Attest That "Substantially All" Orders Submitted to the Retail Liquidity Program Will Qualify as "Retail Orders"

January 28, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on January 17, 2012, NYSE MKT LLC ("NYSE MKT" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the attestation requirement of Rule 107C—Equities to allow a Retail Member Organization ("RMO") to attest that "substantially all" orders submitted to the Retail Liquidity Program (the "Program") will qualify as "Retail Orders." Rule 107C(b)(2)(C)—Equities currently requires RMOs to attest that "any order" will so qualify, effectively preventing certain significant retail brokers from participating in the Program due to operational constraints. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing an amendment to Rule 107C—Equities to provide that an RMO may attest that "substantially all" of the orders it submits to the Program are Retail Orders, as defined in Rule 107C—Equities, replacing the requirement that the RMO must attest that all submitted orders qualify as Retail Orders.

Under current Rule 107C(b)(2)—Equities, a member organization wishing to become an RMO must submit: (A) An application form; (B) supporting documentation; and (C) an attestation that "any order" submitted as a Retail Order will qualify as such under Rule 107C—Equities.[4]

The Exchange believes that the categorical nature of the current attestation language is preventing certain member organizations with retail customers from participating in the Program. In particular, the Exchange understands that some member organizations wishing to participate in the Program represent both "Retail Orders," as defined in Rule 107C(a)(3)—Equities, as well as other agency flow that may not meet the strict definition of "Retail Order." The Exchange further understands that limitations in order management systems and routing networks used by such member organizations may make it infeasible for them to isolate 100% of Retail Orders from other agency, non-Retail Order flow that they would direct to the Program. Unable to make the categorical attestation required by the current language of Rule 107C—Equities, some member organizations have chosen not to participate, notwithstanding that substantially all order flow from such member organizations would be Retail Orders. This limitation has the effect of preventing their retail customers from benefiting from the enhanced price competition and transparency of the Program.

Accordingly, the Exchange is proposing a de minimis relaxation of the RMO attestation requirement in order to accommodate these system limitations and expand the access of retail customers to the benefits of the Program.

Specifically, as proposed an RMO would be permitted to send de minimis quantities of agency orders to the Exchange as Retail Orders that cannot be explicitly attested to under existing definitions of the Program.

The Exchange will issue a Trader Notice to make clear that the "substantially all" language is meant to permit the presence of only isolated and de minimis quantities of agency order that do not qualify as Retail Orders that

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A Retail Order is defined in Rule 107C(a)(3)—Equities as "an agency order that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology."

cannot be segregated from Retail Orders due to systems limitations. In this regard, an RMO would need to retain, in its books and records, adequate substantiation that substantially all orders sent to the Exchange as Retail Orders met the strict definition and that those orders not meeting the strict definition are agency orders that cannot be segregated from Retail Orders due to system limitations, and are de minimis in terms of the overall number of Retail Orders sent to the Exchange.[5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because, while the proposed rule change represents a relaxation of the attestation requirements, the change is a de minimis relaxation that still requires the RMO applicant to attest that ''substantially all'' of its orders will qualify as Retail Orders. The slight relaxation will allow enough flexibility to accommodate system limitations while still ensuring that only a fractional amount of orders submitted to the Program would not qualify as Retail Orders.

The Exchange believes that the proposed rule change promotes just and equitable principles of trade because it will ensure that similarly situated member organizations who have only slight differences in the capability of their systems will be able to equally benefit from the Program.

The Exchange believes that the proposed rule change will remove impediments to and perfect the mechanism of a free and open market and a national market system because it will allow member organizations, who are concerned about its system limitations not allowing 100% certification that submitted orders are Retail Orders, to still participate in the Program. By removing impediments to participation in the Program, the proposed change would permit expanded access of retail customers to the price improvement and transparency offered by the Program and thereby potentially stimulate further price competition for retail orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the amendment, by increasing the level of participation in the program, will increase the level of competition around retail executions such that retail investors would receive better prices than they currently do on the Exchange and potentially through bilateral internalization arrangements. The Exchange believes that the transparency and competitiveness of operating a program such as the Retail Liquidity Program on an exchange market would result in better prices for retail investors, and benefits retail investors by expanding the capabilities of Exchanges to encompass practices currently allowed on non-Exchange venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–07. 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 the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2013–07 and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02289 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[5] The Financial Industry Regulatory Authority, Inc. (''FINRA''), on behalf of the Exchange, will review a member organization's compliance with these requirements.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68757; File No. SR–ICEEU–2012–08]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Withdrawal of Proposed Rule Change To Clear Western European Sovereign CDS Contracts

January 29, 2013.

On October 15, 2012, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the clearing of Western European Sovereign credit default swap contracts on the following sovereign reference entities: Republic of Ireland, Italian Republic, Hellenic Republic, Portuguese Republic, and Kingdom of Spain. Notice of the proposed rule change was published in the **Federal Register** on November 2, 2012.[3] The Commission received one comment on the proposed rule change.[4]

On December 14, 2012, the Commission extended the time period in which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, to January 31, 2013.[5] On January 24, 2013, ICE Clear Europe withdrew the proposed rule change (SR–ICEEU–2012–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02299 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–68119 (October 29, 2012), 77 FR 66209 (November 2, 2012).

[4] *See* Comments submitted to the Commission by Darrell Duffie, Stanford University dated November 7, 2012 (*http://sec.gov/comments/sr-iceeu-2012-08/iceeu201208.shtml*).

[5] *See* Securities Exchange Act Release No. 34–68437 (December 14, 2012), 77 FR 75466 (December 20, 2012).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68760; File No. SR–ISE–2013–05]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Market Maker Fees

January 29, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'') [4] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[5]

The purpose of this proposed rule change is to increase the discount for Market Makers [6] when they trade against Priority Customer [7] orders that are preferenced to them to $0.05 per contract from the fee charged to Market Makers who trade against Priority Customer orders that are not preferenced to them. This discount is currently set at $0.02 per contract and is applicable when Market Makers add or remove liquidity in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols from the complex order book.[8] Accordingly, Market Makers that add or remove liquidity from the complex order book by trading against Priority Customer complex orders that are preferenced to them will be charged: (i) $0.34 per contract in the Select Symbols (including SPY) and in the Non-Select Penny Pilot Symbols; and (ii) $0.77 per contract in the Non-Penny Pilot Symbols.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72); and 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38).

[5] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38); and 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR–ISE–2012–63).

[6] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[7] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[8] The current $0.02 per contract discount also applies to a group of symbols in which Market Makers can enter quotes in the complex order book (''Complex Quoting Symbols''). The discount applicable to the Complex Quoting Symbols is found on the Exchange's Schedule of Fees. *See* Section II. Complex Order Fees and Rebates, footnote 4. This proposed rule change also applies to the Complex Quoting Symbols.

The Exchange notes that NASDAQ OMX PHLX, Inc. (''PHLX'') currently has a $0.05 per contract differential between the fee it charges market makers for complex orders in certain symbols and the fee it charges directed (i.e., preferenced) market makers for the same transactions.[9] With this proposed rule change, ISE seeks to adopt the $0.05 differential currently in place at PHLX.

The Exchange notes that the fee differential currently between Market Makers and preferenced Market Makers on ISE is $0.02 per contract where a preferenced Market Maker is assessed the lower fee. The Exchange is now proposing to increase the differential from $0.02 per contract to $0.05 per contract for complex order transactions to reflect the increased costs that are incurred by such Market Makers that enter into order flow arrangements at a cost and without the benefit of a guaranteed allocation.[10] The Exchange believes that in order to attract Priority Customer complex orders in an intensely competitive environment it must continue to adjust its fees and rebates, which ultimately benefit all market participants.

Market Makers may be categorized as preferenced Market Makers when such Market Makers execute against a Priority Customer order preferenced to them for execution by an order flow provider. For example, Market Maker ABCD is assessed the preferenced Market Maker fee for trading against a Priority Customer order preferenced to it for execution by an order flow provider. Market Maker ABCD is not assessed the discounted preferenced Market Maker fee for executing a Priority Customer order that is not preferenced to Market Maker ABCD, but rather is assessed the full Market Maker fee.

The Exchange notes that all Market Makers have the ability to incentivize an order flow provider to preference an order if they desire to enter into, for example, a payment for order flow arrangement with an order flow provider. While all market participants enjoy the benefits of the liquidity that such order flow brings to the market, not all market participants incur the additional expense of paying an order flow provider for such order flow. The Exchange believes that this additional expense should be considered in assessing fees to Market Makers that attract such order flow to the Exchange for the benefit of all market participants.

The Exchange proposes to implement this proposed rule change on a pilot basis set to expire one (1) year from the date the proposed fees become operative. In support of this proposed rule change, the Exchange agrees to submit to the Commission on a monthly basis during the pilot period certain summary data as the Commission may request regarding this proposed fee change and make this data publicly available. The data would include information with respect to rates of order interaction of Priority Customer complex orders and rates of price improvement, and an analysis of the effect of the fee differential upon inter-market and intra-market competition. In addition, the Exchange also agrees to submit data, and make it publicly available, on (1) the rate of interaction with preferenced Priority Customer complex orders by both preferenced Market Makers and non-preferenced Market Makers, (2) the rates of price improvement for preferenced Priority Customer complex orders that received price improvement by both preferenced Market Makers and non-preferenced Market Makers, and (3) the percentage of preferenced and non-preferenced Priority Customer complex orders that received price improvement, and the average price improvement for such orders, for the six months prior to the time that this proposed fee became operative (i.e., July 2012 through December 2012) to allow the Commission to analyze the impact of the proposed fee change.

The Exchange represents that the proposed fee change will apply only to equity options that are able to be listed and traded on more than one options exchange. There will be no discount for Singly Listed Symbols and FX Options Symbols.[11] The Exchange further represents that, prior to and at the time of a complex order transaction, Market Makers, including preferenced Market Makers, are unaware of the identity of the contra-party to the transaction and moreover, ISE Rule 400 titled ''Just and Equitable Principles of Trade'' is intended to prohibit coordinated actions between preferenced Market Makers and order flow providers, and that the Exchange proactively conducts surveillance for, and enforces against, such violations.

The Exchange also proposes to make one non-substantive amendment to the Exchange's Schedule of Fees. Specifically, the Exchange proposes to remove footnote 7 under Section I, Regular Order Fees and Rebates, as that footnote is no longer applicable. Footnote 7 was previously applicable to Special Non-Select Penny Pilot Symbols (''SNS Symbols''), a group of symbols that were a part of Section I of the Schedule of Fees. The Exchange recently removed the SNS Symbols from the Schedule of Fees in its entirety and moved them into the Select Symbols category.[12] The Exchange inadvertently failed to remove footnote 7 when it filed to remove the SNS Symbols and proposes to do so now.

The Exchange is not proposing any other changes in this filing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Act'')[13] in general, and furthers the objectives of Section 6(b)(4) of the Act[14] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to assess lower fees to preferenced market makers that add or remove liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, than the fee charged to Market Makers because of the requisite quoting obligations applicable to preferenced Market Makers. Preferenced Market Makers have heightened and burdensome quoting obligations to the market which do not apply to the non-

[9] *See* Section I, Rebates and Fees for Adding and Removing Liquidity in Select Symbols, Part B. Complex Order at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F. see also* Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (the ''PHLX Approval Order'').

[10] The Exchange notes that under ISE Rule 722(b)(3), the Exchange has the ability to provide Market Makers with a guaranteed allocation and the Exchange may do so by designating on a class basis where such guaranteed allocations would apply. The Exchange, however, has not designated any class as such. In the event the Exchange designates certain classes to provide Market Makers the benefit of a guaranteed allocation in those classes, the discount proposed in this filing will not apply to those preferenced Market Makers in those classes of options designated by the Exchange.

[11] Singly Listed Symbols and FX Options Symbols are identified by their ticker symbol on the Exchange's Schedule of Fees. The Exchange is not providing this fee discount to Singly Listed Symbols and FX Options Symbols because these symbols are traded only on ISE and therefore, the Exchange does not need to provide an incentive to attract order flow in them.

[12] *See* Securities Exchange Act Release No. 68240 (November 15, 2012), 77 FR 69905 (November 21, 2012) (SR–ISE–2012–88).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

preferenced Market Makers or to other market participants and therefore are assessed a lower fee when they transact with a Priority Customer complex order that was preferenced to them for execution.[15] Firm Proprietary/Broker-Dealer, Non-ISE Market Maker [16] and Professional Customer [17] orders are currently assessed a higher fee than Market Makers while Priority Customers are not assessed a fee for removing liquidity from the complex order book, as is the case on competing exchanges.[18]

The Exchange operates in a highly competitive market in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. ISE and the other options exchanges are engaged in an intense competition on price (and other dimensions of competition) to attract order flow from order flow providers. Accordingly, the fees assessed by the Exchange must remain competitive with fees charged by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to send orders to the Exchange rather than to a competing venue.

In the PHLX Approval Order, the Commission employed a two part test to evaluate whether PHLX's proposal to adopt a $0.05 per contract differential was consistent with the Act. First, the Commission examined whether the exchange making the proposal was subject to significant competitive forces in setting the terms of its proposal. The Commission noted that if the exchange making the proposal was subject to significant competitive forces in setting the terms of its proposal, the Commission will approve the proposal unless it determines that there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder.

With respect to the first part of the analysis, ISE notes that it is subject to significant competitive forces in setting the terms of any fee proposals, including this proposed fee change. The Commission has previously found that there is significant competition for order flow in the options markets.[19] There currently are eleven registered national securities exchanges that trade listed options. Competition in the options market is evidenced by data PHLX provided in support of its filing to adopt a $0.05 differential, noting that market share, based on contract volume, among the options exchanges, as of 2012, ranged from approximately less than 1% to 22% for equity options.[20] Further, six of the eleven options exchanges have rules that provide for the trading of complex orders.[21] Further, data regarding market share among the options exchanges for complex orders also shows that there is significant competition for order flow. For example, for June 1, 2012, the market share for complex orders ranged from 3.39% for NYSE Arca, which had 74,486 complex order trades, to 43.79% for ISE, which had 961,040 complex order trades.[22] Moreover, the volume for complex orders has been increasing over the past few years.[23] Additionally, the proposed fees will apply only to equity options that are able to be listed and traded on more than one options exchange, and are therefore subject to competition among the markets for order flow.[24]

With respect to second part of the analysis, the Exchange does not believe that there is a substantial countervailing basis to find that the proposed rule change fails to meet the requirements of the Act or the rules thereunder. The Exchange notes that the fees for adding or removing liquidity as proposed distinguish between preferenced Market Makers and non-preferenced Market Makers, and would provide the preferenced Market Makers a lower fee than non-preferenced Market Makers when the preferenced Market Maker interacts with order flow that has been preferenced to them. The Exchange notes in part that preferenced Market Makers that execute against order flow in the complex order book that has been preferenced to them do not have a guaranteed allocation,[25] unlike in the leg market, and that the reduced fee for preferenced Market Makers is an attempt to confer an additional benefit on preferenced Market Makers for the value they provide in bringing order flow to the Exchange.

The Exchange further notes that increased order flow provides better execution quality on the Exchange because customers enjoy greater price transparency and executions at lower prices, and that Market Makers to whom order flow is preferenced still must compete with other Exchange participants to interact with that order flow to receive the benefits of such arrangements. This increased order flow, and corresponding greater execution quality, benefits all market participants.

The Commission has previously approved as consistent with the Act rules of exchanges that provide preferenced Market Makers a guaranteed allocation when they interact with preferenced order flow, based upon their status as preferenced market makers.[26] Likewise, preferenced Market Makers on ISE would be charged a lower fee when they interact with order flow preferenced to them, based on their status as preferenced Market Makers.

When approving the proposals that provided a guaranteed allocation to preferenced market makers, the Commission found that the guaranteed allocation for preferenced market makers would not affect the incentives

[15] Preferenced market makers are required to continuously quote at least 90% of the series of an options class, whereas non-preferenced market makers are required to quote only 60% of the series of an options class. *See* ISE Rule 804(e).

[16] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, registered in the same options class on another options exchange.

[17] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[18] Firm Proprietary/Broker-Dealer, Non-ISE Market Maker and Professional Customer orders are currently charged $0.40 per contract for removing liquidity in the Select Symbols (excluding SPY) and in the Non-Select Penny Pilot Symbols, $0.41 per contract for removing liquidity in SPY and $0.84 per contract for removing liquidity in the Non-Penny Pilot Symbols whereas Market Maker orders are currently charged $0.39 per contract for removing liquidity in the Select Symbols (excluding SPY), in the Non-Select Penny Pilot Symbols and in SPY and $0.82 per contract for removing liquidity in the Non-Penny Pilot Symbols. *see also* PHLX Pricing Schedule at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F.*

[19] *See* Securities Exchange Act Release No. 61317 (January 8, 2010), 75 FR 2915 (January 19, 2010) (SR–ISE–2009–103) (finding that the exchange was subject to significant competitive forces in setting the terms of its proposal, including fees, and noting that ''the Exchange has a compelling need to attract order flow to maintain its share of trading volume, imposing pressure on the Exchange to act reasonably in establishing fees for these data offerings'').

[20] *See* Letter from Joan C. Conley, Senior Vice President and Corporate Secretary, NASDAQ OMX, dated July 26, 2012 (''PHLX Letter'').

[21] *See* C2 Rule 6.13; CBOE Rules 6.42, 6.45, 6.53C; PHLX Rule 1080; NYSE Arca Rules 6.62(e), 6.91; NYSE MKT Rules 900.3NY(e), 963NY, 980NY.

[22] *See* PHLX Supporting Data, at *http://www.sec.gov/comments/sr-phlx-2012-27/phlx201227-2.pdf.*

[23] *See* Complex Orders Surge, Traders Magazine, March 2012 (noting increase in use of customer orders by customers at one broker-dealer in 2011); *see also* BATS February 2012 Options Market Update, at *http://www.batstrading.com/resources/fee_schedule/2012/BATS-February-2012-USMarket-Update.pdf* (noting that more volume is being done through complex strategies, and that volume in the complex order book has increased).

[24] There will be no discount for Singly Listed Symbols and FX Options Symbols because these symbols are traded only on ISE and therefore they are not subject to competition for order flow.

[25] *See supra* note 10.

[26] *See* Securities Exchange Act Release No. 51759 (May 27, 2005), 70 FR 32860 (June 6, 2005) (Order Approving SR–PHLX–2004–91).

of the trading crowd to compete aggressively for orders based on price.[27] The Exchange believes that the potential impact of a guaranteed allocation on competition may be distinguished from the potential impact of the reduced transaction fee on competition. Specifically, the guaranteed allocation does not provide preferenced market makers an explicit subsidy—in the form of lesser per contract fees—over other market makers that are competing to execute against the same order flow. Rather, the guaranteed allocation scheme allocates portions of orders to other market makers who are at the same price as the preferenced market maker, thus protecting the incentive of other market makers to compete with preferenced market makers on price. In contrast, assessing a lesser transaction fee on preferenced market makers than other market makers when the preferenced market makers interact with order flow preferenced to them may allow preferenced market makers to execute against complex orders at more aggressive prices than other market makers, which may reduce the incentive and ability of such other market makers to compete with preferenced market makers on price.

The Exchange has considered the potential impact of the fees for adding and removing liquidity on preferenced Market Makers and the $0.05 fee differential on competition between preferenced Market Makers and other Market Makers that are competing to execute against the same order flow. In the PHLX Approval Order, the Commission noted that for the two months during which the PHLX $0.05 price differential was in effect, there was no statistically significant adverse impact on the competitiveness of the PHLX market for directed (i.e., preferenced) customer complex orders. Given that the Exchange is proposing to implement the same $0.05 cent differential for preferenced Priority Customer complex orders, the Exchange believes there will not be any statistical significant adverse impact of the proposed fee differential on the competitiveness of the ISE market for preferenced Priority Customer complex orders, or the extent of price improvement for preferenced Priority Customer complex orders on the ISE. Nevertheless, like PHLX, ISE is proposing to adopt the $0.05 discount for preferenced Priority Customer complex orders on a pilot basis and will provide data to the Commission to further evaluate whether there is any adverse impact.[28]

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes this proposal, which seeks to adopt a fee discount applicable to Market Makers for executing orders that are preferenced to them, will enhance competition because the Exchange is seeking to adopt a fee discount that is already in place at one other exchange. The Exchange believes that the proposed rule change will promote competition, as it is designed to allow ISE to better compete for order flow and allow Market Makers to execute more of their transactions on the Exchange and therefore, improve the Exchange's competitive position. ISE also does not believe that the proposed rule change will impose any burden on competition among market participants on ISE that is not necessary or appropriate in furtherance of the purposes of the Act because, as noted above, preferenced Market Makers have heightened and burdensome quoting obligations to the market that non-preferenced Market Makers or other market participants do not have and therefore preferenced Market Makers may be assessed a lower fee when they transact with Priority Customer complex orders that are preferenced to them for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[29] and subparagraph (f)(2) of Rule 19b–4 thereunder,[30] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2013–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–05. 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

[27] *Id.*

[28] For purposes of studying the competitive impact of the proposed fee change, ISE agrees to provide data on the rate of interaction with preferenced Priority Customer complex orders by both preferenced Market Makers and non-preferenced Market Makers. This data will cover the six months prior to the time the proposed fee was in effect. For the same time period, ISE also agrees to provide data on rates of price improvement for preferenced Priority Customer complex orders that received price improvement by both preferenced Market Makers and non-preferenced Market Makers. For the same time period, ISE also agrees to provide data on the percentage of preferenced and non-preferenced Priority Customer complex orders that received price improvement, and the average price improvement for such orders.

[29] 15 U.S.C. 78s(b)(3)(A)(ii).

[30] 17 CFR 240.19b–4(f)(2).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington DC, 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2013–05, and should be submitted on or before February 25, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02302 Filed 2–1–13; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13369 and #13370]

Connecticut Disaster Number CT–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Connecticut (FEMA–4087–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 through 11/08/2012.

Effective Date: 01/25/2013.

Physical Loan Application Deadline Date: 02/12/2013.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Connecticut, dated 10/30/2012 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 02/12/2013.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–02339 Filed 2–1–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13367 and #13368]

New Jersey Disaster Number NJ–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4086–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/08/2012.

Effective Date: 01/24/2013.

Physical Loan Application Deadline Date: 03/01/2013.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Jersey, dated 10/30/2012 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 03/01/2013.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–02348 Filed 2–1–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13365 and #13366]

New York Disaster Number NY–00130

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4085–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 through 11/08/2012.

Effective Date: 01/25/2013.

Physical Loan Application Deadline Date: 02/27/2013.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New York, dated 10/30/2012 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 02/27/2013.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–02347 Filed 2–1–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13463 and # 13464]

Pennsylvania Disaster Number PA–00057

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Pennsylvania (FEMA–4099–DR), dated 01/10/2013.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/08/2012.

Effective Date: 01/17/2013.

Physical Loan Application Deadline Date: 03/11/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 10/10/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Pennsylvania, dated 01/10/2013, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Montgomery.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2013–02337 Filed 2–1–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration.

ACTION: Notice of open Federal Interagency Task Force Meeting.

SUMMARY: The SBA is issuing this notice to announce the location, date, time, and agenda for its public meeting of the Interagency Task Force on Veterans Small Business Development. The meeting will be open to the public.

DATES: Friday, February 15, 2013, from 9:00 a.m. to 12:00 Noon in the Eisenhower Conference Room, Side A, located on the 2nd floor.

ADDRESSES: U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development. The Task Force is established pursuant to Executive Order 13540 and focused on coordinating the efforts of Federal agencies to improve capital, business development opportunities and pre-established Federal contracting goals for small business concerns owned and controlled by veterans (VOB's) and service-disabled veterans (SDVOSB's). Moreover, the Task Force shall coordinate administrative and regulatory activities and develop proposals relating to ''six focus areas'': (1) Access to capital (loans, surety bonding and franchising); (2) Ensure achievement of pre-established contracting goals, including mentor protégé and matching with contracting opportunities; (3) Increase the integrity of certifications of status as a small business; (4) Reducing paperwork and administrative burdens in accessing business development and entrepreneurship opportunities; (5) Increasing and improving training and counseling services; and (6) Making other improvements to support veteran's business development by the Federal government.

On November 1, 2011, The Interagency Task Force on Veterans Small Business Development submitted its first report to the President, which included 18 recommendations that were applicable to the ''six focus areas'' identified above. The purpose of the meeting is scheduled as a full Task Force meeting. The agenda will include a presentation and discussion of the recommendations included in the Task Force Report to the President.

In addition, the Task Force will allow time to obtain public comment from individuals and representatives of organizations regarding the areas of focus.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however, advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Task Force must contact Cheryl Simms, by February 11, 2013, by email in order to be placed on the agenda. Comments for the Record should be applicable to the ''six focus areas'' of the Task Force and emailed prior to the meeting for inclusion in the public record, verbal presentations; however, will be limited to five minutes in the interest of time and to accommodate as many presenters as possible. Written comments should be emailed to Cheryl Simms, Program Liaison, Office of Veterans Business Development, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416, at the email address for the Task Force, *vetstaskforce@sba.gov.* Additionally, if you need accommodations because of a disability or require additional information, please contact Cheryl Simms, Designated Federal Official for the Task Force at (202) 205–6773; or by email at: *cheryl.simms@sba.gov,* SBA, Office of Veterans Business Development, 409 3rd Street SW., Washington, DC 20416. For more information, please visit our Web site at *www.sba.gov/vets.*

Dated: January 24, 2013.

Dan Jones,

SBA Committee Management Officer.

[FR Doc. 2013–02353 Filed 2–1–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 8173]

Culturally Significant Objects Imported for Exhibition

Determinations: ''Edwardian Opulence: British Art at the Dawn of the Twentieth Century''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Edwardian Opulence: British Art at the Dawn of the Twentieth Century,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Yale Center for British Art in New Haven, Connecticut from on or about February 28, 2013, until on or about June 2, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 29, 2013.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2013–02401 Filed 2–1–13; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8174]

Notice of Availability of Finding of No Significant Impact for the Proposed NOVA Chemicals Inc. Line 20 Facility Conversion Project

SUMMARY: The purpose of this notice is to inform the public of the availability of the Department of State's Finding of No Significant Impact on the proposed NOVA Chemicals Inc. Line 20 Facilities Conversion Project. Under E.O. 13337 the Secretary of State is authorized to issue Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States, of facilities for the exportation or importation of liquid petroleum, petroleum products, or other non-gaseous fuels to or from a foreign country. NOVA Chemicals Inc. (NOVA) has applied to the Department of State (the Department) for reinstatement of a Presidential Permit authorizing it to operate and maintain existing pipeline facilities at the U.S.-Canada international boundary near Marysville, St. Clair County, Michigan.

NOVA states that it intends to convert these pipeline facilities, consisting of approximately 1,350 feet of 12-inch diameter pipeline (the Line 20 Facilities), from natural gas transmission to natural gas liquids transportation service in order to transport natural gas liquids, principally ethane, from U.S. sources of supply to a petrochemical complex located in Corunna, Ontario, Canada. The Corunna complex is owned and operated by NOVA Chemicals (Canada) Ltd. (NOVA Ltd.) which, like NOVA Chemicals Inc., is a subsidiary of NOVA Chemicals Corporation (NOVA Corporation). According to NOVA its conversion of the Line 20 Facilities from natural gas to natural gas liquids service will return the Line 20 Facilities to the service for which a Presidential Permit was issued in 1986. Consistent with NEPA (42 U.S.C. 4321, *et seq.*), the regulations of the Council on Environmental Quality (40 CFR 1500–1508), and the Department's implementing regulations (22 CFR part 161, and in particular 22 CFR 161.7(c)), the Department of State has found that issuance of a Presidential Permit authorizing the construction, connection, operation, and maintenance of the Cross Border Facility would not have a significant impact on the quality of the human environment. The Finding of No Significant Impact was signed by the Department on January 19, 2013.

The Finding of No Significant Impact is available from the Department at: *http://www.state.gov/e/enr/applicant/applicants/c54799.htm*.

FOR FURTHER INFORMATION CONTACT: Genevieve Walker, Office of Environmental Quality and Transboundary Issues, Department of State, Washington, DC 20520, Tel: 202–647–9798, Email: *walkerg@state.gov*.

Dated: January 29, 2012.

George N. Sibley,

Director, Office of Environmental Quality and Transboundary Issues, Department of State.

[FR Doc. 2013–02399 Filed 2–1–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixty First Meeting: RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment.

SUMMARY: The FAA is issuing this notice to advise the public of the Sixty-First meeting of the RTCA Special Committee 135, Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held March 21, 2013 from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at RTCA Headquarters, 1150 18th St. NW., Suite 910, Washington DC, 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 330–0652/(202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 135. The agenda will include the following:

March 21, 2013

- Chairmen's Opening Remarks, Introductions.
- Introduction of FAA Representative
- Approval of Summary from the Sixtieth Meeting (RTCA Paper No. 012–13/SC135–691)
- Review open proposals for Users Guides
- Review Working Group Drafts
  - Section 4
  - Section 5
  - Section 8
  - Section 16
  - Section 20
  - Section 21
- New and Unfinished Business
  - Errata Sheet
  - Schedule for Users Guide
- Establish Date for Next SC–135 Meeting.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 24, 2013.

Richard F. Gonzalez,

Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.

[FR Doc. 2013–02334 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Nineteenth Meeting: RTCA Special Committee 224, Airport Security Access Control Systems

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Meeting Notice of RTCA Special Committee 224, Airport Security Access Control Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the nineteenth meeting of the RTCA Special Committee 224, Airport Security Access Control Systems.

DATES: The meeting will be held February 21, 2013 from 9:00 a.m.–4:00 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW.,

Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 224. The agenda will include the following:

February 21, 2013

- Welcome, Introductions & Administrative Remarks
- Review and Approve Summary of Eighteenth Meeting
- Updates from TSA (as required)
- Overall Document Status Review
- Document Section Reports
- Appendix Section Reports
- Time and Place of Next Meeting
- Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 23, 2013.

Richard F. Gonzalez,

Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.

[FR Doc. 2013–02329 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventeenth Meeting: RTCA Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: RTCA Special Committee 214 held jointly with EUROCAE WG–78: Standards for Air Traffic Data Communication Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 214 to be held jointly with EUROCAE WG–78: Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held February 19, 2013, from 8:00 a.m. to 12:00 a.m.

ADDRESSES: The meeting will be held at RTCA, 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 214/EUROCAE WG–78: Standards for Air Traffic Data Communication Services. The agenda will include the following:

February 19, 2013

- Welcome, Introductions, & Administrative Remarks
- Approval of Agenda
- Approval of the minutes of 16th Plenary Meeting
- Approval of Terms of Reference—Rev-3
- Approval of Change 1 to DO–280B/ED–110B ''Interoperability Requirements Standard for ATN Baseline 1 (INTEROP ATN B1)''
- Other Business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 23, 2013.

Richard F. Gonzalez,

Management Analyst, Business Operations Group, Federal Aviation Administration.

[FR Doc. 2013–02328 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–57]

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 25, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–1307 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: Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW.; Washington, DC 20591;

email *andrea.copeland@faa.gov*; (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 24, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2012–1307.
Petitioner: AeroServicios De LaCosta.
Section of 14 CFR Affected:
14 CFR 129.5(b).
Description of Relief Sought:
Petitioner seeks an exemption to Part 129.5(b) to operate Metro SA227 Aircraft within the U. S. with exception to ICAO Annex 6 regulations requiring Cockpit Voice Recorder (CVR), Flight Data Recorder (FDR), Ground Proximity Warning System (GPWS) and Traffic Collision Avoidance System (TCAS) II.

[FR Doc. 2013–02368 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Rocky Mountain Metropolitan Airport, Broomfield, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Rocky Mountain Metropolitan Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before March 6, 2013.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. John P. Bauer, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kenneth E. Maenpa, Airport Director, Rocky Mountain Metropolitan Airport, Broomfield, Colorado, at the following address: Mr. Kenneth E. Maenpa, Airport Director, Rocky Mountain Metropolitan Airport, 11755 Airport Way, Broomfield, Colorado 80021.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Miller, Colorado Engineer/Compliance Specialist, Federal Aviation Administration, Northwest Mountain Region, Denver Airports District Office, 26805 E. 68th Avenue, Suite 224, Denver, Colorado 80249–6361.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Rocky Mountain Metropolitan Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On January 15, 2013, the FAA determined that the request to release property at the Rocky Mountain Metropolitan Airport submitted by Jefferson County meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than March 6, 2013.

The following is a brief overview of the request:

Jefferson County is proposing the release from the terms, conditions, reservations, and restrictions on a 120 acre parcel of acquired by Jefferson County on June 2, 1959. This property was transferred to the Jefferson County Airport Authority in April of 1966. With the dissolution of the Airport Authority in 1998, this property ownership was then transferred back to Jefferson County, as the airport sponsor, January 11, 1999. Elevation constraints of this parcel compared to the Runway environment makes it unusable for airport development. The property is currently being leased to the City of Westminster, and consists of the back nine holes of the Heritage Golf Course. The expected use of the property is to remain a golf course with the City of Westminster having ownership. The proceeds for the disposal of the property will be at fair market value and will be utilized to complete a much needed taxiway to enhance safety within the hangar area on the airfield. This proposed taxiway is identified on the current Airport Layout Plan.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at the St George Airport.

Issued in Denver, Colorado, on January 15, 2013.

John P. Bauer,

Manager, Denver Airports District Office.

[FR Doc. 2013–02321 Filed 2–1–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0011]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 19 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before March 6, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2013–0011 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://*

www.regulations.gov at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 19 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Nicholas C. Bolton

Mr. Bolton, 22, has had ITDM since 1991. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Bolton understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bolton meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from New York.

Isaias Gomez

Mr. Gomez, 54, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Gomez understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Gomez meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Indiana.

Brandon E. Hamlett

Mr. Hamlett, 40, has had ITDM since 2006. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Hamlett understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Hamlett meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Nevada.

Douglas F. Keller

Mr. Keller, 36, has had ITDM since 2002. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Keller understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Keller meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C CDL from Michigan.

Mark R. Loesel

Mr. Loesel, 50, has had ITDM since 2000. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Loesel understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Loesel meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Wisconsin.

Steven A. Marion

Mr. Marion, 51, has had ITDM since 1998. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Marion understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Marion meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

Jason E. McAnally

Mr. McAnally, 34, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. McAnally understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. McAnally meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Alabama.

Robert W. Moen

Mr. Moen, 37, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moen understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moen meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Iowa.

Craig S. Moran

Mr. Moran, 56, has had ITDM since 1969. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Moran understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Moran meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from California.

Wayne A. Ondrusek

Mr. Ondrusek, 71, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Ondrusek understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ondrusek meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Lenicia R. Riley

Ms. Riley, 31, has had ITDM since 2012. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Riley understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Riley meets the vision requirements of 49 CFR 391.41(b)(10). Her optometrist examined her in 2012 and certified that she does not have diabetic retinopathy. She holds a Class A CDL from Texas.

Mark L. Sandager

Mr. Sandager, 60, has had ITDM since 1980. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sandager understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sandager meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from Minnesota.

Samuel L. Sergio

Mr. Sergio, 22, has had ITDM since 1995. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sergio understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sergio meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Massachusetts.

Jason L. Shaw

Mr. Shaw, 30, has had ITDM since 1998. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shaw understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Shaw meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Oklahoma.

Paul M. Shierk

Mr. Shierk, 43, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Shierk understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV

safely. Mr. Shierk meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Oregon.

Kailey J. Skroko

Ms. Skroko, 26, has had ITDM since 1999. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Skroko understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Skroko meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2012 and certified that she does not have diabetic retinopathy. She holds an operator's license from Indiana.

Samantha K. Tsuchiya

Ms. Tsuchiya, 27, has had ITDM since 1996. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Tsuchiya understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely. Ms. Tsuchiya meets the requirements of the vision standard at 49 CFR 391.41(b)(10). Her optometrist examined her in 2012 and certified that she does not have diabetic retinopathy. She holds a Class C operator's license from California.

David W. West

Mr. West, 54, has had ITDM since 2010. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. West understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. West meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class E operator's license from Missouri.

Eugene R. Zollner, II

Mr. Zollner, 51, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Zollner understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Zollner meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) Elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 USC. 31136 (e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: January 18, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–02268 Filed 2–1–13; 8:45 am]

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[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2012–0349]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 12 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective February 4, 2013. The exemptions expire on February 4, 2015.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to

5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit *http://www.gpo.gov/fdsys/pkg/FR–2010–12–29/pdf/2010–32876.pdf.*

Background

On December 13, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 12 individuals and requested comments from the public (77 FR 74271). The public comment period closed on January 14, 2013, and no comments were received.

FMCSA has evaluated the eligibility of the 12 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 12 applicants have had ITDM over a range of 1 to 50 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 13, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA received no comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 12 exemption applications, FMCSA exempts Dennis W. Baseman (MN), Kathy L. Brown (IN), Charles K. Eudy (TX), John C. Evans (IL), Thomas J. Ferry (NJ), Jeffrey C. Hanson (TX), Jeffrey D. Kivett (IN), Bryan M. Laffin (MD), Peter W. Prime (MA), David E. Wagner (PA), Daniel V. Williamson (MN), and Charles F. Woodford (WI) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA

for a renewal under procedures in effect at that time.

Issued on: January 18, 2013.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2013–02267 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA 2013–0002–N–3]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on November 15, 2012.

DATES: Comments must be submitted on or before March 6, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On November 15, 2012, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs for which the agency was seeking OMB approval. 77 FR 68203. FRA received one comment in response to this notice.

On January 9, 2013, the Association of American Railroads (AAR) submitted a comment on behalf of itself and its member railroads. AAR stated its opposition to the proposed renewal of OMB's approval of FRA's requirement that rolling stock with glazing materials be stenciled and noted that 49 CFR 223.17 and 49 CFR 223, Appendix A, set forth FRA's glazing requirements. Section 223.17 requires the stenciling of the walls of rolling stock as follows:

> Each locomotive, passenger car and caboose that is fully equipped with glazing materials that meets the requirements of this part shall be stenciled on an interior wall as follows:
>
> ''Fully Equipped FRA Part 223 glazing'' or similar words conveying that meaning in letters at least ⅜ inch high.

Appendix A requires more detailed information than section 223.17. It provides the following:

> c. Material Identification
>
> (1) Each individual unit of glazing material shall be permanently marked, prior to installation, to indicate that this type of material has been successfully tested as set forth in this appendix and that marking shall be done in such a manner that it is clearly visible after the material has been installed.
>
> (2) Each individual unit of a glazing material that has successfully passed the Type I testing regimen shall be marked to indicate:
>
> (i) ''FRA Type I'' material;
>
> (ii) the manufacturer of the material;
>
> (iii) the type or brand identification of the material.
>
> (3) Each individual unit of a glazing material that has successfully passed the Type II testing regimen shall be marked to indicate:
>
> (i) ''FRA Type II'' material;
>
> (ii) the manufacturer of the material;
>
> (iii) the type or brand identification of the material.

AAR believes that, ''with glazing materials required to have detailed information set forth in Appendix A, there is no reason to require the information on the walls of rolling stock required by section 223.17. Section 223.17 is simply superfluous.'' In its letter, AAR pointed out that it filed a petition with FRA in 2004 to eliminate the stenciling requirement under 49 CFR 223.17 and remarked:

> With more than eight years having elapsed since AAR filed its petition, it is past the point in time when FRA should have acted to eliminate the requirement to stencil rolling stock. OMB should deny the request to approve this useless information collection requirement.

FRA fully acknowledges the issue that AAR raises in its January 9th letter and in its earlier petition to FRA. For some time, FRA has planned to address this issue through an agency rulemaking. However, FRA cannot always proceed with a rulemaking as quickly as it or the regulated community would like, even when the agency knows that a current rule needs to be revised. The AAR well knows that the rulemaking process is neither a fast nor a simple process. Myriad points of view must be considered before the agency changes an existing rule. To achieve its mission to promote and enforce all areas of rail safety, FRA must prioritize its rulemaking agenda to address those areas that will most greatly and directly impact rail safety. In that regard, the current state of rail safety throughout the nation is a prime consideration. Rail accidents and incidents that occur at any given time and result in numerous injuries, fatalities, significant property damage, or harm to nearby communities will demand urgent agency action. Items on the agency regulatory agenda then will be moved up or down depending on current rail events. Having said all the above, FRA plans on revising its Safety Glazing Standards Rule (49 CFR Part 223) later this year. FRA will carefully review section 223.17 and other requirements in this rule that are deemed unnecessary or superfluous with the object of eliminating them. FRA asks AAR's patience and asks OMB to approve this latest renewal information collection submission with its current requirements for the maximum time period while FRA works on completing its intended rulemaking action.

Before OMB decides whether to approve a proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden, and are being submitted for clearance by OMB as required by the PRA.

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525.

Type of Request: Extension without change of a previously approved information collection.

Affected Public: 5 Manufacturers.

Abstract: The collection of information is set forth under 49 CFR Part 223, which requires the certification and permanent marking of glazing materials by the manufacturer. The manufacturer is also responsible for making available test verification data to railroads and FRA upon request.

Form Number(s): N/A

Annual Estimated Burden Hours: 119 hours

Title: Use of Locomotive Horns at Highway-Rail Grade Crossings

Title: Disqualification Proceedings

OMB Control Number: 2130–0529

Type of Request: Extension without change of a previously approved information collection

Affected Public: 40,000 Locomotive Engineers

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR Part 209, Subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Annual Estimated Burden Hours: 5 hours

Addressee: Send comments regarding this information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC, 20503, Attention: FRA Desk Officer. Comments may also be sent electronically via email to the Office of Information and Regulatory Affairs (OIRA) at the following address: *oira_submissions@omb.eop.gov*

Comments are invited on the following: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on January 29, 2013.

Rebecca Pennington,

Chief Financial Officer, Federal Railroad Administration.

[FR Doc. 2013–02375 Filed 2–1–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Publication of Fiscal Year 2012 Service Contract Inventory

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of publication of Fiscal Year 2012 Service Contract Inventory.

SUMMARY: The Department of the Treasury will make available to the public at *http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-the-Procurement-Executive.aspx* (see Key Topics) the Department's Fiscal Year (FY) 2012 Service Contract Inventory. The Inventory lists all service contract actions over $25,000 awarded in FY 2012 and funded by Treasury, to include contract actions made on the Department's behalf by other agencies. Contract actions awarded by the Department on another agency's behalf with the other agency's funding are excluded.

FOR FURTHER INFORMATION CONTACT: Cathy Higginbotham, Office of the Procurement Executive, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220, at (202) 622–6585 or *ootpe@do.treas.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 743 of Division C of the FY 2010 Consolidated Appropriations Act, Public Law (Pub. L.) 111–117, agencies required to submit an inventory in accordance with the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270; 31 U.S.C. 501 note), other than the Department of the Defense, shall also prepare an annual service contract inventory. Treasury submitted its inventory for FY 2012 to the Office of Management and Budget (OMB) on December 18, 2012.

Dated: January 29, 2013.

Thomas Sharpe, Jr.,

Senior Procurement Executive.

[FR Doc. 2013–02354 Filed 2–1–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Information Collection tools.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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)). Currently, the IRS is soliciting comments concerning final regulation, REG–120509–06 (TD 9465), 1.882–5; Determination of Interest Expense Deduction of Foreign Corporation; Form 13614–NR, Volunteer Return Preparation Critical Intake Sheet-NR; and REG–209006–89, Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f).

DATES: Written comments should be received on or before April 5, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution

Avenue NW., Washington, DC 20224. Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection tools should be directed to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION: Currently, the IRS is seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

(1) *Title:* Determination of Interest Expense Deduction of Foreign Corporation.

OMB Number: 1545–2030.

Form Number: TD 9465.

Abstract: This document contains final regulations under Section 882(c) of the Internal Revenue Code concerning the determination of the interest expense deduction of foreign corporations engaged in a trade or business within the United States. These final regulations conform the interest expense rules to recent U.S. Income Tax Treaty agreements and adopt other changes to improve compliance.

Current Actions: There are no changes to the previously approved burden of this existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 75.

Estimated Time per Respondent: 35 min.

Estimated Total Annual Burden Hours: 35.

(2) *Title:* Volunteer Return Preparation Critical Intake Sheet-NR.

OMB Number: 1545–2075.

Form Number: 13614–NR.

Abstract: This form will be used at the nonresident alien VITA sites by volunteers to gather information—relevant to tax preparation—from taxpayer's.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 40.

Estimated Time per Respondent: 2 hrs.

Estimated Total Annual Reporting Burden Hours: 80.

(3) *Title:* Transfers by Domestic Corporations That Are Subject to Section 367(a)(5); Distributions by Domestic Corporations That Are Subject to Section 1248(f).

OMB Number: 1545–2183.

Form Number: REG–209006–89.

Abstract: This document contains proposed regulations under sections 367(a), 367(a)(5), 367(b), 1248(a), 1248(e), 1248(f), and 6038B of the Internal Revenue Code (Code). The proposed regulations included in this document affect domestic corporations that transfer property to foreign corporations in certain transactions, or that distribute the stock of certain foreign corporations, and certain shareholders of such domestic corporations. The proposed regulations are necessary, in part, to provide guidance on changes to the law made by the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342).

Current Actions: There is no change in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal Government.

Estimated Number of Respondents: 305.

Estimated Time per Respondent: 10 hrs., 40 mins.

Estimated Total Annual Burden Hours: 3,260.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 28, 2013.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2013–02258 Filed 2–1–13; 8:45 am]

BILLING CODE 4830–01–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission on February 7, 2013 in Washington, DC.

Name: William A. Reinsch, Chairman of the U.S.-China Economic and Security Review Commission. The Commission is mandated by Congress to investigate, assess, and report to Congress annually on ''the national security implications of the economic relationship between the United States and the People's Republic of China.'' Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC on February 7, 2013, ''China's New Leadership and Implications for the United States.''

Background: This is the first public hearing the Commission will hold during its 2013 report cycle to collect input from academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. In 2012, the Chinese Communist Party's 18th Party Congress ushered in a new generation of political leaders, raising questions over what China's priorities will be over the next decade. This hearing will examine the impacts of China's recent leadership transition through the lenses of China's domestic politics, its economy, and its military. Additionally, the hearing will include a discussion on the United States' evolving policy towards Asia. The hearing will be co-chaired by Chairman

William A. Reinsch and Vice Chairman Dennis C. Shea. Any interested party may file a written statement by February 7, 2013, by mailing to the contact below. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Location, Date and Time: 2118 Rayburn House Office Building. Thursday, February 7, 2013, 9:00 am–4:15 pm Eastern Time. A detailed agenda for the hearing will is posted to the Commission's Web Site at *www.uscc.gov.* Also, please check our Web site for possible changes to the hearing schedule. *Reservations are not required to attend the hearing.*

FOR FURTHER INFORMATION CONTACT: Any member of the public seeking further information concerning the hearing should contact Reed Eckhold, 444 North Capitol Street NW., Suite 602, Washington DC 20001; phone: 202–624–1496, or via email at *reckhold@uscc.gov. Reservations are not required to attend the hearing.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: January 29, 2013.

Michael Danis,

Executive Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2013–02332 Filed 2–1–13; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

Initial Research on the Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan

ACTION: Notice.

SUMMARY: This notice announces the preliminary plans of the Department of Veterans Affairs (VA) to conduct a longitudinal cohort study of adverse health effects related to military deployment to Iraq and Afghanistan, to include potential exposure to airborne hazards and burn pits, and to take related actions to promote the effective monitoring and assessment of deployment-related exposures and potential health effects of deployments. The planned actions are based in part on VA's review of the analysis and recommendations in an October 31, 2011, report of the Institute of Medicine (IOM) of the National Academy of Sciences (NAS) concerning the potential long-term health consequences of exposure to burn pits in Iraq and Afghanistan.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Ciminera, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 461–1020. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

On October 31, 2011, at VA's request, IOM issued a study titled, ''Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan'' (IOM report). The IOM reviewed a wide range of data sources including peer-reviewed literature on the subject of respiratory exposures in general, information on types of materials and quantities burned during burn pit use in Iraq and Afghanistan, and analyses of ambient air sampling collected by the Department of Defense (DoD). IOM concluded that there was limited but suggestive evidence of an association between exposure to combustion products and reduced pulmonary function, but inadequate or insufficient evidence of an association between exposure to combustion products and cancer, respiratory diseases, circulatory diseases, neurologic diseases, and adverse reproductive and developmental outcomes in the populations studied. After careful review of the IOM report, the Secretary has directed the Veterans Health Administration to conduct a long-term prospective study on all adverse health effects potentially related to military deployment to Iraq and Afghanistan, to include health effects potentially related to exposure to airborne hazards and burn pits. In addition, the Secretary has requested participation by DoD in VA's proposed study, joint participation in long-term cohort studies for every future major deployment, priority staffing in support of the VA/DoD Environmental Exposure Data Transfer Agreement (DTA), and continued collaboration on a Joint VA/DoD Action Plan to address clinical and research issues associated with deployment. Additional efforts include inviting DoD to support a joint VA/DoD post-deployment health annual symposium to disseminate lessons learned to health care teams (and other stakeholders) and bring key subject matter and policy experts together to guide joint strategic research plans on post-deployment health related issues. VA intends, in conjunction with DoD, to establish clinical evaluation protocols for exposure to burn pit emissions and other airborne pollutants encountered by servicemembers deployed to Iraq and Afghanistan, and conduct research on the long-term health effects of exposure to burn pits.

Background. This IOM report was not required by law. It was requested by VA in response to increasing concerns about the long-term health of U.S. servicemembers who served in Iraq or Afghanistan who may have been exposed to potentially hazardous materials from open burn pits, which were commonly used for waste disposal. Specifically, VA asked IOM to examine potential exposures and long-term health risks arising from exposure to smoke created from open pit burning of solid waste and other materials in Iraq and Afghanistan. Using the Joint Base Balad (JBB) burn pit as an example, IOM was asked to evaluate the long-term health risks based on a review of a wide range of sources such as epidemiologic studies conducted either by or under the auspices of VA or DoD; other available epidemiologic literature on populations exposed to similar hazards; as well as relevant environmental studies, relevant toxicologic studies, veteran-specific clinical/pathologic studies, and the effects related to short-term peak exposures, as well as chronic exposures. In addition, IOM was asked to make recommendations for epidemiologic research initiatives for VA and DoD to further study potential long-term health effects.

IOM first assessed the types and quantities of materials burned during the time of pit use and analyzed air monitoring data collected at JBB during 2007 and 2009. It then examined anticipated health effects from exposure to air pollutants found at JBB and studies of health effects in similar populations with similar exposures, grading the quality of those studies as key or supportive. IOM then performed a synthesis of key information on potential long-term health effects in military personnel potentially exposed to burn pits and developed design elements and feasibility considerations for an epidemiologic study.

IOM concluded that there is limited but suggestive evidence of an association between exposure to combustion products and reduced pulmonary function in the populations studied. Pulmonary function tests are frequently used to diagnose respiratory disease, and changes can be observed in the absence of clinical symptoms or disease. However, this IOM finding focused on pulmonary function, not respiratory disease, and noted that further studies, including longitudinal studies, are required. The studies conducted to this point have been limited in scope and duration, and many focus on non-veterans in other

(not completely similar) settings, including firefighters, residents living near incinerators, and incinerator workers.

IOM also concluded that there is inadequate or insufficient evidence of an association between exposure to combustion products and cancer, respiratory diseases, circulatory diseases, neurologic diseases, and adverse reproductive and developmental outcomes in the populations studied.

As previously noted, IOM relied on peer reviewed studies of surrogate patient populations (firefighters and incinerator workers) because there were limited studies, long or short term, of servicemembers exposed to burn pits or similar contaminants while in an operational area. VA believes such studies would be helpful in properly assessing affected veterans for compensation purposes as well as for medical evaluation, treatment and follow up. The following precursor actions will facilitate such future studies:

(1) *Development of a standardized post-deployment evaluation protocol.* VA and DoD believe that the post-deployment evaluation of servicemembers and veterans with respiratory complaints should be standardized across the Departments. VA recognizes that burn pits may not be the main cause of any long-term health effects related to deployment to Iraq and Afghanistan. Military operations in these areas also expose servicemembers to other air pollutants, predominately particulate matter (PM), which might be associated with long-term health effects, particularly in highly exposed or susceptible populations. Developing a standardized screening and diagnostic evaluation protocol will facilitate appropriate assessment and medical care as needed. VA intends to work jointly with DoD to develop expert consensus on these evaluation protocols.

(2) *Development of validated exposure assessment instruments.* VA will continue to work in a supporting role with DoD to attempt to develop exposure assessment instruments for use in both research and clinical evaluation. This will aid in identifying any health outcomes potentially associated with burn pit emissions by identifying sources of exposure as well as the chemicals associated with burning waste and other pollution sources. Accurate assessment of exposure potential requires identifying possible toxicants, detailed deployment information, duration of deployment, job duties, and in the case of burn pits, the distance from the burn pit and whether the individual lived and worked upwind or downwind from the burn pit. VA relies on DoD to provide these confirmatory data, and is actively pursuing a Data Transfer Agreement (DTA) to include more specific data elements.

(3) *Supporting an integrated DoD/VA clinical informatics system.* VA recognizes that assessment of health outcomes is best done collaboratively using the clinical informatics systems of DoD and VA. An integrated VA-DoD electronic medical record is the optimal solution. The issue of integration is being addressed through several ongoing initiatives. The VA-DoD Deployment Health Work Group is sponsoring a DTA that will enable DoD exposure data to be transferred to VA. In addition, VA plans to link outcome data with self-reported questionnaire data from DoD's Millennium Cohort Study (MCS), which includes a large veteran population that deployed in support of current operations in Iraq and Afghanistan. VA is working to embed personnel in the MCS office to conduct joint research and provide VA medical record reviews of conditions self-reported from veterans participating in the MCS.

To address the need for further study of the long-term health effects of exposure to airborne hazards (such as pollution and burn pit emissions) in Iraq and Afghanistan, VA intends to take the following steps:

Design appropriate studies. The long-term health effects related to exposure to burn pit emissions should be assessed. Early markers of respiratory disease, via measurable changes in the respiratory system, should be examined through a research-based physical examination component of a broader research program. As a first step, VA intends to develop research goals and objectives, structures, and establish essential study design features. Existing research studies, such as the Million Veteran Program, the Cooperative Studies Program, the Gulf War Veteran studies, the MCS, and the National Health Study for a New Generation of U.S. Veterans, will be evaluated to determine whether any of these can be used to support burn pit exposure studies, or whether modifications to these studies may be necessary to meet the overall goals of a research plan. In 2005, DoD formed the Joint Particulate Matter Work Group to investigate the composition of PM across USCENTCOM. The Pulmonary Working Group was established in 2010 to investigate reports of specific respiratory conditions found in returning veterans. VA and DoD continue to collaborate and support ongoing activities that may be leveraged in the study of long-term health effects related to exposure to airborne hazards such as burn pit emissions.

Establish an independent oversight mechanism. VA intends to establish an independent oversight committee to provide guidance and to review specific research objectives, study designs, research and evaluation protocols, and results from burn pit emissions research. VA has established independent advisory bodies that could potentially provide the required level of external oversight. These bodies include standing review committees that provide peer review for VA researchers. The committees should include external subject matter experts recruited from academia, internal VA experts, and experts from other government agencies, and should be modeled after the National Institutes of Health's Center for Scientific Review.

Conduct a cohort study. VA intends to work jointly with DoD to develop and conduct a cohort study of veterans and servicemembers to assess potential long-term effects related to burn pit emissions in the context of other ambient exposures. This will likely involve a population-based prospective study that includes baseline and repeated clinical examinations with sufficient follow up to address the potential long-term health effects of deployment to Iraq and Afghanistan as well as potential burn pit exposure.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on December 26, 2012, for publication.

Dated: January 29, 2013.

William F. Russo,

Deputy Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–02264 Filed 2–1–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Monday,

No. 23 February 4, 2013

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status for the Distinct Population Segment of the North American Wolverine Occurring in the Contiguous United States; Establishment of a Nonessential Experimental Population of the North American Wolverine in Colorado, Wyoming, and New Mexico; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2012–0107: 4500030113]

RIN 1018–AY26

Endangered and Threatened Wildlife and Plants; Threatened Status for the Distinct Population Segment of the North American Wolverine Occurring in the Contiguous United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list the distinct population segment of the North American wolverine occurring in the contiguous United States, as a threatened species under the Endangered Species Act. If we finalize this rule as proposed, it would extend the Act's protections to this species. The effect of this regulation is to add the distinct population segment of the North American wolverine occurring in the contiguous United States to the List of Endangered and Threatened Wildlife in our regulations. We also propose a special rule under section 4(d) of the Act to apply the specific prohibitions of the Act necessary to protect the wolverine. We find that critical habitat is not determinable at this time. The Service seeks data and comments from the public on this proposed listing rule, the proposed special rule under section 4(d) of the Act, and our finding that the designation of critical habitat for the species is not determinable at this time.

DATES: We will accept comments received or postmarked on or before May 6, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by March 21, 2013.

Public Informational Sessions and Public Hearing: We will hold 3 public informational sessions and public hearings on this proposed rule. Public informational sessions will occur from 2:00 p.m. to 5:00 p.m. and public hearings will be held from 7:00 p.m. to 9:00 p.m. at each location. Public informational sessions and public hearings will occur in Boise, ID, on March 13, 2013, from 7:00 p.m. to 9:00 p.m.; in Lakewood, CO, on March 19, 2013, from 7:00 p.m. to 9:00 p.m.; and in Helena, MT, on March 27, 2013, from 7:00 p.m. to 9:00 p.m., all times local (see **ADDRESSES**). Registration for those providing testimony in the public hearings will begin at 6:00 p.m. at each location.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Keyword box, enter Docket No. FWS–R6–ES–2012–0107, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2012–0107; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

(3) *At a public hearing:* We are holding three public hearings on this proposed rule (see **ADDRESSES** for location information). You may provide your comments at any of the three hearings.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public Informational Sessions and Public Hearings: Public informational sessions and public hearings will be held on March 13, 2013, at the Boise Centre on the Grove, 850 West Front Street, Boise, ID 83702. The second is scheduled on March 19, 2013, at the Hampton Inn, 137 Union Boulevard, Lakewood, CO 80228. The third is scheduled on March 27, 2013, at the Red Lion Colonial Inn, 2301 Colonial Drive, Helena, MT 59601. At all three locations the public informational session will run from 2:00 p.m. to 5:00 p.m., followed by public speaker registration at 6:00 p.m., and then the public hearing for oral testimony from 7:00 p.m. to 9:00 p.m. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Brent Esmoil, Montana Ecological Services Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

Any additional tools or supporting information that we may develop for this rulemaking will be available at *http://www.fws.gov/mountain-prairie/species/mammals/wolverine/,* at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0107, and at the Montana Field Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Brent Esmoil, Field Supervisor (Acting), U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, Montana 59601, by telephone (406) 449–5225. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act or ESA), if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule.

This rule consists of:

- A proposed rule to list the distinct population segment (DPS) of the North American wolverine occurring in the contiguous United States as a threatened species; and
- A proposed special rule under section 4(d) of the Act that outlines the prohibitions necessary and advisable for the conservation of the wolverine.

A proposed rule under section 10(j) of the Act to establish an experimental non-essential population of wolverine in Colorado is published concurrently in this issue of the **Federal Register**. Also, a draft Recovery Outline for the wolverine DPS is available on our Web site at *http://www.fws.gov/mountain-prairie/species/mammals/wolverine/* or on *http://www.regulations.gov.*

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E)

Other natural or manmade factors affecting its continued existence.

We have determined that habitat loss due to increasing temperatures and reduced late spring snowpack due to climate change is likely to have a significant negative population-level impact on wolverine populations in the contiguous United States. In the future, wolverine habitat is likely to be reduced to the point that the wolverine in the contiguous United States is in danger of extinction.

We will seek peer review. We are seeking comments from knowledgeable individuals with scientific expertise to review our analysis of the best available science and application of that science and to provide any additional scientific information to improve this proposed rule. Because we will consider all comments and information received during the comment period, our final determinations may differ from this proposal.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether and how the wolverine may benefit from such a designation; whether there are threats to the species from human activity, the degree to which it can be expected to increase due to a critical habitat designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent;

(6) Specific information on the amount and distribution of wolverine habitat,

(7) Information on the projected and reasonably likely impacts of climate change on the wolverine and its habitat;

(8) Suitability of the proposed 4(d) rule for the conservation, recovery, and management of the DPS of the North American wolverine occurring in the contiguous United States.

(9) Additional information concerning whether it is appropriate to prohibit incidental take of wolverine in the course of legal trapping activities directed at other species in the proposed 4(d) rule, including any information about State management plans related to trapping regulations and any measures within those plans that may avoid or minimize the risk of wolverine mortality from incidental trapping for other species.

(10) Additional provisions the Service may wish to consider to conserve, recover, and manage the DPS of the North American wolverine occurring in the contiguous United States.

We will consider all comments and information received during the comment period on this proposed listing rule and special rule under section 4(d) of the Act during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.* Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Montana Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On April 19, 1995, we published a finding (60 FR 19567) that a previous petition, dated August 3, 1994, submitted by the Predator Project (now named the Predator Conservation Alliance) and Biodiversity Legal Foundation to list the wolverine in the contiguous United States as an endangered or threatened species, did not provide substantial information indicating that listing the wolverine in the contiguous United States may be warranted.

On July 14, 2000, we received a petition dated July 11, 2000, submitted by the Biodiversity Legal Foundation, Predator Conservation Alliance, Defenders of Wildlife, Northwest Ecosystem Alliance, Friends of the Clearwater, and Superior Wilderness Action Network, to list the wolverine within the contiguous United States as an endangered or threatened species and designate critical habitat for the species.

On October 21, 2003, we published a 90-day finding that the petition failed to present substantial scientific and commercial information indicating that listing may be warranted (68 FR 60112).

On September 29, 2006, as a result of a complaint filed June 8, 2005 by Defenders of Wildlife and others alleging we used the wrong standards to assess the July 11, 2000, wolverine petition, the U.S. District Court, Montana District, ruled that our 90-day petition finding (68 FR 60112) was in error and ordered us to submit to the **Federal Register** a 12-month finding for the wolverine by September 29, 2007. On April 6, 2007, the deadline for this 12-month finding was extended to February 28, 2008.

On March 11, 2008, we published a 12-month finding of ''not warranted'' for the wolverine in the contiguous United States (73 FR 12929). In that finding we determined that the wolverine in the contiguous United States did not constitute a distinct population segment or a significant portion of the range of a listable entity of the wolverine in

North America and so was not a listable entity under the Act.

On July 8, 2008 we received a Notice of Intent to Sue from Earthjustice alleging violations of the Act in our March 11, 2008, 12-month finding. On September 30, 2008, Earthjustice filed a complaint in the U.S. District Court, District of Montana, seeking to set aside and remand the 12-month finding back to the Service for reconsideration.

On March 6, 2009, the Service agreed to settle the case with Earthjustice by voluntarily remanding the 12-month finding and issuing a new 12-month finding by December 1, 2010. Following the settlement agreement, the court dismissed the case on June 15, 2009, and ordered the Service to comply with the settlement agreement.

On April 15, 2010, the Service published a Notice of Initiation of a 12-month finding for wolverines in the contiguous United States (75 FR 19591). That finding was published on December 14, 2010, and determined that the wolverine in the contiguous United States constituted a Distinct Population Segment and that the DPS warranted listing under the Act, but that listing was precluded by higher priority listing actions (75 FR 78030).

On September 9, 2011, we reached an agreement with plaintiffs in *Endangered Species Act Section 4 Deadline Litig.,* Misc. Action No. 10–377 (EGS), MDL Docket No. 2165 (D. DC) (known as the ''MDL case'') on a schedule to publish proposed rules or to withdraw warranted findings for the species on our list of candidate species. This agreement stipulated that we would submit for publication in the **Federal Register** a proposed listing rule for the wolverine, or withdraw the warranted 12-month finding, no later than the end of the 2013 Fiscal Year.

On April 13, 2012, several parties filed an action challenging the Service's December 14, 2010 warranted but precluded finding for wolverine. *Cottonwood Envtl. Law Ctr., et al.* v. *Salazar, et al.,* 9:12-cv-00057–DLC (D. Mont.) On September 20, 2012, the court granted the Service's motion to stay that litigation based on the Service's representation to the Court that it expected to submit this rule or withdraw the warranted finding to the **Federal Register** by January 18, 2013.

Threatened Status for the Contiguous United States Wolverine DPS

Background

It is our intent to discuss below only those topics directly relevant to the listing of the contiguous United States DPS of the North American wolverine as a threatened species in this section of the proposed rule.

Species Information

Taxonomy and Life History

The wolverine has a Holarctic (habitats found in the northern continents) distribution including northern portions of Europe, Asia, and North America. The currently accepted taxonomy classifies wolverines worldwide as a single species, *Gulo gulo,* with two subspecies. Old World wolverines are found in the Nordic countries of Europe, Russia, and Siberia and are part of the subspecies *Gulo gulo gulo.* New World wolverines occur in North America. The wolverines in the contiguous United States are a part of the New World subspecies, *G. g. luscus:* the North American wolverine (Kurten and Rausch 1959 p. 19; Pasitschniak-Arts and Lariviere 1995, p. 1). The species is known by several common names, including mountain devil, glutton, caracajou, quickhatch, gulon, skunk bear, as well as wolverine.

The wolverine is the largest terrestrial member of the family Mustelidae. Adult males weigh 12 to 18 kilograms (kg) (26 to 40 pounds (lb)), and adult females weigh 8 to 12 kg (17 to 26 lb) (Banci 1994, p. 99). The wolverine resembles a small bear with a bushy tail. It has a broad, rounded head; short, rounded ears; and small eyes. Each foot has five toes with curved, semi-retractile claws used for digging and climbing (Banci 1994, p. 99).

A large number of female wolverines (40 percent) are capable of giving birth at 2 years old, become pregnant most years, and produce average litter sizes of 1 to 2 kits. In one study of known-aged females, none reproduced at age 2; 3 of 10 first reproduced at age 3; and 2 did not reproduce until age 4. The average age at first reproduction was 3.4 years (Persson *et al.* 2006, pp. 76–77). Another study indicated that the average age at first reproduction is likely more than 3 years (Inman *et al.* 2007c, p. 70). Pregnant females commonly resorb or spontaneously abort litters prior to giving birth (Magoun 1985, pp. 30–31; Copeland 1996, p. 43; Persson *et al.* 2006, p. 77; Inman *et al.* 2007c, p. 70). This may in turn preserve resources to increase reproductive success in subsequent years (Persson 2005, p. 1456). By age 3, nearly all female wolverines become pregnant every year, but energetic constraints due to low food availability result in loss of pregnancy in about half of them each year. It is likely that, in many places in the range of wolverines, it takes 2 years of foraging for a female to store enough energy to successfully reproduce (Persson 2005, p. 1456). It is likely that, despite the high rate of initiation of pregnancy, due to the spontaneous abortion of litters resulting from resource limitation, actual rates of successful reproduction in wolverines are among the lowest known for mammals (Persson 2005, p. 1456).

Supplemental feeding of females increases reproductive potential (Persson 2005, p. 1456). Food-supplemented females were also more successful at raising kits to the time of weaning, suggesting that wolverine reproduction and ultimately population growth rates and viability are food-limited. Female wolverines appear to use a complex strategy of food accumulation and caching to attain enough resources to successfully raise a litter (Inman *et al.* 2012b, pp. 640–641).

Breeding generally occurs from late spring to early fall (Magoun and Valkenburg 1983, p. 175; Mead *et al.* 1991, pp. 808–811). Females undergo delayed implantation until the following winter or spring, when active gestation lasts from 30 to 40 days (Rausch and Pearson 1972, pp. 254–257). Litters are born from mid-February through March, containing one to five kits, with an average in North America of between one and two kits (Magoun 1985, pp. 28–31; Copeland 1996, p. 36; Krebs and Lewis 1999, p. 698; Copeland and Yates 2006, pp. 32–36; Inman *et al.* 2007c, p. 68).

Female wolverines use natal (birthing) dens that are excavated in snow. Persistent, stable snow greater than 1.5 meters (m) (5 feet (ft)) deep appears to be a requirement for natal denning, because it provides security for offspring and buffers cold winter temperatures (Pulliainen 1968, p. 342; Copeland 1996, pp. 92–97; Magoun and Copeland 1998, pp. 1317–1318; Banci 1994, pp. 109–110; Inman *et al.* 2007c, pp. 71–72; Copeland *et al.* 2010, pp. 240–242). Female wolverines go to great lengths to find secure den sites, suggesting that predation is a concern (Banci 1994, p. 107). Natal dens consist of tunnels that contain well-used runways and bed sites and may naturally incorporate shrubs, rocks, and downed logs as part of their structure (Magoun and Copeland 1998, pp. 1315–1316; Inman *et al.* 2007c, pp. 71–72). In Idaho, natal den sites occur above 2,500 m (8,200 ft) on rocky sites, such as north-facing boulder talus or subalpine cirques (steep-walled semicircular basin carved by a glacier) in forest openings (Magoun and Copeland 1994, pp. 1315–1316). In Montana, natal dens occur above 2,400 m (7,874 ft) and are located on north aspects in avalanche debris,

typically in alpine habitats near timberline (Inman *et al.* 2007c, pp. 71–72). Offspring are born from mid-February through March and the dens are typically used through late April or early May (Myrberget 1968, p. 115; Magoun and Copeland 1998, pp. 1314–1317; Inman *et al.* 2007b, pp. 55–59). Occupation of natal dens is variable, ranging from approximately 9 to 65 days (Magoun and Copeland 1998, pp. 1316–1317).

Females may move kits to multiple secondary (maternal) dens as they grow during the month of May (Pulliainen 1968, p. 343; Myrberget 1968, p. 115), although use of maternal dens may be minimal (Inman *et al.* 2007c, p. 69). Timing of den abandonment is related to accumulation of water in dens (due to snow melt), the maturation of offspring, disturbance, and geographic location (Myrberget 1968, p. 115; Magoun 1985, p. 73). After using natal and maternal dens, wolverines may also use rendezvous sites through early July. These sites are characterized by natural (unexcavated) cavities formed by large boulders, downed logs (avalanche debris), and snow (Inman *et al.* 2007c, pp. 55–56). Male wolverines likely mate with several females, and although they are not known to directly contribute to rearing young, they do tolerate subadult wolverines in their territories (usually their own offspring) until they reach maturity (Copeland 1996, p. 72).

Habitat, Space, and Food

In North America, wolverines occur within a wide variety of alpine, boreal, and arctic habitats, including boreal forests, tundra, and western mountains throughout Alaska and Canada. The southern portion of the species' range extends into the contiguous United States, including high-elevation alpine portions of Washington, Idaho, Montana, Wyoming, California, and Colorado (Wilson 1982, p. 644; Hash 1987, p. 576; Banci 1994, p. 102, Pasitschniak-Arts and Lariviere 1995, p. 499; Aubry *et al.* 2007, p. 2152; Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–25). Wolverines do not appear to specialize on specific vegetation or geological habitat aspects, but instead select areas that are cold and receive enough winter precipitation to reliably maintain deep persistent snow late into the warm season (Copeland *et al.* 2010, entire). The requirement of cold, snowy conditions means that, in the southern portion of the species' range where ambient temperatures are warmest, wolverine distribution is restricted to high elevations, while at more northerly latitudes, wolverines are present at lower elevations and even at sea level in the far north (Copeland *et al.* 2010, Figure 1).

In the contiguous United States, wolverines likely exist as a metapopulation (Aubry *et al.* 2007, p. 2147, Figures 1, 3). A population is a group of interbreeding individuals of the same species. A metapopulation is a population composed of a network of semi-isolated subpopulations, each occupying a suitable patch of habitat in a landscape of otherwise unsuitable habitat (Pulliam and Dunning 1997, pp. 212–214). Metapopulations require some level of regular or intermittent migration and gene flow among subpopulations, in which individual subpopulations support one-another by providing genetic and demographic enrichment through mutual exchange of individuals (Meffe and Carroll 1997, p. 678). Individual subpopulations may go extinct or lose genetic viability, but are then ''rescued'' by immigration from other subpopulations, thus ensuring the persistence of the metapopulation as a whole. If metapopulation dynamics break down, either due to changes within subpopulations or loss of connectivity, then the entire metapopulation may be jeopardized due to subpopulations becoming unable to persist in the face of inbreeding or demographic and environmental stochasticity (Pulliam and Dunning 1997, pp. 221–222). The wolverine metapopulation in the DPS consists of a network of small subpopulations on mountain tops, some consisting of less than ten individuals. Persistence of subpopulations under these conditions requires movement between subpopulations across both suitable and unsuitable wolverine habitat. Wolverines prefer to move across suitable habitat (as defined by persistent spring snow cover) rather than to cross unsuitable habitats during dispersal movements (Schwartz *et al.* 2009, p. 3230). Therefore, we would expect that changes resulting in reduction of suitable habitat conditions would result in reduced movement rates between habitat patches if distances between them became greater. This could affect the metapopulation as a whole if movement rates became too low to ensure subpopulation demographic or genetic health.

Wolverines are opportunistic feeders and consume a variety of foods depending on availability. They primarily scavenge carrion, but also prey on small animals and birds, and eat fruits, berries, and insects (Hornocker and Hash 1981, p. 1290; Hash 1987, p. 579; Banci 1994, pp. 111–113). Wolverines have an excellent sense of smell that enables them to find food beneath deep snow (Hornocker and Hash 1981, p. 1297).

Wolverines require a lot of space; the availability and distribution of food is likely the primary factor in determining female wolverine movements and home range size (Hornocker and Hash 1981, p. 1298; Banci 1994, pp. 117–118). Male wolverine home range size and location is likely tied to the presence of active female home ranges and breeding opportunities (Copeland 1996, p. 74). Female wolverines forage close to den sites in early summer, progressively ranging further from dens as kits become more independent (May *et al.* 2010, p. 941). Wolverines travel long distances over rough terrain and deep snow, and adult males generally cover greater distances than females (Hornocker and Hash 1981, p. 1298; Banci 1994, pp. 117–118; Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–28; Brian 2010, p. 3; Copeland and Yates 2006, Figure 9). Home ranges of wolverines are large, and vary greatly in size depending on availability and distribution of food and gender and age of the animal. Home ranges of adult wolverines also vary in size depending on geographic location. Home ranges in Alaska were approximately 100 square kilometers (km^2) to over 900 km^2 (38.5 square miles (mi^2) to 348 mi^2) (Banci 1994, p. 117). Average home ranges of resident adult females in central Idaho were 384 km^2 (148 mi^2), and average home ranges of resident adult males were 1,522 km^2 (588 mi^2) (Copeland 1996, p. 50). Wolverines in Glacier National Park had average adult male home ranges of 496 km^2 (193 mi^2) and adult female home ranges of 141 km^2 (55 mi^2) (Copeland and Yates 2006, p. 25). Wolverines in the Greater Yellowstone Ecosystem had average adult male home ranges of 797 km^2 (311 mi^2), and average adult female home ranges of 329 km^2 (128 mi^2) (Inman *et al.* 2007a, p. 4). These home range sizes are large relative to the body size of wolverines, and may indicate that wolverines occupy a relatively unproductive niche in which they must forage over large areas to consume the amount of calories needed to meet their life-history requirements (Inman *et al.* 2007a, p. 11).

Across their worldwide distribution, wolverines are dependent on persistent spring snow cover for successful reproduction (Pulliainen 1968, pp. 338–341; Myrberget 1968, p. 115; Copeland 1996, pp. 93–94; Magoun and Copeland 1998, pp. 1315–1319; Aubry *et al.* 2007, p. 2153; Inman *et al.* 2012a, p.785; Copeland *et al.* 2010, entire). No records exist of wolverines denning anywhere but in snow, despite the wide

availability of snow-free denning opportunities within the species' geographic range. The snow tunnels and complex structure associated with dens are likely required to protect young from interspecific and intraspecific predation (Persson *et al.* 2003, pp. 25–26; Magoun and Copeland 1998, p. 1318). A layer of deep snow may also add crucial insulation from cold temperatures and wind prevalent in wolverine habitat (Pulliainen 1968, p. 342; Bjärvall *et al.* 1978, p. 24–25; Copeland 1996, p. 100; Magoun and Copeland 1998, p. 1318).

Female wolverines have been observed to abandon reproductive dens when temperatures warm and snow conditions become wet (Magoun and Copeland 1998, p. 1316); this response indicates that the condition of the snow is also important to successful reproduction, and that the onset of spring snowmelt forces female wolverines to move kits into alternate denning sites with better snow conditions, if they are available. These movements may be energetically costly and subject females and kits to predation risk. The deep, persistent spring snow layer in the Copeland *et al.* (2010) model captures all known wolverine den sites in the DPS; however, on average, most denning occurs at higher elevations within the area defined by the model. Female wolverines establish reproductive dens at elevations higher than average elevations used by nonreproductive wolverines (Copeland 1996, p. 94; Magoun and Copeland 1998, pp. 1315–1316; Inman *et al.* 2007c, p. 71), suggesting that females find the conditions necessary for successful denning in the upper portion of their home range where snow is most persistent and occurs in the heaviest accumulations.

Wolverine year-round habitat use also takes place almost entirely within the area defined by deep persistent spring snow (Copeland *et al.* 2010, pp. 242–243). Within the DPS, this area is generally centered on the alpine tree line (the maximum elevation beyond which tree growth is precluded and only low-growing vegetation is found). In the contiguous United States, wolverine year-round habitat is found at high elevations centered near the tree line in conifer forests (below tree line) and rocky alpine habitat (above tree-line) and in cirque basins and avalanche chutes that have food sources such as marmots, voles, and carrion (Hornocker and Hash 1981, p. 1296; Copeland 1996, p. 124; Magoun and Copeland 1998, p. 1318; Copeland *et al.* 2007, p. 2211; Inman *et al.* 2007a, p. 11). In the southern portion of wolverine range in North America which includes the DPS, wolverines are constrained by their need for cold conditions and persistent spring snow to using only the coldest available landscapes (Copeland *et al.* 2010, Figure 6).

Mean seasonal elevations used by wolverines in the northern Rocky Mountains and North Cascades vary between 1,400 and 2,600 m (4,592 and 8,528 ft) depending on location, but are always relatively high on mountain slopes (Hornocker and Hash 1981, p. 1291; Copeland *et al.* 2007, p. 2207, Aubry *et al.* 2007, p. 2153; Inman *et al.* 2012, p. 782). Elevation ranges used by historical wolverine populations in the Sierra Nevada and southern Rocky Mountains are unknown, but presumably wolverines used higher elevations, on average, than more northerly populations to compensate for the higher temperatures found at lower latitudes. In the contiguous United States, valley bottom habitat appears to be used only for dispersal movements and not for foraging or reproduction (Inman *et al.* 2009, pp. 22–28). Wolverine reproductive dens have been located in alpine, subalpine, taiga, or tundra habitat (Myrberget 1968, p. 115; Pulliainen 1968, pp. 338–341; Bjärvall 1982, p. 318; Lee and Niptanatiak 1996, p. 349; Landa *et al.* 1998, pp. 451–452; Magoun and Copeland 1998, pp. 1317–1318). Wolverines rarely, or never, den in lower elevation forested habitats, although they may occupy these habitats occasionally (Magoun and Copeland 1998, p. 1317).

Wolverine Densities

Wolverines naturally occur in low densities with a reported range from one animal per 65 km^2 (25 mi^2), to one animal per 337 km^2 (130 mi^2) (Hornocker and Hash 1981, pp. 1292–1295; Hash 1987, p. 578; Copeland 1996, pp. 31–32; Copeland and Yates 2006, p. 27; Inman *et al.* 2007a, p. 10; Squires *et al.* 2007, p. 2218). No systematic population census exists over the entire current range of wolverines in the contiguous United States, so the current population level and trends are not known with certainty. However, based on our current knowledge of occupied wolverine habitat and wolverine densities in this habitat, it is reasonable to estimate that the wolverine population in the contiguous United States numbers approximately 250 to 300 individuals (Inman 2010b, pers. comm.). The bulk of the current population occurs in the northern Rocky Mountains, with a few individuals in the North Cascades and one known individual each in the Sierra Nevada and southern Rocky Mountains. Within the area known to currently have wolverine populations, relatively few wolverines can coexist due to their naturally low population densities, even if all areas were occupied at or near carrying capacity. Given the natural limitations on wolverine population density, it is likely that historical wolverine population numbers were also low (Inman *et al.* 2007a, Table 6). Because of these natural limitations, it is possible that densities and population levels in the northern Rocky Mountains and North Cascades where populations currently exist may not be substantially lower than population densities were in these areas prior to European settlement. However, historically, the contiguous United States population would likely have been larger than it is today due to the larger area occupied by populations when the southern Rocky Mountains, Bighorn Mountains, Sierra Nevada, and possibly also the Oregon Cascades and mountains of Utah, were occupied at full capacity.

Wolverine Status in Canada and Alaska

The bulk of the range of North American wolverines is found in Canada and Alaska, where wolverines inhabit alpine tundra, boreal forest, and arctic habitats (Slough 2007, p. 78). Wolverines in Canada have been divided into two populations for management by the Canadian Government: An eastern population in Labrador and Quebec, and a western population that extends from Ontario to the Pacific coast, and north to the Arctic Ocean. The eastern population is currently listed as endangered under the Species At Risk Act in Canada, and the western population is designated as a species of special concern (COSEWIC 2003, p. 8).

The current status of wolverines in eastern Canada is uncertain. Wolverines have not been confirmed to occur in Quebec since 1978 (Fortin *et al.* 2005, p. 4). Historical evidence of wolverine presence in eastern Canada is also suspect because no evidence exists to show that wolverine pelts attributed to Quebec or Labrador actually came from that region; animals were possibly trapped elsewhere and the pelts shipped through the eastern provinces (COSEWIC 2003, p. 20). Wolverines in eastern Canada may currently exist in an extremely low-density population, or may be extirpated. Wolverines in eastern Canada, both historically and currently, could represent migrants from western populations that never became resident animals (COSEWIC 2003, pp. 20–21). The Federal Government of Canada has completed a recovery plan

for the eastern population with the goal of establishing a self-sustaining population through reintroduction and protection (Fortin *et al.* 2005, p. 16).

Wolverines in western Canada and Alaska inhabit a variety of habitats from sea level to high elevations (Slough 2007, pp. 77–78). They occur in Alaska, Ontario, Manitoba, Saskatchewan, Alberta, British Columbia, Yukon, Northwest Territories, and Nunavut (Slough 2007, pp. 77–78). Since European colonization, a generally recognized range contraction has taken place in boreal Ontario and the aspen parklands of Manitoba, Saskatchewan, and Alberta (COSEWIC 2003, pp. 20–21; Slough 2007, p. 77). This range contraction occurred concurrently with a reduction in wolverine records for the Great Lakes region in the contiguous United States (Aubry *et al.* 2007, pp. 2155–2156). Causes of these changes are uncertain, but may be related to increased harvest, habitat modification, or climate change (COSEWIC 2003, pp. 20–21; Aubry *et al.* 2007, pp. 2155–2156; Slough 2007, pp. 77–78). Analysis supports climate change as a factor contributing to population declines in southern Ontario, because snow conditions necessary to support wolverines do not currently exist in the Great Lakes region of the contiguous United States, and are marginal in southern Ontario (Aubry *et al.* 2007, p. 2154). It is not known if these snow conditions existed historically in the Great Lakes of the contiguous United States; however, the small number of wolverine records from this area suggests that they did not. It is possible that suitable snow conditions did reach further south in eastern Canada in 1850 than they do today, making wolverine dispersal attempts from Canada to the Great Lakes region of the contiguous United States more likely than they are now. Wolverines occurred historically on Vancouver Island and have been given status as a separate subspecies by some (Hall 1981, p. 109). The Vancouver Island population is now regarded as possibly extirpated; no sightings have occurred since 1992 (COSEWIC 2003, p. 18).

Wolverines in western Canada and Alaska appear to persist everywhere that habitat and climate conditions are suitable (COSEWIC 2003, pp. 13–21; Aubry *et al.* 2007, pp. 2152–2155; Slough 2007, p. 79; Copeland *et al.* 2010, Figure 2). Throughout this area, wolverines are managed by regulated harvest at the Provincial and State level. Population estimates for Canada and Alaska are rough because no wolverine surveys have taken place at the State or Provincial scale. However, the population in western Canada is estimated to include approximately 15,089 to 18,967 individuals (COSEWIC 2003, p. 22). The number of wolverines in Alaska is unknown, but they appear to exist at naturally low densities in suitable habitats throughout the state (Alaska Department of Fish and Game 2004, pp. 1–359). We have no information to indicate that wolverine populations have been reduced in numbers or geographic range in Alaska.

The Complexity of Geographic Range Delineation

Information on the nature of historical and current locations of wolverine is lacking for several reasons. Wolverines tend to live in remote and inhospitable places away from human settlements, where they are seldom encountered, documented, or studied. Wolverines naturally occur at low population densities and are rarely and unpredictably encountered where they do occur. Wolverines often move long distances in short periods of time; for example, when dispersing from natal ranges, wolverines may transit through habitats that are unsuitable for long-term survival (Aubry *et al.* 2007, p. 2147; Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–28; Brian 2010, p. 3). Such movements make it difficult to distinguish with certainty between occurrence records that represent established populations in suitable habitats and records that represent short-term occupancy or exploratory movements without the potential for establishment of home ranges, reproduction, or populations. These natural attributes of wolverines make it difficult to precisely determine their present range, or trends in range expansion or contraction, that may have occurred in the past. Therefore, we are cautious and use multiple lines of evidence when trying to determine where past wolverine populations occurred.

Throughout the remainder of this proposed rule, we focus on the use of verifiable and documented wolverine occurrence records to define historical and present range as we have determined that these records constitute the best scientific information available on the past and present distribution of wolverines (see Aubry *et al.* 2007, p. 2148; McKelvey *et al.* 2008, entire). Verifiable records are records supported by physical evidence such as museum specimens, harvested pelts, DNA samples, and diagnostic photographs. Documented records are those based on accounts of wolverines being killed or captured. Use of only verifiable and documented records avoids mistakes of misidentification often made in eyewitness accounts of visual encounters of unrestrained animals in the wild. Visual-encounter records often represent the majority of occurrence records for elusive forest carnivores, and they are subject to inherently high rates of misidentification of the species involved, including wolverines (McKelvey *et al.* 2008, pp. 551–552). These misidentifications can result in wildly inaccurate conclusions about species occurrence (McKelvey *et al.* 2008, pp. 550–553).

Aubry *et al.* (2007, entire) used only verifiable and documented records to investigate wolverine distribution through time. This paper is the only available comprehensive treatment of these distribution patterns that attempts to distinguish between records that represent resident animals versus animals that have dispersed outside of suitable habitat. For these reasons, we find that Aubry *et al.* (2007, entire) represents the best available summary of wolverine occurrence records in the contiguous United States at this time. Since the publication of Aubry *et al.* (2007, entire), verified records of wolverines have also been documented in Colorado and California, which we will describe in greater detail below.

Aubry *et al.* (2007, entire) used verifiable and documented records from museum collections, literature sources, and State and Federal institutions to trace changes in geographic distribution of wolverines in the historical record. They then used an overlay of suitable wolverine habitats to determine which records represent wolverines in habitats that may support residency, and, by extension, populations, and which records likely represent wolverines outside the range of suitable habitats, so called ''extralimital'' records. Aubry *et al.*'s (2007, entire) focus on verifiable and documented records corrected past overly broad approaches to wolverine range mapping (Nowak 1973, p. 22; Hall 1981, p. 1009; Wilson 1982, p. 644; Hash 1987, p. 576), which used a more inclusive but potentially misleading approach when dealing with occurrence records. Many of the extralimital records used in these publications represented individuals that dispersed from natal ranges but ended up in habitats that could not support wolverines. Use of these data to determine the historical geographic range of wolverines results in gross overestimation of the area that can actually be used successfully by wolverines for the establishment of populations. Subsequent to publication of Aubry *et al.* (2007, entire), two publications (Copeland *et al.* 2010,

entire; Brock *et al.* 2007, entire) further refined our understanding of wolverine habitat needs and corroborated the approach of Aubry *et al.* (2007, entire). Thus, despite the paucity of verifiable records, we now have strong information on the areas that are currently suitable to be occupied by wolverine based on habitat and climate conditions.

We agree with Aubry *et al.* (2007, p. 2149) that the most appropriate method to determine the current and historical range of wolverines is to use a combination of occurrence records and habitat suitability, along with other information, such as documented successful reproduction events, indicating where reproductive and potentially self-sustaining populations may occur. We also generally agree with their conclusions about the historical and current range of the species. We find that the species' range is the area that may support viable populations, and does not include extralimital occurrences outside of habitat that is likely to support wolverine life-history needs. Areas that can support wolverine populations may be referred to as potential ''source'' populations because they provide surplus individuals through reproduction beyond what is needed for replacement. Areas that have some of the habitat attributes of wolverine habitat but do not have enough habitat to support viable populations may be referred to as population ''sinks'' because wolverines may disperse to these areas and remain for some time, but will either die there without reproducing, leave the area in search of better habitat conditions, or may actually reproduce, but at a rate lower than that needed for replacement of individuals lost to mortality or emigration, leading to eventual population extinction.

For a widely dispersing species like the wolverine, we expect many locality records to represent dispersal attempts into sink habitats or nonhabitat. The value to the population (and thus the DPS) of dispersers in these areas is unclear; it is likely that most dispersers into sink habitats or nonhabitat will be lost to the population unless they are able to move back into source habitats. Therefore, it is our conclusion that population sink areas and areas of non-wolverine habitat, here defined as places where wolverines may be found but where habitat is not suitable for long-term occupancy and reproduction, do not represent part of the species historical range and have little conservation value for the DPS, other than possibly serving as temporary stop-overs for attempted dispersers as they search for suitable habitats. Compared with broader approaches to defining historical geographic range, this focused approach (1) results in reducing the bias of extralimital dispersers and (2) concentrates conservation attention on areas capable of maintaining populations.

Aubry *et al.* (2007, pp. 2147–2148) divided records into ''historical'' (recorded prior to 1961), ''recent'' (recorded between 1961 and 1994), and ''current'' (recorded after 1994). Historical records occurred before systematic surveys. Historical records encompass the time during which wolverine numbers and distribution were hypothesized to be at their highest (prior to European settlement) and also at their lowest (early 20th century) (Wright and Thompson 1935; Grinnell *et al.* 1937; Allen 1942; Newby and Wright 1955, all as cited in Aubry *et al.* 2007, p. 2148). The recent time interval covers a hypothesized population expansion and rebound from the early 20th century low. Current records offer the most recent evidence available for wolverine occurrences and potential populations. All occurrence records must be individually analyzed in light of their context in terms of habitat conditions conducive to wolverine population establishment and whether or not they occur clustered with other records, which might indicate that populations have historically occurred in the area. The authors of Aubry *et al.* (2007) did such an analysis as they compiled their records.

Wolverine Distribution

We assessed the historical, recent, and current distribution data for each of the regions below to determine the likelihood of the presence of historical populations (rather than extralimital dispersers). Of 729 mappable records (those records with precise location information) compiled by Aubry *et al.* (2007, p. 2150), 188 were from the historical time interval (see Table 1). The discussion below draws heavily from both Aubry *et al.* (2007, entire) and Copeland *et al.* (2010, entire).

TABLE 1—WOLVERINE RECORDS FROM THREE TIME PERIODS FROM AUBRY ET AL. 2007

[Numbers represent total documented and verifiable records with the subset of those records that were verifiable in parentheses]

	Historical (<1964)	Recent (1961–1994)	Current (>1994)
Northeast	13 (1)	0	0
Upper Midwest	4 (2)	0	0
Great Lakes	36 (4)	1	0
Central Great Plains	*71 (2)	1	0
Rocky Mountains	147 (45)	332 (283)	215 (210)
Pacific Coast	89 (14)	23 (15)	7
Totals	362 (68)	357 (298)	222 (210)

*35 records from a single source (the journals of Alexander Henry).

Northeast and Upper Midwest—The low number of records and scattered nature of their distribution combined with a lack of suitable habitat indicate that wolverines were likely only occasional transients to the area and not present as a reproducing population after 1800.

Great Lakes—The lack of large numbers of verifiable records in this area of relatively high human population density and the lack of suitable habitat suggests that wolverines did not exist in this area as a viable population after 1900. Widely scattered records generally before 1900, along with occasional subsequent records suggest that if a reproducing population existed in the Great Lakes, it predated 1900, and that any post-1900 records represent dispersal from a receding Canadian population. Wolverine distribution in Ontario, Canada, appears to have receded north from the Great Lakes region since the 1800s, and currently wolverines occupy only the northern portion of the province, a distance of over 644 km (400 mi) from the United States border (COSEWIC 2003, p. 9). The distribution pattern of

record illustrated in Aubry *et al.* (2007, p. 2152) is consistent with what would be expected if those records were of dispersing individuals from a Canadian population that receded progressively further north into Canada after 1800, possibly due to natural climate changes (COSEWIC 2003, p. 28).

Central Great Plains—The lack of precise locality records and suitable habitat from the Great Plains States leads us to conclude that reproducing populations of wolverines did not historically inhabit this area. Of thirty-six records from North Dakota, 35 are from the journals of a single fur trader (see Table 1), and it is not clear that the records represent actual collection localities or are localities where trades or shipments occurred (Aubry 2007, pers. comm.). Given the habitat relationships of wolverines (*e.g.,* Copeland *et al.* 2010, Figure 1), it is unlikely that these records represent established wolverines or that this area served as wolverine habitat.

Rocky Mountains—Five Rocky Mountains States (Idaho, Montana, Wyoming, Colorado, and Utah) contained numerous wolverine records. Records with precise locality information appear to coalesce around several areas that may have been population centers, such as central Colorado, the greater Yellowstone region, and northern Idaho-northwestern Montana. The large number of verifiable and documented records for this region, along with the suggestion of population centers or strongholds, suggests that wolverines existed in reproducing populations throughout much of the Rocky Mountains during the historical time interval. The lack of records for Colorado and Utah after 1921 suggests that the southern Rocky Mountains population of wolverines was extirpated in the early 1900s, concurrent with widespread systematic predator control by government agencies and livestock interests. The northern Rocky Mountains population (north of Wyoming) was reduced to historical lows or possibly even extirpated during the early 1900s, and then increased dramatically in the second half of the 1900s (see Table 1) as predator control efforts subsided and trapping regulations became more restrictive (Aubry *et al.* 2007, p. 2151). This increase likely indicates a population rebound from historical lows in this period.

Wolverine records from 1995 to 2005 indicate that wolverine populations currently exist in the northern Rocky Mountains (see Table 1). Legal trapping in Montana in the recent past removed an average of 10.5 individuals from this population each year (Montana Department of Fish, Wildlife, and Parks 2007, p. 2), but harvest mortality has been reduced due to regulatory changes in 2008 (Montana Department of Fish, Wildlife and Parks 2008, p. 8). Populations in British Columbia and Alberta, Canada, are extant (COSEWIC 2003, pp. 18–19), and may have been a source of surplus wolverines to the contiguous United States population during population lows. Recently, a male wolverine moved on its own from the southern Greater Yellowstone Area of Wyoming into the southern Rocky Mountains of Colorado, where it still persisted as of November 2012 (Inman *et al.* 2009, pp. 22–26; Odell 2012, pers. comm.). This attempted dispersal event is the first verified wolverine occurrence in Colorado since 1919 and may represent a continuation of the wolverine expansion in the Rocky Mountains detailed above. It is possible that other wolverines have traveled to the southern Rocky Mountains and have remained undetected. There is no evidence that Colorado currently hosts a wolverine population or that female wolverines have made, or are likely to make, similar movements. Female dispersal movements tend to be much shorter than males, usually occupying home ranges adjacent to their natal range, and dispersal is documented only for lesser distances than males routinely travel (Hornocker and Hash 1981, p. 1290; Copeland 1996, p. 91; Kyle and Strobeck 2001, p. 338; Tomasik and Cook 2005, p. 390; Cegelski *et al.* 2006, p. 206, Inman *et al.* 2011, p. 7). The largest documented female movement occurred in 2010 in the North Cascades of Washington (Aubry *et al.* 2011, pp. 21–22). In that instance, a radio-collared female wolverine moved an air-line distance of approximately 233 km (145 mi) over a 44-day period. During this movement, her course generally stayed within suitable wolverine habitat (as defined by Copeland *et al.* (2010, p. 242)) and was never more than about 19 km (12 mi) from suitable wolverine habitat.

Pacific Coast—Historical records show that wolverines occurred in two population centers in the North Cascades Range and the Sierra Nevada. However, records do not show occurrences between these centers from southern Oregon to northern California, indicating that the historical distribution of wolverines in this area is best represented by two disjunct populations rather than a continuous peninsular extension from Canada. This conclusion is supported by genetic data indicating that the Sierra Nevada and Cascades wolverines were separated for at least 2,000 years prior to extirpation of the Sierra Nevada population (Schwartz *et al.* 2007, p. 2174).

Only one Sierra Nevada record exists after 1930, indicating that this population was likely extirpated in the first half of the 1900s, concurrent with widespread systematic predator control programs. In 2008, a male wolverine was discovered in the Sierra Nevada Range of California, the first verified record from California since 1922 (Moriarty *et al.* 2009, entire). Genetic testing revealed that this wolverine was not a descendant of the endemic Sierra Nevada wolverine population, but was likely derived from wolverines in the Rocky Mountains (Moriarty *et al.* 2009, p. 159). This attempted dispersal event may represent a continuation of the wolverine expansion in the contiguous United States as detailed above. Other wolverines may have travelled to the Sierra Nevada and remain undetected. There is no evidence that California currently hosts a wolverine population or that female wolverines have made, or are likely to make, similar dispersal movements.

Wolverines were likely extirpated from the North Cascades in the early 20th century and then recently recolonized from Canada. Currently, a small population persists in this area (Aubrey *et al.* 2011, entire). In 2012, reproduction was documented for the first time in the North Cascades (Aubry *et al.* 2012, p. 2). Wolverines have also been documented in the southern portion of the North Cascades, near Mount Adams, since 2009 (Akins 2010, p. 4). The North Cascades population may be connected with, and is possibly dependent on, the larger Canadian population for future expansion and long-term persistence.

Summary of Wolverine Distribution

Historical wolverine records were found across the northern tier of the contiguous United States, with convincing evidence of wolverine populations in the northern and southern Rocky Mountains, Sierra Nevada Mountains, and North Cascades Mountains (Aubry *et al.* 2007, p. 2152).

Currently, wolverines appear to be distributed as functioning populations in two regions in the contiguous United States: the North Cascades in Washington, and the northern Rocky Mountains in Idaho, Montana, and Wyoming (this area also includes the Wallowa Range in Oregon). Wolverines were likely extirpated, or nearly so, from the entire contiguous United States in the first half of the 20th century

(Aubry *et al.* 2007, Table 1). Although the reasons for this extirpation are not known with certainty, unregulated trapping and widespread indiscriminant predator control likely contributed to population declines. The available evidence suggests that, in the second half of the 20th century and continuing into the present time, wolverine populations have expanded in the North Cascades and the northern Rocky Mountains from sources in Canada, but that populations have not been reestablished in the Sierra Nevada Range or the southern Rocky Mountains, despite the known movement of single individual males to each of these areas. We conclude that the current range of the species in the contiguous United States includes the North Cascades Mountains, the northern Rocky Mountains, the southern Rocky Mountains, and the Sierra Nevada Mountains, but that reestablishment of populations in the southern Rocky Mountains and Sierra Nevada Mountains has not yet occurred.

We also conclude that wolverines either did not exist as established populations, or were extirpated prior to settlement and the compilation of historical records, in the Great Lakes region, possibly due to climate changes that occurred through the 1800s and 1900s. The Great Lakes region lacks suitable wolverine habitat, and suitable habitat does not appear to exist in adjacent Canada (Copeland *et al.* 2010, Figure 1). The widely scattered records from this region are consistent with dispersing individuals from a Canadian population that receded north early in the 1800s. We cannot rule out the possibility that wolverines existed as established populations prior to the onset of trapping in this area, but we have no evidence of this.

No evidence in the historical records indicates that wolverines were ever present as established populations in the Great Plains, Midwest, or Northeast.

Habitat Relationships and Wolverine Distribution

Deep, persistent, and reliable spring snow cover (April 15 to May 14) is the best overall predictor of wolverine occurrence in the contiguous United States (Aubry *et al.* 2007, pp. 2152–2156; Copeland *et al.* 2010, entire). Deep, persistent snow correlates well with wolverine year-round habitat use across wolverine distribution in North America and Eurasia at both regional and local scales (Copeland *et al.* 2010, entire; Inman *et al.* 2012a, p. 785). It is uncertain why spring snow cover so accurately predicts wolverine habitat use; however, it is likely related to wolverines' need for deep snow during the denning period. In addition, wolverines appear to take advantage of a cold, low-productivity niche by using food caching in cold habitats to survive food-scarce winters that other carnivores cannot (Inman *et al.* 2012b, pp. 640–642). Wolverines' physiological requirement for year-round cold temperatures may also play a role in habitat use (Copeland *et al.* 2010, pp. 242–243). Snow cover during the denning period is essential for successful wolverine reproduction range-wide (Hatler 1989, p. iv; Magoun and Copeland 1998, p. 1317; Inman *et al.* 2007c, pp. 71–72; Persson 2007; Copeland *et al.* 2010, p. 244). Wolverine dens tend to be in areas of high structural diversity such as logs and boulders with deep snow (Magoun and Copeland 1998, p. 1317; Inman *et al.* 2007c, pp. 71–72; Persson 2007, entire). Reproductive females dig deep snow tunnels to reach the protective structure provided by logs and boulders. This behavior presumably protects the vulnerable kits from predation by large carnivores, including other wolverines (Pulliainen 1968, p. 342; Zyryanov 1989, pp. 3–12), but may also have physiological benefits for kits by buffering them from extreme cold, wind, and desiccation (Pullianen 1968, p. 342, Bjärvall *et al.* 1978, p. 23). Wolverines live in low-temperature conditions and appear to select habitats in part to avoid high summer temperatures (Copeland *et al.* 2010, p. 242). Wolverine distribution is likely affected by climatic conditions at two different scales. Wolverines require deep persistent snow for denning, and this likely determines where wolverine populations can be found at the grossest range-wide scale (Copeland *et al.* 2010, p. 244). At smaller scales, wolverines likely select habitats to avoid high summer temperatures. These cool habitats also tend to retain snow late into spring, leading to wolverines' year-round association with areas of persistent spring snow (Copeland *et al.* 2010, p. 244).

All of the areas in the contiguous United States for which good evidence of persistent wolverine populations (either present or historical) exists (*i.e.,* North Cascades, Sierra Nevada, northern and southern Rocky Mountains) contain large and well-distributed areas of deep snow cover that persists through the wolverine denning period (Inman *et al.* 2011, Fig. 3; Aubry *et al.* 2007, p. 2154; Copeland *et al.* 2010, Figure 1). The Great Plains, Great Lakes, Midwest, and Northeast lack the spring snow conditions and low summer temperatures thought to be required by wolverines for successful reproduction and year-round occupancy (Aubry *et al.* 2007, p. 2154; Copeland *et al.* 2010, Figure 1). The lack of persistent spring snow conditions in the Great Plains, Great Lakes, Midwest, and Northeast supports the exclusion of these areas from the current range of wolverines. Whether wolverines once existed as established populations in any of these regions is uncertain, but the current climate appears to preclude their presence as reproducing populations, and the sparse historical record of wolverine presence in this area makes historical occupation of these areas by wolverine populations doubtful. It is our conclusion that the ecosystem that supports wolverines does not exist in these areas currently, and may not have existed at the time of European settlement of these areas.

Large areas of habitat with characteristics suitable for wolverines still occur in the southern Rocky Mountains and Sierra Nevada, despite the extirpation of wolverines from those areas (Aubry *et al.* 2007, p. 2154, Inman *et al.* 2011, Fig. 4; Copeland *et al.* 2010, Figure 1). Wolverine extirpations in these areas were coincident with unregulated trapping and systematic predator eradication efforts in the early 1900s, which have been discontinued for many years. Each of these areas has received at least one and possibly more migrants from adjacent populations in the northern Rocky Mountains; however, there is no evidence that females have migrated to these areas or that populations of wolverines currently exist there (Aubry *et al.* 2007, *Table 1;* Moriarty *et al.* 2009, entire; Inman *et al.* 2009, entire).

We conclude that areas of wolverine historical occurrence can be placed in one of three categories: (1) Areas where wolverines are extant as reproducing and potentially self-sustaining populations (North Cascades, northern Rocky Mountains); (2) areas where wolverines historically existed as reproducing and potentially self-sustaining populations prior to human-induced extirpation, and where reestablishment of those populations is possible given current habitat conditions and management (the Sierra Nevada Mountains in California and southern Rocky Mountains in Colorado, New Mexico, Wyoming, Uinta Mountains and surrounding ranges in Utah, Bighorn Mountains in Wyoming, and possibly the Oregon Cascades Mountains); and (3) areas where historical presence of wolverines in reproducing and potentially self-sustaining populations is doubtful, and

where the current habitat conditions preclude the establishment of populations (Great Plains, Midwest, Great Lakes, and Northeast). We, therefore, consider the current range of wolverines to include suitable habitat in the North Cascades of Washington, the northern Rocky Mountains of Idaho, Wyoming, Montana, and eastern Oregon, the southern Rocky Mountains of Colorado and Wyoming, and the Sierra Nevada of California. We here include the Sierra Nevada and southern Rocky Mountains in the current range of wolverines despite the probability that functional populations do not exist in these areas. They are included due to the known existence of one individual in each area and the possibility that more, as yet undetected, individuals inhabit these areas.

Distinct Population Segment

Pursuant to the Act, we must consider for listing any species, subspecies, or, for vertebrates, any Distinct Population Segment (DPS) of these taxa, if there is sufficient information to indicate that such action may be warranted. To interpret and implement the DPS provision of the Act and Congressional guidance, the Service and the National Marine Fisheries Service published, on February 7, 1996, an interagency Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (61 FR 4722). This policy addresses the recognition of DPSs for potential listing actions. The policy allows for more refined application of the Act that better reflects the biological needs of the taxon being considered, and avoids the inclusion of entities that do not require its protective measures.

Under our DPS policy, three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for additions to the list of endangered and threatened species, reclassification, and removal from the list. They are: (1) Discreteness of the population segment in relation to the remainder of the taxon; (2) the biological or ecological significance of the population segment to the taxon to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.,* whether the population segment is, when treated as if it were a species or subspecies, an endangered or threatened species). Discreteness refers to the degree of isolation of a population from other members of the species, and we evaluate this factor based on specific criteria. If a population segment is considered discrete, we must consider whether the discrete segment is ''significant'' to the taxon to which it belongs by using the best available scientific and commercial information. If we determine that a population segment is both discrete and significant, we then evaluate it for endangered or threatened species status based on the Act's standards. The DPS evaluation in this proposed rule concerns the segment of the wolverine species occurring within the contiguous 48 States, including the northern and southern Rocky Mountains, Sierra Nevada Range, and North Cascades Range.

Distinct Population Segment Analysis for Wolverine in the Contiguous United States

Analysis of Discreteness

Under our DPS Policy, a population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act (inadequacy of existing regulatory mechanisms). The wolverine within the contiguous United States meets the second DPS discreteness condition because of differences in conservation status as delimited by the Canadian-United States international governmental boundary.

In our 12-month finding for the North American wolverine DPS (75 FR 78030) we conducted a complete analysis of the discreteness of the wolverine DPS that we incorporate here by reference. In that analysis we concluded that the international boundary between Canada and the United States currently leads to division of the control of exploitation and conservation status of the wolverine. This division is significant because it allows for potential extirpation of the species within the contiguous United States through loss of small populations and lack of demographic and genetic connectivity of the two populations. This difference in conservation status is likely to become more significant in light of threats discussed in the five factors analyzed below. Therefore, we find that the difference in the conservation statuses in Canada and the United States result in vulnerability to the significant threat (discussed below) in the U.S. wolverine population but not for the Canadian population. Existing regulatory mechanisms are inadequate to ensure the continued existence of wolverines in the contiguous United States in the face of these threats. Therefore, it is our determination that the difference in conservation status between the two populations is significant in light of section 4(a)(1)(D) of the Act, because existing regulatory mechanisms appear sufficient to maintain the robust conservation status of the Canadian population, while existing regulatory mechanisms in the contiguous United States are insufficient to protect the wolverine from threats due to its depleted conservation status. As a result, the contiguous United States population of the wolverine meets the discreteness criterion in our DPS Policy (61 FR 4725). Consequently, we use the international border between the United States and Canada to define the northern boundary of the contiguous United States wolverine DPS.

Analysis for Significance

If we determine a population segment is discrete, its biological and ecological significance will then be considered in light of Congressional guidance that the authority to list DPSs be used sparingly while encouraging the conservation of genetic diversity. In carrying out this examination, we consider available scientific evidence of the population's importance to the taxon to which it belongs (*i.e.,* the North American wolverine (*Gulo gulo luscus*)). Our DPS policy states that this consideration may include, but is not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

In our 12-month finding (75 FR 78030), we conducted an exhaustive analysis of the significance of the contiguous United States population of the North American wolverine that we incorporate here by reference. In that analysis we concluded that the wolverine population in the contiguous United States is significant because its

loss would result in a significant gap in the range of the taxon.

Summary of the Distinct Population Segment Analysis

We conclude that the wolverine population in the contiguous United States is both discrete and significant under our DPS policy. The conservation status of wolverines in the contiguous United States is less secure than wolverines in adjacent Canada due to fragmented habitat, small population size, reduced genetic diversity, and their vulnerability to threats analyzed in this finding. Loss of the contiguous United States wolverines would result in a significant gap in the range of the taxon. Therefore, we determine that the population of wolverines in the contiguous 48 States, as currently described, meets both the discreteness and significance criteria of our DPS policy, and is a listable entity under the Act as a DPS.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533), and its implementing regulations at 50 CFR part 424, set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, we may list a species based on any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Under Factor A we will discuss a variety of impacts to wolverine habitat including: (1) Climate change, (2) human use and disturbance, (3) dispersed recreational activities, (4) infrastructure development, (5) transportation corridors, and (6) land management. Many of these impact categories overlap or act in concert with each other to affect wolverine habitat. Climate change is discussed under Factor A because although climate change may affect wolverines directly by creating physiological stress, the primary impact of climate change on wolverines is expected to be through changes to the availability and distribution of wolverine habitat.

Two efforts to map wolverine habitat in the contiguous United States have been completed (Inman *et al.* 2012, entire; Copeland *et al.* 2010, entire). Both of these habitat models rely on snow as a primary input. The Copeland *et al.* (2010) model defines wolverine habitat as simply the area continuously covered by snow from mid-winter until mid-May. The Inman *et al.* (2012) model is based on snowpack and also incorporates other habitat variables, such as terrain ruggedness and some aspects of human development. The two models result in estimates of wolverine habitat that are very similar across most of the range of wolverines in the contiguous United States. Areas of significant departure between the models are the California Sierras and Oregon Cascades where the Copeland *et al.* (2010) model predicts significantly greater habitat area than does the Inman *et al.* (2012) model. Given the general agreement between the two models, we combined the areas depicted by them into a composite wolverine habitat model that includes all areas described by one or both of these models. This composite model serves as the basis for our estimates of wolverine habitat below. Within the four States that currently harbor wolverines (Montana, Idaho, Oregon (Wallowas) and Wyoming), an estimated 124,014 km^2 (47,882 mi^2) of wolverine habitat exists. Habitat in the North Cascades and Eastern Washington (Kettle Range and associated habitat) add approximately 20,356 km^2 (7859 mi^2). Ninety-four percent (135,396 km^2; 52,277 mi^2) of total wolverine habitat is in Federal ownership with most of that managed by the U.S. Forest Service (Forest Service).

Reduction in Habitat Due to Climate Change

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). ''Climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (*e.g.,* temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78). Various types of changes in climate can have direct or indirect effects on species. These effects may be positive, neutral, or negative and they may change over time, depending on the species and other relevant considerations, such as the effects of interactions of climate with other variables (*e.g.,* habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19).

We recognize that there are scientific uncertainties on many aspects of climate change, including the role of natural variability in climate. In our analysis, we rely both on synthesis documents (*e.g.,* IPCC 2007; Karl *et al.* 2009) that present the consensus view of a very large number of experts on climate change from around the world, and on five analyses that relate the effects of climate changes directly to wolverines (Gonzalez *et al.* 2008, entire; Brodie and Post 2009, entire; Peacock 2011, entire; McKelvey *et al.* 2011, entire, Johnston *et al.* 2012, entire). To date, McKelvey *et al.* (2011) is the most sophisticated analysis regarding climate change effects to wolverines. This report is based on data from global climate models including both temperature and precipitation, downscaled to reflect the regional climate patterns and topography found within the range of wolverines in the contiguous United States. For this reason we find that McKelvey *et al.* (2011, entire) represents the best scientific information available regarding the impacts of climate change to wolverine habitat.

Snowpack changes as well as concomitant changes to wolverine habitat suitability result from both changes in temperature (negative relationship) and changes in snowfall (positive relationship). Because many climate models predict higher precipitation levels associated with climate warming, the interaction between these two variables can be quite complex. Consequently, predictions about snow coverage that rely only on temperature projections are less reliable than those that rely on both temperature and precipitation. McKelvey *et al.* (2011, entire) report projections for wolverine habitat and dispersal routes through the time interval from 2070 to 2099.

Climate Effects to Wolverines

Due to dependence of wolverines on deep snow that persists into late spring both for successful reproduction and for year-round habitat, and their restricted distribution to areas that maintain significant snow late into the spring season, we conclude that deep snow maintained through the denning period is required for wolverines to

successfully live and reproduce. Reduction of this habitat feature would proportionally reduce wolverine habitat, or to an even greater extent if habitat reduction involved increasing fragmentation.

Based on the information described above, we analyzed the effects of climate change on wolverines through three primary mechanisms: (1) Reduced snowpack and earlier spring runoff, which would reduce suitable habitat for wolverine denning; (2) increase in summer temperatures beyond the physiological tolerance of wolverines; and (3) ecosystem changes due to increased temperatures, which would move lower elevation ecosystems to higher elevations, thereby eliminating high-elevation ecosystems on which wolverines depend and increasing competitive interactions with species that currently inhabit lower elevations. These mechanisms would tend to push the narrow elevation band that wolverines use into higher elevation. Due to the conical structure of mountains, this upward shift would result in reduced overall suitable habitat for wolverines.

Reduced Snow Pack and Earlier Spring Runoff

Warmer winter temperatures are reducing snow pack in western North American mountains through a higher proportion of precipitation falling as rain and higher rates of snowmelt during winter (Hamlet and Lettenmaier 1999, p. 1609; Brown 2000, p. 2347; Mote 2003, p. 3–1; Christensen *et al.* 2004, p. 347; Knowles *et al.* 2006, pp. 4548–4549). This trend is expected to continue with future warming (Hamlet and Lettenmaier 1999, p. 1611; Christensen *et al.* 2004, p. 347; Mote *et al.* 2005, p. 48). Shifts in the initiation of spring runoff toward earlier dates are also well documented (Hamlet and Lettenmaier 1999, p. 1609; Brown 2000, p. 2347; Cayan *et al.* 2001, pp. 409–410; Christensen *et al.* 2004, p. 347; Mote *et al.* 2005, p. 41; Knowles *et al.* 2006, p. 4554). Earlier spring runoff leads to lack of snow or degraded snow conditions during April and May, the critical time period for wolverine reproductive denning. In addition, a feedback effect hastens the loss of snow cover due to the reflective nature of snow and the relative heat-absorbing properties of non-snow-covered ground. This effect leads to the highest magnitude of warming occurring at the interface of snow-covered and exposed areas, increasing the rate at which melting occurs in spring (Groisman *et al.* 1994a, pp. 1637–1648; Groisman *et al.* 1994b, pp. 198–200). Due to the importance of deep snow cover in spring for wolverine reproduction, currently suitable habitat that loses this feature would be rendered unsuitable for wolverines.

Ecosystem Changes Associated with Climate Change

Changes in temperature and rainfall patterns are expected to shift the distribution of ecosystems northward (IPCC 2007c, p. 230) and up mountain slopes (McDonald and Brown 1992, pp. 411–412; Danby and Hik 2007, pp. 358–359; IPCC 2007c, p. 232). As climate changes over a landscape, the ecosystems that support wolverines are likely to move according to the change of temperature, but with a time lag depending on the ability of individual plant species to migrate (McDonald and Brown 1992, pp. 413–414; Hall and Fagre 2003, p. 138; Peterson 2003, p. 652). Wolverines are not dependent on any particular ecosystem in the sense that they do not appear to depend on a certain vegetative component or other biological ecosystem attribute; however, it is likely that wolverines would respond to similar climatic cues as other members of the alpine ecosystem such that changes in tree-line location up or down slope would predict a similar change in wolverine distribution. Because of their reliance on mountainous habitat, wolverines in the contiguous United States will most likely adjust to climate changes by using higher elevations on mountain slopes, not by shifting their latitudinal distribution. Along a latitudinal gradient through the historical distribution of wolverines, records tend to be found at higher elevations in southern latitudes (Aubry *et al.* 2007, p. 2153), suggesting that wolverines compensate for increased temperature at low latitudes by selecting higher elevations. Therefore, the regional availability of suitable habitat is not likely to significantly change (*i.e.,* at least some wolverine habitat will continue to be available in all regions where wolverines currently occur), but within these landscapes, smaller areas will remain suitable for wolverines. Mountain ranges with maximum elevations within the elevation band that wolverines currently use, such as much of the wolverine habitat in central Idaho, may become entirely unsuitable for wolverines with the projected level of warming reported in McKelvey *et al.* (2011, Figure 3; see below for discussion).

Timing of Climate Effects

Unlike snow conditions, which respond directly to temperature change without a time lag, ecosystem responses to temperature change do lag, with the magnitude of the lag depending on constituent species' individual migratory abilities. Wolverines are described as a ''tree-line'' species because they are most often found in an elevation band that is approximately centered on the alpine tree-line at any given locality within their range (Inman *et al.* 2012a, p. 785). Alpine tree lines are maintained by a complex set of climactic and biotic factors, of which temperature is significantly important (Cogbill and White 1991, p. 169; Hättenschwiler and Körner 1995, p. 367; Jobbágy and Jackson 2000, p. 259; Pellat *et al.* 2000, pp. 80–81). However, the conditions that favor tree establishment and lead to elevation advance in the tree line may exist only sporadically, increasing time lags associated with tree line response to warming beyond the species-specific generation time of the trees involved (Hessl and Baker 1997, p. 181; Klasner and Fagre 2002, p. 54). Within wolverine habitats, tree lines have advanced up mountain slopes since 1850, due to climate warming, and this trend is expected to continue into the future (Hessl and Baker 1997, p. 176; Hall and Fagre 2003, p. 138). We expect that species reliant on resources associated with this biome, such as wolverines, will need to shift accordingly, not necessarily due to their dependence on the specific vegetation conditions, but due to wolverines likely being keyed into similar climatic variables. Since wolverine association with tree-line location is likely coincident with their dependence on climatic conditions, and the fact that wolverines can move about in response to climate changes, it is not likely that wolverines would respond to climate changes with a similar time lag. More likely, wolverines would respond to climate changes in real time, shifting habitat use more rapidly than tree-line shifts would occur. Given the irregular nature of tree-line response to warming, tree-line migration is likely to lag behind the climate warming that causes it.

Magnitude of Climate Effects on Wolverine

Several studies relating the effects of climate changes on wolverines in the past, present, and future are now available (Brock and Inman Personal Communication 2007, entire; Gonzales *et al.* 2008, pp. 1–5; Brodie and Post 2010, entire; McKelvey *et al.* 2011, entire; Peacock 2011, entire; Johnston *et al.* 2012, entire). The Gonzalez *et al.* report and the report by Brock and Inman (Personal Communication 2007) were both preliminary attempts to

analyze climate change impacts to wolverines, but are not currently considered the best available science because they did not consider the effects of both changes in temperature and precipitation that may affect the distribution of persistent spring snow cover (McKelvey 2011, entire). The analysis by Peacock (2011) is a sophisticated look at climate change impacts to wolverines, but suffers from the large-scale data presentation used. This large scale makes relating specific impacts to wolverines difficult, because the montane habitat inhabited by wolverines is climatologically complex on a small scale, and without significant downscaling of climate results, it is not possible to determine how much habitat may be left after climate change impacts have occurred. Both Brock and Inman (Personal Communication 2007) and Gonzalez *et al.* (2008) have been superseded by a more sophisticated analysis provided by McKelvey *et al.* (2011, entire). The course-grain scale of the analysis in Peacock (2011, entire) limits its use to that of supporting the conclusion that wolverine habitat is likely to decline. Likewise, the limited area analyzed by Johnston *et al.* (2012) also limits its use for this wide-ranging species. The McKelvey *et al.* (2011, entire) analysis includes climate projections at a local scale for wolverine habitats and analyzes the effects of both temperature changes and changes to precipitation patterns. Lack of accounting for changes in precipitation was a weakness of their own work cited by the authors of both Brock and Inman (Personal Communication 2007) and Gonzalez *et al.* (2008).

Brodie and Post (2010, entire) correlate the decline in wolverine populations in Canada over the past century with declining snowpack due to climate change over the same period. However, correlation does not infer causation; other factors could have caused the decline. The Brodie and Post (2010, entire) analysis used harvest data to infer population trends in addition to its reliance on correlation to infer causation (McKelvey *et al.* 2010a, entire); in this case, historic climate changes are inferred to have caused the declines in harvest returns, which are thought by the authors to reflect actual population declines. Due to the above-stated concerns, we view the analysis of Brodie and Post (2010, entire) with caution, although we do agree that the posited mechanism, of loss of snowpack affecting wolverine populations and distribution, likely has merit.

McKelvey *et al.* (2011, entire) used downscaled global climate models to project the impacts of changes in temperature and precipitation to wolverine habitat as modeled by Copeland *et al.* (2010, entire). The authors also present an alternative method for evaluating climate impacts on wolverine habitat, by merely projecting onset of spring snowmelt to occur 2 weeks earlier than it currently does. Based on this information, wolverine habitat in the contiguous United States, which supports approximately 250 to 300 wolverines, is shrinking and is likely to continue to shrink with increased climate warming (McKelvey *et al.* 2011, Figure 4). Habitat losses are likely to occur throughout the range of the DPS and are projected to be most severe in central Idaho. However, large areas of snow cover are likely to remain in the North Cascades, Greater Yellowstone Area (GYA), and the Glacier Park-Bob Marshall Wilderness of Montana (McKelvey *et al.* 2011 Figures 4, 13). The southern Rocky Mountains of Colorado retained significant high-elevation snow in some models but not others, and so may be another area that could support wolverine populations in the face of climate changes (McKelvey *et al.* 2011, p. 2889).

Overall, wolverine habitat in the contiguous United States is expected to get smaller and more highly fragmented as individual habitat islands become smaller and the intervening areas between wolverine habitats become larger (McKelvey *et al.* 2011, Figures 4, 13). McKelvey *et al.* (2011) predict that 31 percent of current wolverine habitat in the contiguous United States will be lost due to climate warming by the time interval centered on 2045 (2030–2059) (McKelvey *et al.* 2011, pp. 2887–2888). That loss expands to 63 percent of wolverine habitat by the time interval centered on 2085 (2070 to 2099). Estimates for the northern Rocky Mountain States (Montana, Idaho, and Wyoming) are similar, with an estimated 32 percent and 63 percent of persistent spring snow lost for the 2045 and 2085 intervals respectively. Central Idaho is predicted to be especially sensitive to climate change effects losing 43 percent and 78 percent of wolverine habitat for the 2045 and 2085 intervals respectively. Conversely, the mountains of Colorado appear to be slightly less sensitive to climate changes in their analysis losing 31 percent and 57 percent of habitat over the same intervals. Given the spatial needs of wolverines and the limited availability of suitable wolverine habitat in the contiguous United States, this projected gross loss of habitat area is likely to result in a loss of wolverine numbers that is greater than the overall loss of habitat area.

We expect wolverine populations to be negatively affected by changes in the spatial distribution of habitat patches as remaining habitat islands become progressively more isolated from each other due to climate changes (McKelvey *et al.* 2011, Figure 8). Currently, wolverine habitat in the contiguous United States can be described as a series of habitat islands. Some of these groups of islands are large and clumped closely together, such as in the North Cascades, Glacier Park-Bob Marshall Wilderness complex in Montana, and the GYA. Other islands are smaller and more isolated, such as the island mountain ranges of central and southwestern Montana. Inbreeding and consequent loss of genetic diversity have occurred in the past within these smaller islands of habitat (Cegelski *et al.* 2006, p. 208), and genetic exchange between subpopulations is difficult to achieve (Schwartz *et al.* 2009, Figure 4). Climate change projections indicate that, as warming continues, large contiguous blocks of habitat will decrease in size and become isolated to the extent that their ability to support robust populations becomes questionable (McKelvey *et al.* 2010b, Figure 8). Under the moderate climate change scenarios analyzed by McKelvey *et al.* (2011, entire), the current wolverine stronghold in central Idaho begins to look similar to the current situation in the more isolated mountain ranges of southwestern Montana (McKelvey *et al.* 2011, Figure 4) where wolverines persist, but subpopulations are small. These subpopulations are essentially family groups, which require connectivity with other groups for genetic and possibly demographic enrichment. This habitat alteration would result in a high likelihood of reduced genetic diversity due to inbreeding within a few generations (Cegelski *et al.* 2006, p. 209). Further isolation of wolverines on small habitat islands with reduced connectivity to other subpopulations would also increase the likelihood of subpopulations loss due to demographic stochasticity, impairing the functionality of the wolverine metapopulation in the contiguous United States.

We find that McKelvey *et al.* (2011, entire) represents the best available science for projecting the future impacts of climate change on wolverine habitat for four primary reasons. First, their habitat projections are based on global climate models that are thought to be the most reliable predictors of future climate available (IPCC 2007a, p. 12).

Second, they conducted downscaling analyses to infer geographic climate variation at a scale relevant to wolverine habitat. Third, they used a hydrologic model to predict snow coverage during the spring denning period (the strongest correlate with wolverine reproductive success). Fourth, they used the habitat model developed by Copeland *et al.* (2010, entire), to relate projected climate changes to wolverine habitat. Based on our analysis of the methods and analysis used by the authors, we conclude it constitutes the best available information on the likely impact of climate change on wolverine distribution in the contiguous United States. Other analyses of climate change discussed above (Brock and Inman Personal Communication 2007, entire; Gonzales *et al.* 2008, entire; Brodie and Post 2010, entire; Peacock 2011, entire) all support the conclusion that climate changes caused by warming are likely to negatively affect wolverine habitat in the future. Based on the analysis presented, we conclude that climate changes are likely to result in permanent loss of a significant portion of wolverine habitat in the future. Additional impacts of climate change will be increased habitat fragmentation as habitat islands become smaller and intervening habitat disappears. Eventually, habitat fragmentation will likely lead to a breakdown of wolverine metapopulation dynamics, as subpopulations are no longer able to rescue each other after local extinctions due to a lack of connectivity. It is also likely that loss of genetic diversity resulting in lower fitness will occur as population isolation increases.

Summary of Impacts of Climate Changes

Wolverine habitat is projected to decrease in area and become more fragmented in the future as a result of climate changes that result in increasing temperatures, earlier spring snowmelt, and loss of deep, persistent, spring snowpack. These climate change impacts are expected to have direct and indirect effects to wolverine populations in the contiguous United States including reducing the number of wolverines that can be supported by available habitat and reducing the ability of wolverines to travel between patches of suitable habitat. This reduction in population size and connectivity is likely to affect metapopulation dynamics, making it more difficult for subpopulations to recolonize areas where wolverines have been extirpated and to bolster the genetics or demographics of adjacent subpopulations.

Habitat Impacts Due to Human Use and Disturbance

Because wolverine habitat is generally inhospitable to human use and occupation and most wolverine habitat is also federally managed in ways that must consider environmental impacts, wolverines are somewhat insulated from impacts of human disturbances from industry, agriculture, infrastructure development, or recreation. Human disturbance in wolverine habitat in the contiguous United States has likely resulted in the loss of some minor amount of wolverine habitat, although this loss has not yet been quantified. Sources of human disturbance to wolverines has been speculated to include winter and summer recreation, housing and industrial development, road corridors, and extractive industry, such as logging or mining. In the contiguous United States, these human activities and developments sometimes occur within or immediately adjacent to wolverine home ranges, such as in alpine or boreal forest environments at high elevations on mountain slopes. They can also occur in a broader range of habitats that are occasionally used by wolverines during dispersal or exploratory movements—habitats that are not suitable for the establishment of home ranges and reproduction.

Little is known about the behavioral responses of individual wolverines to human presence, or about the species' ability to tolerate and adapt to repeated human disturbance. Some speculate that disturbance may reduce the wolverine's ability to complete essential life-history activities, such as foraging, breeding, maternal care, routine travel, and dispersal (Packila *et al.* 2007, pp. 105–110). However, wolverines have been documented to persist and reproduce in areas with high levels of human use and disturbance including developed alpine ski areas and areas with motorized use of snowmobiles (Heinenmeyer 2012, entire). This suggests that wolverines can survive and reproduce in areas that experience human use and disturbance. How or whether effects of disturbance extend from individuals to characteristics of subpopulations and populations, such as vital rates (*e.g.,* reproduction, survival, emigration, and immigration) and gene flow, and ultimately to wolverine population or metapopulation persistence, remains unknown at this time.

Wolverine habitat is characterized primarily by spring snowpack, but also by the absence of human presence and development (Hornocker and Hash 1981 p. 1299; Banci 1994, p. 114; Landa *et al.* 1998, p. 448; Rowland *et al.* 2003 p. 101; Copeland 1996, pp. 124–127; Krebs *et al.* 2007, pp. 2187–2190). This negative association with human presence is sometimes interpreted as active avoidance of human disturbance, but it may simply reflect the wolverine's preference for cold, snowy, and high-elevation habitat that humans avoid. In the contiguous United States, wolverine habitat is typically associated with high-elevation (*e.g.,* 2,100 m to 2,600 m (6,888 ft to 8,528 ft)) subalpine forests that comprise the Hudsonian Life Zone (weather similar to that found in northern Canada), environments not typically used by people for housing, industry, agriculture, or transportation. However, a variety of activities associated with extractive industry, such as logging and mining, as well as recreational activities in both summer and winter are located in a small amount of occupied wolverine habitat.

For the purposes of this rulemaking, we analyze human disturbance in four categories: (1) Dispersed recreational activities with primary impacts to wolverines through direct disturbance (*e.g.,* snowmobiling and heli-skiing); (2) disturbance associated with permanent infrastructure such as residential and commercial developments, mines, and campgrounds; (3) disturbance and mortality associated with transportation corridors; and (4) disturbance associated with land management activities such as forestry, or fire/fuels reduction activities. Overlap between these categories is extensive, and it is often difficult to distinguish effects of infrastructure from the dispersed activities associated with that infrastructure. However, we conclude that these categories account for most of the human activities that occur in occupied wolverine habitat.

Dispersed Recreational Activities

Dispersed recreational activities occurring in wolverine habitat include snowmobiling, heli-skiing, hiking, biking, off- and on-road motorized use, hunting, fishing, and other uses.

One study documented (in two reports) the extent that winter recreational activity spatially and temporally overlapped modeled wolverine denning habitat in the contiguous United States (Heinemeyer and Copeland 1999, pp. 1–17; Heinemeyer *et al.* 2001, pp. 1–35). This study took place in the Greater Yellowstone Area (GYA) in an area of high dispersed recreational use. The overlap of modeled wolverine denning habitat and dispersed recreational activities was extensive. Strong temporal overlap existed between snowmobile activity (February–April)

and the wolverine denning period (February–May). During 2000, six of nine survey units, ranging from 3,500 to 13,600 (ha) (8,645 to 33,592 (ac)) in size, showed evidence of recent snowmobile use. Among the six survey units with snowmobile activity, the highest use covered 20 percent of the modeled denning habitat, and use ranged from 3 to 7 percent over the other survey units. Snowmobile activity was typically intensive where detected.

Three of nine survey units in this study showed evidence of skier activity (Heinemeyer and Copeland 1999, p. 10; Heinemeyer *et al.* 2001, p. 16). Among the three units with activity, skier use covered 3 to 19 percent of the survey unit. Skiers also intensively used the sites they visited. Combined skier and snowmobile use covered as much as 27 percent of potential denning habitat in one unit where no evidence of wolverine presence was detected. We conclude from this study that in some areas, high recreational use may coincide substantially with wolverine habitat. The authors of the study cited above chose the study area based on its unusually high level of motorized recreational use. Although we do not have information on the overlap of wolverine and winter recreation in the remaining part of the contiguous United States range, it is unlikely that any of the large areas of wolverine habitat such as the southern Rocky Mountains, Northern Rocky Mountains, GYA, or North Cascades get the high levels of recreational use seen in the portion of the GYA examined in this study across the entire landscape. Rather, each of these areas has small (relative to wolverine home range size) areas of intensive recreational use (ski resorts, motorized play areas) surrounded by a landscape that is used for more dispersed recreation such as backcountry skiing or snowmobile trail use.

Although we can demonstrate that recreational use of wolverine habitat is heavy in some areas, we do not have any information to suggest that these activities have negative effects on wolverines. No rigorous assessments of anthropogenic disturbance on wolverine den fidelity, food provisioning, or offspring survival have been conducted. Disturbance from foot and snowmobile traffic associated with historical wolverine control activities (Pulliainen 1968, p. 343), and field research activities, have been purported to cause maternal females to abandon natal dens and relocate kits to maternal dens (Myrberget 1968, p. 115; Magoun and Copeland 1998, p. 1316; Inman *et al.* 2007c, p. 71). However, this behavior appears to be rare, even under intense disturbance associated with capture of family groups at the den site (Persson *et al.* 2006, p. 76), and other causes of den abandonment may have acted in these cases. Preliminary results from an ongoing study on the potential impacts of winter recreation on wolverines in central Idaho indicate that wolverines are present and reproducing in this area in spite of heavy recreational use, including a developed ski area, dispersed winter and summer recreation, and dispersed snowmobile use (Heinemeyer *et al.* 2012, entire). The security of the den and the surrounding foraging areas (*i.e.,* protection from predation by carnivores) is an important aspect of den site selection. Abandonment of natal and maternal dens may be a preemptive strategy that females use in the absence of predators (*i.e.* females may abandon dens without external stimuli), as this may confer an advantage to females if prolonged use of the same den makes that den more evident to predators. Evidence for effects to wolverines from den abandonment due to human disturbance is lacking. The best scientific information available does not substantiate dispersed recreational activities as a threat to wolverine.

Most roads in wolverine habitat are low-traffic volume dirt or gravel roads used for local access. Larger, high-volume roads are dealt with below in the section ''transportation corridors. At both a site-specific and landscape scale, wolverine natal dens were located particularly distant from public (greater than 7.5 km (4.6 mi)) and private (greater than 3 km (1.9 mi)) roads (May 2007, p. 14–31). Placement of dens away from public roads (and away from associated human-caused mortality) was also a positive influence on successful reproduction. It is not known if the detected correlation is due to the influence of the roads but we find it unlikely that wolverines avoid the type of low-use forest roads that generally occur in wolverine habitat. Other types of high-use roads are rare in wolverine habitat and are not likely to affect a significant amount of wolverine habitat (see transportation corridors section below).

Infrastructure Development

Infrastructure includes all residential, industrial, and governmental developments such as buildings, houses, oil and gas wells, and ski areas. Infrastructure development on private lands in the Rocky Mountain West has been rapidly increasing in recent years and is expected to continue as people move to this area for its natural amenities (Hansen *et al.* 2002, p. 151). Infrastructure development may affect wildlife directly by eliminating habitats, or indirectly, by displacing animals from suitable habitats near developments.

Wolverine home ranges generally do not occur near human settlements, and this separation is largely due to differential habitat selection by wolverines and humans (May *et al.* 2006, pp. 289–292; Copeland *et al.* 2007, p. 2211). In one study, wolverines did not strongly avoid developed habitat within their home ranges (May *et al* 2006, p. 289). Wolverines may respond positively to human activity and developments that are a source of food. They scavenge food at dumps in and adjacent to urban areas, at trapper cabins, and at mines (LeResche and Hinman 1973 as cited in Banci 1994 p. 115; Banci 1994, p. 99). Based on the best available science, we conclude that wolverines do not avoid human development of the types that occur within suitable wolverine habitat.

There is no evidence that wolverine dispersal is affected by infrastructure development. Linkage zones are places where animals can find food, shelter, and security while moving across the landscape between suitable habitats. Wolverines prefer to travel in habitat that is most similar to habitat they use for home-range establishment, *i.e.,* alpine habitats that maintain snow cover well into the spring (Schwartz *et al.* 2009, p. 3227). Wolverines may move large distances in an attempt to establish new home ranges, but the probability of making such movements decreases with increased distance between suitable habitat patches, and the degree to which the characteristics of the habitat to be traversed diverge from preferred habitat in terms of climatic conditions (Copeland *et al.* 2010, entire; Schwartz *et al.* 2009, p. 3230).

The level of development in these linkage areas that wolverines can tolerate is unknown, but it appears that the current landscape does allow wolverine dispersal (Schwartz *et al.* 2009, Figures 4, 5; Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–28). For example, wolverine populations in the northern Rocky Mountains appear to be connected to each other at the present time through dispersal routes that correspond to habitat suitability (Schwartz *et al.* 2009, Figures 4, 5). However, gene flow between wolverine subpopulations in the contiguous United States may not be high enough to prevent genetic drift (Cegelski *et al.* 2006, p. 208). To ensure long-term genetic viability, each subpopulation

within the contiguous United States would need an estimated 400 breeding pairs, or 1 to 2 effective migrants per generation (Cegelski *et al.* 2006, p. 209). Our current understanding of wolverine ecology suggests that no subpopulation historically or presently at carrying capacity would approach 400 breeding pairs within the contiguous United States (Brock *et al.* 2007, p. 26); nor is the habitat capable of supporting anywhere near this number. It is highly unlikely that 400 breeding pairs exist in the entire contiguous United States. Because no wolverine subpopulations are likely to be large enough to maintain genetic diversity over time on their own, long-term viability of wolverines in the contiguous United States requires exchange of individuals between subpopulations.

Wolverines are capable of long-distance movements through variable and anthropogenically altered terrain, crossing numerous transportation corridors (Moriarty *et al.* 2009, entire; Inman *et al.* 2009, pp. 22–28). Wolverines are able to successfully disperse between habitats, despite the level of development that is currently taking place in the current range of the DPS (Copeland 1996, p. 80; Copeland and Yates 2006, pp. 17–36; Inman *et al.* 2007a, pp. 9–10; Pakila *et al.* 2007, pp. 105–109; Schwartz *et al.* 2009, Figures 4, 5). Dispersal between populations is needed to avoid further reduction in genetic diversity; however, there is no evidence that human development and associated activities are preventing wolverine movements between suitable habitat patches. Rather, wolverine movement rates are limited by suitable habitat and proximity of suitable habitat patches, not the characteristics of the intervening unsuitable habitat (Schwartz *et al.* p. 3230).

Transportation Corridors

Transportation corridors are places where transportation infrastructure and other forms of related infrastructure are concentrated together. Examples include interstate highways and high-volume secondary highways. These types of highway corridors often include railroads, retail, industrial, and residential development and also electrical and other types of energy transmission infrastructure. Transportation corridors may affect wolverines if located in wolverine habitat or between habitat patches. If located in wolverine habitat, transportation corridors result in direct loss of habitat. Direct mortality due to collisions with vehicles is also possible (Packila *et al.* 2007, Table 1).

The Trans Canada Highway at Kicking Horse Pass in southern British Columbia, an important travel corridor over the Continental Divide, has a negative effect on wolverine movement (Austin 1998, p. 30). Wolverines partially avoided areas within 100 m (328 ft) of the highway, and preferred to use distant sites (greater than 1,100 m (3,608 ft)). Wolverines that approached the highway to cross repeatedly retreated, and successful crossing occurred in only half of the attempts (Austin 1998, p. 30). Highway-related mortality was not documented in the study. Where wolverines did successfully cross, they used the narrowest portions of the highway right-of-way. A railway with minimal human activity, adjacent to the highway, had little effect on wolverine movements. Wolverines did not avoid, and even preferred, compacted, lightly used ski trails in the area. The extent to which avoidance of the highway may have affected wolverine vital rates or life history was not measured.

In the tri-State area of Idaho, Montana, and Wyoming, most crossings of Federal or State highways were done by subadult wolverines making exploratory or dispersal movements (ranges of resident adults typically did not contain major roads) (Packila *et al.* 2007, p. 105). Roads in the study area, typically two-lane highways or roads with less improvement, were not absolute barriers to wolverine movement. The individual wolverine that moved to Colorado from Wyoming in 2008 successfully crossed Interstate 80 in southern Wyoming (Inman *et al.* 2008, Figure 6). Wolverines in Norway successfully cross deep valleys that contain light human developments such as railway lines, settlements, and roads (Landa *et al.* 1998, p. 454). Wolverines in central Idaho avoided portions of a study area that contained roads, although this was possibly an artifact of unequal distribution of roads that occurred at low elevations and peripheral to the study site (Copeland *et al.* 2007, p. 2211). Wolverines frequently used un-maintained roads for traveling during the winter, and did not avoid trails used infrequently by people or active campgrounds during the summer (Copeland *et al.* 2007, p. 2211).

At both a site-specific and landscape scale, wolverine natal dens were located particularly distant from public (greater than 7.5 km (4.6 mi)) and private (greater than 3 km (1.9 mi)) roads (May 2007, p. 14–31). Placement of dens away from public roads (and away from associated human-caused mortality) was a positive influence on successful reproduction (May 2007, p. 14–31). Predictive, broad-scale habitat models, developed using historical records of wolverine occurrence, indicated that roads were negatively associated with wolverine occurrence (Rowland *et al.* 2003, p. 101). Although wolverines appear to avoid transportation corridors in their daily movements, studies of the few areas where transportation corridors are located in wolverine habitat leads us to conclude that the effects are most likely local in scale. There are no studies that address potential effects of transportation corridors in linkage areas (*i.e.* outside of wolverine habitat). In the few documented long-distance movements by wolverines, the animals successfully crossed transportation corridors (Inman *et al.* 2009, Fig. 6). The available evidence indicates that dispersing wolverines can successfully cross transportation corridors.

Land Management

Few effects to wolverines from land management actions such as grazing, timber harvest, and prescribed fire have been documented. Wolverines in British Columbia used recently logged areas in the summer and moose winter ranges for foraging (Krebs *et al.* 2007, pp. 2189–2190). Males did not appear to be influenced strongly by the presence of roadless areas (Krebs *et al.* 2007, pp. 2189–2190). In Idaho, wolverines used recently burned areas despite the loss of canopy cover (Copeland 1996, p. 124).

Intensive management activities such as timber harvest and prescribed fire do occur in wolverine habitat; however, for the most part, wolverine habitat tends to be located at high elevations and in rugged topography that is unsuitable for intensive timber management. Much of wolverine habitat is managed by the U.S. Forest Service or other Federal agencies and is protected from some practices or activities such as residential development. In addition, much of wolverine habitat within the contiguous United States is already in a management status such as wilderness or national park (see Factor D for more discussion) that provides some protection from management, industrial, and recreational activities. Wolverines are not thought to be dependent on specific vegetation or habitat features that might be manipulated by land management activities, nor is there evidence to suggest that land management activities are a threat to the conservation of the species.

Summary of Factor A

The threat of current, and future impacts to wolverine habitat due to climate change occurs over the entire range of the contiguous United States

population of the wolverine. This threat is likely to have already reduced the overall areal extent and distribution of wolverine suitable habitat. Determining whether or not wolverine populations have been impacted by this threat is complicated by the historical extirpation of wolverines in the early 20th century followed by recolonization and expansion. It is possible that expansion of wolverine populations through the second half of the 20th century has masked climate change effects that would have otherwise reduced populations had they existed at presettlement levels. Despite the lack of detectable population-level impacts, it is still likely that habitat is already reduced from historic levels due to this threat.

Suitable wolverine habitat is projected to be reduced by 31 percent in the contiguous United States by 2045 and 63 percent by the time interval 2070 to 2099 due to climate warming. This reduction will likely result in suitable wolverine habitat shifting up mountain slopes, and becoming smaller and more isolated due to the conical structure of mountains. Because wolverine home ranges tend to be so large, some small mountain ranges are likely to lose the ability to support wolverine populations. We expect that the secondary effects of this habitat loss, such as increased habitat fragmentation and isolation, will intensify the overall impacts of habitat loss on wolverines.

Deep snow that persists into the month of May is essential for wolverine reproduction. This life-history parameter for the species (reproductive rate) is likely to be most sensitive to climate changes. Wolverine are vulnerable to habitat modification (specifically, reduction in persistent spring snow cover) due to climate warming in the contiguous United States. Further, it is likely that year-round wolverine habitat, not just denning habitat, will also be significantly reduced due to the effects of climate warming. Reductions in habitat would result in greater habitat isolation, thereby likely reducing the frequency of dispersal between habitat patches and the likelihood of recolonization after local extinction events. This reduced dispersal ability, if not compensated for by higher population levels or assisted dispersal, is likely to result in loss of genetic diversity within remaining habitat patches and population loss due to demographic stochasticity. The contiguous United States population of wolverines is already very small and fragmented and is, therefore, particularly vulnerable to these impacts.

Human activities, including dispersed recreation activities, infrastructure, and the presence of transportation corridors occur in occupied wolverine habitat. However, the alpine and subalpine habitats preferred by wolverine typically receive little human use relative to lower elevation habitats. The majority of wolverine habitat (over 90 percent) occurs within Forest Service and National Park Service lands that are subject to activities, but usually not direct habitat loss to infrastructure development. The best available science leads us to determine that human activities and developments do not pose a current threat to wolverines in the contiguous United States.

Wolverines coexist with some modification of their environment, as wilderness characteristics such as complete lack of motorized use or any permanent human presence are likely not critical for maintenance of populations. It is clear that wolverines coexist with some level of human disturbance and habitat modification.

We know of no examples where human activities such as dispersed recreation have occurred at a scale that could render a large enough area unsuitable so that a wolverine home range would be likely to be rendered unsuitable or unproductive. Given the large size of home ranges used by wolverine, most human activities affect such a small portion that negative effects to individuals are unlikely. These activities do not occur at a scale that is likely to have population-level effects to wolverine.

Little scientific or commercial information exists regarding effects to wolverines from development or human disturbances associated with them. What little information does exist suggests that wolverines can adjust to moderate habitat modification, infrastructure development, and human disturbance. In addition, large amounts of wolverine habitat are protected from human disturbances and development, either legally through wilderness and National Park designation, or by being located at remote and high-elevation sites. Therefore, wolverines are afforded a relatively high degree of protection from the effects of human activities by the nature of their habitat. Wolverines are known to successfully disperse long distances between habitats through human-dominated landscapes and across transportation corridors. The current level of residential, industrial, and transportation development in the western United States does not appear to have precluded the long-distance dispersal movements that wolverines require for maintenance of genetic diversity. We do not have information to suggest that future levels of residential, industrial, and transportation development would be a significant conservation concern for the DPS.

In summary, the best scientific and commercial information available indicates that only the projected decrease and fragmentation of wolverine habitat or range due to future climate change is a threat to the species now and in the future. The available scientific and commercial information does not indicate that other potential stressors such as land management, recreation, infrastructure development, and transportation corridors pose a threat to the DPS.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Over much of recent history, trapping has been a primary cause of wolverine mortality (Banci 1994, p. 108; Krebs *et al.* 2004, p. 497; Lofroth and Ott 2007, pp. 2196–2197; Squires *et al.* 2007, p. 2217). Unregulated trapping is believed to have played a role in the historical decline of wolverines in North America in the late 1800s and early 1900s (Hash 1987, p. 580). Wolverines are especially vulnerable to targeted trapping and predator reduction campaigns due to their habit of ranging widely in search of carrion, bringing them into frequent contact with poison baits and traps (Copeland 1996, p. 78; Inman *et al.* 2007a, pp. 4–10; Packila *et al.* 2007, p. 105; Squires *et al.* 2007, p. 2219).

Human-caused mortality of wolverines is likely additive to natural mortality due to the low reproductive rate and relatively long life expectancy of wolverines (Krebs *et al.* 2004, p. 499; Lofroth and Ott 2007, pp. 2197–2198; Squires *et al.* 2007, pp. 2218–2219). This means that trapped subpopulations likely live at densities that are lower than carrying capacity, and may need to be reinforced by recruits from untrapped subpopulations to maintain population viability and persistence.

A study in British Columbia determined that, under a regulated trapping regime, trapping mortality in 15 of 71 wolverine population units was unsustainable, and that populations in those unsustainable population units were dependent on immigration from neighboring populations or untrapped refugia (Lofroth and Ott 2007, pp. 2197–2198). Similarly, in southwestern Montana, legal trapping in isolated mountain ranges accounted for 64 percent of documented mortality and reduced the local wolverine subpopulation (Squires *et al.* 2007, pp. 2218–2219). The observed harvest

levels, which included two pregnant females in a small mountain range, could have significant negative effects on a small subpopulation (Squires *et al.* 2007, p. 2219). Harvest refugia, such as jurisdictions with closed seasons, national parks, and large wilderness areas, are important to wolverine persistence on the landscape because they can serve as sources of surplus individuals to bolster trapped populations (Squires *et al.* 2007, p. 2219; Krebs and Ott 2004, p. 500). Due to their large space requirements, wolverine population refuges must be large enough to provide protection from harvest mortality; and complete protection is only available for wolverines whose entire home range occurs within protected areas. Glacier National Park, though an important refuge for a relatively robust population of wolverines, was still vulnerable to trapping because most resident wolverine home ranges extended into large areas outside the park (Squires *et al.* 2007, p. 2219). It is likely that the largerscale refuges provided by the states of Idaho and Wyoming (which do not permit wolverine trapping) provide wolverine habitat that is fully protected from legal harvest in Montana; however, wolverines with home ranges that partially overlap Montana and dispersers that move into Montana would be vulnerable to harvest. Due to the restrictive, low level of harvest now allowed by Montana, the number of affected wolverines would be correspondingly small.

Despite the impacts of trapping on wolverines in the past, trapping is no longer a threat within most of the wolverine range in the contiguous United States. Montana is the only State where wolverine trapping is still legal. Before 2004, average wolverine harvest was 10.5 wolverines per year. Due to preliminary results of the study reported in Squires *et al.* (2007, pp. 2213–2220), the Montana Department of Fish, Wildlife, and Parks adopted new regulations for the 2004–2005 trapping season that divided the State into three units, with the goal of spreading the harvest more equitably throughout the State.

For the 2008–2009 trapping season, the Montana Department of Fish, Wildlife, and Parks adjusted its wolverine trapping regulations again to further increase the geographic control on harvest to prevent concentrated trapping in any single area, and to completely stop trapping in isolated mountain ranges where small populations are most vulnerable (Montana Department of Fish Wildlife and Parks 2010, pp. 8–11). Their new regulations spread harvest across three geographic units (the Northern Continental Divide area, the Greater Yellowstone area, and the Bitterroot Mountains), and established a statewide limit of five wolverines. In the four trapping seasons that have occurred since these rules were implemented, wolverine take averaged 3.25 wolverines annually (Montana Department of Fish Wildlife and Parks 2010, pp. 8–11; Brian Giddings Pers. Comm. August 30, 2012), with reduced harvest being due to season closure rather than lack of wolverines. Under the current regulations, no more than three female wolverines can be legally harvested each year, and harvest in the more vulnerable isolated mountain ranges is prohibited. The size of the wolverine population subjected to trapping in this area is not known precisely but is likely not more than about 300 animals in states of Montana, Idaho, and Wyoming combined (Bob Inman pers. comm. 2010b).

The Montana Department of Fish, Wildlife, and Parks conduct yearly furbearer monitoring using track surveys. These surveys involve snowmobiling along transect routes under good tracking conditions and visually identifying all carnivore tracks encountered. The protocol does not use verification methods such as DNA collection or camera stations to confirm identifications. Consequently, misidentifications are likely to occur. Given the relative rarity of wolverines and the relative abundance of other species with which they may be confused, such as bobcats (*Lynx rufus*), Canada lynx (*Lynx canadensis*), and mountain lions (*Felis concolor*), lack of certainty of identifications of tracks makes it highly likely that the rare species is overrepresented in unverified tracking records (McKelvey *et al.* 2008, entire). The Montana Department of Fish, Wildlife, and Parks wolverine track survey information does not meet our standard for reliability described in the geographic distribution section, and we have not relied on this information in this finding.

Montana wolverine populations have rebounded from historic lows in the early 1900s while at the same time being subjected to regulated trapping (Aubry *et al.* 2007, p. 2151; Montana Department of Fish, Wildlife, and Parks 2007, p. 1). In fact, much of the wolverine expansion that we have described above took place under less-restrictive (*i.e.,* higher harvest levels) harvest regulations than are in place today. The extent to which wolverine population growth has occurred in Montana as a result of within-Montana population growth, versus population growth attributable to surrounding states where wolverines are not trapped, *i.e.,* population growth driven by the entire metapopulation versus just the portion of the metapopulation found in Montana, is unknown.

Current levels of incidental trapping (*i.e.,* capture in traps set for species other than wolverine) have been suggested by the petitioners to be a threat to wolverines. In the 2008–2009 trapping season, two wolverines were incidentally killed in traps set for other species in Beaverhead and Granite Counties, Montana (Montana Fish, Wildlife, and Parks 2010, p. 2). These two mortalities occurred within the portion of southwestern Montana that is currently closed to legal wolverine trapping to ensure that wolverines are not unsustainably harvested in this area of small, relatively isolated mountain ranges. Four cases of incidental wolverine trapping have occurred in Idaho in recent years. One wolverine was trapped by a coyote/bobcat trapper in 2006 and was collared and released after all of its toes and a portion of its left front foot were amputated (Inman *et al.* 2008, p. 1). That animal (a female) survived and successfully reproduced after release. The Department of Agriculture Wildlife Services trapped three wolverines (one each in 2004, 2005, and 2010) incidental to trapping wolves involved in livestock depredations. One of these sustained severe injuries and was euthanized. The other two were released without visible injury. Another wolverine was trapped in Wyoming in 2006. This animal was released unharmed (Inman 2012, pers. comm.). The three documented mortalities are possibly locally significant for wolverines in these areas because local populations in each of the mountain ranges are small and relatively isolated from nearby source populations.

Summary of Factor B

Legal wolverine harvest occurs in one state, Montana, within the range of the DPS. The extent to which this harvest affects populations occurring outside of Montana is unknown. However, the State of Montana contains most of the habitat and wolverines that exist in the current range of the DPS, and regulates trapping to reduce the impact of harvest on wolverine populations. Incidental harvest also occurs within the range of the DPS; however, the level of mortality from incidental trapping appears to be low. Harvest,when combined with the likely effects of climate change, may contribute to the likelihood that the wolverine will become extirpated in the

future. This may occur by increasing the speed with which small populations of wolverine are lost from isolated habitats, and also by increasing mortality levels for dispersing wolverines, with the result of reducing dispersal rates. Regular dispersal and exchange of genetic material are required to maintain the genetics and demographics of wolverine subpopulations in the contiguous United States.

The current known level of incidental trapping mortality is low. We note that it is unknown whether or not increased trapping of wolves associated with wolf trapping regulations recently approved by the states of Idaho and Montana would be likely to result in increased incidental trapping of wolverines. Idaho began its wolf trapping program in the winter of 2011–2012, and Montana began theirs in the winter of 2012–2013. These wolf trapping activities are relatively new in the DPS area, and we do not yet have reliable information on the level of incidental take of wolverines that may result from them.

Based on the best scientific and commercial information available, we conclude that trapping, including known rates of incidental trapping in Montana and Idaho, result in a small number of wolverine mortalities each year and that this level of mortality by itself would not be a threat to the wolverine DPS. However, by working in concert with habitat loss resulting from climate change, mortality due to harvest and incidental trapping may contribute to population declines. Therefore, we conclude that trapping, when considered cumulatively with habitat loss resulting from climate change, is likely to become a threat to the DPS (see discussion under Synergistic Interactions Between Threat Factors, below).

Factor C. Disease or Predation

No information is currently available on the potential effects of disease on wild wolverine populations. Wolverines are sometimes killed by wolves (*Canis lupus*), black bears (*Ursus americanus*), and mountain lion (Burkholder 1962, p. 264; Hornocker and Hash 1981, p. 1296; Copeland 1996, p. 44–46; Inman *et al.* 2007d, p. 89). In addition, wolverine reproductive dens are likely subject to predation, although so few dens have been discovered in North America that determining the intensity of this predation is not possible.

Summary of Factor C

We have no information to suggest that wolverine mortality from predation and disease is above natural or sustainable levels. The best scientific and commercial information available indicates that disease or predation is not a threat to the species now or likely to become so in the future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

Based on our calculations using a composite map showing the coverage of both the Copeland *et al.* (2010, entire) and Inman *et al.* (2012, entire) wolverine habitat models, the majority (94 percent) of wolverine habitat currently occupied by wolverine populations in the lower contiguous United States is Federally owned and managed, mostly by the U.S. Forest Service. An estimated 144,371 km^2 (49,258 mi^2) of wolverine habitat occurs in the occupied area in Montana, Idaho, Oregon (Wallowa Range), and Wyoming. Of that, 135,396 km^2 (46,332 mi^2) is in Federal ownership. Additionally, 47,150 km^2 (12,973 mi^2) (32.7 percent) occurs in designated wilderness, and 23,062 km^2 (1,630 mi^2) (16.0 percent) occurs in inventoried roadless areas. An additional 13,784 km^2 (3,288 mi^2) (9.5 percent) are within national parks.

None of the existing Federal or State regulatory mechanisms were designed to address the threat of modification of wolverine habitat due to the loss of snowpack associated with climate change. Several existing regulatory mechanisms protect wolverine from other forms of disturbance and from overutilization from harvesting; these are described in more detail below.

Federal Laws and Regulations

The Wilderness Act

The Forest Service and National Park Service both manage lands designated as wilderness areas under the Wilderness Act of 1964 (16 U.S.C. 1131–1136). Within these areas, the Wilderness Act states the following: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, or motorboats; (3) there can be no landing of aircraft; (4) there can be no other form of mechanical transport; and (5) no structure or installation may be built. A large amount of suitable wolverine habitat, about 28 percent for the states of Montana, Idaho, and Wyoming, occurs within Federal wilderness areas in the United States (Inman personal communication 2007b). As such, a large proportion of existing wolverine habitat is protected from direct loss or degradation by the prohibitions of the Wilderness Act.

National Environmental Policy Act

All Federal agencies are required to adhere to the National Environmental Policy Act (NEPA) of 1970 (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carry out. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR 1500–1518) state that agencies shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects which cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR 1502). The NEPA itself is a disclosure law, and does not require subsequent minimization or mitigation measures by the Federal agency involved. Although Federal agencies may include conservation measures for wolverines as a result of the NEPA process, any such measures are typically voluntary in nature and are not required by the statute. Additionally, activities on non-Federal lands are subject to NEPA if there is a Federal action.

For example, wolverines are designated as a sensitive species by the Forest Service, which requires that effects to wolverines be considered in documentation completed under NEPA. NEPA does not itself regulate activities that might affect wolverines, but it does require full evaluation and disclosure of information regarding the effects of contemplated Federal actions on sensitive species and their habitats.

National Forest Management Act

Under the National Forest Management Act of 1976, as amended (16 U.S.C. 1600–1614), the Forest Service shall strive to provide for a diversity of plant and animal communities when managing national forest lands. Individual national forests may identify species of concern that are significant to each forest's biodiversity. Outside of designated wilderness but still on Forest Service-managed lands, wolverines occur mainly in alpine areas. Their habitat is generally offered more protections from timber harvest than would otherwise be the case in lowland areas due to the difficulty of accessing wolverine habitat, especially in areas where motorized access is limited or absent, such as most National Forest land and all designated wilderness areas.

National Park Service Organic Act

The NPS Organic Act of 1916 (16 U.S.C. 1 *et seq.*), as amended, states that the NPS ''shall promote and regulate the use of the Federal areas known as

national parks, monuments, and reservations to conserve the scenery and the national and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Where wolverines occur in National Parks, they and their habitats are protected from large-scale loss or degradation due to the Park Service's mandate to ''* * * conserve scenery * * * and wildlife * * * [by leaving] them unimpaired.'' Wolverine harvest and trapping of other furbearers is also prohibited in National Parks.

Clean Air Act of 1970

On December 15, 2009, the Environmental Protection Agency (EPA) published in the **Federal Register** (74 FR 66496) a rule titled, ''Endangerment and Cause or Contribute Findings for Greenhouse Gases under Section 202(a) of the Clean Air Act.'' In this rule, the EPA Administrator found that the current and projected concentrations of the six long-lived and directly emitted greenhouse gases (GHGs)—carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride—in the atmosphere threaten the public health and welfare of current and future generations; and that the combined emissions of these GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG pollution that threatens public health and welfare (74 FR 66496). In effect, the EPA has concluded that the GHGs linked to climate change are pollutants, whose emissions can now be subject to the Clean Air Act (42 U.S.C. 7401 *et seq.*) (see 74 FR 66496). However, specific regulations to limit GHG emissions were only proposed in 2010 and, therefore, cannot be considered an existing regulatory mechanism. At present, we have no basis to conclude that implementation of the Clean Air Act in the future (40 years, based on global climate projections) will substantially reduce the current rate of global climate change through regulation of GHG emissions. Thus, we conclude the Clean Air Act is not designed to address the primary threat to wolverine of the loss of snowpack due to the effects of climate change.

State Laws and Regulations

State Comprehensive Wildlife Conservation Strategies and State Environmental Policy and Protection Acts

The wolverine is listed as State Endangered in Washington, California, and Colorado. In Idaho and Wyoming it is designated as a protected nongame species (Idaho Department of Fish and Game 2010, p. 4; Wyoming Game and Fish 2005, p. 2). Oregon, while currently not considered to have any individuals other than possible unsuccessful dispersers, has a closed season on trapping of wolverines. These designations largely protect the wolverine from mortality due to hunting and trapping. In Montana, the wolverine is classified as a regulated furbearer (Montana Fish, Wildlife, and Parks 2010, p. 8). Montana is the only State in the contiguous United States where wolverine trapping is still legal.

Wolverines receive some protection under State laws in Washington, California, Idaho, Montana, Wyoming, and Colorado. Each State's fish and wildlife agency has some version of a State Comprehensive Wildlife Conservation Strategy (CWCS) in place. These strategies, while not State or Federal legislation, can help prioritize conservation actions within each State. Named species and habitats within each CWCS may receive focused attention during State Environmental Protection Act (SEPA) reviews as a result of being included in a State's CWCS. However, only Washington, California, and Montana appear to have SEPA-type regulations in place. In addition, each State's fish and wildlife agency often specifically names or implies protection of wolverines in its hunting and trapping regulations. Only the State of Montana currently allows wolverine harvest (see discussion under Factor B).

Before 2004, the Montana Department of Fish, Wildlife, and Parks regulated wolverine harvest through the licensing of trappers, a bag limit of one wolverine per year per trapper, and no statewide limit. Under this management, average wolverine harvest was 10.5 wolverines per year. Due to preliminary results of the study reported in Squires *et al.* (2007, pp. 2213–2220), Montana Department of Fish, Wildlife, and Parks adopted new regulations for the 2004–2005 trapping season that divided the State into three units with the goal of spreading the harvest more equitably among available habitat. In 2008, Montana Department of Fish, Wildlife, and Parks further refined their regulations to prohibit trapping in isolated mountain ranges, and reduced the overall statewide harvest to five wolverines with a statewide female harvest limit of three. Under factor B, above, we concluded that trapping, including known rates of incidental trapping in Montana, by itself, is not a threat to the wolverine DPS, but that by working in concert with the primary threat of climate change, the trapping program may contribute to population declines (see Synergistic Interactions Between Threat Factors, below).

Summary of Factor D

The existing regulatory mechanisms appear to protect wolverine from several of the factors described in Factors A and B above. Specifically, State regulations for wolverine harvest appear to be sufficient to prohibit range–wide overutilization from hunting and trapping in the absence of other threats. However, given that climate change impacts are expected to reduce wolverine populations and fragment habitat, the impact of harvest to wolverine would be expected to increase if harvest levels were maintained at current levels. Federal ownership of much of occupied wolverine habitat protects the species from direct losses of habitat and provides further protection from many of the forms of disturbance described above. Wolverines use habitats affected by human disturbance, and additional protection is afforded wolverines by the large area of their range that occurs in designated wilderness and national parks. The current regulatory regime does not address the potential impacts of dispersed winter recreation outside of protected areas; however, at this time the available information does not suggest that dispersed winter recreation is a threat to the DPS.

Our review of the regulatory mechanisms in place at the national and State level demonstrates that the short-term, site-specific threats to wolverine from direct loss of habitat, disturbance by humans, and direct mortality from hunting and trapping are, for the most part, adequately addressed through State and Federal regulatory mechanisms. However, as described under Factor A, the primary threat with the greatest severity and magnitude of impact to the species is loss of habitat due to continuing climate warming. The existing regulatory mechanisms currently in place at the national level were not designed to address the threat to wolverine habitat from climate change.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Small Population Size

Population ecologists use the concept of a population's ''effective'' size as a measure of the proportion of the actual population that contributes to future generations (for a review of effective population size, see Schwartz *et al.*

1998, entire). In a population where all of the individuals contribute offspring equally, effective population size would equal true population size, referred to as the population census size. For populations where contribution to the next generations is often unequal, effective population size will be smaller than the census size. The smaller the effective population size, the more reproduction in each generation is dominated by a few individuals in each generation. For wolverines it is likely that high-quality home ranges are limited, and individuals occupying them are better able to reproduce. Therefore, mature males and females that are successful at acquiring and defending a territory may dominate reproduction. Another contributing factor that reduces effective population size is the tendency in wolverines for a few males to monopolize the reproduction of several females, reducing reproductive opportunities for other males. Although this monopolization is a natural feature of wolverine life history strategy, it can lead to lower effective population size and reduce population viability by reducing genetic diversity. The effective population is not static, members of the effective population in 1 year may lose this status in the following year and possibly regain it again later depending on their reproductive success. When members of the effective population are lost, it is likely that their territories are quickly filled by younger individuals who may not have been able to secure a productive territory previously.

Effective population size is important because it determines rates of loss of genetic variation and the rate of inbreeding. Populations with small effective population sizes show reductions in population growth rates and increases in extinction probabilities when genetic diversity is low enough to lead to inbreeding depression (Leberg 1990, p. 194; Jimenez *et al.* 1994, pp. 272–273; Newman and Pilson 1997, p. 360; Saccheri *et al.* 1998, p. 492; Reed and Bryant 2000, p. 11; Schwartz and Mills 2005, p. 419; Hogg *et al.* 2006, p. 1495, 1498; Allendorf and Luikart 2007, pp. 338–342). Franklin (1980, as cited in Allendorf and Luikart 2007, p. 359) proposed an empirically based rule suggesting that for short-term (a few generations) maintenance of genetic diversity, effective population size should not be less than 50. For long-term (hundreds of generations) maintenance of genetic diversity, effective population size should not be less than 500 (for appropriate use of this rule and its limitations see Allendorf and Luikart 2007, pp. 359–360). Others suggest that even higher numbers are required to ensure that populations remain viable, suggesting that long-term connectivity to the reservoir of genetic resources in the Canadian population of wolverines will be required for the long-term genetic health of the DPS (Traill *et al.* 2010, p. 32). All evidence suggests that no habitat area within the contiguous United States is large enough to support a wolverine population with an effective population size of 500 animals. Given the life history of wolverines that includes high inequality of reproductive success and a metapopulation of semi-isolated subpopulations, effective population sizes would likely never reach even 100 individuals at full habitat occupancy as this would suggest a census population of over 1,000. In this case, population connectivity exchange with the larger Canadian/Alaskan population would likely be required for long-term viability.

Wolverine effective population size in the northern Rocky Mountains, which is the largest extant population in the contiguous United States, is exceptionally low and is below what is thought necessary for short-term maintenance of genetic diversity. Estimates for effective population size for wolverines in the northern Rocky Mountains averaged 35 (credible limits = 28–52) (Schwartz *et al.* 2009, p. 3226). This study excluded the small population from the Crazy and Belt Mountains (hereafter ''CrazyBelts'') as they may be an isolated population, which could bias the estimate using the methods of Tallmon *et al.* (2007, entire). Measures of the effective population sizes of the other populations in the contiguous United States have not been completed, but given their small census sizes, their effective sizes are expected to be smaller than for the northern Rocky Mountains population. Thus, wolverine effective population sizes are very low. For comparison, estimates of wolverine effective population size are bracketed by critically endangered species, such as the black-footed ferret (*Mustela nigripes*) (4.10) (Wisely *et al.* 2007, p. 3) and the ocelot (*Leopardus pardalis*) (2.9 to 13.9) (Janecka *et al.* 2007, p. 1), but are substantially smaller than estimates for the Yellowstone grizzly bear (*Ursus arctos*) (greater than 100), which has reached the level of recovery under the Act (Miller and Waits 2003, p. 4338). Therefore, we conclude that effective population size estimates for wolverines do not suggest that populations are currently critically endangered, but they do suggest that populations are low enough that they could be vulnerable to loss of genetic diversity, and may require intervention in the future to remain viable. To date, no adverse effects of the lower genetic diversity of the contiguous United States wolverines have been documented.

Wolverines in the contiguous United States are thought to be derived from a recent recolonization event after they were extirpated from the area in the early 20th century (Aubry *et al.* 2007, Table 1). Consequently, wolverine populations in the contiguous United States have reduced genetic diversity relative to larger Canadian populations as a result of founder effects or inbreeding (Schwartz *et al.* 2009, pp. 3228–3230). Wolverine effective population size in the northern Rocky Mountains was estimated to be 35 (Schwartz *et al.* 2009, p. 3226) and is below what is thought to be adequate for short-term maintenance of genetic diversity. Loss of genetic diversity can lead to inbreeding depression and is associated with increased risk of extinction (Allendorf and Luikart 2007, pp. 338–343). Small effective population sizes are caused by small actual population size (census size), or by other factors that limit the genetic contribution of portions of the population, such as polygamous mating systems. Populations may increase their effective size by increasing census size or by the regular exchange of genetic material with other populations through interpopulation mating.

The concern with the low effective population size was highlighted in a recent analysis that determined that, without immigration from other wolverine populations, at least 400 breeding pairs would be necessary to sustain the long-term genetic viability of the northern Rocky Mountains wolverine population (Cegelski *et al.* 2006, p. 197). However, the entire population is likely only 250 to 300 (Inman 2010b, pers. comm.), with a substantial number of these being unsuccessful breeders or nonbreeding subadults (*i.e.,* part of the census population, but not part of the effective population).

Genetic studies demonstrate the essential role that genetic exchange plays in maintaining genetic diversity in small wolverine populations. The concern that low effective population size would result in negative effects is already being realized for the contiguous United States population of wolverine. Genetic drift has already occurred in subpopulations of the contiguous United States: Wolverines here contained 3 of 13 haplotypes found

in Canadian populations (Kyle and Strobeck 2001, p. 343; Cegelski *et al.* 2003, pp. 2914–2915; Cegelski *et al.* 2006, p. 208; Schwartz *et al.* 2007, p. 2176; Schwartz *et al.* 2009, p. 3229). The haplotypes found in these subpopulations were a subset of those in the larger Canadian population, indicating that genetic drift had caused a loss of genetic diversity. One study found that a single haplotype dominated the northern Rocky Mountain wolverine population, with 71 of 73 wolverines sampled expressing that haplotype (Schwartz *et al.* 2007, p. 2176). The reduced number of haplotypes indicates not only that genetic drift has occurred but also some level of genetic separation; if these populations were freely interbreeding, they would share more haplotypes (Schwartz *et al.* 2009, p. 3229). The reduction of haplotypes is likely a result of the fragmented nature of wolverine habitat in the United States and is consistent with an emerging pattern of reduced genetic variation at the southern edge of the range documented in a suite of boreal forest carnivores (Schwartz *et al.* 2007, p. 2177).

Immigration of wolverines from Canada is not likely to bolster the genetic diversity of wolverines in the contiguous United States. There is an apparent lack of connectivity between wolverine populations in Canada and the United States based on genetic data (Schwartz *et al.* 2009, pp. 3228–3230). The apparent loss of connectivity between wolverines in the northern Rocky Mountains and Canada prevents the influx of genetic material needed to maintain or increase the genetic diversity in the contiguous United States. The continued loss of genetic diversity may lead to inbreeding depression, potentially reducing the species' ability to persist through reduced reproductive output or reduced survival. Currently, the cause for this lack of connectivity is uncertain. Wolverine habitat appears to be well-connected across the border region (Copeland *et al.* 2010, Figure 2) and there are few manmade obstructions such as transportation corridors or alpine developments. However, this lack of genetically detectable connectivity may be related to harvest management in southern Canada.

Summary of Factor E

Small population size and resulting inbreeding depression are potential, though as-yet undocumented, threats to wolverines in the contiguous United States. There is good evidence that genetic diversity is lower in wolverines in the DPS than it is in the more contiguous habitat in Canada and Alaska. The significance of this lower genetic diversity to wolverine conservation is unknown. We do not discount the possibility that loss of genetic diversity could be negatively affecting wolverines now and continue to do so in the future. It is important to point out, however, that wolverine populations in the DPS area are thought to be the result of colonization events that have occurred since the 1930s. Such recent colonizations by relatively few individuals and subsequent population growth are likely to have resulted in founder effects, which could contribute to low genetic diversity. The effect of small population sizes and low genetic diversity may become more significant if populations become smaller and more isolated, as predicted due to climate changes.

Based on the best scientific and commercial information available we conclude that demographic stochasticity and loss of genetic diversity due to small effective population sizes, by itself, is not a threat to the wolverine DPS. However, by working in concert with the primary threat of habitat loss due to climate change, this may contribute to the cumulative effect of population declines. Therefore, we conclude that demographic stochasticity and loss of genetic diversity due to small effective population sizes is a threat to wolverines when considered cumulatively with habitat loss due to climate change (see discussion under Synergistic Interactions Between Threat Factors).

Synergistic Interactions Between Threat Factors

We have evaluated individual threats to the distinct population segment of the North American Wolverine throughout its range in the contiguous United States. The wolverine DPS faces one primary threat that is likely to drive its conservation status in the future: habitat change and loss due to climate change. This factor alone is enough to determine that the species should be proposed for listing under the Act. Other factors, though not as severe or geographically comprehensive as the potential habitat effects from climate change may, when considered in the context of changes likely to occur due to climate change, become threats due to the cumulative effects they have on wolverine populations. For wolverines, the only such threat factors found in our analysis to have a basis of support as threats to wolverines were the effects of small subpopulation sizes and subpopulation isolation on wolverine genetic and demographic health, and the subsequent potential future influence of trapping.

As discussed in our analysis of the effects on wolverine habitat from climate change under Factor A, wolverine habitat in the contiguous United States is likely to become smaller overall, and remaining habitat is likely to be more fragmented and fragments more isolated from one another than they are today (McKelvey *et al.* 2011, Figure 8). Given that wolverine subpopulations in the DPS are already so small, and movement between subpopulations so restricted, inbreeding has become likely (Kyle and Strobeck 2001, p. 343; Cegelski *et al.* 2003, pp. 2914–2915; Cegelski *et al.* 2006, p. 208; Schwartz *et al.* 2007, p. 2176; Schwartz *et al.* 2009, p. 3229). The longterm maintenance of wolverines in the DPS will require continued connectivity between subpopulations within the DPS, and with populations to the north in Canada. To the extent that wolverine habitat becomes more fragmented, and fragments become more isolated due habitat loss resulting from climate change, these factors will become more significant to wolverine conservation. The risk factor of small population size, including measures of effective population size and their consequent effects on maintenance of genetic diversity, is a threat to the North American wolverine DPS when considered cumulatively with habitat loss resulting from climate change.

Wolverine populations have been expanding in the DPS area since the early 20th century, when they were likely at or near zero (Aubry *et al.* 2007, p. 2151). Most of this expansion has occurred under trapping regulations that allowed a higher level of trapping than currently occurs (see Montana Department of Fish, Wildlife, and Parks 2007, p. 1). Therefore, it might be argued that wolverine trapping is not occurring at levels that would significantly affect conservation of the DPS. However, future habitat changes due to climate change are predicted to reduce habitat connectivity and extent. As described above, these changes are likely to exacerbate the problem of loss of genetic diversity and demographic stability caused by low effective population size and insufficient movement between populations, leading to inbreeding. Given these likely secondary effects of climate change, human-caused mortality due to harvest is likely to become more significant to the wolvereine population as connectivity needs increase and connectivity simultaneously becomes more difficult. As habitats become

smaller and more isolated from one another, more wolverines will be needed to attempt to move between subpopulations to maintain population viability. Harvest currently removes up to five wolverines from the population every year, reducing the number of animals available for dispersal. In addition, incidental trapping of wolverines removes still more. For these reasons, we find that harvest and incidental trapping, when considered cumulatively with habitat loss resulting from climate change, are likely to become threats to the DPS due to the likely synergistic effects they may have on the population as habitat becomes smaller and more fragmented.

Proposed Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the wolverine DPS. We have identified threats to the contiguous United States population of the North American wolverine attributable to Factors A, B, and E. The primary threat to the DPS is from habitat and range loss due to climate warming (Factor A). Wolverines require habitats with near-arctic conditions wherever they occur. In the contiguous United States, wolverine habitat is restricted to high-elevation areas in the West. Wolverines are dependent on deep persistent snow cover for successful denning, and they concentrate their year-round activities in areas that maintain deep snow into spring and cool temperatures throughout summer. Wolverines in the contiguous United States exist as small and semi-isolated subpopulations in a larger metapopulation that requires regular dispersal of wolverines between habitat patches to maintain itself. These dispersers achieve both genetic enrichment and demographic support of recipient populations. Climate changes are predicted to reduce wolverine habitat and range by 31 percent over the next 30 years and 63 percent over the next 75 years, rendering remaining wolverine habitat significantly smaller and more fragmented. We anticipate that, by 2045, maintenance of the contiguous United States wolverine population in the currently occupied area may require human intervention to facilitate genetic exchange and possibly also to facilitate metapopulation dynamics by moving individuals between habitat patches if they are no longer accessed regularly by dispersers, or risk loss of the population.

Other threats are minor in comparison to the driving primary threat of climate change; however, cumulatively, they could become significant when working in concert with climate change if they further suppress an already stressed population. These secondary threats include harvest (including incidental harvest) (Factor B) and demographic stochasticity and loss of genetic diversity due to small effective population sizes (Factor E). All of these factors affect wolverines across their current range in the contiguous United States.

The Act defines an endangered species as any species that is ''in danger of extinction throughout all or a significant portion of its range'' and a threatened species as any species ''that is likely to become endangered throughout all or a significant portion of its range within the foreseeable future.'' We find that the contiguous United States wolverine DPS presently meets the definition of a threatened species due to the likelihood of habitat loss caused by climate change resulting in population decline leading to breakdown of metapopulation dynamics. Breakdown in metapopulation dynamics would make the DPS vulnerable to further loss of genetic diversity through inbreeding, and likely vulnerable to demographic endangerment as small subpopulations could no longer rely on demographic rescue from nearby populations. At that point wolverine populations would meet the definition of an endangered species under the Act. We base this determination on the immediacy, severity, and scope of the threats described above. Therefore, on the basis of the best available scientific and commercial information, we propose listing the contiguous United State DPS of the North American wolverine as a threatened species in accordance with sections 3(6) and 4(a)(1) of the Act.

Under the Act and our implementing regulations, a species may warrant listing if it meets the definition of an endangered or threatened species throughout all or a significant portion of its range. The contiguous United States DPS of the North American wolverine proposed for listing in this rule is wide-ranging and the threats occur throughout its range. Therefore, we assessed the status of the DPS throughout its entire range. The threats to the survival of the species occur throughout the species' range and are not restricted to any particular significant portion of that range. Accordingly, our assessment and proposed determination applies to the DPS throughout its entire range.

Available Conservation Measures

Conservation measures provided to species listed as an endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed, preparation of a draft and final recovery plan, and revisions to the plan as significant new information becomes available. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. The recovery outline is available on our Web site at *http://www.fws.gov/mountain-prairie/species/mammals/wolverine/* and on *http://*

www.regulations.gov concurrently with the publication of this proposed rule. When completed, the draft recovery plan and the final recovery plan will be available on our Web site or from our Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribal, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for nonfederal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States inhabited by wolverines or uninhabited states with suitable habitat would be eligible for Federal funds to implement management actions that promote the protection and recovery of wolverines. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although the wolverine DPS is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the species habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape altering activities on Federal lands in suitable wolverine habitat within the range of the species administered by the Department of Defense, U.S. Fish and Wildlife Service, Bureau of Land Management, National Park Service, and U.S. Forest Service; construction and management of gas pipeline and power line rights-of-way in suitable wolverine habitat by the Federal Energy Regulatory Commission; construction and maintenance of roads or highways by the Federal Highway Administration in suitable wolverine habitat; and permitting of infrastructure development in suitable wolverine habitat for recreation, oil and gas development, or residential development by the U.S. Forest Service, National Park Service, Bureau of Land Management, U.S. Fish and Wildlife Service, or Department of Defense.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.21 for endangered wildlife, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. Under the Lacey Act (18 U.S.C. 42–43; 16 U.S.C. 3371–3378), it is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species, and at 17.32 for threatened species. With regard to endangered wildlife, a permit must be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of species proposed for listing. The following activities could potentially result in a violation of section 9 of the Act; this list is not comprehensive:

Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 134 Union Boulevard, Suite 650, Lakewood, CO 80228; Telephone 303–236–4265.

A determination to list the contiguous United States DPS of the North American wolverine as a threatened species under the Act, if we ultimately determine that listing is warranted, will not regulate greenhouse gas emissions. Rather, it will reflect a determination that the DPS meets the definition of a threatened species under the Act, thereby establishing certain protections for them under the ESA. While we acknowledge that listing will not have a direct impact on the loss of deep, persistent, late spring snowpack or the reduction of greenhouse gases, we expect that it will indirectly enhance national and international cooperation and coordination of conservation efforts, enhance research programs, and encourage the development of mitigation measures that could help slow habitat loss and population declines. In addition, the development of a recovery plan will guide efforts intended to ensure the long-term

survival and eventual recovery of the lower 48 states DPS of the wolverine.

Special Rule Under Section 4(d) of the Act

Whenever a species is listed as a threatened species under the Act, the Secretary may specify regulations that he deems necessary and advisable to provide for the conservation of that species under the authorization of section 4(d) of the Act. These rules, commonly referred to as ''special rules,'' are found in part 17 of title 50 of the Code of Federal Regulations (CFR) in §§ 17.40–17.48. This special rule for § 17.40 would prohibit take of any wolverine in the contiguous United States when associated with or related to trapping, hunting, shooting, collection, capturing, pursuing, wounding, killing, and trade. In this context, any activity where wolverines are attempted to be, or are intended to be, trapped, hunted, shot, captured, or collected, in the contiguous United States, will be prohibited. It will also be prohibited to incidentally trap, hunt, shoot, capture, pursue, or collect wolverines in the course of otherwise legal activities. All otherwise legal activities involving wolverines and their habitat that are conducted in accordance with applicable State, Federal, tribal, and local laws and regulations are not considered to be take under this regulation. This includes activities that occur in and may modify wolverine habitat such as those described below.

In this proposed listing rule, we identified several risk factors for the wolverine DPS that, in concert with climate change, may result in reduced habitat value for the species. These risk factors include human activities like dispersed recreation, land management activities by Federal agencies and private landowners, and infrastructure development. However, the scale at which these activities occur is relatively small compared to the average size of wolverine's home range, between 300 and 500 km^2 (186 and 310 mi^2). For example, ski resorts constitute the largest developments in wolverine habitats. In Colorado, the state with the most ski resorts in the range of the wolverine, ski resort developments cover only 0.6 percent of available wolverine habitat (Colorado Division of Wildlife 2010, p. 16). Other developments are more localized still, such as mines and small infrastructure. It is possible that these forms of habitat alteration may affect individual wolverines, by causing the temporary movement of a few individuals within or outside of their home ranges during or shortly after construction. However, due to the small scale of the habitat alteration involved in these sorts of activities, we conclude that the overall impact of these activities is not significant to the conservation of the species. Dispersed recreation like snowmobiling and back country skiing, and warm season activities like backpacking and hunting, occur over larger scales; however, there is little evidence to suggest that these activities may affect wolverines significantly or have a significant effect on conservation of the DPS. Preliminary evidence suggests that wolverines can coexist amid high levels of dispersed motorized and nonmotorized use (Heinenmeyer *et al.* 2012, entire), possibly shifting activity to avoid the most heavily used areas within their home ranges.

Transportation corridors and urban development in valley bottoms between patches of wolverine habitat may inhibit individual wolverines' movement between habitat patches; however, wolverines have made several long-distance movements in the recent past that indicates they are able to navigate current landscapes as they search for new home ranges. As described above, we have no evidence to suggest that current levels of transportation infrastructure development or residential development are a threat to the DPS or will become one in the future.

Land management activities (principally timber harvest, wildland firefighting, prescribed fire, and silviculture) can modify wolverine habitat, but this generalist species appears to be little affected by changes to the vegetative characteristics of its habitat. In addition, most wolverine habitat occurs at high elevations in rugged terrain that is not conducive to intensive forms of silviculture and timber harvest. Therefore, we anticipate that habitat modifications resulting from these types of land management activities would not significantly affect the conservation of the DPS, as we described above.

The proposed special rule under section 4(d) of the Act will provide for the possession and take of wolverines that are (1) legally held at the time of listing (2) legally imported pursuant to applicable Federal and state statutes, or (3) captively bred without a permit. The special rule will also allow the continuation of the export of captive-bred wolverines provided applicable Federal and state laws are followed, and provide for the transportation of wolverine skins in commerce within the United States. The export skins from wolverines documented as captive-bred will be permitted. Legally possessed skins may be transported in interstate trade without permits.

In this proposed rule, we include a prohibition against incidental take of wolverine in the course of legal trapping activities directed at other species. However, documented take of wolverine from incidental trapping has been low. In the 2008–2009 trapping season, two wolverines were incidentally killed in traps set for other species in Beaverhead and Granite Counties, Montana (Montana Fish, Wildlife, and Parks 2010, p. 2). In Idaho, the U.S. Department of Agriculture Wildlife Services trapped three wolverines (one each in 2004, 2005, and 2010) incidental to trapping wolves involved in livestock depredations. One of these sustained severe injuries and was euthanized. We are requesting the public, Federal agencies, and the affected State fish and wildlife agencies to submit public comments on this issue, including any State management plans related to trapping regulations and any measures within those plans that may avoid or minimize the risk of wolverine mortality from incidental trapping for other species.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * * on which are found those physical or biological features (I) Essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination by the Secretaries of Commerce and Interior that such areas are essential for the conservation of the species.'' Section 3(3) of the Act (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be an endangered or threatened species. Critical habitat may only be designated within the jurisdiction of the United States, and may not be designated for jurisdictions outside of the United States (50 CFR 424(h)). Our regulations

(50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Delineation of critical habitat requires, within the geographical area occupied by the DPS of the North American wolverine in the contiguous United States, identification of the physical and biological features essential to the conservation of the species. In general terms, physical and biological features essential to the wolverine may include (1) Areas defined by persistent spring snowpack and (2) areas with avalanche debris (bottom of avalanche chutes where large trees, rocks, and other debris are swept) and talus slopes or boulder fields (debris piles of large rocks, trees, and branches) in which females can construct dens which provide security from large predators and buffer against wind and low temperatures.

Information regarding the wolverine's life functions and habitats associated with these functions has expanded greatly in recent years. We need additional time to assess the potential impact of a critical habitat designation, including whether there will be any benefit to wolverine from such a designation. A careful assessment of the habitats that may qualify for designation as critical habitat will require a thorough assessment in light of projected climate change and other threats. At this time, we also need more time to analyze the comprehensive data to identify specific areas appropriate for critical habitat designation. Accordingly, we find designation of critical habitat to be ''not determinable'' at this time.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our listing determination and critical habitat designation are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period.

We will consider all comments and information received during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Required Determinations

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You also may email the comments to this address: *Exsec@ios.goi.gov.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501, et seq.)

This rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this proposed rule are the staff members of the Montana Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h) add entries for ''Wolverine, North American'' to the List of Endangered and Threatened Wildlife in alphabetical order under Mammals to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Wolverine, North American.	*Gulo gulo luscus*	U.S.A. (Alaska and northern contiguous States); Canada.	Where found within contiguous U.S.A., except where listed as an experimental population.	T	.....	NA	17.40(a)
Wolverine, North American.	*Gulo gulo luscus*	U.S.A. (Alaska and northern contiguous States); Canada.	U.S.A. (specified portions of CO, NM, and WY; see 17.84(d)).	XN	.....	NA	17.84(d)
*	*	*	*	*	*		*

■ 3. Amend § 17.40 by revising paragraph (a) to read as follows:

§ 17.40 Special rules—mammals.

(a) Wolverine, North American (*Gulo gulo luscus*).

(1) *Which populations of the North American wolverine are covered by this special rule?* This rule covers the distribution of this species in the contiguous United States.

(2) *What activities are prohibited?* Any activity where wolverines are attempted to be, or are intended to be, trapped, hunted, shot, captured, or collected, in the contiguous United States, will be prohibited. It will also be prohibited to incidentally trap, hunt, shoot, capture, pursue, or collect wolverines in the course of otherwise legal activities.

(3) *What activities are allowed?* Incidental take of wolverines will not be a violation of section 9 of the Act, if it occurs from any other otherwise legal activities involving wolverines and their habitat that are conducted in accordance with applicable State, Federal, tribal, and local laws and regulations. Such activities occurring in wolverine habitat include:

(i) Dispersed recreation such as snowmobiling, skiing, backpacking, and hunting for other species;

(ii) Management activities by Federal agencies and private landowners such as timber harvest, wildland firefighting, prescribed fire, and silviculture;

(iii) Transportation corridor and urban development;

(iv) Mining;

(v) Transportation and trade of legally possessed wolverine skins and skins from captive-bred wolverines within the United States.

* * * * *

Dated: January 16, 2013.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–01478 Filed 2–1–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2012–0106]

RIN 1018–AZ22

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of the North American Wolverine in Colorado, Wyoming, and New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to establish a nonessential experimental population (NEP) area for the North American wolverine (*Gulo gulo luscus*) in the Southern Rocky Mountains of Colorado, northern New Mexico, and southern Wyoming. The distinct population segment (DPS) of the North American wolverine occurring in the contiguous United States is proposed for Federal listing as a threatened species under the Endangered Species Act. We propose to establish the NEP area for the wolverine in the Southern Rockies portion of the DPS under section 10(j) of the Endangered Species Act, and to classify any wolverines introduced into the area as a nonessential experimental population within the Southern Rocky Mountains. This proposed rule provides a plan for establishing the NEP area and provides for allowable legal incidental taking of the wolverine within the defined NEP area. The proposed action would not result in reintroduction of the wolverine; rather, the NEP area designation would provide the regulatory assurances necessary to facilitate a State-led reintroduction effort, should the state of Colorado determine to reintroduce the wolverine. The best available data indicate that reintroduction of the wolverine into the Southern Rocky Mountains is biologically feasible and will promote conservation of the species.

DATES: Comment submission: We will accept comments received or postmarked on or before May 6, 2013. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**), the deadline for submitting an electronic comment is Eastern Standard Time on this date. Public meeting: We will hold a public hearing on March 19, 2013 at the Hampton Inn, 137 Union Boulevard, Lakewood, CO 80228. A public informational session will be held at the same location from 2:00 p.m. to 5:00 p.m. followed by speaker registration at 6:00 p.m. and then the public hearing for oral testimony from 7:00 p.m. to 9:00 p.m. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Brent Esmoil, Montana Ecological Services Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

ADDRESSES: You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R6–ES–2012–0106, which is the docket number for this rulemaking. Then, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You

may submit a comment by clicking on ''Comment Now!''

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: [FWS–R6–ES–2012–0106]; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Copies of Documents: The proposed rule is available on *http://www.regulations.gov.*

Public meeting: The March 19, 2013, public meeting will include a public informational session from 2:00 p.m. to 5:00 p.m., followed by public speaker registration at 6:00 p.m., and then the public hearing for oral testimony from 7:00 p.m. to 9:00 p.m. and will take place at the Hampton Inn, 137 Union Boulevard, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Brent Esmoil, Field Supervisor (Acting), Montana Ecological Services Field Office, Helena, Montana telephone 406–449–5225. Direct all questions or requests for additional information to: WOLVERINE QUESTIONS, U.S. Fish and Wildlife Service, Montana Field Office, 585 Shepard Way, Helena, MT 59601. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under section 10(j) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act or ESA), an experimental population may be identified outside of the current range of the species for the purposes of reintroducing the species. Before an experimental population may be designated, the Service must first determine that the population is separate from other populations and whether the experimental population is essential to the continued existence of the endangered or threatened species. If an experimental population is designated as nonessential, critical habitat may not be designated for that population.

This rule consists of:

- A proposed rule to identify a nonessential experimental population (NEP) of the North American wolverine in the southern Rocky Mountains of the United States.

A proposed rule to add the Distinct Population Segment (DPS) of the North American wolverine to the list of threatened and endangered species under the Act is published concurrently in this issue of the **Federal Register**. Also, a draft Recovery Outline for the proposed North American wolverine DPS in the contiguous United States is available on our Web site at *http://www.fws.gov/mountain-prairie/species/mammals/wolverine/* or on *http://www.regulations.gov*.

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from the public, other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Whether the boundaries of the proposed nonessential population area are appropriate.

(2) Information on wolverine occurrences in Colorado, especially any occurrences for which physical evidence might exist, that would indicate that a population of wolverines exists within the proposed NEP area.

(3) Information on threats to wolverines in the NEP area that have not been considered in this proposed rule and that might affect a reintroduced population.

(4) Information on the effects of reintroducing wolverines to Colorado on public and private land management, economic activities such as agriculture, forestry, recreation, mining, oil and gas development, and residential development.

(5) Information about the feasibility of conducting reintroductions of wolverines into other areas within the historical range of wolverines that may be appropriate. Examples include the Sierra Nevada Range in California, Bighorn Range in Wyoming, Uinta Mountains in Utah, and southern Cascades Range in Oregon.

Before we issue a final rule to implement this proposed action if it is deemed appropriate, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in the **DATES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the Montana Field Office. (see **FOR FURTHER INFORMATION CONTACT**).

Public Meeting

We will hold a public informational session from 2:00 p.m. to 5:00 p.m., followed by public speaker registration at 6:00 p.m., and then the public hearing for oral testimony from 7:00 p.m. to 9:00 p.m. and will take place at the Hampton Inn, 137 Union Boulevard, Lakewood, CO 80228 (see **ADDRESSES**). Persons needing reasonable accommodations in order to attend and participate in a public meeting should contact the Montana Field Office, at the address or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the meeting. Information regarding this proposal is available in alternative formats upon request.

Peer Review

In accordance with our policy, ''Notices of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis.

Accordingly, the final decision may differ from this proposal.

Background

Statutory and Regulatory Framework

The North American wolverine DPS in the contiguous United States was designated a candidate species on December 14, 2010 (75 FR 78030), under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). An NEP can only be designated for a species that is listed under the Act. Therefore, in addition to the proposed NEP, today's **Federal Register** includes a proposed rule to list this DPS as a threatened species. The Act provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of any endangered wildlife and the Service typically extends this prohibition to wildlife species that are listed as threatened . ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

The 1982 amendments to the Act (16 U.S.C. 1531 et seq.) included the addition of section 10(j), which allows for the designation of reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the Act and our regulations at 50 CFR 17.81, the Service may designate as an experimental population a population of an endangered or threatened species that has been or will be released into suitable natural habitat outside the species' current natural range (but within its probable historical range, absent a finding by the Director of the Service in the extreme case that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed). With the experimental population designation, the relevant population is treated as a threatened species for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. A threatened species designation allows us discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations and prohibitions are necessary and advisable to provide for the conservation of a threatened species, as we have proposed to do so for the wolverine DPS in the proposed listing rule that is also published in today's **Federal Register**. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species. This section 10(j) rule contains the prohibitions and exemptions necessary and advisable to conserve the proposed NEP.

The proposed NEP would not proceed to a final rule if the wolverine is not listed under the Act. The wolverine is proposed for listing in the proposed listing rule published concurrently with this proposed NEP designation. Should we subsequently determine that the wolverine is not warranted for listing, this proposed NEP designation will be withdrawn. Nothing in this proposed NEP designation should be construed to affect the listing decision itself.

Before authorizing the release as an experimental population (including eggs, propagules, or individuals) of an endangered or threatened species, and before authorizing any necessary transportation to conduct the release, the Service must find, by regulation in 50 CFR 17.81(b), that such release will further the conservation of the species. In making such a finding, the Service uses the best scientific and commercial data available to consider:

- Any possible adverse effects on extant populations of a species as a result of removal of individuals, eggs, or propagules for introduction elsewhere;
- The likelihood that any such experimental population will become established and survive in the foreseeable future;
- The relative effects that establishment of an experimental population will have on the recovery of the listed species; and
- The extent to which the introduced population may be affected by existing or anticipated Federal or State actions or private activities within or adjacent to the experimental population area.

Furthermore, as set forth in 50 CFR 17.81(c), all regulations designating experimental populations under section 10(j) of the Act must provide:

- Appropriate means to identify the experimental population, including, but not limited to, its actual or proposed location, actual or anticipated migration, number of specimens released or to be released, and other criteria appropriate to identify the experimental population(s);
- A finding, based solely on the best scientific and commercial data available, and the supporting factual basis, on whether the experimental population is, or is not, essential to the continued existence of the species in the wild;
- Management restrictions, protective measures, or other special management concerns of that population, which may include but are not limited to, measures to isolate or contain the experimental population designated in the regulation from natural populations; and
- A process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species.

Under 50 CFR 17.81(d), the Service must consult with appropriate State fish and wildlife agencies, local governmental entities, affected Federal agencies, and affected private landowners in developing and implementing experimental population rules. To the maximum extent practicable, section 10(j) rules represent an agreement between the Service, affected State and Federal agencies, and persons holding any interest in land which may be affected by the establishment of an experimental population.

Based on the best scientific and commercial data available, we must determine whether the experimental population is *essential* or *nonessential* to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential. We have determined that this proposed experimental population would not be essential to the continued existence of the species in the wild. This determination has been made because the potential future loss of North American wolverines from the Southern Rocky Mountains would not reduce the likelihood of the species' survival throughout its current range in the DPS—specifically, occupied habitat in the States of Idaho, Montana, Washington, Oregon, and Wyoming.

Additionally, donor animals for reintroduction into Colorado would likely be obtained from Alaska or western Canada. Wolverine populations in both of these areas are outside of the DPS, and their distribution, abundance, and trends have remained stable. No donor animals would be obtained from within the DPS. Therefore, the Service is proposing to designate an NEP area for this species in Colorado and adjoining portions of Wyoming and New Mexico. The state of Utah also borders Colorado and contains suitable wolverine habitat. Because wolverine habitat in Utah is not contiguous with habitat in Colorado, we believe that if a population were established in Colorado, it would not be expected to include habitat in Utah in its range. Therefore, we did not propose to include Utah in the NEP area. However, we would like public comment on whether it is appropriate to include this or any other area within the NEP area.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or a unit of the National Park Service, and Federal agency conservation requirements under section 7(a)(1) and the Federal agency consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat.

When an NEP is located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing as a threatened species and only section 7(a)(1) and section 7(a)(4) apply. In these instances, an NEP provides additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the proposed NEP is found to not be essential to the continued existence of the species, the effects of proposed actions affecting the NEP will not generally jeopardize the continued existence of the species. As a result, a formal conference will likely never be required for activities affecting North American wolverines established within the proposed NEP area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

Biological Information

Wolverines are the largest terrestrial member of the family Mustelidae, with adult males weighing 12 to 18 kilograms (kg) (26 to 40 pounds (lb)) and adult females weighing 8 to 12 kg (17 to 26 lb). The wolverine resembles a small bear with a bushy tail. The coat is typically dark brown, with two buff stripes extending from the neck, along the flanks, to the base of the tail. White patches are common on the chest or throat (Banci 1994, p. 99).

The wolverine is a circumpolar species occurring from Scandinavia eastward across Eurasia and into North America (Copeland and Whitman 2003, p. 672). There are two subspecies of wolverine: *Gulo gulo gulo* in Eurasia and *G. g. luscus* in North America. In North America, historical records indicate the presence of wolverines broadly across Canada and the northernmost tier of the United States, with southern extensions into the Sierra Nevada Mountains of California and the Southern Rocky Mountains of Colorado (Copeland and Whitman 2003, p. 672). The North American wolverine is currently found in Alaska, Canada (Yukon, Northwest Territories, British Columbia, and Alberta), and in a reduced area of the contiguous United States (Idaho, western Montana, Washington, northwestern Wyoming, and eastern Oregon) (Copeland and Whitman 2003, p. 673; Aubry *et al.* 2007, p. 2150).

There are several areas within the historical distribution of wolverines that may be appropriate candidates for reintroductions. The largest of these areas in terms of wolverine suitable habitat is the southern Rocky Mountains and is included as the NEP in this proposed rule. The next largest area of habitat that may be appropriate for reintroductions is the Sierra Nevada Mountains of California. Subsequent to a Colorado reintroduction, should it occur, we may consider proposing other experimental populations such as the Sierra Nevada Mountains, the Bighorn Mountains in Wyoming, the southern Cascades Mountains in Oregon, or the Uinta Mountains in Utah. The results of feasibility discussions with and coordination with appropriate state agencies and the public would determine whether any of these possibilities are pursued. Currently, the California Department of Fish and Wildlife has indicated that they are supportive of investigating the possibility of a future experimental population, and likely would be supportive of reintroductions if potential management issues could be resolved.

Within the proposed NEP, there are numerous historical records of North American wolverines from the Colorado Rocky Mountains; however, the species is believed to have been extirpated from the southern Rocky Mountains in Colorado, New Mexico, and Wyoming by the early 1900s (Aubry *et al.* 2007, pp. 2150 and 2155). The most notable factors leading to their disappearance were likely trapping and poisoning (Krebs *et al.* 2004, p. 493; Aubry *et al.* 2007, p. 2156). There are historical, recent, and current records from Wyoming (Aubry *et al.* 2007, pp. 2150 and 2155). Wolverines are currently present in northwestern Wyoming, primarily in the Greater Yellowstone Ecosystem (Aubry *et al.* 2007, p. 2155). We are not aware of any wolverine populations in the southern or eastern portions of Wyoming within the proposed NEP area. There is one historical record from New Mexico near Taos in 1860; however, the exact location for this record is unknown (Aubry *et al.* 2007, p. 2150). There are several historical records from Utah, but no recent or current records (Aubry *et al.* 2007, p. 2151). Wolverine populations in the Southern Rocky Mountains appear to have been extirpated by human-caused mortality factors that no longer pose a threat such as intensive predator control using broadcast poison baits and widespread, unregulated trapping; therefore, reintroduction may be an appropriate management strategy (Aubry *et al.* 2007, pp. 2156).

Wolverines are opportunistic feeders that consume a variety of foods, depending on availability. They primarily scavenge carrion, but also prey on small or vulnerable animals and are omnivorous in summer (Hornocker and Hash 1981, p. 1290; Banci 1994, p. 111; Copeland and Whitman 2003, p. 678). Food availability is believed to be a limiting factor in reproduction, with most adult females breeding every year,

but only a small portion producing kits (Banci 1994, p. 105; Persson 2005, p. 1454). However, in one study, four females were supplementally fed, and all produced kits in 3 consecutive years (Persson 2005, p. 1456) indicating that wolverines are capable of higher reproductive output with sufficient nutrition. Mountainous areas of Colorado contain abundant food for wolverines; in particular, yellow-bellied marmots (*Marmota flaviventris*), a staple food source for females rearing kits, are widely distributed throughout potential wolverine habitat (Hall 1981, p. 373). Large numbers of big game animals present in Colorado would provide ample opportunity for scavenging as well. This may increase food availability, and consequently improve kit production.

North American wolverines do not appear to select their habitat based upon specific vegetation or topography, but preferentially select areas that are cold and have persistent snow cover into mid-May (Copeland *et al.* 2010, p. 233). Deep, persistent snow cover during the denning season provides a thermal buffer for the kits and a refuge from predators (Copeland *et al.* 2010, p. 234). Wolverines exploit a relatively unproductive habitat where food is scarce but where predation and interspecific competition are reduced; as a result, they require a large home range and occur at low densities (Inman *et al.* 2011, p. 8). Home ranges of 100 to 1,582 square kilometers (km^2) (39 to 611 square miles (mi^2)) per adult wolverine have been reported in the contiguous United States (Hornocker and Hash 1981, p. 1291; Banci 1994, p. 117; Copeland 1996, p. iii). Adult male home ranges typically overlap that of two or three adult females (Banci 1994, p. 118). Reported densities in the contiguous United States range from one wolverine per 65 km^2 (25 mi^2) to one wolverine per 286 km^2 (110 mi^2) (Hornocker and Hash 1981, p. 1296; Copeland 1996, p. 32; Inman *et al.* 2011, p. 1). Approximately 18,500 km^2 (11,500 mi^2) and 40,000 km^2 (15,000 mi^2) of mountainous, high-elevation terrain that could provide suitable wolverine habitat are estimated to occur in Colorado (Colorado Division of Wildlife 2010, p. 16; Inman *et al.* draft, p. 7; our calculations based on our composite habitat model). This amount of habitat could support more than 100 wolverines in Colorado under current conditions.

Relationship of the Experimental Population to Recovery Efforts

Should the state of Colorado pursue reintroduction of North American wolverines, the effort would occur in the Colorado portion of the Southern Rocky Mountains. Any reintroduction program by Colorado Parks and Wildlife (CPW) would first require approval of the Colorado Parks and Wildlife Commission, as well as the State Legislature of Colorado. The designation of an NEP area centered in Colorado is designed to facilitate approvals for a reintroduction within the State of Colorado, as well as create public support for such a reintroduction effort by ensuring that compatible activities will not be subject to the regulation of the Act, which some perceive as an undesirable side-effect of reintroductions of listed species. This would be the first effort to reintroduce the species in the contiguous United States. Colorado is an appropriate choice for several reasons:

- Historical records document the species' presence in the Colorado Rocky Mountains;
- The primary factors leading to the wolverine's extirpation from Colorado (trapping and poisoning) are now managed, and the species is protected by its designation as a State endangered species;
- Abundant suitable habitat remains in Colorado in the form of high-elevation areas with deep persistent spring snow;
- The high elevation of potential habitat in Colorado may provide some protection from warming trends caused by climate change (Regonda *et al.* 2005, p. 376; Ray *et al.* 2008, p. 2; McKelvey *et al.* 2011, pp. 2882 and 2894);
- In 2010, the Colorado Wildlife Commission went on record in support of evaluating a reintroduction and initiating a discussion about reintroduction with interested stakeholders. The Service and other potential partners are supportive of exploring a State-led reintroduction effort.

The primary goal of this recovery effort is to reestablish viable populations of North American wolverines in Colorado that would contribute to conservation of the species in the contiguous United States and also contribute to eventual delisting of the DPS, should listing be finalized. A secondary goal is to establish high-elevation refugia in the event climate change begins to impact wolverine populations using lower elevation habitat.

Two recent instances of long-distance movements by male North American wolverines have been documented (Inman *et al.* 2009, entire; Moriarty *et al.* 2009, entire). In 2008, a male wolverine was photographed in the Sierra Nevada Mountains near Truckee, California (Moriarty *et al.* 2009, entire). Genetic testing of the individual's hair and scat most closely matched animals from the western Rocky Mountains, which would indicate a distance traveled of at least 600 km (370 mi). The testing also definitively ruled out the possibility that this individual was descended from the historical Sierra Nevada population (Moriarty *et al.* 2009, p. 160), now thought to be extinct. In 2009, a young male traveled over 900 km (560 mi) from northwestern Wyoming to Rocky Mountain National Park in Colorado (Inman *et al.* 2009, entire). These two animals continue to reside in those habitats into which they moved. Both of these instances support the premise that the northern Rocky Mountain wolverine population is continuing to expand, to the point that some animals are making extraordinary exploratory movements. They also suggest that suitable habitat remains outside of the wolverine's currently occupied range. However, female dispersal is documented only for shorter distances (Hornocker and Hash 1981, p. 1290; Copeland 1996, p. 91; Kyle and Strobeck 2001, p. 338; Tomasik and Cook 2005, p. 390; Cegelski *et al.* 2006, p. 206; Aubry *et al.* 2011, pp. 21–22; Inman *et al.* 2011, p. 7). Consequently, the likelihood of multiple females and males moving to the southern Rocky Mountains at the same time so that a genetically healthy population could be founded is very low. Therefore, the probability of a population naturally reestablishing in this disjunct habitat is extremely low.

Location of the Nonessential Experimental Population

The proposed NEP will include Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Delta, Dolores, Douglas, Eagle, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, La Plata, Lake, Larimer, Las Animas, Mesa, Mineral, Moffat, Montezuma, Montrose, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Summit, and Teller Counties, in Colorado. We also propose to include adjacent counties in New Mexico (Colfax, Los Alamos, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, and Taos Counties), and Wyoming (Albany and Carbon Counties) that have suitable habitat contiguous or closely adjacent to wolverine habitat in Colorado. If a wolverine were located in one of these adjacent areas after translocations took place, it most likely would have originated from the reintroduced population because habitat

in these areas is contiguous or closely associated with habitat in Colorado where reintroductions would take place, and far removed from habitat with established wolverine populations, the closest being the Greater Yellowstone area of northwestern Wyoming. It is possible that one or more wolverines could move from the Greater Yellowstone area to the NEP. Wolverines that make such a move will be considered part of the NEP. Based on evidence of only a single wolverine moving into the southern Rockies since the early 20th century, movements such as this appear to be very rare. The Southern Rocky Mountain NEP is approximately bounded on the east by Interstate 25, on the south by Interstate 25 and Highway 550, on the west by the Green River, Interstate 70, and the Colorado-Utah State line, and on the north by Interstate 80. The map at the conclusion of this proposed rule illustrates the location of the NEP and its relationship with the rest of the North American wolverine DPS.

Any North American wolverines found within the aforementioned counties after the first wolverine releases will be considered part of the NEP. Wolverines occurring outside of the NEP will be treated differently, depending on their origin, if known, and their probable origin, if undetermined. Wolverines occurring outside of the NEP that are known to have originated from the reintroduced population (through affixed tags, radio collars, genetic testing, or other definitive means) may be captured and returned to the NEP at the discretion of CPW and the Service and after consulting with the State wildlife agency where the animal was found if outside of Colorado. Wolverines of unknown origin occurring outside of the NEP in Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming will be considered part of the threatened DPS of North American wolverine due to the likelihood that wolverines from the threatened population may naturally disperse anywhere in these states. Wolverines of unknown origin occurring outside of the NEP in Colorado, Arizona, Kansas, Nebraska, New Mexico, or Oklahoma will be considered to have originated from the experimental population due to the lack of other plausible source populations in these states, and may be captured and returned to the reintroduction area, if needed for the reintroduction effort, at the discretion of CPW or the Service and after consulting with the State wildlife agency where the animal was found.

Section 10(j) of the Act requires that an experimental population be geographically separate from other nonexperimental populations of the same species. The nearest suitable habitat outside of the proposed NEP that supports a North American wolverine population is in the Wind River Mountain Range of Wyoming (Inman *et al.* 2011, p. 7). At its closest point, the southern Wind River Mountains are approximately 220 km (137 mi) from the proposed NEP. This distance is within the dispersal capabilities of male wolverines as demonstrated by the movement of wolverine M56 from the Wind River Range to the Southern Rocky Mountains in 2009 (Inman et al. 2009, Fig. 1), but is apparently further than females are able to travel through unsuitable habitat. The largest documented female movement occurred in 2010 in the North Cascades of Washington (Aubry *et al.* 2011, pp. 21–22). In that instance, a radio-collared female wolverine moved an air-line distance of approximately 233 km (145 mi) over a 44-day period. During this movement, her course generally stayed within suitable wolverine habitat (as defined by Copeland *et al.* (2010, p. 242)) and was never more than about 19 km (12 mi) from suitable wolverine habitat (as defined by the Copeland et al. (2010) model). In general, female wolverines tend to establish home ranges adjacent to their natal home range, and dispersal is documented only for lesser distances than males routinely travel (Hornocker and Hash 1981, p. 1290; Copeland 1996, p. 91; Kyle and Strobeck 2001, p. 338; Tomasik and Cook 2005, p. 390; Cegelski *et al.* 2006, p. 206, Inman *et al.* 2011, p. 7). It would require multiple females and males moving into an area at the same time for a wolverine population to establish naturally in the Southern Rocky Mountains. Based on the best information currently available to us regarding wolverine movements, we find this scenario unlikely to happen. Consequently, the likelihood of a population naturally reestablishing in the proposed NEP is minimal, and we consider the proposed NEP to be geographically separate from other nonexperimental populations of wolverines.

Colorado is within the historical range of the North American wolverine (Aubry *et al.* 2007, p. 2150). The species is believed to have been extirpated from the State and surrounding habitat in southern Wyoming and northern New Mexico by the early 1900s (Aubry *et al.* 2007, pp. 2150 and 2155). From 1979 through 1996, researchers conducted 12 studies in Colorado attempting to document the presence of wolverine or Canada lynx (*Lynx canadensis*) (Colorado Division of Wildlife 2010, p. 5). These studies used snow tracking, remote cameras, and snares. As a result of these and subsequent surveys, the Colorado Division of Wildlife concluded that if any wolverines remained in Colorado, they did not represent a viable population. The 2010 12-month finding concluded that Colorado was within the current range of the species (due to the documented presence of one male wolverine in the state), but reestablishment of a population has not occurred (75 FR 78035, December 14, 2010). Thus, we consider the NEP area to be unoccupied by a wolverine population, despite the documented presence of a lone adult male wolverine.

In Wyoming, North American wolverine populations currently occur in the Greater Yellowstone Ecosystem in the northwestern corner of the State (WGF 2010, p. IV–2–96). We are not aware of any wolverine populations in the southeastern portion of the State, which includes Albany and Carbon Counties within the proposed NEP reintroduction area. The only verifiable record of wolverines in New Mexico that we are aware of was a single individual reported near Taos in 1860 (Aubry *et al.* 2007, p. 2150). Although other unverified reports have occurred (e.g., Frey 2006, p. 21), we find that the lack of physical evidence associated with these records makes them unreliable evidence of wolverine distribution patterns (McKelvey *et al.* 2008, entire). The southern limit for the species in the Rocky Mountains may have been northern New Mexico (Frey 2006, p. 21; Aubry *et al.* 2007, p. 2150). However, it is not certain whether the southernmost historical records represented reproducing populations or dispersers (Banci 1994, p. 102).

North American wolverines require large blocks of suitable habitat due to their sizeable home range requirements and territoriality. Average home ranges of resident adult females in central Idaho were 384 km^2 (148 mi^2), and average home ranges of resident adult males were 1,522 km^2 (588 mi^2) (Copeland 1996, p. 50). Wolverines in Glacier National Park had average adult male home ranges of 496 km^2 (193 mi^2) and adult female home ranges of 141 km^2 (55 mi^2) (Copeland and Yates 2006, p. 25). Wolverines in the Greater Yellowstone Ecosystem had average adult male home ranges of 797 km^2 (311 mi^2), and average adult female home ranges of 329 km^2 (128 mi^2) (Inman *et al.* 2007a, p. 4). There are numerous areas with the Colorado Rocky

Mountains that could serve as suitable release sites (Copeland *et al* 2010, Fig. 2). These areas have persistent spring snow cover due to high elevation and have large blocks of contiguous habitat in public ownership (Colorado Division of Wildlife 2010, pp. 11–12 and 20). Persistent spring snow cover is considered an essential habitat requirement for successful reproduction (Copeland *et al.* 2010, p. 234). Large blocks of habitat under public ownership (primarily the U.S. Forest Service (USFS) and National Park Service (NPS)) promote uniform management of the species and improve the likelihood of broad public support. In addition, areas within the Southern Rockies are likely to persist as wolverine habitat in the face of climate change (McKelvey *et al.* 2011, Table 2).

Both of the Federal agencies that manage most of the potential habitat within the proposed NEP have experience managing North American wolverines and their habitat. The wolverine is found in several National Forests managed by the USFS. The USFS has designated the wolverine a ''sensitive species,'' which means that the species and its habitat are given special consideration during management and planning (USFS 2006, p. 10). The NPS promotes the conservation of all federally listed and candidate species according to their National Park Service Management Policies of 2006 4. 4. 2. 3 which states ''The Service will survey for, protect and strive to recover all species native to the national park system units that are listed under the ESA. The Service will fully meet its obligations under the NPS Organic Act and the ESA to both proactively conserve listed species and prevent detrimental effects on these species.'' The wolverine is found in several National Parks in Alaska, as well as Glacier, Grand Teton, North Cascades, and Yellowstone National Parks in the contiguous United States. Consequently, the NPS is also familiar with management of the species. As previously noted, an area encompassing Rocky Mountain National Park, within the proposed NEP in Colorado, has supported a single male wolverine for approximately 3 years (Inman *et al.* 2009, entire).

Causes of Extirpation and Likelihood of Population Reestablishment and Survival

Wolverine habitat in Colorado represents a sizeable area of formerly occupied North American wolverine habitat. The factors that likely led to the species' extirpation from this State nearly 100 years ago, specifically unregulated trapping and poisoning, are no longer a threat. Since that time, management and legal protections for the wolverine have improved for the following reasons (Colorado Division of Wildlife 2010, p. 15):

- Trapping and hunting of wolverines is no longer allowed in the State (Colorado Revised Statutes (CRS 33–2–105);
- The wolverine is designated an Endangered species under the State's Endangered Species statute (State of Colorado 2012, p. 16);
- Colorado restricts the use of poisons, leg-hold traps, kill-type trapping devices, and snare trapping (State of Colorado 1996, p. 1);
- The Service has proposed listing the distinct population segment of the North American wolverine as threatened in the contiguous United States, if the listing and this NEP rule are finalized, intentional take of wolverines would be prohibited in the NEP area;

Wyoming classifies the wolverine as a Species of Greatest Conservation Need (WGFD 2010, p. IV-i-9). The wolverine does not receive protection under New Mexico State law; the species is informally listed as ''apparently extirpated'' (Frey 2006, p. 21). There are no legal trapping seasons for wolverines in Wyoming and New Mexico, which means that trapping of wolverines is not permitted in these states.

Release Procedures

North American wolverines would be released only after necessary approvals from the Parks and Wildlife Commission and State Legislature were received after which a suitable management framework would be developed by the State of Colorado, in cooperation with the Service and other partners. Adaptive management principles would be used during reintroduction efforts to assist in the collection, release, and management of wolverines, and are particularly important as this would be the first attempt to reintroduce wolverines in the contiguous United States. Lessons learned early would be applied to efforts in subsequent years and at future sites. Several partners from State and Federal agencies and private organizations have held two workshops discussing restoration of the species in the contiguous United States. A working draft methodology is being developed by these partners that presents guidelines for translocation of the species and post-release monitoring (Inman *et al.* draft, entire). The details presented in this section come from that working draft, which represents the best available information on the subject.

Donor Site(s)

Donor Site(s) may include any North American population of wolverines in Alaska or Canada. Factors that will be considered when choosing the location(s) from which wolverines would be captured for release in Colorado would include:

- Sustainability of removals;
- Familiarity of potential donor animals with food sources and mortality risks in the release area;
- Genetic composition of potential donor animals;
- Translocation logistics; and
- Support of provincial or state government.

Sustainability of removals—Any North American wolverines released in Colorado would be captured from a wild population because there are no captive breeding facilities that provide animals for release. Removal of wolverines from a donor site must be sustainable; that is, removals must do no long-term harm to the donor population. This issue is discussed in detail in the following section.

Familiarity of potential donor animals with food sources and mortality risks in the release area—North American wolverines released in Colorado should have a familiarity with food sources and mortality risks in the release area. Successful reestablishment of a population depends on the survival, site fidelity, and reproduction of translocated individuals. It is presumed that the more familiarity a released animal has with available foods and potential mortality sources, the more likely it will survive, remain in the release area, and successfully reproduce. Potential causes of mortality in Colorado could include starvation, avalanche, and predation by black bears (*Ursus americanas*) or mountain lions (*Puma concolor*). For example, a wolverine captured from a donor site containing mountainous habitat would likely have more familiarity with risks posed by avalanches than an individual captured from flat tundra habitat. Similarly, if predation contributes a substantial portion to the donor wolverines' diet, a familiarity with prey common in Colorado, such as marmots, will likely improve survival, site fidelity, and reproductive success.

There is a possibility that not enough donor animals from mountainous habitat similar to habitat in the NEP areas would be found. In that circumstance, some donor animals might be collected from flatter, more open habitats of the Arctic tundra of

Canada or Alaska. Wolverines are more numerous in these areas and more easily captured, and, due to their availability, may be used in addition to mountain animals to augment total numbers of donor animals. In addition to augmenting the numbers of donor animals available, this would also serve to spread the impact of removals across more populations as well as provide an opportunity to experimentally test the appropriateness of conducting reintroductions with these individuals.

Genetic composition of potential donor animals—North American wolverine restoration in Colorado should consider whether to reintroduce animals from the closest available geographic population, the closest genetic population, or a mixture of both. The draft protocol developed for the southern Rocky Mountains eliminates the possibility of using donor sites within the proposed DPS area due to the small size and already-reduced genetic endowment in this area. Therefore, the nearest potential donor site is in the Canadian Rocky Mountains of British Columbia and Alberta. Using the closest (Canadian) geographic population assumes that some local adaption to conditions in the Rocky Mountains has occurred. However, little is known about genes that may influence local adaptations of wolverines, and there is no scientific information showing that wolverines have adapted genetically to local conditions in any way. Based upon what is currently known regarding wolverine genetics, choosing animals with a genetic profile that is most similar to historical populations in the Southern Rocky Mountains could potentially create a genetic bottleneck. We believe that the best strategy may be a combination of both considerations. This approach would mix individuals from multiple populations, thereby maximizing genetic diversity, which would in turn provide a broad range of characteristics from which local adaptations could eventually occur.

Translocation logistics—Translocation logistics are an important consideration in conducting a reintroduction program that makes efficient use of limited resources and minimizes stress to translocated animals. Logistics planning would be completed prior to collecting animals for translocation. Details would vary depending on origin of donor population(s), but will include:

- Protecting the health and safety of both wolverines and associated human personnel;
- Securing all necessary permits for animal transport;
- Developing a protocol and schedule for veterinary inspections;
- Determining necessary air and/or ground transportation of animals;
- Meeting requirements for shipping containers; and
- Readying a holding facility for animals prior to their release.

Support of provincial or state government—Local, state, and provincial governments should support goals of the reintroduction effort. Specific provincial or state regulations would be followed. If a provincial or state government opposed removal of wolverines from their jurisdiction for translocation to Colorado, that donor population would no longer be considered. Active participation by all affected agencies would be encouraged.

Number of Release Animals

We would consider the likely home range size, ideal sex ratio, and desired population density in determining the number of North American wolverines to be released (see *Biological Information* section). A typical adult sex ratio is approximately two males for every five females (2M:5F). These seven animals would likely require a maximum of 2,000 km^2 (770 mi^2) of suitable habitat. The actual number of animals released and the time required to reach 20 percent occupation would depend on rates of survival and reproduction.

An initial release of a small number of North American wolverines would maximize opportunities to implement adaptive management with a minimum potential loss of animals. However it would also diminish the opportunity for early success and minimize genetic diversity. Although the exact reintroduction protocol that may be used will not be known until and unless a program is approved by the State of Colorado, principles of adaptive management would be employed when determining composition of released animals.

Season of Capture and Method of Release

There are two potential timeframes for capture of North American wolverines: (1) A spring capture (April–May) of males and non-lactating females, which would eliminate the need to deal with pregnant females and potential loss of litters; or (2) an early-winter capture (November–December) of males and pregnant females, which would require addressing pregnant females and potential litter loss, but could also improve the chances of reintroduction success. No firm decision has been made between the use of a spring or early winter capture protocol. This and other protocol questions will be addressed if CPW decides to pursue a reintroduction program.

There are also different release strategies: (1) A soft release, which would require holding animals in a pen at the release site for a period of time prior to release to habituate animals and increase site fidelity; (2) a semi-hard release, which would release animals directly into the wild at a location that has previously been provisioned with carcasses to increase survival; or (3) a hard release, which would release animals directly into the wild with no provisioning. The ultimate choice of release option will depend on the sites selected for releases and available infrastructure to support captive maintenance.

An early-winter capture with a semi-hard release has several advantages. It may improve both survival (through provisioning) and site fidelity (if females have newborn young present). Reduced movements due to the presence of a litter could result in females remaining in high-elevation habitat on public lands and spending less time at lower elevations where contact with roads and humans is more likely. Early reproduction reduces the time needed to achieve desired reoccupation of potential habitat and could also increase genetic diversity at the reintroduction site, particularly if paternity includes males that were not translocated. Provisioning would improve food availability during a time of limited resource availability. Food availability is believed to be a limiting factor in reproduction; therefore, provisioning may improve litter survival.

If post-release survival is satisfactory under an early-winter capture/semi-hard release scenario, this strategy would continue for subsequent releases. If not, partners would reassess both the season of capture and method of release to determine what changes are appropriate.

Capture Techniques

In most instances, the cooperating agency at the donor site would lead the capture effort. Specific state or provincial regulations would be followed. The method of capture may vary depending on the donor site. Darting from a helicopter works well in more open habitat; however, trapping is preferred in forested habitat. Box traps have been used successfully. Trap transmitters may be used to determine if trap doors are shut. Use of prebaiting and remote cameras at the trap site would also be considered. Standard

biomedical protocols would be followed for any immobilization with anesthesia (Fahlman *et al.* 2008; Arnemo *et al.* 2011). A field assessment following darting or trapping would be conducted to determine the animal's suitability for translocation. The assessment would determine weight, sex, general health, reproductive status, and estimated age of the individual. Only animals that meet the necessary criteria would be retained for translocation. Retained animals would: (1) Be treated for parasites, (2) have blood and hair samples taken for genetic analysis, and (3) be vaccinated for rabies, canine distemper, and plague. They would then be placed in a suitable transport crate and taken to a transport site by responsible personnel. All efforts would be made to minimize the time an animal spends in a crate. As soon as possible, animals would be transported to a holding facility near the release site.

Holding Facility

Immediately prior to departure and again upon arrival at the holding facility, North American wolverines would be inspected by personnel trained to evaluate the animals' condition. Wolverines would then be transferred to larger holding pens. A veterinarian would be on call while animals are at the holding facility. While at this facility, wolverines should be fed a variety of foods similar to what they likely would encounter in the release area. Each animal would be fitted with a satellite collar and surgically implanted with a radio-transmitter prior to release. At this time, ultrasounds also would be conducted on all females to determine pregnancy status (assuming early-winter capture). Time at the holding facility should be minimized.

Release Into the Wild

For a semi-hard release, a site with large boulders would be provisioned with ample frozen ungulate carcasses and covered with snow, except for a tunnel entrance leading under the boulders. The crate would be placed at the tunnel entrance and a female released into the tunnel. This would provide the animal with a secure environment and a known food source. Remote cameras placed in the vicinity of the release could document use at the site. If the area were frequented by the wolverine, the site could be provisioned with additional carcasses. Location and timing of provisioning would be modified as needed depending on site use and weather.

Post-Release Monitoring

Throughout the reintroduction project, there would be an ongoing assessment of release procedures. Modifications to the protocol would be made if necessary, to ensure the highest probability of survival for each North American wolverine released in Colorado. Additionally, post-release monitoring would assess the long-term success of this reintroduction project through determining survival, reproduction, recruitment, and habitat occupancy. Noninvasive techniques such as telemetry, remote camera surveillance, snow tracking, hair snares, and scat sampling would be used. Noninvasive techniques are preferred because they are less disruptive to the animal and are less expensive than trapping.

It is anticipated that this reintroduction project would require a minimum of 4 years of releases. Monitoring data would be evaluated annually to assess the current status of the reintroduced population and the need to augment with additional animals. If we determine that some factor precludes successful establishment of a viable population, reintroduction efforts would be discontinued for the site. Any wolverines remaining within the NEP after reintroductions took place would remain under the NEP regulatory regime, even if further introductions were abandoned.

Any reintroduced North American wolverines that have dispersed into poor habitat, are injured, or are malnourished, may be captured and rehabilitated or euthanized. Rehabilitated animals could be re-released or sent to an accredited zoo. Decisions to capture, rehabilitate, and/or euthanize would be made on a case-by-case basis by permitting authorities and personnel trained to accurately determine the prognosis for the animal.

Donor Stock Assessment and Effects on Donor Populations

North American wolverines used to establish an experimental population would come from wild populations in western Canada or Alaska. Wolverines in western Canada and Alaska are not listed under the Act or under Canada's functional equivalent, the Species At Risk Act. Wolverine populations at donor sites would be monitored to ensure that no harm is done to the source population due to the removal of too many animals. Most North American wolverines are currently found in western Canada and Alaska, where they persist everywhere that suitable habitat is available (75 FR 78033). Range reductions have not been documented in Alaska, Yukon, Northwest Territories, or British Columbia (Copeland and Whitman 2003, p. 673). The wolverine population is estimated at more than 13,000 adult animals in western Canada (COSEWIC 2003, p. 22). No population estimates are available for Alaska, but based upon the amount of available habitat, it is reasonable to assume that several thousand wolverines are present. Trapping occurs throughout western Canada and Alaska, with more than 1,000 animals harvested annually (Copeland and Whitman 2003, p. 680). An estimated 10 to 20 individuals would be taken annually for at least 4 years for translocation into Colorado. We do not anticipate that this level of removal of wolverines for translocation will impact donor populations.

Status of Proposed Population

In our proposed rule to list the wolverine DPS in the contiguous United States published concurrently with this proposed NEP, we also published a proposed special rule under section 4(d) of the Act to refine which protections of the Act apply to the proposed DPS. The proposed special rule concludes that effects to wolverine habitat from climate change is the primary threat to the DPS and that trapping, both legal targeted trapping of wolverines and incidental trapping of wolverines while pursuing other species, are threats to the DPS in concert with climate change. Other human activities occurring in wolverine habitat either do not negatively affect the species, or they occur at such a small scale, as not to be threats.

We believe that a similar approach to prohibitions on take identified in the proposed section 4(d) rule is also appropriate in the proposed section 10(j) area, with one exception. In the larger DPS area covered by the proposed special rule (section 4(d)), incidental trapping of wolverine during trapping for other species is prohibited. In the proposed section 10(j) area, we do not think that it is necessary for the conservation of wolverine to prohibit incidental trapping of wolverine during lawful trapping for other species. This difference in approach is due to (1) Regulations in Colorado that prohibit the use of various manners of take (i.e., leg hold or body gripping traps, instant kill traps, and snares with small stops) in recreational trapping of furbearers and (2) trapping of predators in response to livestock conflicts is tightly regulated in Colorado to prevent widespread use of traps that may injure non-target species (Odell 2012, pers.

comm.) These regulations reduce the chances that incidental trapping would occur to the point that this risk factor is not a threat to wolverines in most of the NEP area, and would not threaten a reestablished population.

In the small portions of the NEP in New Mexico and Wyoming, incidental trapping is more likely to occur. These areas represent small portions of the overall wolverine habitat in the NEP (approximately 10 percent of the NEP), so although incidental take is possible in these states, it is not likely to occur frequently, and is not likely to threaten the overall NEP if one is established. In the interest of minimizing regulation to what is necessary to achieve conservation, it is in the best interest of wolverine conservation not to prohibit incidental take from trapping in the NEP. Therefore, take of wolverines during otherwise lawful activities in the NEP is not expected, except for the low probability of incidental take occurring due to trapping of other species in the small portion of the NEP in Wyoming and New Mexico.

The proposed special section 10(j) rule is designed to broadly exempt from the section 9 take prohibitions any take of North American wolverines that is accidental and incidental to otherwise lawful activities. As is fully described in the proposed special section 10(j) rule, we provide this exemption in this section 10(j) rule because we believe that such incidental take of members of the NEP associated with otherwise lawful activities, though not likely to occur, is necessary and advisable for the conservation of the species because it provides assurances to the public that their activities would not be adversely affected by a wolverine reintroduction.

This section 10(j) designation is justified because no adverse effects to extant wild or captive North American wolverine populations would result from release of animals into Colorado. As previously discussed, all donor animals would be taken from stable populations that are outside of the proposed threatened DPS. We expect that the reintroduction effort into Colorado would result in the successful establishment of a self-sustaining population that would contribute to conservation of the species. Due to the current management and legal standing for the species in Colorado, we anticipate minimal incidental take from the NEP. Additionally, wolverines would be released on remote tracts of public land that are removed from most potential public conflict.

Management

If this proposed rule is adopted and necessary approvals are gained from both the Colorado Parks and Wildlife Commission and State legislature, CPW in Colorado would serve as the lead agency in the reintroduction and subsequent management of North American wolverines in the state. However, the Service would continue to coordinate with CPW on these restoration efforts. If this proposed rule is adopted, the Service would partner with CPW, with CPW taking the lead role in the reintroduction and management of wolverines in the Colorado portion of the NEP. Management of populations in the NEP area would be guided by provisions in: (1) The associated special rule; (2) the environmental assessment for this action conducted under NEPA; and (3) the management plan developed by CPW, with involvement of the other partners (Service, WGFD, NMDGF, USFS, and NPS).

We conclude based on the proposed section 4(d) rule that accompanied the proposed wolverine DPS listing, and based on the lack of identified threats in the NEP beyond the overarching threat of climate change and incidental trapping, that the effects of Federal, State, or private actions and activities would not pose a substantial threat to North American wolverine establishment and persistence in Colorado, because most activities currently occurring in the NEP areas are compatible with wolverine conservation, and there is no information to suggest that future activities would be incompatible with conservation. Most of the area constituting wolverine habitat within the NEP with high potential for wolverine establishment is managed by the USFS or NPS and is protected from major development activities through the following mechanisms:

- The Wilderness Act—The USFS and NPS both manage lands designated as wilderness areas under the Wilderness Act of 1964 (16 U.S.C. 1131–1136). There are several restrictions within these areas: (1) New or temporary roads cannot be built; (2) there can be no use of motor vehicles, motorized equipment, motorboats, or other forms of mechanical transport; (3) there can be no landing of aircraft; and (4) no structures or installations can be built. There are 41 wilderness areas in Colorado, totaling more than 13,000 km^2 (5,000 mi^2) (Colorado Wilderness 2012, entire). Most of this wilderness is within suitable wolverine habitat, including portions of Rocky Mountain National Park. Wolverine habitat within wilderness areas is protected from direct loss or degradation by the aforementioned restrictions.
- National Forest Management Act—Under the National Forest Management Act of 1976, as amended (16 U.S.C. 1600–1614), the USFS must strive to provide for a diversity of plant and animal communities on lands it manages. The USFS manages approximately 62,000 km^2 (24,000 mi^2) of National Forest lands in Colorado (USFS 2011, table 4). Wolverines released in Colorado that use habitat outside of wilderness areas, but still on USFS lands, would likely occur mainly in alpine areas, which are sensitive to habitat alterations. Consequently, these areas are generally more protected from activities such as timber harvest and road building than lowland areas. The USFS permits land for ski areas in Colorado. Many of these ski areas occur in suitable wolverine habitat. However, ski areas constitute only a small percentage of all lands managed by the USFS in the state. We anticipate no disproportionate impacts from these ski areas. Because of the relatively insignificant impact of developed recreation areas (ski areas), we do not expect projects to be halted or substantially modified as a result of regulatory actions. The USFS designated the North American wolverine as a sensitive species in 1993, which means the animal and its habitat are given special consideration during management planning efforts.
- National Park Service Organic Act—The NPS Organic Act of 1916 (16 U.S.C. 1 *et seq.*), as amended, states that the NPS ''shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations to conserve the scenery and the national and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' Any wolverines released in Colorado that reside on NPS lands (such as Rocky Mountain National Park) would be protected by this mandate to conserve wildlife and leave resources unimpaired.
- Colorado State Law—The wolverine is listed as a State endangered species in Colorado, and there is a closed season on trapping of wolverines (Colorado Division of Wildlife 2010, p. 15). Recreational fur trapping with injuring or killing traps, is not authorized in Colorado and predator trapping to reduce conflicts with livestock is strictly controlled (Odell 2012, pers. comm). These regulations

largely protect the species from mortality due to trapping.

Management issues related to the wolverine NEP that have been considered include:

• *Incidental Take*—The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3), such as agricultural activities, rural development, skiing, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP areas that are in accordance with Federal, State, tribal, and local laws and regulations. The special rule accompanying the proposed wolverine listing identifies the prohibitions of the Act that apply to the DPS. Threats to the DPS include habitat loss due to climate change and trapping (both intentional and incidental). Prohibitions of the Act in the special rule are limited to intentional trapping, hunting, shooting, collecting, capturing, pursuing, wounding, killing, and trade of wolverines or wolverine parts, and unintentional trapping, hunting, shooting, capturing, pursuing, or collecting wolverines incidental to otherwise lawful activities. For this reason, incidental take due to otherwise lawful activities other than trapping is not likely to occur. In addition, this proposed experimental population special rule contains specific exceptions regarding the taking of individual animals. If this section10(j) rule is finalized, incidental take of wolverines within the NEP area would not be prohibited, provided that the take is unintentional and is in accordance with the special rule that is a part of this section 10(j) rule. The significant difference between areas inside and outside of the NEP would be that outside of the NEP, incidental trapping, hunting, shooting, capturing, pursuing, or collecting of wolverines would be prohibited unless covered by a permit issued under section 10 of the Act, whereas inside the NEP, no permit would be necessary. In addition, if in the future the best available information changes to suggest that the section 4(d) rule was not adequate to protect wolverines outside of the NEP, that rule could be changed through a public rulemaking process to provide additional prohibitions of the Act without changing the prohibitions inside the NEP area, where it is important to give stakeholders assurance that prohibitions would not change after reintroductions began. However, if there is evidence of intentional take of a North American wolverine within the NEP that is not authorized by the special rule, we would refer the matter to the U.S. Fish and Wildlife Service law enforcement for investigation.

• Special handling—In accordance with 50 CFR 17.31(b), any employee or agent of the Service, any other Federal land management agency, or State personnel, designated for such purposes, may in the course of their official duties, handle wolverines to aid sick or injured individuals, or to salvage dead wolverines. However, non-Service personnel and their agents would need to acquire permits from the Service for these activities.

• *Coordination with landowners and land managers*—The Service and cooperators have identified issues and concerns associated with the potential wolverine population establishment in Colorado. Several affected parties have sought the highest degree of certainty possible that impacts to land use and recreation would not occur as a result of wolverine reintroduction. Establishment of the NEP would satisfy most reservations expressed by affected stakeholders. Nothing in this rule requires any additional changes, protections, mitigation, or enhancement measures for wolverine.

• *Public awareness and cooperation*—We will inform the general public of the importance of this reintroduction project in the overall recovery of the wolverine in the contiguous United States. The designation of the NEP for portions of Colorado, New Mexico, and Wyoming would provide greater flexibility in the management of the reintroduced wolverine. The NEP designation is necessary to secure needed cooperation of the States, landowners, agencies, and other interests in the affected area.

• *Potential impacts to other federally listed species*—Within the proposed NEP for North American wolverine, there are two federally listed species with habitat requirements that likely overlap those of the wolverine: the gray wolf (*Canis lupus*) and Canada lynx (*Lynx canadensis*).

The gray wolf's listing status in Colorado and New Mexico is as an endangered species. In Wyoming, the wolf is delisted (77 FR 55530, September 10, 2012). The wolverine has been documented to scavenge prey killed by wolves (Banci 1994, p. 100; Van Dijk *et al.* 2008, p. 1184). Additionally, wolves have been documented to prey on wolverines (Copeland and Whitman 2003, p. 679). Wolves may occasionally disperse into the NEP; however, we are not aware of any resident wolves currently in the NEP areas. Therefore, we expect little or no impacts to wolves from wolverines or to wolverines from wolves within the NEP. Any impacts to wolves will be fully analyzed in a Section 7 consultation on this proposed rule.

The Canada lynx is listed as a threatened DPS within portions of the contiguous United States, including Colorado and Wyoming. It is a candidate species in New Mexico. It was likely extirpated from Colorado and Utah and may not have occurred in New Mexico historically. In 1999, the Colorado Division of Wildlife (now CPW) reintroduced lynx into Colorado, and they are now a reproducing population (CPW 2011, p. 1). The natural ranges of wolverines and lynx naturally overlap across most of Alaska, Canada, and much of the occupied range in the contiguous United States. Within the area of range overlap, lynx and wolverines appear to coexist without significant conflict. It is possible that wolverines and lynx may occasionally kill each other. There may also be some limited amount of competition between wolverines and lynx for prey. However, as previously noted, wolverines are opportunistic feeders that consume a variety of foods, depending on availability. They primarily scavenge carrion, but also prey on small or vulnerable animals and are omnivorous in summer (Hornocker and Hash 1981, p. 1290; Banci 1994, p. 111; Copeland and Whitman 2003, p. 678). Lynx, on the other hand, largely prey on snowshoe hare (*Lepus americanas*) (Fitzgerald *et al.* 1994, p. 369). Although we know that wolverines do eat snowshoe hares, we do not have any information regarding the extent to which wolverines may utilize them. However, occasional feeding on hares by wolverines is not likely to affect Canada lynx food availability. Any potential effects to Canada lynx from wolverine reintroduction will be fully analyzed in a Section 7 consultation on this proposed rule.

• *Monitoring and Evaluation*

Reintroduction Effectiveness Monitoring: Post-release monitoring would assess the long-term success of this experimental reintroduction project through determining survival, reproduction, recruitment, and habitat occupancy. Noninvasive techniques such as telemetry, remote camera surveillance, snow tracking, hair snares, and scat sampling would be used. Satellite collars would be the primary short-term method of measuring survival. Aerial monitoring for signals from radio-collared animals would also occur periodically. Any mortality

signals would be investigated to confirm mortality and determine cause of death. Monitoring data would be evaluated annually, or as necessary, to assess the current status of the reintroduced population and the need to augment with additional animals or adjust translocation protocols. Long-term monitoring would be necessary to determine the viability of the NEP.

Donor Population Monitoring: Donor sites may include any North American population of wolverines in Alaska or western Canada, but would not include any wolverine population within the contiguous United States. Wolverine population abundance and trends at donor sites would be monitored during and following translocation to ensure that no harm is done to the source population due to the removal of too many animals. Noninvasive monitoring techniques similar to those used for reintroduced wolverines would be used at donor sites.

Monitoring Impacts to Other Listed Species: The federally threatened Canada lynx is the species most likely to experience some degree of competition with North American wolverines. Both species were found historically in Colorado, but were likely extirpated from the State in the 1900s. As noted previously, there may be limited competition for prey, including the potential for either species to prey on the other, but their coexistence across most of the species' ranges in North America suggests that intense competition or predation is not likely. Lynx reintroductions into Colorado were initiated in 1999, and monitoring is ongoing (CPW 2011, pp. 1–2).

Findings

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), we find that releasing North American wolverines into Colorado will further the conservation of the species, but that this proposed population is not essential to the continued existence of the species in the wild.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The areas that would be affected if this proposed rule is adopted include the potential release area in Colorado and adjacent areas into which North American wolverines may disperse, which over time could include significant portions of the NEP areas. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the limited prohibitions of the Act provided for in the special rule; we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the NEP. In regard to section 7(a)(2), the population is treated as a threatened species within a National Wildlife Refuge or unit of the National Park Service and Federal agency consultation requirements apply. In areas outside of a National Wildlife Refuge or unit of the National Park Service, the population is treated as proposed for listing as a threatened species, and Federal action agencies are not required to consult on their activities. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because the NEP is, by definition, not essential to the survival of the species, conferring will likely never be required for wolverine populations within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions within the NEP area may occur to benefit the wolverine, but we do not expect projects to be halted or substantially modified as a result of these regulations.

If adopted, this proposal would not apply prohibitions on incidental take of the North American wolverines within the NEP area. The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as agricultural activities, rural development, skiing, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP area that are in accordance with Federal, State, tribal, and local laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be permitted. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property within the NEP area, in or near wolverine habitat, are grazing, timber harvest, and mining. However, private property within areas of suitable habitat for North American wolverine is very limited. We believe that the presence of the wolverine would not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of the wolverine; and Federal agencies would only have to

comply with sections 7(a)(1) and 7(a)(4) of the Act throughout much of the NEP. Therefore, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP areas.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), if adopted, this proposal will not ''significantly or uniquely'' affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed NEP designations will not place additional requirements on any city, county, or other local municipalities.

This rule will not produce a Federal mandate of $100 million or greater in any year (i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This proposed NEP designation for the North American wolverine would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. This rule would allow for the take of reintroduced North American wolverines when such take is incidental to an otherwise legal activity, such as recreation, forestry, agriculture, hydroelectric power generation, and other activities that are in accordance with Federal, State, and local laws and regulations. Therefore, we do not believe that establishment of this NEP would conflict with existing or proposed human activities or hinder use of the public lands within the NEP.

A takings implication assessment is not required because this rule: (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Colorado, New Mexico, and Wyoming. Achieving the recovery goals for this species would contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments would not change; and fiscal capacity would not be substantially directly affected. The special rule operates to maintain the existing relationship between State and Federal Government and is being undertaken in coordination with the States of Colorado, New Mexico, and Wyoming. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This proposed rule does not contain any new information collections that require approval. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095, which expires May 31, 2014. We may not collect or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

In compliance with all provisions of NEPA, we will analyze the impact of this proposed rule. We are preparing a Draft Environmental Assessment on this action and will fulfill our obligations under NEPA by the time of we publish our final rule.

Government-to-Government Relationship With Tribes

In accordance with the presidential memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 229511), Executive Order 13175 (65 FR 67249), and the Department of the Interior Manual Chapter 512 DM 2, we have considered possible effects on federally recognized Indian tribes and have determined that Tribes—Southern Ute in Colorado, Ute Mountain in Colorado and New Mexico, and Jicarilla Apache in New Mexico—have Reservation lands within the NEP areas, but these lands appear to include little or no suitable habitat for North American wolverines. The Service will fully consider information received during the public comment period by tribal entities on the proposed NEP designations and wolverine reintroduction.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As described above, this rule is not expected to significantly affect energy supplies, distribution, or use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- Be logically organized;
- Use the active voice to address readers directly;
- Use clear language rather than jargon;
- Be divided into short sections and sentences; and
- Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comment should be as specific as possible. For example, you should tell us the numbers of the sections and paragraphs that are

unclearly written, which sections or sentences are too long, or the sections where you feel lists and tables would be useful.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2012–0106, or upon request from the Montana Field Office (see **ADDRESSES**).

Authors

The primary authors of this proposed rule are staff members of the Service's Montana Field Office and Regional Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11(h) add entries for ''Wolverine, North American'' to the List of Endangered and Threatened Wildlife in alphabetical order under Mammals to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Wolverine, North American.	*Gulo gulo luscus*	U.S.A. (Alaska and northern contiguous States); Canada.	Where found within contiguous U.S.A., except where listed as an experimental population.	T	.....	NA	17.40(a)
Wolverine, North American.	*Gulo gulo luscus*	U.S.A. (Alaska and northern contiguous States); Canada.	U.S.A. (specified portions of CO, NM, and WY; see 17.84(d)).	XN	.....	NA	17.84(d)
*	*	*	*	*	*		*

■ 3. Amend § 17.84 by adding paragraph (d) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(d) North American wolverine (*Gulo gulo luscus*).

(1) *Where is the North American wolverine designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the North American wolverine is within the species' historical range and is defined as follows: The Colorado counties of Alamosa, Archuleta, Boulder, Chaffee, Clear Creek, Conejos, Costilla, Custer, Delta, Dolores, Douglas, Eagle, El Paso, Fremont, Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, La Plata, Lake, Larimer, Las Animas, Mesa, Mineral, Moffat, Montezuma, Montrose, Ouray, Park, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Summit, and Teller; the New Mexico counties of Colfax, Los Alamos, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, and Taos; and the Wyoming counties of Albany and Carbon.

(ii) A population of the North American wolverine is not known to reside in these counties. Based on habitat requirements, we do not expect this species to become established outside of this NEP area. However, if individuals of this population move outside the designated NEP area, they would be treated in the following way: Wolverines occurring in Wyoming outside of the NEP area will be considered part of the threatened Distinct Population Segment of North American wolverine unless they are known to have originated from the NEP. Wolverines occurring outside of the NEP areas in Colorado and New Mexico will be considered to have originated from the experimental populations, and may be captured and returned to the appropriate reintroduction area, if needed for the reintroduction effort, at the discretion of Colorado Parks and Wildlife (CPW), the affected State wildlife agency, or the Service. Wolverines that disperse to other states and are known to have originated from the reintroduced population in Colorado may also be returned to the reintroduction area, if needed for the reintroduction effort, at the discretion of CPW, the affected State wildlife agency, or the Service. Wolverines released within the NEP will be managed primarily by the State of Colorado, in cooperation with the Service, in accordance with this rule and the respective management plans.

(iii) We will not change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area without a public rulemaking. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?*

(i) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means, North American wolverines, or parts thereof, that are taken or possessed in violation of paragraph (d)(3) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act. In addition wolverines may not be intentionally trapped, hunted, shot,

captured, killed, or collected in violation of paragraph (d)(3).

(ii) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (c)(2)(i) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as agriculture, forestry, wildlife management, recreation, land development, transportation, trapping, and other activities, is not prohibited. Additionally, take prohibitions do not apply to legally acquired wolverines held in captivity.

(4) *How will the effectiveness of these reintroductions be monitored?* We and partners will prepare periodic progress reports and fully evaluate this reintroduction effort after 5 years beginning at the time of the first wolverine release to determine whether to continue or terminate the reintroduction effort.

(5) **Note:** Map of the NEP area for the North American wolverine follows:

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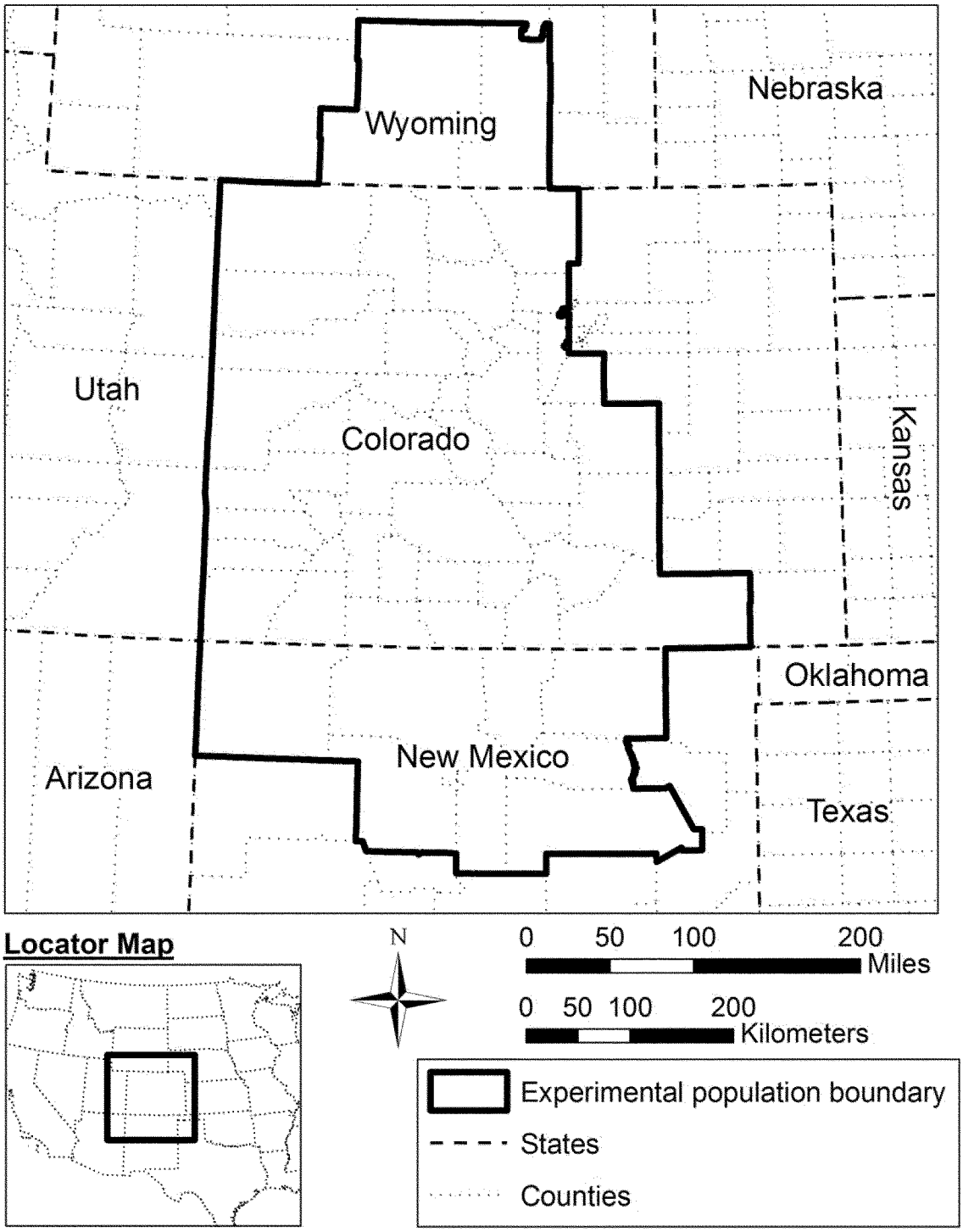

Dated: January 16, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–01479 Filed 2–1–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Monday,

No. 23 February 4, 2013

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removing the Island Night Lizard From the Federal List of Endangered and Threatened Wildlife; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0099; FXES11130900000–134–FF09E32000]

RIN 1018–AY44

Endangered and Threatened Wildlife and Plants; Removing the Island Night Lizard From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; 12-month petition finding; notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the island night lizard (*Xantusia riversiana*) from the Federal List of Endangered and Threatened Wildlife. This action is based on a review of the best available scientific and commercial information, which indicates that the species no longer meets the definition of endangered species or threatened species under the Endangered Species Act of 1973, as amended (Act). This proposed rule, if made final, would remove the island night lizard as a threatened species from the List of Endangered and Threatened Wildlife. This document also constitutes our 12-month finding on a petition to remove the island night lizard from the Federal List of Endangered and Threatened Wildlife.

DATES: We will accept comments received or postmarked on or before April 5, 2013. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by March 21, 2013.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R8–ES–2012–0099, which is the docket number for this rulemaking. On the search results page, under the Comment Period heading in the menu on the left side of your screen, check the box next to ''Open'' to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2012–0099; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments below for more information).

Document availability: A copy of the draft post-delisting monitoring plan can be viewed at *http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=C01M.*

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone 760–431–9440; facsimile (fax) 760–431–5901. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document contains: (1) A 12-month finding in response to a petition to delist the San Clemente and San Nicolas Island distinct population segments (DPSs); (2) a proposed rule to remove the island night lizard from the Federal List of Endangered and Threatened Wildlife; and (3) a notice of availability of a draft post-delisting monitoring plan.

Species addressed. The island night lizard (*Xantusia riversiana*) is endemic to three Channel Islands (San Clemente, San Nicolas, and Santa Barbara) located off the southern California coast and a small islet (Sutil Island) located just southwest of Santa Barbara Island. Habitat restoration and reduced adverse human-related impacts since listing have resulted in significant improvements to habitat quality and quantity. As a result, threats to the island night lizard have been largely ameliorated. Though population densities were not known at the time of listing, the island night lizard populations are currently estimated at 21.3 million lizards on San Clemente Island, 15,300 lizards on San Nicolas Island, and 17,600 lizards on Santa Barbara Island (including Sutil Island).

Purpose of the Regulatory Action. Under the Endangered Species Act of 1973, we may be petitioned to list, delist, or reclassify a species. In 2004, we received a petition from the Navy asserting that each of the three island occurrences of island night lizard qualifies for recognition as a DPS under the DPS Policy (61 FR 4722; February 7, 1996) and requesting that we delist the San Clemente and San Nicolas Island DPSs (Navy 2004, p. 12). In 2006, we published a 90-day finding (71 FR 48900) concluding that the Navy's petition provided substantial information supporting that delisting may be warranted and we thus announced the initiation of a status review for this species, which is summarized in this document.

Basis for the Regulatory Action. Under the Act, a species may be determined to be an endangered species or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider the same factors in delisting a species. We may delist a species if the best scientific and commercial data indicate the species is neither threatened nor endangered for one or more of the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer threatened or endangered; or (3) the original scientific data used at the time the species was classified were in error.

Threats to the island night lizard at the time of listing included destruction of habitat by feral goats and pigs, predation, and the introduction of nonnatives throughout the species range. We reviewed all available scientific and commercial information pertaining to the five threat factors in our status review of the island night lizard. The results of our status review are summarized below.

- We consider the island night lizard to be ''recovered'' because all substantial threats to the lizard have been ameliorated.
- All remaining potential threats to the species and its habitat, with the exception of climate change, are currently managed through implementation of management plans.
- While we recognize that results from climate change such as rising air temperatures, lower rainfall amounts, and rising sea level are important issues with potential effects to the island night

lizard and its habitat, the best available information does not indicate that potential changes in temperature, precipitation patterns, and rising sea levels would significantly impact the island night lizard or its habitat. We expect that the lizard's susceptibility to climate change is somewhat reduced by its ability to use varying habitat types and by its broad generalist diet; therefore, we do not consider climate change to be a substantial threat to the species at this time.

- We find that delisting the island night lizard is warranted and we propose to remove this taxon from the Federal List of Endangered and Threatened Wildlife.
- We have also prepared a draft post-delisting monitoring plan to monitor the island night lizard after delisting to verify that the species remains secure.

Acronyms Used

We use several acronyms throughout the preamble to this proposed rule. To assist the reader, we set them forth here:

BMP = best management practices
CHIS = Channel Islands National Park
DPS = Distinct Population Segment
FMP = Fire Management Plan
GHG = greenhouse gas
INLMA = Island Night Lizard Management Area
INRMP = Integrated Natural Resources Management Plan
IPCC = Intergovernmental Panel on Climate Change
MSRP = Montrose Settlements Restoration Program
Navy = United States Department of the Navy
NEPA = National Environmental Policy Act
NHRP = Native Habitat Restoration Program
NPS = National Park Service
OMB = Office of Management and Budget
PDM = post-delisting monitoring
PRBO = Point Reyes Bird Observatory
Service = United States Fish and Wildlife Service
SHOBA = Shore Bombardment Area
SPR = Significant Portion of the Range

Public Comments

We intend any final action resulting from this proposal to be based on the best scientific and commercial data available, and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, tribes, the scientific community, industry, or other interested parties concerning this proposed rule. We particularly seek comments concerning:

(1) Reasons why we should or should not delist the island night lizard under the Act.

(2) New biological or other relevant data concerning any threat (or lack thereof) to this species.

(3) New information concerning the population size or trends of this species.

(4) New information on the restoration of *Lycium californicum* (California boxthorn), which contain the highest recorded densities of island night lizards throughout their range.

(5) New information on the current or planned activities in the subject areas that may adversely affect or benefit the species.

(6) New information and data on the projected and reasonably likely impacts to island night lizard or its habitat associated with climate change.

(7) Information regarding how best to conduct post-delisting monitoring (PDM), should the proposed delisting lead to a final delisting rule (see *Post-Delisting Monitoring Plan Overview* section below, which briefly outlines the goals of the draft PDM Plan that is available for public comment concurrent with publication of this proposed rule). Such information might include suggestions regarding the draft objectives, and monitoring procedures for establishing population and habitat baselines, or for detecting variations from those baselines over the course of at least 9 years.

You may submit your comments and materials concerning this proposed rule (and associated draft PDM Plan) by one of the methods listed in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *http://www.regulations.gov,* we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If your written comments provide personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.* Please include sufficient information with your comment to allow us to verify any scientific or commercial data you submit.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment during normal business hours at the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. We must receive your request within 45 days after the date of this **Federal Register** publication. Send your request to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (50 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule and the draft PDM Plan. The purpose of peer review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. A peer review panel will conduct an assessment of the proposed rule and draft PDM Plan, and the specific assumptions and conclusions regarding the proposed delisting. This assessment will be completed during the public comment period.

We will consider all comments and information we receive during the comment period on this proposed rule as we prepare the final determination. Accordingly, the final decision may differ from this proposal.

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing or reclassifying the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Actions

The island night lizard was proposed as a threatened species under the Act on June 1, 1976 (41 FR 22073) based on threats from habitat degradation from grazing by introduced animals on all

three islands and from ''habitat alterations caused by farming, fire, grazing by introduced animals, and invasion by exotic plants'' on San Nicolas and Santa Barbara Islands. A final rule listing the island night lizard as a threatened species was published in the **Federal Register** on August 11, 1977 (42 FR 40682). We finalized a Recovery Plan for the Endangered and Threatened Species of the California Channel Islands (Recovery Plan) in January 1984, which addressed the island night lizard and six other federally listed species occurring on San Clemente, San Nicolas, and Santa Barbara Islands (including Sutil Island) off the coast of southern California (Service 1984). Subsequently, we initiated notice of reviews and requested public comments concerning the status of the island night lizard under 4(c)(2) of the Act on September 27, 1982 (47 FR 42387), July 7, 1987 (52 FR 25523), and November 6, 1991 (56 FR 56882). None of those reviews resulted in a recommendation to change the status of the species; no summaries were published.

In 1997, the National Wilderness Institute submitted a petition to delist the island night lizard on the basis of data error (National Wilderness Institute 1997). In a letter to the National Wilderness Institute dated June 29, 1998 (Service 1998), we indicated that due to the low priority assigned to delisting activities in our 1997 Fiscal Year Listing Priority Guidance, we were not able to act on the petition at that time.

In 2004, the Navy submitted a petition asserting that the island night lizard populations on San Clemente, San Nicolas, and Santa Barbara Islands each qualify as DPSs (Navy 2004). The petition stated that the island night lizard populations meet the discreteness and significance criteria of the Service's and National Marine Fisheries Service's Joint Policy Regarding the Recognition of Distinct Vertebrate Population Segments under the Act (DPS Policy) (61 FR 4722, February 7, 1996). The petition sought the delisting of the San Clemente and San Nicolas Island distinct population segments of island night lizard.

On July 7, 2005 (70 FR 39327), we announced the initiation of a 5-year review of the island night lizard and requested that interested parties submit information regarding the species' status. We published a second notice in the **Federal Register** on November 3, 2005 (70 FR 66842), extending the request for information concerning the island night lizard. No information regarding the status of the island night lizard was received in response to either information request. On August 22, 2006 (71 FR 48900), we published in the **Federal Register** a 90-day finding for both the 1997 and 2004 petitions to delist the island night lizard. In our 90-day finding, we determined the 1997 petition from the National Wilderness Institute did not provide substantial information indicating that delisting the island night lizard due to data error was warranted, which concluded our review of that petition. However, we determined the 2004 petition from the Navy provided substantial information indicating the petitioned actions of delisting the San Clemente and San Nicolas Island populations may be warranted and initiated a 12-month status review, which is represented by this proposed delisting rule.

In September 2006, we completed a 5-year review of the island night lizard (Service 2006, pp. 24–26). In that review, we conducted a preliminary DPS analysis of the island night lizard populations on San Clemente, San Nicolas, and Santa Barbara Islands and concluded that the lizards on each island may qualify as DPSs under the Service's policy because they may each meet the discreteness and significance criteria. Additionally, the 2006 5-year review recommended revising the listing of the island night lizard by designating each island as a DPS. That review also recommended classifying the San Nicolas and Santa Barbara Island DPSs as threatened. Lastly, the 5-year review concluded that the San Clemente Island DPS had recovered due to the amelioration of threats and recommended delisting of this DPS (Service 2006, p. 26). However, we stated that we would continue to seek additional information and refine our preliminary DPS analysis in the context of the 12-month finding on the Navy's petition to delist the San Clemente and San Nicolas populations of the island night lizard (Service 2006, p. 5). We published a notice in the **Federal Register** on February 14, 2007 (72 FR 7064), announcing the availability of completed 5-year reviews, including the island night lizard 5-year review. A copy of the 2006 5-year review for the island night lizard is available on the Service's Environmental Conservation Online System [*http://ecos.fws.gov/docs/five_year_review/doc776.pdf*].

Most recently, we published a notice of initiation of 5-year reviews in the **Federal Register** on May 21, 2010 (75 FR 28636), initiating a further status review for the island night lizard. We completed this review for the lizard on October 5, 2012. The 2012 review recommended delisting the lizard throughout its entire range due to the amelioration of substantial threats and current management of potential threats to the species and its habitat (Service 2012a, p. 44). As we are adopting this recommendation in this finding, we do not further address here the DPS status of the three island populations.

Species Information

The island night lizard occurs on three of the Channel Islands off the coast of California: San Clemente Island, San Nicolas Island, and Santa Barbara Island. It also occurs on a small islet, Sutil Island, just southwest of Santa Barbara Island. The majority of information on island night lizard biology and life history comes from studies conducted on San Clemente Island, with some additional studies and information from San Nicolas and Santa Barbara islands. The information on island night lizards on Sutil Island is limited to the two occasions it was documented there.

Description

Island night lizard adults average 2.6 to 4.3 inches (in) (65 to 109 millimeters (mm)) in length from snout to vent (Goldberg and Bezy 1974, p. 356; Fellers and Drost 1991, p. 28; Mautz 1993, p. 422). Dorsal coloration ranges from pale ash gray and beige to shades of brown and shades of black with varying uniform, mottled, and striped patterns (Bezy *et al.* 1980, p. 575; Fellers and Drost 1991, pp. 42–44). Both coloration and patterning are highly variable among lizards on all islands throughout their range (Bezy *et al.* 1980, p. 575; Fellers and Drost 1991, pp. 43–44).

Biology and Life History

The island night lizard is a slow-growing, late-maturing, and long-lived lizard (Goldberg and Bezy 1974, pp. 355–358; Fellers and Drost 1991, pp. 36–42). Island night lizards can live on average 11 to 13 years, with some individuals estimated to be 30 years of age (Fellers and Drost 1991, p. 38; Mautz 1993, p. 420; Fellers *et al.* 1998, p. 25).

Members of the genus *Xantusia* are primarily active during the day (Bezy 1988, p. 8); however, they are highly sedentary and tend to remain under shelter such as dense vegetation or rocks (Fellers and Drost 1991, pp. 50, 55; Mautz 1993, p. 419). Sheltered areas provide suitable cover to protect the species from predation and allow sufficient amounts of sunlight to penetrate to the ground, providing a range of temperatures for thermal regulation (regulation of body temperature) (Mautz 2001a, pp. 9–12).

Island night lizards are viviparous (bear live young) and reach sexual

maturity at approximately 3 to 4 years of age (Goldberg and Bezy 1974, p. 355; Fellers and Drost 1991, p. 40). Breeding begins around March or April and single broods of young are born around September (Goldberg and Bezy 1974, p. 353). Females demonstrate irregular intervals between reproductive cycles, but appear to approach a biennial cycle (approximately half of sexually mature females reproduce in any given year) (Goldberg and Bezy 1974, p. 358). The island night lizard is unique within the genus *Xantusia* for having a brood size greater than two (Fellers and Drost 1991, p. 59); however, brood size differs among each of the islands where the species occurs, with females on San Nicolas Island averaging 5.3 young per brood and females on both San Clemente and Santa Barbara Islands averaging 3.9 young per brood (Fellers and Drost 1991, p. 60).

Based on multiple years of surveys on San Clemente Island, neonate (young of the year) island night lizards on average comprise about 25 percent of the population (Mautz 1993, p. 422), but this percentage may be lower during periods of drought. Between August 2003 and July 2004, only 1.65 in (42 mm) of rain fell on San Clemente Island (Mautz 2005, p. 5). Surveys conducted in 2004 during the first part of the birthing season (early September) revealed neonate lizards comprised only 14 of the 199 lizards captured (approximately 7 percent) (Mautz 2005, p. 5). In contrast, surveys conducted in October 2006 following a very rainy winter on San Clemente Island (9.65 in (245 mm) of rainfall) revealed 45 of the 127 lizards (35 percent of those captured) were yearlings (in the first year of life) (Mautz 2007, p. 4). Had the 2006 survey taken place in early September, the yearlings would have been counted as neonates. The significant difference in the percentage of neonates or yearlings between dry and wet years may be representative of the species' reproductive response to annual variations in rainfall and food abundance.

Island night lizards are omnivorous, with a diet primarily consisting of insects and plant matter (Knowlton 1949, p. 45; Brattstrom 1952, pp. 168–171; Mautz 1993, p. 417). Analyses of stomach and digestive tract contents of 24 lizards collected from San Clemente Island in 1948 revealed an omnivorous diet consisting of insects (including species of Hemiptera, Coleoptera, Lepidoptera, Diptera, and Hymenoptera); grass, sedge, seeds, and fruits; lizard skin; and the remains of what appeared to be juvenile mice (Knowlton 1949, p. 45). In 15 of the 24 specimens, plant material constituted at least 50 percent of the total food identified in the stomach contents (Knowlton 1949, p. 46). A more detailed analysis of numerous species of *Xantusia,* including specimens of the island night lizard from San Clemente, San Nicolas, and Santa Barbara Islands, was conducted by Brattstrom (1952, p. 3). Based on samples of the stomach and intestinal contents, Brattstrom (1952, p. 172) determined that the island night lizard eats the widest variety of foods of any of the species of the Genus *Xantusia* included in the research. Although all age groups will eat both plant and animal material, younger lizards consume a greater amount of animal prey in their diet than older lizards (Fellers and Drost 1991, p. 56). Plant material found in the stomach or fecal samples of island night lizards included *Mesembryanthemum crystallinum* (crystalline iceplant); the fruits, flowers, and leaves of *Lycium californicum* (California boxthorn); and the fruits of *Atriplex semibaccata* (Australian saltbush) (Fellers and Drost 1991, pp. 55–56).

Distribution and Habitat

The island night lizard is endemic to three Channel Islands (San Clemente, San Nicolas, and Santa Barbara) located off the southern California coast (Goldberg and Bezy 1974, pp. 355–358; Fellers and Drost 1991, p. 28) and a small islet (Sutil Island) located just southwest of Santa Barbara Island (Bezy *et al.* 1980, p. 579). San Clemente Island and San Nicolas Island are managed by the Navy, while Santa Barbara Island and Sutil Island are owned and managed by the National Park Service. San Clemente, San Nicolas, and Santa Barbara Islands vary in size and the amount of suitable habitat available for the island night lizard (see Table 1 below at the end of the ''*Population Density and Abundance''* section, which highlights the lizard's estimated population size for each island in relation to each island's size and the available habitat present). San Clemente Island is the largest and southernmost of the Channel Islands occupied by the lizard, consisting of approximately 37,200 acres (ac) (15,054 hectares (ha)), and is located approximately 68 miles (mi) (109 kilometers (km)) west of San Diego, California, and 55 mi (89 km) south of Long Beach, California (Navy 2002, p. 1.1). San Nicolas Island is the second largest and westernmost of the three Channel Islands inhabited by the lizard, consisting of approximately 14,230 ac (5,698 ha), and is located approximately 28 mi (45 km) southwest of Santa Barbara Island and 50 mi (80 km) northwest of San Clemente Island (Fellers *et al.* 1998, p. 5). Santa Barbara Island is the smallest and northernmost island inhabited by the lizard, consisting of approximately 640 ac (259 ha), and is located approximately 38 mi (61 km) from the mainland of southern California (Fellers and Drost 1991, pp. 5, 29) and 28 mi (45 km) northeast of San Nicolas Island.

Sutil Island is an islet located approximately 0.4 mi (0.65 km) southwest of Santa Barbara Island and consisting of approximately 13.7 ac (5.5 ha). At the time of listing (42 FR 40682), island night lizards were not known to occur on Sutil Island. Since listing, we are aware of only two occasions where island night lizards were documented on Sutil Island and, currently, little information concerning the species on Sutil Island exists.

Different surveys and descriptions of the vegetation types on San Clemente, San Nicolas, and Santa Barbara Islands have referred to the habitat supporting island night lizards under various names and descriptions. Two vegetation types identified by Sawyer *et al.* (2009) support most of the known dominant plant taxa associated with the lizard. The two vegetation types are Coast prickly pear scrub and *Lycium californicum* Provisional Shrubland Alliance. In Coast prickly pear scrub, cacti such as *Opuntia littoralis* (coastal prickly pear), *Opuntia oricola* (chaparral prickly pear), and *Cylindropuntia prolifera* (coast cholla) are dominant or codominant among the shrub canopy (Sawyer *et al.* 2009, pp. 599–601). *Lycium californicum* Provisional Shrubland Alliance is characterized by the prevalence of *L. californicum* (Sawyer *et al.* 2009, p. 588).

Cylindropuntia prolifera is referred to by its older Latin name, *Opuntia prolifera,* in numerous references cited in this document (for example, Fellers and Drost 1991, pp. 34, 68; Mautz 2001a, p. 17; Navy 2002, p. 3.54). While the Service recognizes that *C. prolifera* is the currently accepted name of this species and is used in discussions that reference current literature in this document (for example, Sawyer *et al.* 2009 and NPS *in litt.* 2011b), we will use the older name of *O. prolifera* only when referencing previous literature. Vegetation now classified as Coast prickly pear scrub includes communities variously referred to as Maritime Succulent Scrub and Maritime Desert Scrub in several references cited within this document (Fellers and Drost 1991, pp. 34, 68; Mautz 2001a, p. 17; Navy 2002, p. 3.54). *Lycium californicum* Provisional Shrubland Alliance (Sawyer *et al.* 2009, p. 588) is

a vegetative community in which *L. californicum* is a dominant or codominant species and taxa such as *Coreopsis gigantea* (giant coreopsis), *Bergerocactus emoryi* (golden-spined cereus), and *C. prolifera* are present. This is also referred to as Maritime Succulent Scrub, Maritime Desert Scrub, or boxthorn habitat by numerous references included within this document (for example, Fellers and Drost 1991, pp. 34, 68; Mautz 2001a, p. 17; Navy 2002, p. 3.54). To eliminate any confusion, we will refer to the vegetation types that comprise high-quality habitat and supports high island night lizard densities as *L. californicum* and *Opuntia* spp. habitats.

Surveys conducted on the islands occupied by the island night lizard indicate strong habitat preferences for *Lycium californicum* and *Opuntia* spp. habitats (Fellers and Drost 1991, p. 34; Schwemm 1996, pp. 3–4; Mautz 2001a, p. 23; Mautz 2004, p. 18). These habitats are considered high quality because they offer suitable cover to protect the species from predation and allow sufficient amounts of sunlight to penetrate to the ground, which provides a thermal mosaic for thermal regulation (Mautz 2001a, pp. 9–11, 17–18). Island night lizards are also known to occupy grasslands, *Coreopsis gigantea* stands, mixed shrub communities, rocky outcrops, and cobble and driftwood habitats (Fellers and Drost 1991, p. 34; Schwemm 1996, pp. 3–4; Mautz 2001a, p. 23; Mautz 2004, p. 18). Loose rocks or crevices in clay soils are also important habitat components within island night lizard habitat (Fellers and Drost 1991, p. 53; Mautz 2001a, p. 17).

Mautz (2001a, pp. 17–18) suggested that vegetation community characteristics may be as important to island night lizard habitat as species composition. This assertion is corroborated by Fellers *et al.* (1998, p. 16), who concluded that plywood debris, which serves as cover in grasslands with scattered *Haplopappus* (haplopappus) and few to no other shrub species, was a factor that contributed to high densities of lizards at sampling sites on San Nicolas Island.

In addition to natural cover, artificial cover created by human presence on San Clemente, San Nicolas, and Santa Barbara Islands may also be utilized by island night lizards, thereby enabling them to persist in areas of otherwise unsuitable habitat. During surveys for the species on San Clemente and San Nicolas Islands, lizards were routinely found under pieces of plywood discarded by U.S. Navy (Navy) personnel (Fellers *et al.* 1998, p. 18). The presence of these boards, some of which may have been in place for a decade or more, provided an opportunity for researchers to assess longevity of the species because some specific lizards were recorded (captured and recaptured) over long intervals of time (Fellers *et al.* 1998, p. 7). Underlying soils may also indicate whether an area supports lizards. Extensive trapping conducted on San Nicolas Island determined that loose sand substrates are unsuitable for the species (Fellers *et al.* 1998, pp. 11–17). Very little information exists concerning the vegetative communities on Sutil Island.

San Clemente Island

San Clemente Island supports approximately 19,640 acres (ac) (7,948 hectares (ha)) of high-quality island night lizard habitat distributed primarily along the western marine terraces (Navy 2002, p. 3.54). There are approximately 13,791 ac (5,581 ha) of *Opuntia* spp. habitat and 5,849 ac (2,367 ha) of *Lycium californicum* habitat (Service 1997, p. 6; Navy 2002, p. 3.54). From 1992 to 2008, a long-term trend analysis was conducted, which indicated no clear trend in habitats dominated by *Opuntia* spp. or *L. californicum* on San Clemente Island, but there was an approximate 6 percent reduction of *L. californicum* and 10 percent reduction of *Opuntia* spp. in the cover of those habitats on the island (Tierra Data Inc. 2010, pp. 48–67). This observed decrease was likely due to high rainfall experienced in the baseline years from 1991 to 1993, in comparison to subsequent rainfall (Tierra Data Inc. 2010, p. 125).

Low- to moderate-quality island night lizard habitat consisting of *Artemisia* spp. (sagebrush), *Eriogonum* spp. (buckwheat), *Deinandra clementina* (as *Hemizonia clementina*) (Catalina tarweed), as well as *Lycium californicum* and *Opuntia* spp., occupies approximately 386 ac (156 ha) of the northeastern escarpment of San Clemente Island (Navy 2002, p. 3.65). Low-quality grassland habitat occupies approximately 11,831 ac (4,788 ha) on the central plateau and eastern scarp of the island (Navy 2002, p. 3.54). Lizards on San Clemente Island have not been found in closed-canopy canyon or woodland habitats, which do not allow sufficient amounts of sunlight to penetrate the canopy cover for thermal regulation, or active sand dunes that do not offer sufficient cover for the species (Mautz 2001a, pp. 4, 9, 18).

San Nicolas Island

Due to differing survey methodologies and precision of mapping efforts, the amount of high-quality habitat on San Nicolas Island has varied over time. Based on these various surveys and methodologies, little high-quality habitat is known to exist on San Nicolas Island. Site specific vegetation transects completed in 1996 failed to locate *Lycium californicum* and only once located *Opuntia* spp. (Chess *et al.* 1996, pp. 19–46). Fellers *et al.* (1998, p. 46) conducted an island-wide analysis of the vegetation, utilizing aerial photos and on the ground surveys, and estimated 1.9 ac (0.8 ha) of high-quality island night lizard habitat and about 161 ac (65 ha) of lower-quality mixed shrub habitat occur on San Nicolas Island. In 2003, Junak (2003, p. 7) also conducted an island-wide survey of the vegetation utilizing helicopter flyovers, on the ground surveys, and Global Positioning System receivers and estimated that approximately 11.2 ac (4.6 ha) of high-quality habitats were available on the island. That high-quality habitat occurs primarily on the eastern half of the island and is patchily distributed with lower-quality habitat (Fellers *et al.* 1998, pp. 13–14). The lower-quality habitat is a mixed shrub community comprising *Haplopappus* spp., *Calystegia macrostegia* (island morning-glory), *Coreopsis gigantea, Atriplex semibaccata, Deinandra clementina, Lupinus albifrons* (silver lupine), *Baccharis pilularis* (coyote brush), and *Artemisia* spp. (Fellers *et al.* 1998, pp. 16–17). Island night lizards generally do not inhabit the western half of San Nicolas Island due to a lack of suitable vegetative or rock cover. One exception is a 0.6-ac (0.2-ha) area of cobble and driftwood habitat at Redeye Beach that is just above the intertidal zone on the northwestern side of the island (Fellers *et al.* 1998, p. 11). Occupancy within this habitat, which supports the highest density of lizards on the island, is unique to San Nicolas Island (Fellers *et al.* 1998, p. 11).

Santa Barbara Island

Habitat on Santa Barbara Island is limited due to the small size of the island and the extensive habitat damage that occurred historically when goats (*Capra* spp.), sheep (*Ovis* spp.), and European rabbits (*Oryctolagus cuniculus*) were present (Service 1984, pp. 45–46; Fellers and Drost 1991, p. 70). Using aerial photographs of the island from 1983 and ground surveys, Fellers and Drost (1991, p. 68) identified approximately 14.8 ac (6 ha) of high-quality habitat on Santa Barbara Island that included *Lycium californicum, Opuntia* spp., and rock outcrops. Low- to moderate-quality habitat on Santa Barbara Island also contains some

Lycium californicum and *Opuntia* spp., but is dominated by *Coreopsis gigantea, Eriogonum giganteum* var. *compactum* (Santa Barbara Island buckwheat), and *Eriophyllum nevinii* (silver-lace) (Fellers and Drost 1991, p. 70); these native shrub communities are patchily distributed in grasslands across a majority of the island (Halvorson *et al.* 1988, p. 111).

The National Park Service (NPS) is preparing a new preliminary vegetative analysis of Santa Barbara Island, but it has not been finalized (NPS 2011b, *in litt.*). Preliminary results from surveys conducted in 2010 (in a report not yet finalized) by the NPS indicate an increase in high-quality habitat, where *Lycium californicum and Opuntia* spp. are dominant or codominant among the vegetation (NPS 2011b, *in litt.*). Results indicate that there are approximately 16.6 ac (6.7 ha) of *L. californicum* and 9.3 ac (3.8 ha) of *Opuntia oricola* habitat where these taxa account for greater than 39 percent of the vegetative cover (Rodriguez 2012, pers. obs.). A preliminary analysis concerning *Cylindropuntia prolifera,* another documented habitat for the lizard, is not yet available.

Sutil Island

Little is known about the habitat on Sutil Island. Sutil Island consists of approximately 13.7 ac (5.5 ha) (Rudolph 2011, pers. obs.), much of it unbroken bedrock, with some vegetation identified as island night lizard habitat, such as low shrubs, *Lycium californicum,* and rocks and fissures, but these are sparsely distributed (Drost 2011, pers. obs.).

Population Density and Abundance

At listing (42 FR 40682), island night lizard population densities were not known on any of the inhabited Channel Islands. Island night lizards appear to show preference for several habitat types (Fellers and Drost 1991, p. 68; Mautz 2001a, pp. 17–19); however, determining an overall population estimate is difficult due to the sedentary and reclusive behavior of the species. The highest lizard population densities are observed in *Lycium californicum* and *Opuntia* spp. habitats (Fellers and Drost 1991, pp. 34, 68; Mautz 2001a, p. 17). Lizards are found in lower densities throughout shrub communities, rocky outcrops, grasslands, and in stands of *Coreopsis gigantea* (Service 1984, p. 93; Fellers and Drost 1991, p. 35; Mautz 2001a, pp. 17–22). Mautz (2004, p. 8) reported that a large number of lizards are repeatedly recaptured in survey traps. High recapture rates, in conjunction with large survey grids relative to their home range size, indicate that standardized trapping provides a good estimate of local densities (White 1982, p. 130). Therefore, trapping in suitable cover on San Clemente, San Nicolas, and Santa Barbara Islands can be a good indicator of lizard density and overall abundance (Mautz 2001a, p. 17).

San Clemente Island

Surveys conducted over a 7-year period indicate that San Clemente Island contains the largest population of island night lizards. From 1991 to 1998, researchers calculated population densities using data from pitfall traps, cover boards, and rock turn surveys in high-quality island night lizard habitat (Mautz 2001a, pp. 17–23, 43–54). The Navy conducted similar surveys in 2009 and 2010; as of 2011 (Mautz 2011, pers. comm.), those results were not yet analyzed and are not currently available.

Density estimates were assessed by analyzing capture rates and mark-recapture data, based on the 1991 to 1998 surveys, using three methodologies: (1) A minimum estimate measure of the number of animals intercepted in a single sample; (2) a Lincoln Index; and (3) a Regression Index (Mautz 2001a, pp. 21–23). The minimum estimate measure resulted in a population of 8.18 million on San Clemente Island; however, Mautz (2001a, pp. 20–22) indicated that this number represents an underestimate because most of the lizard population is inaccessible in dense vegetation or underground, and pitfall traps intercept only animals active in the immediate vicinity of the trap. The Lincoln Index estimated that 16.71 million lizards occurred on San Clemente Island; however, Mautz (2001, pp. 43–44) again cautioned that this method could underestimate the number of lizards because inadequate mixing of those captured lizards back into the population could result in a higher proportion of recaptures. The Regression Index estimated that 25.89 million lizards occurred on San Clemente Island; however, Mautz (2001, p. 51) cautioned that this method could overestimate the number of lizards because the index requires a closed sampling population and the extended period of time of sampling from 1991–1998 may accommodate an increased amount of immigration and emigration on the study plots.

Mautz (2001a, pp. 21–23) suggested that a reasonable estimate of island night lizard density on San Clemente Island could be calculated from the average between the Lincoln and Regression Indexes. This calculation resulted in an estimate of 21.3 million lizards on the island. Evaluation of the habitat type where the data was collected was used to estimate lizard densities in high-quality habitat: 1,934 lizards per 2.47 ac (1 ha) in *Lycium californicum* habitat, 2,558 lizards per 2.47 ac (1 ha) in *Opuntia littoralis* and *O. oricola* habitat, and 1,423 lizards per 2.47 ac (1 ha) in *O. prolifera* habitat (Mautz 2001a, p. 23). These high-quality habitats occur on the lower marine terraces of the west side of the island and support approximately half of the estimated population (10.4 million) of lizards (Mautz 2001a, p. 29). In the lower-quality habitat areas, island night lizards were estimated at 1,142 lizards per 2.47 ac (1 ha) in upland plateau grasslands and 926 lizards per 2.47 ac (1 ha) in scarp grassland and coastal sage (Mautz 2001a, p. 23). No lizards were found in canyon woodland and active sand dunes on the island (Mautz 2001a, p. 23). Because there has not been a new population estimate or much change in the quantity of habitat, the Service and Navy continue to use the estimate of 21.3 million lizards.

San Nicolas Island

Estimates of the number of island night lizards on San Nicolas Island have been assessed from a number of data collection efforts. The primary study conducted surveys from 1992 to 1995 using pitfall traps, coverboards, and Sherman small mammal traps arranged in transects through suitable habitat and on the edges of impenetrable habitats (Fellers *et al.* 1998, p. 7). That study also utilized data from surveys conducted by Tom Murphey from 1984 to 1985 (Fellers *et al.* 1998, p. 5). Lastly, Fellers *et al.* (1998, p. 71) also used grid arrays conducted from 1992 to 1995, from some of the areas initially surveyed by Tom Murphey.

Fellers *et al.* (1998, p. 46) estimated the number of lizards on San Nicolas island and density of lizards in different habitat types by comparing survey data from populations on Santa Barbara Island with aerial photograph estimates of the habitat on San Nicolas Island. Overall, lizard abundance on San Nicolas Island was estimated at 15,300 individuals (Fellers *et al.* 1998, p. 20). Island night lizard densities were estimated at 3,200 lizards per 2.47 ac (1 ha) in *Lycium californicum* habitat, 2,500 lizards per 2.47 ac (1 ha) in *Opuntia* spp. habitat, and 200 lizards per 2.47 ac (1 ha) in mixed-shrub habitat (Fellers *et al.* 1998, p. 46). Island night lizards are found primarily on the eastern half of San Nicolas Island; however, the island does support an

exceptionally high density of lizards (4,000 per 2.47 ac (1 ha)) in cobble and driftwood habitat found on Redeye Beach at the northwestern end of the island (Fellers *et al.* 1998, pp. 11, 20). The mixed-shrub habitat is only utilized by the island night lizard on San Nicholas Island and it is unknown whether it supports a self-sustaining lizard population. Through examination of aerial photographs and ground surveying efforts, Fellers *et al.* (1998, p. 46) estimated approximately 0.13 ac (0.05 ha) of *L. californicum* and 1.17 ac (0.47 ha) of *Opuntia* spp. existed on San Nicolas Island.

Subsequent to Fellers *et al.* (1998), Junak (2003, p. 7) revised the estimated amount of *Opuntia* spp. and *Lycium californicum* habitats on San Nicolas Island, and concluded there were 11.2 ac (4.6 ha) of these habitats available on the island, compared to 1.3 ac (0.52 ha) previously. A new population assessment of island night lizards on San Nicolas Island has not been conducted, though we anticipate that the number of lizards has increased due to the increase in high-quality habitat. Currently, the Navy's 2010 Integrated Natural Resources Management Plan (INRMP) for San Nicolas Island continues to use the population size of approximately 15,000 lizards established by Fellers *et al.* (1998, p. 20) as the current population estimate (Navy 2010, p. 3–43).

Santa Barbara Island

Surveys to assess island night lizard population status were conducted on Santa Barbara Island from 1981 to 1988 using pitfall traps and Sherman small mammal traps in transects and grid arrays depending on the island's topography (Fellers and Drost 1991, p. 30). Island night lizard densities were estimated at 3,213 lizards per 2.47 ac (1 ha) in *Lycium californicum* habitat, 2,476 lizards per 2.47 ac (1 ha) in *Opuntia* spp. habitat, and 1,665 lizards per 2.47 ac (1 ha) in rock habitat (Fellers and Drost 1991, p. 68). All other habitat types or vegetative communities on the island displayed a density of zero (Fellers and Drost 1991, p. 68). Based on estimates of available habitat types and extrapolation of lizard densities within those habitat types, a total of approximately 17,600 lizards were estimated to occur on Santa Barbara Island in 1991 (Fellers and Drost 1991, p. 68). A new preliminary vegetative analysis of Santa Barbara Island is being drafted and until it is finalized, we will use Fellers and Drost (1991, p. 68) density estimates as the most recent estimate. The Service and NPS continue to use this estimate, because there has been little change in the quantity of habitat available and no additional population estimates have been conducted.

Sutil Island

Sutil Island was not known to be occupied at the time the island night lizard was listed. In 1978, a survey of Sutil Island was conducted and 12 lizards were identified (Wilson 1979, as cited in Power 1979, p. 8.5). In 1991, Drost (2011, pers. obs.) visited the island and though there was little habitat that could be turned or searched, he observed one lizard in a rock crevice. He noted that though vegetative cover on the island was sparse, there were surface cracks, fissures, and boulder cover that could provide cover. We have no surveys for the island night lizard on Sutil Island since 1978. Because Sutil Island is within close proximity to Santa Barbara Island, has very few to no visitors annually, and like Santa Barbara Island is managed by the NPS, we will incorporate Sutil Island in the discussion of Santa Barbara Island for the remainder of this document.

TABLE 1—ISLAND SIZE, AMOUNT OF HABITAT, AND POPULATION SIZE OF THE ISLAND NIGHT LIZARD

Island	Size	Amount of high-quality habitat*	Estimated population (million)
San Clemente	37,200 ac (15,054 ha)	19,640 ac (7,948 ha)	21.3
San Nicolas**	14,230 ac (5,698 ha)	11.8 ac (4.8 ha)	15,300
Santa Barbara	640 ac (259 ha)	25.9 ac (10.5 ha)	17,599

* High-quality habitat (*Lycium californicum* and *Opuntia* spp.).
** Amount of habitat includes cobble and driftwood habitat unique to San Nicolas Island.

Recovery Planning and Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. The Act directs that, to the maximum extent practicable, we incorporate into each plan:

(1) Site-specific management actions that may be necessary to achieve the plan's goals for conservation and survival of the species;

(2) Objective, measurable criteria, which when met would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the list; and

(3) Estimates of the time and cost required to carry out the plan.

Revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Objective, measurable criteria, or recovery criteria contained in recovery plans, must indicate when we would anticipate an analysis of the five threat factors under section 4(a)(1) would result in a determination that a species is no longer endangered or threatened. Section 4(b) of the Act requires the determination be made ''solely on the basis of the best scientific and commercial data available.''

While recovery plans are intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. Determinations to remove a species from the List made under section 4(a)(1) of the Act must be based on the best scientific and commercial data available at the time of the determination, regardless of whether that information differs from the recovery plan.

In the course of implementing conservation actions for a species, new information is often gained that requires recovery efforts to be modified accordingly. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more recovery criteria may have been exceeded while other criteria may

not have been accomplished, yet the Service may judge that, overall, the threats have been minimized sufficiently, and the species is robust enough, that the Service may reclassify the species from endangered to threatened or perhaps delist the species. In other cases, recovery opportunities may have been recognized that were not known at the time the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan.

Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that recovery criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, planning, implementing, and evaluating the degree of recovery of a species that may, or may not, fully follow the guidance provided in a recovery plan.

Thus, while a recovery plan provides important guidance on the direction and strategy for recovery, and indicates when a rulemaking process may be initiated, the determination to remove a species from the Federal List of Endangered and Threatened Wildlife is ultimately based on an analysis of whether a species is no longer endangered or threatened. The following discussion provides a brief review of recovery planning for the island night lizard, as well as an analysis of the recovery criteria and goals as they relate to evaluating the status of the species.

In 1984, the Service published the Recovery Plan for the Endangered and Threatened Species of the California Channel Islands (Recovery Plan) that addressed three candidate species and seven federally threatened or endangered plants and animals, including the island night lizard, distributed among three of the Channel Islands (Service 1984). Given the threats in common to the 10 species addressed, the Recovery Plan is broad in scope and focuses on restoration of habitats and ecosystem function. The Recovery Plan included six general objectives covering all 10 of the plant and animal species:

(1) Identify present adverse impacts to biological resources and strive to eliminate them.

(2) Protect known resources from further degradation by: (a) Removing feral herbivores, carnivores, and selected exotic plant species; (b) controlling unnatural erosion in sensitive locations; and (c) directing military operations and adverse recreational uses away from biologically sensitive areas.

(3) Restore habitats by revegetating disturbed areas using native species.

(4) Identify areas of San Clemente Island where habitat restoration and population increase of certain addressed taxa may be achieved through a careful survey of the island and research on habitat requirements of each taxon.

(5) Delist or upgrade the listing status of those taxa that achieve vigorous, self-sustaining population levels as the result of habitat stabilization, restoration, and preventing or minimizing adverse human-related impacts.

(6) Monitor effectiveness of recovery effort by undertaking baseline quantitative studies and subsequent follow-up work (Service 1984, pp. 106–107).

Our review of the Recovery Plan focuses on the actions identified that promote the recovery of the island night lizard. The Recovery Plan adopts a generalized strategy to eliminate or control selected threats associated with nonnative species, erosion, and habitat disturbance. Elimination of these threats and restoration of degraded habitat on the Channel Islands are necessary for recovery of the island night lizard. The Recovery Plan states that ''[o]nce the threats to these taxa have been removed or minimized and the habitats are restored, adequately protected, and properly managed, reclassification for some taxa may be considered'' (Service 1984, p. 108). Actions specified in the Recovery Plan that are pertinent to recovery of the threatened island night lizard include:

(1) Eliminate selected nonnative species from San Clemente, San Nicolas, and Santa Barbara Islands.

(2) Conduct a soil survey of San Clemente Island.

(3) Construct check-dams to control erosion on San Clemente Island.

(4) Revegetate eroded and disturbed areas on San Clemente Island.

(5) Conduct specific programs for the island night lizard once management recommendations are formulated to enhance populations.

(6) Provide good-quality habitat for endangered or threatened birds (includes expanding *Lycium californicum,* which is high-quality island night lizard habitat).

(7) Modify existing management plans to minimize habitat disturbance.

(8) Implement policies to minimize habitat disturbance or loss.

(9) Prevent the introduction of additional nonnative taxa.

(10) Maintain restriction of recreational use of Santa Barbara Island to existing designated trails.

(11) Establish an ecological reserve for regions of high density of island night lizards on San Clemente and San Nicolas Islands.

(12) Determine island night lizard essential habitat, habitat requirements and preferences, population size, distribution, and effects of nonnative plants on the species and utilize data for development of habitat recommendations and habitat restoration.

(13) Evaluate the success of management actions.

(14) Increase public support for recovery efforts.

(15) Use existing laws and regulations to protect the island night lizard.

Specific criteria for determining when threats have been removed or sufficiently minimized for the island night lizard are not identified in the Recovery Plan. However, six objectives are described in general to achieve recovery of the Channel Island species. Following are a summary of actions and activities that have been implemented according to the 1984 Recovery Plan (Service 1984, pp. 106–107), and that contribute to achieve these recovery objectives.

Objective 1: Identify Present Adverse Impacts to Biological Resources and Strive To Eliminate Them

Actions taken by the Navy and NPS to contribute to achieving this objective include: education and outreach; development and implementation of management plans to identify, minimize, and address threats; management, control, and elimination of nonnative predators, herbivores, and invasive plants; consultation and coordination with the Service; and control of erosion. These actions are discussed briefly below and in greater detail in the five-factor analysis.

The Navy has taken steps to eliminate incidental impacts to the island night lizard by educating all Navy personnel stationed on San Clemente and San Nicolas Islands. All Navy personnel receive handouts, pamphlets, or posters presenting information on the distribution, threats, and management responsibilities of sensitive resources, such as federally threatened and endangered species, including the island night lizard. The NPS has also taken steps to eliminate incidental impacts to the lizard by educating all visitors to Santa Barbara Island (including Sutil Island). Brochures discussing the island's unique wildlife, including the island night lizard, as well

as maps of designated trails that all visitors must use to decrease disturbance to wildlife and lessen damage to resources, are available to all visitors of the island at the visitors' center or online at the Channel Islands National Park's Web site (*http://www.nps.gov/chis/index.htm*).

The Recovery Plan also recommends that existing laws and regulations be used to protect candidate, threatened, and endangered species, including the island night lizard. Based on the occurrences of this species on federally owned land, the primary laws with potential to protect the island night lizard include the National Environmental Policy Act (NEPA), the Sikes Act Improvement Act, NPS Organic Act, Federal Noxious Weed Act, Soil Conservation and Domestic Allotment Act, and the Act.

NEPA requires Federal action agencies to integrate environmental values into their decision-making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. Since its enactment in 1970, the Navy has implemented NEPA for actions on San Clemente and San Nicolas Islands, and the NPS has implemented NEPA for actions on Santa Barbara Island (including Sutil Island).

Pursuant to the Sikes Act Improvement Act of 1997, the Navy adopted INRMPs for San Clemente Island in 2002 and San Nicolas Island in 2010 that help guide the management and protection of each island's natural resources (Navy 2002; Navy 2010). INRMPs incorporate to the maximum extent practicable, ecosystem management principles and provide the landscape necessary to sustain military land uses. Each INRMP includes specific management actions and objectives to address the Recovery Plan task of incorporating recovery actions into existing management plans (see *Factor D* below). Through these mechanisms, the Navy is required to identify and address all threats to federally listed species during the INRMP planning process. If possible, threats are ameliorated, eliminated, or mitigated through this procedure. The Navy strives to fulfill this objective through both internal planning (INRMP) and compliance with Federal law (consultations with the Service under the Act and preparing environmental review documents under NEPA). The actions taken by the Navy under the INRMPs have not completely eliminated all adverse impacts, but many threats to island night lizards have been greatly reduced. These contributions to the elimination of adverse impacts fulfill a majority of this objective with respect to island night lizard as stated in the Recovery Plan.

Since listing of the Island night lizard under the Act in 1977, the Navy and NPS have had a history of consultation and coordination with the Service regarding the effects of various activities on the island night lizard on San Clemente, San Nicolas, and Santa Barbara Islands.

Objective 2: Protect Known Resources From Further Degradation by: (a) Removing Feral Herbivores, Carnivores, and Selected Exotic Plant Species; (b) Controlling Unnatural Erosion in Sensitive Locations; and (c) Directing Military Operations and Adverse Recreational Uses Away From Biologically Sensitive Areas

In 1992, the Navy fulfilled a major part of this objective by removing the last of the feral goats and pigs from San Clemente Island. Currently, the Navy has an ongoing predator control program to trap and remove feral cats and rats from San Clemente Island. From 2009 to 2010, the Montrose Settlements Restoration Program (MSRP) assisted the Navy by removing all feral cats from San Nicolas Island. In 1981, the last of the European rabbits (a nonnative herbivore) were removed from Santa Barbara Island. These actions to remove predators and nonnative herbivores, or develop removal programs for potential predators, have fulfilled this component of objective 2 in the Recovery Plan to remove feral and nonnative animals. Additionally, the Navy on both San Clemente and San Nicolas Islands, in accordance with the Federal Noxious Weed Act and through implementation of the Navy's INRMPs, conducts actions to reduce or eliminate all transport of nonnative plants to each island, and has facilitated programs to remove nonnative taxa that currently occur on the islands. On Santa Barbara Island, the NPS implements policies and management activities (in accordance with the Organic Act) that restrict all nonnative plant species from the island. Additionally, in partnership with the MSRP, nonnative plant removal is currently occurring on Santa Barbara Island. These actions to control nonnative plants on all islands occupied by the island night lizard have fulfilled most of this component of objective 2 in the Recovery Plan to remove exotic plant species.

The Navy is also taking steps to minimize the effects of erosion on San Clemente Island. Erosion control measures are being incorporated into project designs to minimize the potential to exacerbate existing erosion (O'Connor 2009, pers. comm.). Along with the Navy's planned expansion of its military operational areas, the Navy is developing an erosion control plan that will minimize soil erosion within and adjoining the operational areas (Navy 2008b, pp. 5–30; Service 2008 p. 62). The proposed erosion control plan includes development and application of best management practices (BMPs) such as: establishing setbacks and buffers from steep slopes, drainages, and sensitive resources; constructing site-specific erosion control structures; conducting revegetation and routine maintenance; and monitoring and adjusting the BMPs as appropriate. While the erosion control plan is being prepared, the Navy has postponed all major battalion movements and training, and is using BMPs to minimize erosion when creating and approving projects that might contribute to erosion on the island. The Navy has taken steps to reduce the threat of erosion on the island and contribute to the achievement of this objective.

Through implementation of INRMPs on San Clemente and San Nicolas Islands, the Navy conducts measures to avoid areas with highly erodible soils. Additionally, San Clemente has a nursery to grow native island plants, which are then used to assist in erosion control of disturbed sites. San Nicolas Island has developed a nursery for similar erosion control measures. On Santa Barbara Island, NPS requires the active preservation of soil resources and the avoidance or minimization of impacts to soil. These actions to prevent erosion fulfill this component of objective 2 of the Recovery Plan.

As recommended by the INRMP, the Navy established the Island Night Lizard Management Area (INLMA), which is avoided to the maximum extent practicable to assist with the recovery of the island night lizard and its habitat. Additionally, through implementation of INRMPs on both San Clemente and San Nicolas Islands, the Navy defines and marks work areas to prevent lizard mortality. The NPS has designated trails on Santa Barbara Island to allow visitors to view the island's ecosystems without being obtrusive or destructive to the natural resources. These actions to avoid biologically sensitive areas fulfill objective 2 with respect to island night lizard as stated in the Recovery Plan.

Objective 3: Restore Habitats by Revegetating Disturbed Areas Using Native Species

To restore the structure and function of native island ecosystems, the Navy, through implementation of its INRMP on San Clemente Island, has developed the Native Habitat Restoration Program and constructed a native plant nursery where plants, including species that provide a benefit to island night lizard habitat, are grown from seed, and stem and root cuttings, and outplanted annually. Additionally, the MSRP currently grows native plant species in a nursery on Santa Barbara Island to support island night lizard restoration projects. To date, approximately 15,000 native plants, some providing a benefit to the island night lizard, have been restored to Santa Barbara Island. These actions to restore habitat by revegetation fulfill the objective as stated in the Recovery Plan.

Objective 4: Identify Areas of San Clemente Island Where Habitat Restoration and Population Increase of Certain Addressed Taxa May Be Achieved Through a Careful Survey of the Island and Research on Habitat Requirements of Each Taxon

Since listing, research on the life history and biology of the island night lizard has been ongoing on San Clemente Island. Research has determined the island night lizard's distribution and density in various habitats on San Clemente Island (Mautz 1993; Mautz 2001a). Additionally, the Navy developed the INLMA (as part of the 2002 INRMP) to conserve the largest area of high-quality habitat with the highest densities of island night lizards. The Navy currently avoids and minimizes impacts to the lizard for any projects or training activities proposed in this area through consultation with the Service. Thus, these actions completely fulfill the objective as stated in the Recovery Plan.

Objective 5: Delist or Upgrade the Listing Status of Those Taxa That Achieve Vigorous, Self-Sustaining Population Levels as the Result of Habitat Stabilization, Restoration, and Preventing or Minimizing Adverse Human-Related Impacts

Since listing, threats to the island night lizard have been largely ameliorated, including removal of all nonnative herbivores from San Clemente and Santa Barbara Islands and removal of feral cats from San Nicolas Island. Given that habitat types that are strongly associated with island night lizards appear to be increasing slowly through natural recovery and restoration projects, as well as the amelioration of all substantial threats to the island night lizard, the populations on the three islands appear to be stable. Remaining threats, such as nonnative plants, land use and development, fire, and erosion, are potentially of concern, but are actively managed through implementation of management plans and measures described in the Navy's INRMPs and NPS's management policies and active management plans. Thus, the objective to improve the status of the island night lizard to the point it can be delisted has been fully met.

Objective 6: Monitor Effectiveness of Recovery Effort by Undertaking Baseline Quantitative Studies and Subsequent Follow-Up Work

Since listing and publication of the Recovery Plan, island night lizard monitoring has been conducted on San Clemente Island, with one assessment of the population estimated at approximately 21.3 million island night lizards. Although no subsequent population assessments have occurred since 2001, ongoing monitoring of individual body condition and neonate-to-juvenile ratios indicates the density of island night lizards still strongly corresponds to certain vegetation types. Assessments of the extent and quality of those habitats have been conducted more recently, as discussed below in more detail.

San Clemente Island supports the largest amount of high-quality island night lizard habitat. Monitoring from 1992 to 2008 has shown fluctuating short-term trends, but no clear long-term trend, in *Opuntia* spp. or *Lycium californicum* habitats on San Clemente Island (Tierra Data Inc. 2010, pp. 48–67). However, there was an approximate 6 percent reduction of *L. californicum* and 10 percent reduction of *Opuntia* spp. in percent cover of those habitats on the island (Tierra Data Inc. 2010, pp. 48–67). This reduction was likely due to high rainfall experienced in the baseline years from 1991 to 1993, in comparison to subsequent rainfall (Tierra Data Inc. 2010, p. 125). While research has not indicated how this reduction in cover affects island night lizard populations, monitoring surveys and estimates of island night lizard populations indicate the species remains abundant in suitable habitat. We expect continued monitoring on San Clemente Island, including that associated with ongoing and proposed habitat restoration projects, to show island night lizard populations remaining stable or increasing on the island. These monitoring efforts fulfill the objective as stated in the Recovery Plan.

On San Nicolas Island, there has been one assessment of the island night lizard's population in 1998 and two assessments of the vegetation associated with high densities of island night lizards. The first vegetation assessment was conducted in 1998 by Fellers *et al.* (1998). A second vegetation assessment was conducted in 2003 by Junak (2003, p. 7), which indicated an increase in high-quality *Opuntia* spp. and *L. californicum* habitats from 1.9 ac (0.8 ha) in 1998 to 11.2 ac (4.6 ha). This increase was probably due to more current data and better mapping technology. Monitoring of lizards on San Nicolas Island will be conducted every 5 years by the U.S. Geological Survey in connection with proposed habitat restoration projects (Navy 2010, p. 4.55). Because this species population is strongly correlated with abundance of habitat, and we have seen an increase in available habitat, we expect island night lizard populations to remain stable or increase in number on the island. These monitoring efforts fulfill the objective as stated in the Recovery Plan.

On Santa Barbara Island, there has been one assessment of the island night lizard population and two assessments of the amount of high-quality habitat consisting of *Opuntia* spp. and *Lycium californicum*. The first habitat assessment was conducted from an examination of aerial photographs from 1983 and indicated a total of 14.8 ac (6.0 ha) of *L. californicum* and *Opuntia* spp. habitats (Fellers and Drost 1991, p. 31). However, a new preliminary draft assessment indicates that approximately 16.6 ac (6.7 ha) of *L. californicum* and 9.3 ac (3.8 ha) of *O. oricola* habitats exist in which these species comprise greater than 39 percent of the vegetative cover (Rodriguez 2012, pers. obs.). Additionally, the MSRP continues to restore native habitat on Santa Barbara Island, including species that provide moderate-quality habitat for the island night lizard. Therefore, we expect the island night lizard population to remain stable or increase on Santa Barbara Island. These monitoring actions fulfill this objective as stated in the Recovery Plan.

Summary of Recovery Plan Implementation

In summary, while the Recovery Plan does not include taxon-specific downlisting or delisting criteria for the island night lizard, many of the actions identified in the Recovery Plan have been implemented to benefit the lizard. With the exception of a few recommended recovery actions that are

still ongoing, nearly all recovery objectives have been fulfilled through research and monitoring efforts on all occupied islands, implementation of the Navy's INRMPs on San Clemente and San Nicolas Islands, and NPS's management policies on Santa Barbara Island. Most significantly, the Navy removed feral goats and pigs from San Clemente Island in 1992. There are currently a number of programs in place to improve habitat suitability, prevent introduction of nonnative species, guide and track management efforts, and protect occurrences of the island night lizard. We investigated other potential threats to the lizard and concluded that they do not pose significant impacts. As a result of the management actions conducted by the Navy and NPS, substantial threats have been ameliorated throughout the species' range and the majority of objectives discussed in the Recovery Plan are fulfilled.

Based on our review of the Recovery Plan, we conclude that the status of the island night lizard has improved due to past and current activities being implemented by the Navy and NPS, and the objectives of the Recovery Plan have been met. The effects of these activities on the status of island night lizard are discussed in further detail below.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for adding species to, reclassifying species on, or removing species from the Federal List of Endangered and Threatened Wildlife (List). We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. The five listing factors are: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting its continued existence. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d), if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened; or (3) the original scientific data used at the time the species was classified were in error. The five factors listed under section 4(a)(1) of the Act and their analyses in relation to the island night lizard are presented below. This analysis of threats requires an evaluation of both the threats currently facing the subspecies and the threats that could potentially affect it in the foreseeable future, following the delisting and the removal of the Act's protections.

The Act defines an endangered species as a species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)). A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). The word ''range'' refers to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. The ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends extrapolated.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (i.e., it should be of sufficient magnitude and extent) to affect the species' status such that it meets the definition of endangered or threatened under the Act.

Factor A: The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

At the time of listing (42 FR 40682), the present or threatened destruction, modification, or curtailment of habitat or range was identified as a factor affecting the island night lizards on San Clemente, San Nicolas, and Santa Barbara Islands. Threats attributed to this factor included the introduction of nonnative herbivores and the continuing negative effects of overgrazing on the native vegetation, including those plants identified as island night lizard habitat (42 FR 40682, pp. 40683–40684). The introduction of nonnative plant species was also discussed in the listing rule (42 FR 40682, p. 40684), although under the *Factor E* section. Since listing, and as identified in the 2006 5-year review of the island night lizard (Service 2006, pp. 10–24), threats from nonnative plants, land use or development, and fire also were considered potential threats to island night lizard habitat and are discussed under *Factor A.* The 2012 5-year review addressed the potential threat of erosion to island night lizard habitat or range under *Factor A* (Service 2012a, pp. 26–27), and thus it is also included in this discussion. And finally, we include discussion on potential impacts of climate change to habitat under *Factor A* (as well as *Factor E* as it relates to impacts to individuals of the species itself).

Nonnative Animals

At listing we determined that overgrazing by introduced nonnative herbivores was a threat to the island night lizard on all occupied islands throughout the species' range (42 FR 40682, pp. 40683–40684). Nonnative herbivores were introduced to San Clemente, San Nicolas, and Santa Barbara Islands during the mid-1800s to the mid-1900s, resulting in the degradation of lizard habitat (42 FR 40682, pp. 40682–40683; Navy 2002, pp. 3.34–3.35; Navy 2005, p. 7). In both the 2006 and 2012 5-year reviews, the Service reported that all nonnative herbivores had been removed from these islands and concluded that habitat destruction or modification from the introduction of nonnative herbivores was no longer a threat to the species now or in the future (Service 2006, pp. 11–12; Service 2012a, p. 19).

San Clemente Island

Introduced nonnative herbivores and omnivores have historically and adversely impacted the quantity and quality of habitat and food sources for the island night lizard on San Clemente Island. The last of the nonnative grazing animals was removed from San Clemente Island by 1992; however, the effects of overgrazing, such as depletion of native plants, remain prominent on the central plateau and terraces between canyons on the southern portion of the island. To monitor the response of vegetation to the removal of these nonnative grazers, the Navy implemented a long-term monitoring program from 1992 to 2008 (Tierra Data

Inc. 2010). The analysis from the monitoring program indicated a slight reduction in the percent cover of *Lycium californicum* and *Opuntia* spp. habitats on San Clemente Island. This apparent decline is likely due to an overestimate in the baseline years from 1991 to 1993 resulting from higher rainfall, compared to a reduction in rainfall in subsequent years (Tierra Data Inc. 2010, pp. 48–67). This slight reduction in percent cover is not a cause for concern because this habitat remains well-distributed across the western terraces of the island where there was less grazing impact and where the Navy has established the INLMA. The Navy has no intention of reintroducing large nonnative herbivores to San Clemente Island and has a ''no pets policy'' to control the introduction of any nonnative species (Navy 2002, p. 3.119). Because the major threat to habitat (nonnative herbivores) has been eliminated and the Navy has an active habitat management and restoration program, as described below, we expect the amount and distribution of habitat to remain relatively stable in the future, although some fluctuation is expected related to variable rainfall.

To restore the structure and function of native island ecosystems impacted by nonnative herbivores, the Navy implements a Native Habitat Restoration Program (NHRP) on San Clemente Island (Navy 2002, p. 3.51). As part of that program, the Navy operates a native plant nursery that supports habitat restoration projects for native species such as the San Clemente Island loggerhead shrike (*Lanius ludovicianus mearnsi*) and island night lizard. Plants propagated at the nursery include species that benefit the island night lizard, such as *Lycium californicum, Artemisia californica,* and *Coreopsis gigantea* (Navy 2002, p. 3.51). The Navy outplants at several locations each year to promote native species (Munson 2011, pers. obs.). The Navy has also planted *L. californicum* at Wilson Cove on the northeastern side of San Clemente Island for restoration of areas disturbed by military activities (Munson 2011, pers. obs.). These restoration efforts implemented by the Navy have improved the abundance of native habitat on San Clemente Island and have provided a benefit to multiple species, including the island night lizard.

San Nicolas Island

Although nonnative herbivores were not present on San Nicolas Island at the time of listing (42 FR 40682), the island has a history of grazing activities prior to listing that resulted in impacts on native plant communities. The compounding effects of overgrazing and wind erosion allowed for the emergence of sand dunes on San Nicolas Island, which do not provide habitat for island night lizards (Dunkle 1950, p. 262; Schwartz 1994, p. 173). More recently, in 2011, the Navy completed a Biosecurity Plan for San Nicolas Island to prevent the transport and establishment of nonnative vertebrate species on the island (Navy 2011, p. 1) (See discussion under *Factor C: Disease or Predation* below). The goal is to protect the existing biodiversity on the island by preventing further degradation of habitat on the island from grazing activities now and in the future. Additionally, the Navy is in the process of developing a habitat management and restoration program to improve the abundance of native plant species on the island. To assist in habitat restoration activities on San Nicolas Island (see Land Use and Development section below), the Navy has created a plant nursery that will yield plants, including species identified as components of island night lizard habitat for future restoration projects on San Nicolas Island (Ruane 2013, pers. comm.).

We anticipate no future impacts to island night lizard habitat as a result of nonnative herbivores, and we expect the amount and distribution of habitat to remain relatively stable in the future (although some fluctuation is expected related to variable rainfall) because: (1) The major threat to habitat (nonnative herbivores) was eliminated from San Nicolas Island, thus preventing further reduction of lizard habitat from this threat; and (2) the Navy is in the process of developing a habitat management and restoration program.

Santa Barbara Island and Sutil Island

Island night lizard habitat on Santa Barbara Island was modified due to the introduction of nonnative herbivores such as European rabbits, which heavily impacted the quantity and quality of habitat for the island night lizard. European rabbits were removed from Santa Barbara Island by 1981 (Sumner 1959, p. 5; Fellers and Drost 1991, p. 70, p. 354; Knowlton *et al.* 2007, p. 535). The NPS currently has a nonnative species prevention policy that restricts bringing any animal onto the island (NPS 2012). Since the removal of nonnative herbivores, Santa Barbara Island native plant communities, such as *Artemisia* spp., *Lycium californicum,* and others, have shown resurgence and are increasing in extent (Fellers and Drost 1991, p. 70). Research conducted on Santa Barbara Island from 1982 to 2002 showed an increase in native island night lizard plant communities of *Opuntia littoralis* and *Eriogonum giganteum,* but a decline in *O. prolifera* (Corry 2006, pp. 51–53).

Since 2007, the MSRP has conducted native plant restoration projects on Santa Barbara Island (Harvey and Barnes 2009, pp. 15–22) to benefit Xantus's Murrelet (*Synthiliboramphus hypoleucus*) and Cassin's Auklet (*Ptychoramphus aleuticus*) (Harvey and Barnes 2009, p. 4). Many of the native plants used in these restoration projects also provide island night lizard habitat, such as low- to moderate-quality habitat (*Coreopsis gigantea, Eriogonum giganteum* var. *compactum, Deinandra clementine, Eriophyllum nevinii, Artemisia nesiotica* (sage), and *Baccharis pilularis*) and high-quality habitat (*Lycium californicum*) (Fellers and Drost 1991, p. 34; Fellers *et al.* 1998, pp. 11–12; Harvey and Barnes 2009, p. 7; Mautz 2001a, p. 23; Navy 2005, p. 30). Since 2007, the MSRP has restored approximately 5 ac (2 ha) of native habitat on Santa Barbara Island, consisting of approximately 15,000 native plants (Little 2011, pers. obs.). Because the major threat to habitat (nonnative herbivores) has been eliminated and the NPS has an active habitat management and restoration program, we expect the amount and distribution of habitat to remain relatively stable in the future.

Nonnative Plants

At listing, the introduction of nonnative plants was noted as having adversely impacted all California Channel Islands (42 FR 40682, p. 40684). While the introduction of nonnative herbivores impacted much of the native vegetation, nonnative plants introduced to the islands have also modified habitat for the island night lizard. In the 2006 5-year review, we noted that nonnative plant species may alter ecosystem dynamics by changing soil nitrogen cycling, and may compete with native plants for space or other resources such as light, water, and nutrients (Service 2006, p. 12). Nonnative plant species can also alter ecological processes such as fire frequency that otherwise could affect the persistence of the island night lizard (Navy 2002, p. 3.114). Low densities of lizards observed in some of the nonnative plant communities suggest that modification of the native plant communities can reduce the available resources for this taxon. The 2006 and 2012 5-year reviews of the island night lizard found that habitat destruction or modification from the introduction of nonnative plants is of potential concern,

but due to current management and preventative actions implemented on all occupied islands, is not a substantial threat to the species throughout its range now and in the future (Service 2006, p. 13; Service 2012a, pp. 20–22).

San Clemente Island

Nonnative plants were introduced to San Clemente Island approximately 200 years ago and, in combination with periods of extended drought and overgrazing in the late-1800s, have changed the composition and structure of the vegetative communities on the island (Navy 2002, p. 3.31). The introduction of nonnative plant species to the island has resulted in the loss of adequate shrub cover and proliferation of annual grasses on parts of San Clemente Island (Service 1997, p. 7). The most noticeable changes have occurred in the northern grasslands and dune systems (Navy 2002, p. 3.31).

Nonnative plant introduction can occur on San Clemente Island as a result of equipment and materials transported to the island from the mainland (Service 1997, p. 7) and potentially seeds deposited by birds. Seeds and propagules of nonnative plants adhere to vehicles in mud or soil, and can also be brought onto the island in gravel used for road maintenance (Service 1997, p. 7). The predominant nonnative plant species on San Clemente Island include *Foeniculum vulagare* (fennel), *Carpobrotus* spp. (iceplant), *Salsola* spp. (Russian thistle), and several abundant nonnative annual grasses (Service 1997, p. 7).

Research evaluating the percent cover of nonnative plant species in plot transects on San Clemente Island was conducted from 1992 to 1996, 2000, 2002, 2003, 2006, and 2008 (Tierra Data Inc. 2010, p. 26). Although likely attributed to higher rainfall totals from 1991 to 1993 compared with drought conditions from 2002 to 2003 and in 2006, results indicate an approximately 20 percent decrease in percent cover among nonnative plant species, from baseline data collected during the 1992 to 1993 field season (Tierra Data Inc. 2010, p. 125).

Habitat destruction or modification from nonnative plants is a potential concern, but not currently a substantial threat to the island night lizard due to current management efforts on San Clemente Island. Although previous invasions of nonnative plants probably occurred through introduction of plants preferred for livestock grazing, current nonnative species invasions are typically introduced by equipment used during military activities on the island. The potential pathways for the introduction of nonnative plants to San Clemente Island are many, including human activities and seeds deposited by birds. Due to the continued risk of nonnative plant species, the Navy monitors for new introductions and when found, treats them appropriately (Service 2008, pp. 58–59). In accordance with the Federal Noxious Weed Act and as implemented through objectives set forth within the Navy's INRMP, the Navy continues to reduce the risk of introducing additional nonnative plants to San Clemente Island and manage the removal of nonnative plant taxa already occurring on the island (Navy 2002, p. 3.116). The Navy's objectives on San Clemente Island are as follows:

(1) Use of only native species in landscaping (Navy 2002, p. 3.116); and

(2) Wash all vehicles and equipment used in construction or training activities prior to coming onto the island, including high-pressure spraying to the underside and wheel wells to remove mud and weed seed (Navy 2002, p. 3.116).

Additional nonnative plant management techniques described within the INRMP include: Controlled burns, mechanical removal, and herbicide treatment (Navy 2002, pp. 3.115–3.116). Although nonnative plants will continue to pose a risk to island night lizard habitat, the Navy has taken steps to curtail habitat and plant community alteration by nonnative plants and such steps are expected to continue into the future.

The Navy has implemented an NHRP on San Clemente Island to restore the structure and function of native island ecosystems (Navy 2002, p. 3.51). To assist the NHRP, the Navy has constructed a native plant nursery where plants are currently grown from seed or stem and root cuttings (see discussion above in the Nonnative Animals section). Impacts to island night lizard habitat from nonnative plants may be a persistent low-level threat, but due to implementation of the Navy's INRMP, current nonnative species management, and native species restoration, nonnative species are not currently, nor do we see them becoming in the future, a substantial threat to the lizard on San Clemente Island.

San Nicolas Island

The introduction of nonnative plants, combined with the effect of nonnative herbivores on San Nicolas Island, has limited the quantity of high-quality island night lizard habitat. The most recent information indicates that just over half of the 278 plant taxa on San Nicolas Island are nonnative species, and that San Nicolas Island has the highest proportion (approximately 51 percent) of nonnative plant taxa of any of the eight Channel Islands (Junak 2008, p. 67).

Many potential pathways exist for the introduction of nonnative plants to San Nicolas Island, including human activities and seeds deposited by birds. Due to the continued risk of nonnative plant species being introduced to the island, the Navy monitors for nonnative plant introductions and when found, treats them appropriately (Service 2008, pp. 58–59).

In accordance with the Federal Noxious Weed Act, and as implemented through objectives set forth within the Navy's INRMP, the Navy continues to reduce the risk of introducing additional nonnative plants to San Nicolas Island and manage the removal of nonnative plant taxa already occurring on the island (Navy 2010, p. 4.75–4.76). The Navy's objectives on San Nicolas Island are as follows:

(1) Require vehicles and equipment to be cleaned prior to shipment to the island and between uses at different island construction sites, document that all gravel and fill materials brought to the island are certified weed free, and prohibit the use of nonnative plants for landscaping unless specifically approved by the Environmental Division (Navy 2010, p. 4.75).

(2) Require that native plant species be used for landscaping unless specifically approved (Navy 2010, p. 4.76).

(3) Inspect barge and aircraft before they leave the mainland or for transport arriving directly from other ports or airports, inspect prior to disembarking on San Nicolas Island (Navy 20010, p. 4.76).

Additionally, the Navy treats and monitors select nonnative species annually on San Nicolas Island, such as *Brassica tournefortii* (Saharan mustard) and *Foeniculum vulgare* (fennel) (Ruane 2011, pers. obs.). We anticipate that implementation and continued efforts in the future of the measures described above will remove existing nonnative plants and reduce the rate of introduction of these nonnatives on San Nicolas Island. Therefore, we do not consider nonnative species to be a substantial threat to the lizard now or in the future.

Santa Barbara Island and Sutil Island

Historically, Santa Barbara Island consisted of a native shrubland that provided habitat for the island night lizard; however, the introduction of nonnative herbivores and nonnative plants to the island has modified the native habitat to a more herbaceous-

dominated habitat that is not as readily used by the lizard (Halvorson *et al.* 1988, p. 109). The native scrub cover that once dominated Santa Barbara Island is currently inundated by a nonnative annual grassland community throughout half of the eastern terrace of the island (Halvorson *et al.* 1988, p. 113). Transect data collected on Santa Barbara Island from 1984 to 2002 indicated a reduction in percent cover of some native plants (*Hemizonia clementina* and *Opuntia prolifera*) that provide low- to moderate-quality habitat for the island night lizard (Corry and McEachern 2009, p. 208). However, data indicate an increase in average combined and percent cover for many other native plant species on the island that provide habitat for the island night lizard (*Coreopsis gigantea, Baccharis pilularis, Eriogonum giganteum v. compactum, Opuntia littoralis,* and *Lycium californicum*) (U.S. Geological Survey (USGS) 2001, p. 6, Appendix A; Corry and McEachern 2009, pp. 206–208). Recovery of low- to moderate-quality island night lizard habitat is expected to occur through the natural expansion of native shrub habitat into nonnative grasslands (USGS 2001, p. 6).

The NPS recognizes the potential threat of nonnative plant species and is taking steps to reduce the risk of new introductions. Current NPS management policy, in accordance with the NPS Organic Act, dictates that the NPS will control detrimental nonnative species for the protection of native species' habitats (NPS 2006b, p. 45). In 2007, the MSRP began propagating a native stock of seeds (which were previously collected on Santa Barbara Island) at the Channel Islands National Park greenhouse (Harvey and Barnes 2009, p. 7). Species propagated at the greenhouse included those found within low- to moderate-quality island night lizard habitat, such as *Coreopsis gigantea, Eriogonum giganteum* var. *compactum, Deinandra clementina, Eriophyllum nevinii, Artemisia nesiotica, Baccharis pilularis,* and high-quality habitat, such as *Lycium californicum* (Fellers and Drost 1991, p. 34; Fellers *et al.* 1998, pp. 11–12; Mautz 2001a, p. 23, Navy 2005, p. 30). To date, the MSRP has restored approximately 5 ac (2 ha) of native habitat for seabirds on Santa Barbara Island (Little 2011, pers. obs.). This restoration effort has outplanted approximately 15,000 native plants to the island, some of which as discussed above, provide habitat for island night lizards (Little 2011, pers. obs.). Additionally, from 2007 to 2011 the NPS in coordination with the MSRP conducted nonnative plant species removal from Santa Barbara Island on 4.5 ac (1.8 ha) (Harvey 2012, pers. comm.). The NPS began drafting a General Management Plan for the Channel Islands that will address the continuing effort to monitor and restore native vegetation on Santa Barbara Island (Faulkner 2011, pers. comm.); this plan is not yet completed. Due to current and future management efforts described above, we do not consider nonnative species a substantial threat to the lizard on Santa Barbara Island now or in the future.

Land Use and Development

At listing (42 FR 40682), the destruction or modification of habitat from land use and development was not identified as a threat to the island night lizard. The 2006 and 2012 island night lizard 5-year reviews concluded that land use and development is not a substantial threat to the species or its habitat on any of the three occupied islands (Service 2006, p. 18; Service 2012a, pp. 22–24).

San Clemente Island

San Clemente Island is owned and administered by the Navy and provides operating facilities and support services for the U.S. Pacific Fleet. Activities on and around the island include aviation training, undersea warfare, amphibious warfare, special warfare, and Joint Task Force exercises (Navy 2002, pp. 2.1–2.2). There are more than 300 buildings and structures on the island, including an airstrip on the far northern part of the island. Several quarries and borrow pits are used to provide materials for road construction and maintenance. Intensive training, foot traffic, and construction activities impact island night lizards in the areas where such activities occur. However, most of the buildings and structures are located on the far northern and far southern parts of San Clemente Island, while most of the high-quality *Lycium californicum* and *Opuntia* spp. habitats are found on the western portion of the island (Navy 2002, pp. 2–14). The western portion of the island receives little training use because it is recognized by the Navy to contain high-quality lizard habitat (Navy 2002, p. 3.82). The INLMA was created on this portion of the island to provide a focus area for island night lizard management activities (see *Factor D*), including habitat restoration, to offset the effects of surface-disturbing construction projects (Service 2008, p. 200).

In 2008, the Navy initiated consultation with the Service, pursuant to section 7 of the Act, for proposed new training activities for San Clemente Island (Service 2008, p. 11). Many of the proposed activities covered by the consultation occur in areas already receiving sustained use by the military (Service 2008, p. 10). We estimated that from 2009 to 2014, approximately 2.5 percent of the island night lizard population on San Clemente Island could incidentally be harmed or killed through modification of habitat resulting from these proposed activities. These adverse impacts were associated with increased fires, off-road assault vehicle use, construction of buildings, and other military-related activities (Service 2008, pp. 10, 206). However, we concluded that this potential loss would not jeopardize the continued existence of the species or appreciably reduce its recovery (Service 2008, pp. 205, 209).

While island night lizard habitat loss and disturbance occur on San Clemente Island as a result of military land use and development projects such as training and testing activities, the impacts of these activities are of minor consequence given the size of the island, the amount of suitable habitat that remains for the species, the distribution of the island night lizard population across the island, the size of the species' population on the island, and the avoidance of areas designated for island night lizard management. Therefore, we do not consider land use and development a substantial threat to the island night lizard or its habitat on San Clemente Island now or in the future.

San Nicolas Island

Since 1944, San Nicolas Island has been part of the Naval Air Warfare Center Weapons Division Sea Range, managed by the Naval Air Weapons Station at China Lake, California. The island currently houses approximately 200 Navy personnel that occasionally conduct small-scale training exercises. The island also serves as a launch platform for missile testing (Navy 2002, p. 10). Facilities on the island are used to conduct radar tracking and control, range surveillance, telemetry, and communications for weapons testing (Navy 2005, pp. 6, 10). There are approximately 156 buildings and structures on San Nicolas Island, along with 47 mi (76 km) of paved and unpaved roads (Navy 2005, p. 6.) Additionally, a 10,000-foot (ft) (3,048-meter (m)) concrete and asphalt runway occupies a mesa on the eastern part of the island and, in 1989, a missile testing and pilot training impact area was established (Navy 2005, pp. 6, 19).

Since listing, some permanent loss of island night lizard habitat has occurred

from the development of structures and mission-essential activities. Island night lizards and their habitats do not generally occur in launching areas and thus are not likely to be affected by the activities that occur there (Service 2001, p. 19). Of the 11 patches of high-quality habitat identified by Fellers *et al.* (1998, p. 61), 1 is in close proximity to the airstrip and 3 others are in the proximity of existing structures (Navy 2005, p. 8). On average, less than five projects per year have potential to impact lizards, such that relocation of individuals may be required into adjacent habitat. Most of those projects are generally small—approximately 0.01 ac (0.004 ha) (Smith 2009, pers. comm.). Habitat is re-created in these circumstances by piling cut *Opuntia* spp. pads on top of boards and placing them into the adjacent area (Smith 2009, pers. comm.). The wooden boards provide temporary habitat for the lizards while the *Opuntia* spp. cuttings take root. Island night lizards have not been monitored after relocations; thus, there is no information available to determine the success of these actions. Although high-quality *Opuntia* spp. and *Lycium californicum* habitats are limited on San Nicolas Island, overall land use on the island is not intensive and measures are implemented consistent with the INRMP to try to safely relocate island night lizards that may be impacted by projects.

As part of a consultation with the Service on the effects of a new wind energy project on San Nicolas Island, a biological opinion (8–8–10–F–35) was completed on August 26, 2010, and subsequently amended (814402011–F–0060) on April 22, 2011. During a 4- to 5-year span beginning in 2010, the Navy will install up to 11 wind-powered turbines and an energy storage facility on San Nicolas Island (Service 2010, p. 3). The Service expects this wind energy project to adversely affect the island night lizard by increasing indirect effects of predation by American kestrel (*Falco sparverius*) and barn owls (*Tyto alba*), causing injury or death of individual lizards by foot traffic and construction, and habitat loss and loss of habitat connectivity (Service 2011, pp. 5–7). However, the Navy will implement numerous measures in accordance with management practices stated in the INRMP to reduce the project's effects on the island night lizard: avoidance and minimization measures (including capture and relocation); species monitoring; management of nonnative plant species; erosion control; and contaminant cleanup (Service 2011, p. 5). We concluded in that biological opinion that we do not expect the effects of the proposed project to jeopardize the continued existence of the island night lizard (Service 2011, p. 8).

While island night lizard habitat loss and disturbance occurs on San Nicolas Island as a result of military land use and development, the impacts of these activities are minimal and the Navy conducts adequate management efforts to minimize the effects on the island night lizard. Therefore, we do not consider land use and development a substantial threat to the island night lizard or its habitat on San Nicolas Island now or in the future.

Santa Barbara Island and Sutil Island

Minimal land use activities have occurred on Santa Barbara Island. Farming occurred on Santa Barbara Island from the mid-1800s to early 1900s when portions of the east and west terraces were cleared for agriculture; however, the farming effort was largely unsuccessful and it appears that all farming practices ceased by 1926 (Corry 2006, p. 19). Santa Barbara Island is now managed as a unit of the NPS, with land management focused on the preservation of natural, archaeological, and aesthetic resources (NPS 2006b, pp. 44–62). A visitor center and camping area is located in proximity to a cove area that serves as a landing spot for visitors to the island (NPS 2011a). Public use of the island is limited to primitive camping, hiking, wildlife observation, and other nonconsumptive uses (NPS 20011b). With the exception of potential fire caused by human-related activities (see Fire discussion below), land use is not a substantial threat to the island night lizard or its habitat on Santa Barbara Island due to active management efforts, existing regulatory mechanisms (see discussion of the Organic Act below under *Factor D*), and current management policies, which are expected to continue in the future.

Fire

At listing (42 FR 40682), fire was not identified as a threat to the island night lizard or its habitat. Historically, ranching operations were conducted on San Clemente and San Nicolas Islands, with vegetation periodically burned to facilitate planting of feed crops for nonnative herbivores (Navy 2002, p. 3.28; Navy 2005, p. 7). Fire would normally be a rare occurrence on San Clemente, San Nicolas, and Santa Barbara Islands, but human use and occupancy of the islands have increased the incidence of wildfires on all three islands to varying degrees.

Since the time of listing, we have identified fire as a potential impact to island night lizard. On San Clemente and San Nicolas Islands, this potential threat is associated with military activities and the introduction of nonnative annual grasses, which increase the availability of readily flammable fuels (Service 2006, p. 13; Service 2012a, pp. 25–27). Vegetative communities including *Lycium californicum, Opuntia prolifera,* and *Coreopsis gigantea,* which support moderate to high island night lizard densities, are intolerant of and not well adapted to fire (Navy 2002, pp. 3.59–3.61; Sawyer *et al.* 2009, pp. 483, 588, 600). However, *Opuntia littoralis* may be more tolerant of fire, though it is not fire-dependent for germination (Navy 2002, pp. 3.60–3.61). Where fires do occur, they may destroy lizard habitat which reduces cover that assists with thermoregulation, increases exposure to predators, creates a short-term reduction in prey availability, and potentially harms individuals (Mautz 2001, p. 27; Service 2006, p. 13). Although the potential for fire exists on San Clemente, San Nicolas, and Santa Barbara Islands, it is not considered a substantial threat. The potential for human-caused ignition on San Nicolas Island and Santa Barbara Island is considered low due to the limited amount of human activities that might initiate a fire. In addition, all islands currently implement fire management policies, as discussed below under each island description (Service 2006, pp. 13–15; Service 2012a, pp. 25–27).

San Clemente Island

The use of San Clemente Island for military training and testing has led to a higher number of fires on the island than would otherwise be expected to occur naturally as a result of lightning. Military activities contribute to fires that may adversely affect listed plants and wildlife on San Clemente Island (Service 2008, p. 3). The southern portion of the island has the greatest risk due to the ship-to-shore bombardment that occurs in the area (Service 2008, pp. 56–57). Additionally, the presence of combustible nonnative grasses in combination with military activities could increase fire frequency on San Clemente Island (Navy 2002, p. 3.31).

While fire does not appear to affect island night lizard habitat in the short term, an increase in fire frequency or size could negatively affect lizard abundance over time (Mautz 2001a, pp. 27–28). The highest-quality habitat and highest density of lizards occur in areas where fire has not occurred, or has

occurred rarely, and the fires are small in size (Service 1997, p. 60; Navy 2002, p. 3.32). This trend suggests that lizard habitat and abundances are reduced when fires occur more frequently.

Since 1997, the Navy has implemented a number of management measures to reduce the frequency of wildfires on San Clemente Island: prevention measures, such as scheduling operations with high ignition potential outside the fire season and electrical system improvements; containment measures, such as vegetation management and use of prophylactic fire retardants; and suppression measures, such as staging and use of suppression resources (Service 2008, p. 51). Currently, the portions of the island at greatest risk of fire are the impact areas associated with the ship-to-shore bombardment located at the southern end of the island, and areas containing unexploded ordnance in which access for fire prevention has been closed (Service 2008, pp. 56–57).

In 2008, the Navy proposed a new training expansion on San Clemente Island that could potentially increase the occurrence of fire (Service 2008, p. 5). As part of the consultation with the Service on the effects of the new training and testing activities (Service 2008, pp. 2–3), the Navy completed a comprehensive Fire Management Plan (FMP) for San Clemente Island (Navy 2009). The Navy's fire management focuses on military training and other human-related activities and facilities, as these activities represent the primary source of ignition on the island (Service 2008, p. 3). The Navy modifies range and training activities in an effort to prevent fire ignition, containment, and suppression (Service 2008, pp. 3–4). The FMP implements fuel management strategies consisting of high-intensity fuel management buffer zones; defensible space around structures; and low-intensity landscape modification with prescribed fire that meets fuels management, resource protection, and habitat restoration objectives (Navy 2009, p. ES–3). The FMP concludes that fire does not greatly affect island night lizards on San Clemente Island due to their high numbers and wide distribution across the island, unless the frequency or size of the fire is so high that it removes the necessary thermal cover for long periods of time and over large areas (Navy 2009, pp. 2.26, 2.32).

Through our consultation, we concluded that although these activities may adversely affect island night lizard individuals, fires are not expected to have a significant effect on the island-wide population due to the number of lizards on the island (Service 2008, pp. 203–204). Additionally, we concluded that the fuelbreak and suppression measures outlined within the FMP would prevent a significant increase in fire frequency where high-quality habitat occurs (Service 2008, p. 204).

If intervals between fires are too short, fire can negatively impact *Lycium californicum* and there is a risk of type conversion of the habitat or long-term loss of the shrub community (Navy 2009, p. 4.7). However, prescribed fires may be a useful management tool to control nonnative grasses that degrade native vegetative community values (Navy 2009, pp. 4.7–4.8), specifically in *L. californicum* moderate- and low-density habitat. Because a potential benefit could result from less severe fires in *L. californicum* habitat, fires of moderate-severity will be managed to less than 5 ac (2 ha) in high-density *L. californicum* habitat (Navy 2009, p. 4.8). In moderate-density *L. californicum* habitat, prescribed burns will be managed to less than 20 ac (8 ha); and in low-density *L. californicum* habitat, prescribed burns will be managed to less than 40 ac (16 ha) (Navy 2009, p. 4.8).

We note that the results of this threat analysis remain consistent with our analysis described in the 2006 and 2012 5-year reviews of the island night lizard, such that the potential of fire posing a threat to island night lizards and their habitat on San Clemente Island exists (Service 2006, pp. 15; Service 2012a, p. 25). However, fire is not currently a substantial threat to the species or its habitat on the island nor do we think it will become so in the future due to historical and current fire patterns, the existence of an FMP for the island, the abundance and distribution of high-quality island night lizard habitat, and high abundance of the species on the island.

San Nicolas Island

The potential impacts of fire are a greater concern on San Nicolas Island than San Clemente Island due to the limited amount of island night lizard habitat. Historical grazing from the introduction of nonnative herbivores has resulted in disturbed vegetative communities that favor nonnative plants, specifically nonnative grasses, and increase the vulnerability of these vegetative communities to wildfire (Navy 2010, p. 4.13). Missile launch and termination areas are the most likely sources of potential wildfire ignitions on San Nicolas Island (Service 2006, p. 15). Despite these conditions, few fires have occurred on San Nicolas Island (Navy 2010, p. 4.12). The risk of wildfire to island night lizards is reduced by the fact that launch sites are located outside of high-quality island night lizard habitat on the northern and western portion of San Nicolas Island (Navy 2005, p. 8, 30). Additionally, a fire station is located on the eastern side of San Nicolas Island (Navy 2005, p. 6), near high-quality *Lycium californicum* and *Opuntia* spp. habitat. Few fires have occurred on San Nicolas Island (Navy 2010, p. 4.12). We have no information to indicate that fire has occurred, or is likely to occur, in the intertidal zone of the unique cobble and driftwood habitat inhabited by island night lizards at Redeye Beach.

The objective of the current fire management strategy on San Nicolas Island, as implemented through the Navy's INRMP, is to protect people, infrastructure, and natural and cultural resources from the harmful impacts of wildfire on the island (Navy 2010, p. 4.14). Strategies to achieve this objective include: preventing wildfire ignitions; providing, maintaining, and upgrading fire management cooperative agreements, memoranda of understanding, and reciprocal agreements to provide maximum protection to cultural resources, natural resources, and the island's infrastructure; developing a fire management plan; and developing a database to track all fires, acres burned, suppression tactics, and individuals involved in the suppression tactics (Navy 2010, pp. 4.14–4.15).

In summary, few fires are known to have occurred on San Nicolas Island. While some wildfire risk is associated with vegetative conditions and military activities, fire management activities appear to be sufficiently managing those risks and are expected to do so into the future. Therefore, fire is not a substantial threat to the island night lizard or its habitat now or in the future.

Santa Barbara Island and Sutil Island

Wildfire risk on Santa Barbara Island is less than the other two islands and is primarily related to recreational activities. The National Park Service manages visitation to Santa Barbara Island to ensure the biological and archaeological values of the island are not diminished. Human visitation to Santa Barbara Island is minimal, with only 3,286 on-shore visitors recorded from 2007 to 2010; of these, 2,159 visitors stayed overnight on the island in the primitive campground (NPS 2011a). Although smoking is limited to the cement area adjacent to the visitor center and campfires are not permitted on the island, historical occurrences and potential sources of wildfire on Santa Barbara Island are most likely human-

caused, such as campfires, fireworks, or mechanical equipment. Currently, Channel Islands National Park has a Fire Management Plan (CHIS FMP) in place that covers all units of the Park. The CHIS FMP calls for the suppression of all wildfires within the Park and utilization of Minimum Impact Suppression Tactics where feasible to reduce impacts to natural and cultural resources (NPS 2006a, p. 12). Although no resources are available on Santa Barbara Island to suppress wildfires, the U.S Forest Service's Los Padres National Forest provides firefighting support, including air and ground resources, incident command, communications, and ordering (NPS 2006a, p. 10).

While the potential for fire exists on Santa Barbara Island, it is currently not a substantial threat to island night lizard habitat due to limited human presence on the island, prohibition of fire at campgrounds, and the current CHIS FMP (Service 2006, p. 15; Service 2012a, p. 27), nor is it expected to be a threat in the future.

Erosion

Although erosion was not identified as a threat to the island night lizard at listing (42 FR 40682), the impact from erosion has since been identified as a general threat to the habitats on the Channel Islands. Erosion caused by ongoing military activities on San Clemente and San Nicolas Islands currently affects lizard habitat; however, impacts are primarily a consequence of the historical introduction of nonnative herbivores and land use operations. Due to ongoing management efforts, described below, by the Navy and NPS, the 2006 and 2012 5-year reviews concluded that erosion is not a substantial threat to the lizard or its habitat on any of the occupied islands (Service 2006, pp. 12, 16; Service 2012a, pp. 28–29).

San Clemente Island

Historical impacts and natural land processes have resulted in landslides and erosion on San Clemente Island which require active management by the Navy to minimize threats to island night lizard habitat. Landslides occur where steep slopes have been denuded by grazing nonnative animals. The landslides are exacerbated by naturally occurring processes such as wind and water wearing away land surface, posing a concern for species' habitat and affecting other ecological processes on San Clemente Island (Navy 2002, p. 3.22). The Navy, in accordance with the Soil Conservation and Domestic Allotment Act of 1935, as amended (16 U.S.C. S.5901), and as implemented through the Navy's INRMP for San Clemente Island, is required to prevent and control erosion through surveys and implementation of conservation measures (Navy 2002, p. 3.22). Erosion control measures include locating ground-disturbing activities on previously disturbed sites when possible and assuring that all project work areas and transit routes are clearly identified and marked, and by restricting vehicular activities within those areas (Navy 2002, p. 3.23). Additionally, as part of its consultation with the Service on increased training and testing activities, the Navy is developing an erosion control plan and will implement measures to prevent significant impacts to native habitat, including high-quality island night lizard habitat (Service 2008, p. 62). The Navy coordinated with the Service during development of a plan, and submitted a draft version to the Service for review in 2012. The plan has not yet been finalized.

Impacts from erosion on San Clemente Island resulting from historical introduction and overgrazing by nonnative herbivores have been intensified with current land use operations by the Navy. However, we do not consider erosion to be a substantial threat to the island night lizard or its habitat on the island due to current management practices, including: (1) Coordination with the Service to avoid impacts to island night lizard habitat; (2) the Navy's compliance with the Soil Conservation and Domestic Allotment Act of 1935 to prevent and control erosion; and (3) the Navy's INRMP that requires all projects to incorporate erosion control measures into their projects (training maneuvers excluded). The Navy's efforts under the latter two items above are expected to continue in the future should the island night lizard be delisted.

San Nicolas Island

Similar to San Clemente Island, erosion is also a concern for island night lizard habitat on San Nicolas Island. Almost all of the high-quality island night lizard habitat consisting of *Lycium californicum* and *Opuntia* spp., and moderate-quality habitat consisting of shrub communities, occur in areas where a moderate to high probability of soil erodibility exists (Navy 2005, pp. 30, 44). Most erosion on San Nicolas Island is due to high winds, effects to vegetation from past sheep grazing, and the island's arid climate (Navy 2005, p. 42). Additional erosion was likely caused by military activities that did not include sufficient erosion control measures (Navy 2005, p. 42). Halvorson *et al.* (1996, p. 25) noted that the north and south slope of San Nicolas Island may need active restoration for the recovery of native plants due to soil erosion. Fellers (2009, pers. obs.) commented that not much high-quality island night lizard habitat will be lost to unnatural erosion on San Nicolas Island; however, he also found that unnaturally eroded areas on the south slope are lost and cannot be revegetated.

The Navy has incorporated erosion control measures into San Nicolas Island construction projects since 2000 (Navy 2005, p. 42). The Navy will also continue repairing roads to address and reduce erosion (Ruane 2011, pers. comm.). The objective of the current soils conservation management strategy on San Nicolas Island, as implemented through the Navy's INRMP, is to conserve soil productivity, nutrient functioning, vegetation, wildlife habitat, and water quality through effective implementation of best management practices to prevent and control erosion (Navy 2010, p. 4.10).

Erosion on San Nicolas Island was exacerbated by historical land use practices and the introduction of nonnative herbivores (Service 2006, p. 12; Service 2012a, p. 29); residual effects continue to be a potential concern due to the limited amount of, and time required to reestablish, high-quality lizard habitat. Currently, moderate and high-quality island night lizard habitat occurs in areas considered by the Navy to have a moderate- to high-soil erodibility. However, steps are being taken by the Navy to reduce and manage current impacts from erosion on San Nicolas Island and such efforts are expected to continue in the future. Therefore, we do not consider erosion to currently be a substantial threat to the island night lizard or its habitat on San Nicolas Island now or in the future.

Santa Barbara Island and Sutil Island

Erosion from wind, wave action, and the effects of overgrazing are evident on Santa Barbara Island and continue to contribute to alteration of habitat. However, new sources of human-caused erosion on the island, which could exacerbate current conditions, are minimal given the limited amount of human use there. Any new erosion resulting from direct human use would likely be related to erosion along existing trails. Currently, NPS management policies dictate that the NPS will actively preserve soil resources and prevent the unnatural erosion and prevent or minimize potentially irreversible impacts on soil (NPS 2006b, p. 56). Therefore, based on the best available information about

current erosion levels and NPS efforts to preserve soil resources, we find that erosion is not a substantial threat to the island night lizard or its habitat on Santa Barbara Island now or in the future.

Climate Change

Our analyses under the Endangered Species Act include consideration of ongoing and projected changes in climate. The terms ''climate'' and ''climate change'' are defined by the Intergovernmental Panel on Climate Change (IPCC). The term ''climate'' refers to the mean and variability of different types of weather conditions over time, with 30 years being a typical period for such measurements, although shorter or longer periods also may be used (IPCC 2007, p. 78). The term ''climate change'' thus refers to a change in the mean or variability of one or more measures of climate (e.g., temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2007, p. 78).

Scientific measurements spanning several decades demonstrate that changes in climate are occurring, and that the rate of change has been faster since the 1950s. Examples include warming of the global climate system, and substantial increases in precipitation in some regions of the world and decreases in other regions (For these and other examples, see IPCC 2007, p. 30; and Solomon *et al.* 2007, pp. 35–54, 82–85). Results of scientific analyses presented by the IPCC show that most of the observed increase in global average temperature since the mid-20th century cannot be explained by natural variability in climate, and is ''very likely'' (defined by the IPCC as 90 percent or higher probability) due to the observed increase in greenhouse gas (GHG) concentrations in the atmosphere as a result of human activities, particularly carbon dioxide emissions from use of fossil fuels (IPCC 2007, pp. 5–6 and figures SPM.3 and SPM.4; Solomon *et al.* 2007, pp. 21–35). Further confirmation of the role of GHGs comes from analyses by Huber and Knutti (2011, p. 4), who concluded it is extremely likely that approximately 75 percent of global warming since 1950 has been caused by human activities.

Scientists use a variety of climate models, which include consideration of natural processes and variability, as well as various scenarios of potential levels and timing of GHG emissions, to evaluate the causes of changes already observed and to project future changes in temperature and other climate conditions (e.g., Meehl *et al.* 2007, entire; Ganguly *et al.* 2009, pp. 11555, 15558; Prinn *et al.* 2011, pp. 527, 529). All combinations of models and emissions scenarios yield very similar projections of increases in the most common measure of climate change, average global surface temperature (commonly known as global warming), until about 2030. Although projections of the magnitude and rate of warming differ after about 2030, the overall trajectory of all the projections is one of increased global warming through the end of this century, even for the projections based on scenarios that assume that GHG emissions will stabilize or decline. Thus, there is strong scientific support for projections that warming will continue through the twenty-first century, and that the magnitude and rate of change will be influenced substantially by the extent of GHG emissions (IPCC 2007, pp. 44–45; Meehl *et al.* 2007, pp. 760–764 and 797–811; Ganguly *et al.* 2009, pp. 15555–15558; Prinn *et al.* 2011, pp. 527, 529). (See IPCC 2007b, p. 8, for a summary of other global projections of climate-related changes, such as frequency of heat waves and changes in precipitation. Also see IPCC 2011(entire) for a summary of observations and projections of extreme climate events.)

Various changes in climate may have direct or indirect effects on species. These effects may be positive, neutral, or negative, and they may change over time, depending on the species and other relevant considerations, such as interactions of climate with other variables (e.g., habitat fragmentation) (IPCC 2007, pp. 8–14, 18–19). Identifying likely effects often involves aspects of climate change vulnerability analysis. Vulnerability refers to the degree to which a species (or system) is susceptible to, and unable to cope with, adverse effects of climate change, including climate variability and extremes. Vulnerability is a function of the type, magnitude, and rate of climate change and variation to which a species is exposed, its sensitivity, and its adaptive capacity (IPCC 2007, p. 89; see also Glick *et al.* 2011, pp. 19–22). There is no single method for conducting such analyses that applies to all situations (Glick *et al.* 2011, p. 3). We use our expert judgment and appropriate analytical approaches to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change.

Although many species already listed as endangered or threatened may be particularly vulnerable to negative effects related to changes in climate, we also recognize that, for some listed species, the likely effects may be positive or neutral. In any case, the identification of effective recovery strategies and actions for recovery plans, as well as assessment of their results in 5-year reviews or proposed reclassification rules such as this document, should include consideration of climate-related changes and interactions of climate and other variables. In the case of this proposed rule, this analysis contributes to our evaluation of whether the island night lizard can be delisted.

Global climate projections are informative, and, in some cases, the only or the best scientific information available for us to use. However, projected changes in climate and related impacts can vary substantially across and within different regions of the world (e.g., IPCC 2007, pp. 8–12). Therefore, we use ''downscaled'' projections when they are available and have been developed through appropriate scientific procedures, because such projections provide higher resolution information that is more relevant to spatial scales used for analyses of a given species (see Glick *et al.* 2011, pp. 58–61, for a discussion of downscaling). With regard to our analysis for the island night lizard, we have used the best scientific and commercial data available as the basis for considering various aspects of climate change, as well as the likely effects of climate change in conjunction with other influences that are relevant to the island night lizard.

Since listing (42 FR 40682, p. 40684), potential threats have been identified to the flora and fauna of the United States from ongoing accelerated climate change (IPCC 2007, pp. 1–52; Point Reyes Bird Observatory (PRBO) 2011, pp. 1–68). A recent study examined the effects of climate change scenarios as they pertain specifically to the different ecoregions of California (PRBO 2011, pp. 1–68). An ecoregional approach was examined because climate change effects will vary in different areas of California due to the State's size and diverse topography (PRBO 2011, p. 1). Climate projections for temperature, precipitation, and sea-level rise in these ecoregions were obtained by analyzing numerous IPCC emission scenarios (2007, pp. 44–54), the core of most climate projections for atmospheric and oceanic global circulation models (PRBO 2011, p. 1).

The Southern Bight ecoregion includes San Clemente, San Nicolas, Santa Barbara, and Sutil Islands (PRBO 2011, p. 4); however, this ecoregion refers only to the marine environment

and not the terrestrial environment occupied by island night lizards. Therefore, this threats analysis will use projections made for the Southwestern California ecoregion. This ecoregion is appropriate to use because it contains the same vegetation found on the islands and used by island night lizard, including *Lycium californicum, Opuntia* spp., *Coreopsis gigantea, Deinandra clementina, Artemisia californica,* and *Baccharis pilularis* (Sawyer *et al.* 2009, pp. 387, 423, 483, 493, 588, 599–600).

Currently, San Clemente, San Nicolas, Santa Barbara, and Sutil Islands are located within a Mediterranean climatic regime, but with a significant maritime influence. Climate change models indicate a 1 to 3 degrees Celsius (1.8 to 5.4 degrees Fahrenheit) increase in average temperature for southern California by the year 2070 (Field *et al.* 1999, p. 5; Cayan *et al.* 2008a, p. S26; PRBO 2011, p. 40). As daily temperatures increase, lizard species spend more time in burrows or refuges and less time foraging (Sinervo *et al.* 2010, p. 894). Over the same time span, models predict a 10 to 37 percent decrease in annual precipitation (PRBO 2011, p. 40); however, other modeling predictions indicate little to no change in annual precipitation (Field *et al.* 1999, pp. 8–9; Cayan *et al.* 2008a, p. S26; PRBO 2011, p. 40). If annual precipitation decreases, the percent of vegetative cover and amount of available food sources for the island night lizard would also decrease.

Although the islands experience a short rain season (generally November through April), the presence of fog during the summer months helps to reduce moisture stress for many plant species on the islands (Halvorson *et al.* 1988, p. 111). Currently, climate modeling for fog projections remains a subject of uncertainty (Field *et al.* 1999, pp. 21–22). There is also substantial uncertainty in precipitation projections and debate about precipitation patterns and projections for the Southwestern California ecoregion (PRBO 2011, p. 40). If the islands experienced a prolonged period of warmer air temperature and lower rainfall, the island night lizard's habitat could potentially be reduced; however, due to the uncertainty about precipitation projections, it is difficult to predict the likelihood of that happening.

Rising sea level may also pose a threat to island night lizard habitat on the inhabited islands. By the end of the twenty-first century, various models predict sea level rise 0.11 to 0.72 meters (0.11 to 0.72 ft) globally (Cayan *et al.* 2008b, S62; PRBO 2011, p. 41). A rise in sea level, which may accompany high-tide wave action and more frequent severe storms as a result of climate change, can potentially affect the islands that support the island night lizard by inundating low-lying portions, as well as potentially accelerating erosion along coastal areas (PRBO 2011, p. 41). The cobble and driftwood habitat that occurs just above the intertidal zone at Redeye Beach on San Nicolas Island and supports approximately 1,000 island night lizards (Fellers *et al.* 1998, p. 46) could potentially be altered by a rise in sea level. Island night lizard habitat on Santa Barbara Island occurs at sea level and a rise could potentially alter this habitat (Fellers 2011, pers. obs.); however, the USGS's Coastal Vulnerability Index for the Channel Islands National Park indicates Santa Barbara Island has a low vulnerability ranking indicating a very low rate of sea level rise (0.002–0.004 m (0.007–0.013 ft) over the last 27 years (Pendleton *et al.* 2005, p. 28). On San Clemente Island, Mautz (2011 pers. comm.) indicates that high-quality island night lizard habitat at its lowest elevation occurrence is approximately 10 m (32.8 ft) above sea level, and that a rise in sea level, even at an extreme projection of 0.72 m (2.4 ft), does not pose a threat to the continued existence of the species.

The island night lizard is an insular endemic species (unique to specific islands) that is vulnerable to extirpation from random factors such as environmental stochasticity and natural catastrophes. While climate change could potentially affect the island night lizard and its habitat, the best available information does not allow us to make a meaningful prediction about how potential changes in temperature, precipitation patterns, and rising sea levels could impact the island night lizard, the islands where it occurs, or its habitat. However, we expect that the lizard's susceptibility to climate change is somewhat reduced by its ability to use varying habitat types and by its broad generalist diet. Therefore, we do not consider climate change to be a substantial threat to the island night lizard or its habitat at this time or in the future.

Factor A Summary

The loss and modification of habitat for the island night lizard by nonnative herbivores was identified as a threat to the species when it was listed (42 FR 40682). In our 2006 and 2012 island night lizard 5-year reviews we noted that, although grazing animals were removed from the islands, the residual effects remain and so the process for recovery of these habitat types on San Nicolas and Santa Barbara Islands is occurring at a slow pace. However, current evidence indicates that native vegetation, including that favored by the lizard, is recovering on all three occupied islands and is expected to continue due to management practices, restoration efforts, and policies implemented by the Navy and NPS. Therefore, habitat destruction and modification to the island night lizard or its habitat as a result of the introduction of nonnative herbivores has been ameliorated and is no longer a substantial threat nor is it likely to become one in the future.

At the time of listing (42 FR 40682), the introduction of nonnative plants was not identified as a threat to the island night lizard. The 2006 and 2012 5-year reviews considered the presence of nonnative plants a potential concern due to the vegetation composition changes that have occurred on the three islands inhabited by the island night lizard. The Navy and NPS recognize the potential threat of nonnative species and are implementing management efforts to reduce this risk that will continue in the future. While nonnative plants are a potential rangewide threat, we do not consider the introduction and persistence of nonnative plants to be a substantial threat to the island night lizard or its habitat on any of the occupied islands because of the current and ongoing management actions and policies to remove and control the future introduction of nonnative plants to all islands.

Development activities can reduce available habitat for island night lizards, resulting in the direct loss of individuals. We have determined that land use impacts on San Clemente could potentially affect the island night lizard and its habitat. However, because of the limited development impacts, the remaining amount of available habitat, and the large number of island night lizards (estimated 21 million), we do not consider land use or development a substantial threat to the species' habitat on that island. Land use impacts on San Nicolas Island could potentially affect the island night lizard due to the limited amount of suitable habitat for the species; however, these activities will likely have a minimal impact due to the current management practices to avoid the species during project implementation. In addition, high-quality habitat is distributed in areas that will not be developed. The current status of Santa Barbara Island as a unit of the National Park System protects the island night lizard and its habitat from impacts related to future land use or development. In summary, while land use and development is a concern on

two of the islands, the amount, quality, and distribution of habitat together with avoidance measures reduce the potential impact; therefore, we do not consider development a substantial threat to the island night lizard or its habitat on any of the occupied islands now or in the future.

A potential for fire exists on all three islands due to human activity, with an increased potential on San Clemente and San Nicolas Islands due to military activities and nonnative annual grasses that increase the amount of flammable fuels (Service 2006, pp. 13–15; Service 2012a, pp. 23–26). Based on historical records and current land use, high fire frequency on Santa Barbara is an unlikely occurrence, limited to human negligence to provide an ignition source. Although fire is a potential threat on all islands, we do not consider fire a substantial threat to the island night lizard or its habitat because of ongoing fire management policies, plans, and actions being implemented on all occupied islands now and in the future.

Historical land use and overgrazing by nonnative herbivores exacerbated the impacts of erosion on San Clemente, San Nicolas, and Santa Barbara Islands and those impacts are likely to continue for many years to come. However, all nonnative herbivores have been removed from the islands, and the slow process of natural recovery is ongoing. In accordance with the Navy's INRMPs and NPS's management policies, efforts are underway to control new and existing sources of erosion on all occupied islands. Further, the development and implementation of erosion control plans will help minimize future impacts to the island night lizard and its habitat from erosion. We conclude that erosion may affect island night lizard and its habitat, but it is not currently a substantial threat nor is it likely to become one in the future, due to current management, individual island circumstances, and erosion control efforts.

At the time of listing (42 FR 40682, p. 40684), we did not find climate change to be a threat to the island night lizard. Generally, climate change is predicted to result in warmer air temperatures, lower rainfall amounts, and rising sea levels; however, it is currently unknown how climate change will specifically affect island night lizard habitat on San Clemente, San Nicolas, and Santa Barbara Islands (Service 2006, p. 24; Service 2012a, pp. 38–39). The island night lizard may be more susceptible to natural catastrophes on San Nicolas and Santa Barbara Island because of its restricted distribution on those islands. Its greater numbers and distribution on San Clemente Island may indicate the island night lizard is less susceptible to stochastic events on the island. We recognize that climate change has the potential to affect the island night lizard and its habitat; however, at this time, the best available scientific and commercial information does not indicate that climate change is a substantial threat to the species' habitat now or in the future.

In conclusion, we do not find that habitat destruction or modification from introduction of nonnative taxa, land use and development, fire, erosion, or climate change pose a substantial threat to the island night lizard or its habitat on San Clemente, San Nicolas, and Santa Barbara Islands currently or in the future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for commercial, recreational, scientific, or educational purposes was not identified as a threat to the island night lizard at listing (42 FR 40682, p. 40684). The 2006 and 2012 5-year reviews (Service 2006, p. 18; Service 2012a, p. 28) did not identify overutilization for commercial, recreational, scientific, or educational purposes as a threat to the island night lizard. To our knowledge, island night lizards are captured only for scientific purposes or for relocation efforts due to Navy projects in accordance with permitted activities covered by a section 10(a)(1)(A) permit under the Act. Currently, there are only two active section 10(a)(1)(A) permits issued by the Service for the island night lizard. Although research activities may result in impacts to some individuals (use of pitfall traps and toe-clipping), they do not constitute a significant threat to the species. Capture of island night lizards for commercial or other nonpermitted activities is unlikely to occur on San Clemente or San Nicolas Islands because access to these islands is strictly limited by the Department of Defense. No available information indicates that visitors to Santa Barbara Island are actively collecting island night lizards. Although it is possible that someone visiting or working on any of the islands could collect island night lizards, based on the best available information, there is no indication that such activities are occurring.

Based on the limited number of active section 10(a)(1)(A) permits and lack of evidence that collection is otherwise occurring, we find that overutilization for commercial, recreational, scientific, or educational purposes is not currently a threat and not likely to become a threat to the species on any of the occupied islands.

Factor C. Disease or Predation

Disease

Disease was not identified as a threat to the island night lizard at listing (42 FR 40682, p. 40684), or in the 2006 or 2012 5-year reviews (Service 2006, p. 19; Service 2012a, p. 29). Currently, the best available information does not indicate that disease is a threat to the lizard or likely to be a threat in the future.

Predation

At the time of listing (42 FR 40682, p. 40684), we identified predation of island night lizards as a threat to the species due to the introduction of nonnative feral cats and pigs to San Clemente Island (42 FR 40682, p. 40683). The listing rule (42 FR 40682, p. 40684) also indicated that the introduction of the nonnative southern alligator lizard to San Nicolas Island might pose a threat to the island night lizard through depredation or increased competition (42 FR 40682, p. 40684). The listing rule does not discuss native predators to the island night lizard, such as San Clemente loggerhead shrike and other raptor species. Currently, each island has native predators, such as raptors, but currently available information does not indicate these predators are a substantial threat to the island night lizard.

San Clemente Island

Since listing, nonnative predators have been identified on San Clemente Island, including feral cats, black rats, and gopher snakes (*Pituophis catenifer*); however, only feral cats are known to prey upon island night lizards (Mautz 2001, p. 9). The 2006 and 2012 5-year reviews concluded that feral cats on San Clemente Island could threaten the island night lizard. However, we concluded that predation by feral cats was not a substantial threat due to predator management actions implemented through the Navy's INRMP and the large lizard population on the island. The Navy continues to control feral cats on San Clemente Island to benefit the San Clemente loggerhead shrike and San Clemente Island sage sparrow (*Amphispiza belli clementeae).* These measures provide an ancillary benefit to the island night lizard (Service 2008, p. 59; Biteman *et al.* 2011, p. 22).

In 2006, we concluded that predation by black rats (*Rattus rattus*) and nonnative snakes could threaten island

night lizards on San Clemente Island. Black rats are found throughout San Clemente Island, but the total population of black rats on the island is unknown. Despite an extensive review of the best scientific and commercial information available, the information does not indicate whether or how often black rats prey upon island night lizards. One gopher snake has been located on the island, but since its removal, no others have been reported.

Despite the continued presence of feral cats and black rats on the island, lizard numbers remain high. Additionally, the Navy currently implements a ''no pet policy'' to prevent the introductions of potential predators to native wildlife (Navy 2001, p. 3.119). Therefore, nonnative predators do not currently pose a substantial threat to the species on San Clemente Island due to the large population size of the island night lizard and current predator control measures being implemented on the island, which are expected to continue in the future (Mautz 2001a, p. 25; Service 2006, p. 19).

San Nicolas Island

The 2006 5-year review indicated that the introduction of two nonnative lizards (southern alligator lizard and side-blotched lizard) may impact island night lizards on San Nicolas Island (Service 2006, p. 20). Specifically, the southern alligator lizard may compete with or prey on island night lizards (Service 2006, p. 20). Fellers *et al.* (2009, pp. 18–19) noted that the ranges of both nonnative lizards have expanded on San Nicolas Island and that both the island night lizard and side-blotched lizard have similar distributions on the island. Fellers *et al.* (2009, p. 18) also noted that southern alligator lizards occur in different habitats than island night lizards and that there is no indication of negative impacts to the island night lizard.

Despite the presence of these two nonnative lizards, a review of the best available information does not indicate that predation is occurring. No record exists of side-blotched lizards preying upon island night lizards. In addition, the southern alligator lizard generally occupies different habitats than the island night lizard. Therefore, we conclude that the southern alligator lizard and side-blotched lizard do not pose a substantial predatory threat to the island night lizard on San Nicolas Island (Service 2012a, p. 32).

In the 2006 5-year review, we concluded that feral cat predation threatened the island night lizard due to the small lizard population and the large feral cat population on San Nicolas Island (Service 2006, p. 20). In 2009, the Navy implemented a feral cat removal program to protect Federal or State listed species, including the island night lizard (Hanson and Bonham 2011, pp. 1–4). In addition, the MSRP prioritized removal of feral cats from San Nicolas Island to improve nesting success for the Brandt's cormorant (*Phalacrocorax penicillatus*) and western gull (*Larus occidentalis*) (MSRP 2005, pp. D3.1–D3.2). Several methods were utilized to detect and remove cats from the island, including the installation of camera traps to detect the location and presence of feral cats, the use of modified padded leg-hold live traps, and spotlight hunting (Hanson and Bonham 2011, pp. 2, 4–5). Since June 27, 2010, surveys have failed to locate any evidence of feral cats on San Nicolas Island (Hanson and Bonham 2011, p. 19). The Navy and MSRP announced the successful completion of this project in February 2012 (Little 2012a, pers. comm.). Based on these successful feral cat eradication efforts, we conclude that feral cats are no longer a threat to the island night lizard on San Nicolas Island (Service 2012a, p. 30).

In 2011, the Navy completed a Biosecurity Plan for San Nicolas Island to protect the biodiversity of San Nicolas Island by preventing the transport and establishment of all nonnative vertebrate species (Navy 2011, p. 1). Through implementation of this plan, the Navy has established biosecurity measures for personnel, barge operations, airfield operations, and implemented monitoring to prevent the introduction of nonnative vertebrate species to San Nicolas Island (Navy 2011, pp. 7–19). All personnel must be trained in biosecurity protocols, report sightings and suspicions, display and distribute information signs and pamphlets, ensure biosecurity language is included in all contracts, and review biosecurity compliance (Navy 2011, p. 19). These measures will benefit the island night lizard by reducing the potential for nonnative vertebrate species to be introduced to San Nicolas Island, which could prey upon the island night lizard or outcompete it for natural resources.

Based on a review of the best available information, we conclude that predation is not currently a substantial threat to the island night lizard on San Nicolas Island nor is it likely to become one in the future because nonnative lizards on the island occur in different habitats and are not adversely impacting island night lizards; feral cats have been successfully eradicated; and the Navy implemented a Biosecurity Plan to prevent further introduction of nonnative predators to the island.

Santa Barbara and Sutil Island

The 2006 and 2012 5-year reviews of the island night lizard concluded that Santa Barbara Island does not support any nonnative predators, but does support populations of native predators of the island night lizard, including the burrowing owl (*Athene cunicularia*), American kestrel (*Falco sparverius*), and barn owl (*Tyto alba*) (Service 2006, p. 19; Service 2012a, p. 33). While natural predators may pose a threat to individual island night lizards (Service 2012a), they do not pose a substantial threat to the continued existence of the species on Santa Barbara Island due to the current number of lizards on the island, highly sedentary nature of the lizard, and tendency to remain under shelter such as dense vegetation or rock, which limits the exposure to aerial predators lizards (Service 2006, p. 19; Service 2012a, p. 33). To prevent future introductions of the possible predators to Santa Barbara Island, the NPS restricts bringing any animal onto the island (NPS 2012). Based on lack of nonnative predators, limited predation by natural predators, and NPS invasive species management, we conclude that predation is not a substantial threat on Santa Barbara Island, now or in the future.

Factor C Summary

At the time of listing (42 FR 40682, p. 40684), disease was not considered a threat to the island night lizard and predation by feral cats and alligator lizards was considered a threat, but their impacts were not fully understood. Since then, as described above with respect to affected islands, we have identified predation by nonnative lizards, feral cats, and black rats as a threat to the species. We have no new information to indicate that disease is a threat to the island night lizard. Recent research indicates that neither the southern alligator lizard nor the more recently introduced nonnative side-blotched lizard negatively impact the island night lizard on San Nicolas Island. Additionally, in 2010, the Navy successfully completed a feral cat removal program on San Nicolas Island. The Navy has also implemented efforts to control black rats and feral cats on San Clemente Island as part of the recovery efforts for the San Clemente loggerhead shrike and San Clemente Island sage sparrow. Though black rats and feral cats may affect individual island night lizards, they do not currently pose a substantial threat to the species on San Clemente Island. No

nonnative predators of the island night lizard exist on Santa Barbara Island and native predators on Santa Barbara Island do not currently pose a threat to the species existence. Also, both the Navy and NPS have policies in place to control the introduction of potential predators, and such efforts are expected to continue in the future. Therefore, we conclude that disease and predation are not substantial threats to the island night lizard on any of the occupied islands currently or in the future.

Factor D. Inadequacy of Existing Regulatory Mechanisms

The Act requires us to examine the adequacy of existing regulatory mechanisms with respect to those existing and foreseeable threats that may affect island night lizard. The inadequacy of existing regulatory mechanisms was not indicated as a threat to the island night lizard at the time of listing (42 FR 40682, p. 40684). Since it was listed as threatened, the Act has been and continues to be the primary Federal law that affords protection to island night lizard. The Service's responsibilities in administering the Act include sections 7, 9, and 10.

Section 7(a)(1) of the Act requires all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered and threatened species. Section 7(a)(2) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not ''jeopardize'' the continued existence of a listed species or result in the destruction or adverse modification of habitat in areas designated by the Service to be critical. Critical habitat has not been designated or proposed for the lizard. A jeopardy determination is made for a project that is reasonably expected, either directly or indirectly, to appreciably reduce the likelihood of both the survival and recovery of a listed species in the wild by reducing its reproduction, numbers, or distribution (50 CFR 402.02). A non-jeopardy opinion may include reasonable and prudent measures that minimize the extent of impacts to listed species associated with a project.

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the ''take'' of federally listed wildlife. Section 3(18) defines ''take'' to mean ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Service regulations (50 CFR 17.3) define ''harm'' to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. ''Harassment'' is defined by the Service as an intentional or negligent action that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. The Act provides for civil and criminal penalties for the unlawful taking of listed species.

Listing the island night lizard provided a variety of protections within areas under Federal jurisdiction and the conservation mandates of section 7 for all Federal agencies. Since it was first listed in 1977, the Navy and NPS have consulted and coordinated with us regarding the effects of various activities occurring on federally owned San Clemente, San Nicolas, and Santa Barbara Islands (see *Factor A: Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range* above). If the island night lizard were not listed, these protections would not be provided. Thus, we must evaluate whether other regulatory mechanisms would provide adequate protections absent the protections of the Act.

National Environmental Policy Act (NEPA)

All Federal agencies must comply with the NEPA of 1970 (42 U.S.C. 4321 *et seq.*) for projects they fund, authorize, or carryout. The Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1518) state that agencies shall include a discussion on the environmental impacts of the various project alternatives (including the proposed action), any adverse environmental effects that cannot be avoided, and any irreversible or irretrievable commitments of resources involved (40 CFR part 1502). NEPA does not regulate activities that might affect the island night lizard, but does require full evaluation and disclosure of information regarding the effects of contemplated Federal actions on sensitive species and their habitats. It also does not require minimization or mitigation measures by the Federal agency involved. Therefore, Federal agencies may include conservation measures for island night lizard as a result of the NEPA process, but such measures would be voluntary in nature and are not required by the statute. On San Clemente and San Nicolas Islands, the Navy must analyze under NEPA any actions significantly affecting the quality of the human environment. Typically, the Navy prepares Environmental Assessments and Environmental Impact Statements on operation plans and new or expanding training actions. On Santa Barbara Island and incorporated Sutil Island, NPS must analyze under NEPA any actions significantly affecting the quality of the human environment. NPS prepares Environmental Assessments and Environmental Impact Statements on actions and projects in national parks. Absent the listing of island night lizard, we would expect the Navy and NPS to continue to meet the procedural requirements of NEPA for their actions. However, as explained above, NEPA does not itself regulate activities that might affect island night lizards or their habitat.

National Park Service (NPS) Organic Act

The NPS Organic Act of 1916, as amended (39 Stat. 535, 16 U.S.C. 1), states that the NPS ''shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations * * * to conserve the scenery and the national and historic objects and the wildlife therein'' (which includes listed or non-listed species), ''and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.'' The 2006 NPS Management Policies indicate that the Park Service will ''meet its obligations under the NPS Organic Act and the Endangered Species Act to both pro-actively conserve listed species and prevent detrimental effects on these species.'' This includes working with the Service and undertaking active management programs to inventory, monitor, restore, and maintain listed and non-listed species habitats, among other actions.

Sikes Act Improvement Act (Sikes Act)

The Sikes Act (16 U.S.C. 670) authorizes the Secretary of Defense to develop cooperative plans with the Secretaries of Agriculture and the Interior for natural resources on public lands. The Sikes Act Improvement Act of 1997 requires Department of Defense installations to prepare Integrated Natural Resources Management Plans that provide for the conservation and rehabilitation of natural resources on military lands consistent with the use of military installations to ensure the readiness of the Armed Forces. INRMPs incorporate, to the maximum extent practicable, ecosystem management principles and provide the landscape

necessary to sustain military land uses. INRMPs are developed in coordination with the State and the Service, and are generally updated every 5 years. Although an INRMP is technically not a regulatory mechanism, because its implementation is subject to funding availability, it is an important guiding document that helps to integrate natural resource protection with military readiness and training.

San Clemente Island INRMP: Pursuant to the Sikes Act, the Navy adopted an INRMP for San Clemente Island with multiple objectives for protection of the island night lizard and its habitat that reduce threats to this taxon (Navy 2002). The INRMP complied with NEPA, the Act, the Federal Noxious Weed Act (7 U.S.C. 2801), and the Soil Conservation and Domestic Allotment Act (16 U.S.C 590 a, b). The goal of the San Clemente Island INRMP is to support the military requirements of the Pacific Fleet while maintaining long-term ecosystem health (Navy 2002, p. 1.2). Specifically, this INRMP will:

(1) Facilitate sustainable military readiness and foreclose no options for future requirements of the Pacific Fleet.

(2) Protect, maintain, and restore priority native species to reach self-sustaining levels.

(3) Ensure ecosystem resilience to testing and training impacts.

(4) Maintain the full suite of native species, emphasizing the endemics.

In 1997, the Navy established the INLMA (Service 1997, p. 5), an area encompassing 11,051 ac (4,474 ha) of the western shore of San Clemente Island where the majority of high-quality *Lycium californicum* and *Opuntia* spp. habitats, and approximately half of the island night lizard population is found (Mautz 2001a, p. 29). The INRMP states that the INLMA will be managed as a demonstration project, focusing on the integration of military operational needs with conservation of species (Navy 2002, p. 4.43). The INRMP provides a benefit to the species (Navy 2002, pp. 4.43–4.47) through the following measures:

(1) Designate and implement an approximately 11,010 acre (4,457 ha) management area.

(2) Establish a ''no net loss'' habitat condition policy for INLMA.

(3) Survey for nonnative weeds and prioritize annual control programs for the INLMA.

(4) Ensure that no new nonnative animals are introduced to San Clemente Island that could be a predator, competitor, or introduce disease to the island night lizard.

(5) Provide aggressive control of existing nonnative animals in the INLMA.

(6) Manage fire to protect the integrity of the management area for island night lizards.

(7) Develop, in cooperation with the Service, a delisting plan for the island night lizard.

In addition to these management measures, the Navy developed an FMP for San Clemente Island in 2009 (see *Factor A*). The FMP implements fuel management strategies that benefit the island night lizard through development of: high-intensity fuel management buffer zones; defensible space around structures; and low-intensity landscape modification with prescribed fire that meets fuels management, resource protection, and habitat restoration objectives (Navy 2009, p. ES–3). Additionally, we concluded that the fuelbreak and suppression measures outlined within the FMP would prevent a significant increase in fire frequency where high-quality habitat occurs (Service 2008, p. 204).

Although the INRMP includes objectives targeted toward habitat protection of high-quality island night lizard habitat, Navy operational needs may supersede INRMP goals. The Navy is currently revising the 2002 INRMP, and future iterations of this plan may differ from the existing INRMP. Pending completion of the new INRMP, the Navy continues to implement the 2002 INRMP. We expect that the revised INRMP will continue to manage for natural resource conservation to the maximum extent practicable based on the Navy's historical commitment to implement beneficial management actions for native flora and fauna, and their continued cooperation with the Service to provide conservation actions that benefit species such as the island night lizard and its habitat.

San Nicolas Island INRMP: Pursuant to the Sikes Act, the Navy adopted an INRMP for San Nicolas Island that includes measures to protect the island night lizard and its habitat (Navy 2010). The INRMP also complied with NEPA, the Act, the Federal Noxious Weed Act (7 U.S.C. 2801), and the Soil Conservation Act. The purpose of the San Nicolas INRMP is to provide a viable and implementable framework for the management of natural resources at Naval Base Ventura County, California, San Nicolas Island (Navy 2010, p. 1.1). The INRMP's objective for island night lizards on San Nicolas Island is to maintain a viable population (Navy 2010, p. 4.56). The strategies to accomplish this objective from the INRMP are listed below (Navy 2010, p. 4.56):

(1) Continue to develop and implement protocols to resolve any baseline biological data gaps and to monitor distribution, population size, population trends, and habitat usage of the island night lizard population by conducting site-specific surveys in known or suitable habitat prior to disturbance activities.

(2) Protect and maintain island night lizard habitat quality and integrity by:

(a) Conducting an invasive nonnative control, monitoring, and removal program in island night lizard habitat in order to reduce impacts upon the species' population.

(b) Defining and clearly marking work areas during road maintenance and other activities to prevent island night lizard mortality in accordance with the terms and conditions listed in the Biological Opinion (Service 2001).

(c) Excluding areas of high-quality island night lizard habitat from mowing regimes.

(d) Maintaining a bare ground buffer zone around equipment and storage areas in high-quality island night lizard habitat where practicable.

(e) Siting staging areas for storage of equipment and materials in areas with low island night lizard densities, whenever feasible.

(3) Conduct relocation of island night lizards in accordance with the terms and conditions identified in the current Biological Opinion (Service 2001).

(4) Support studies to investigate the effectiveness of island night lizard management strategies by:

(a) Supporting scientific studies of competition relationships between alligator lizards and island night lizards.

(b) Supporting genetic studies of isolated island night lizard populations to determine population structure and size.

(5) Educate island personnel on laws covering prohibition on taking listed species for pets or for sale in pet trade.

(6) Support recovery plan efforts to establish stable island night lizard populations and eventual delisting by:

(a) Supporting Channel Islands-wide review of population status of the species.

While the INRMP does not guarantee funding will be appropriated for implementation, the Navy has demonstrated a continued commitment to the goals of the INRMP. They have funded a full-time biologist for the island, provided additional funds to hire contractors, or utilized university, volunteer, or other agency personnel to implement numerous activities as outlined in the INRMP.

Federal Noxious Weed Act

The Federal Noxious Weed Act of 1975 (88 Stat. 2148, 7 U.S.C. 2801) established a Federal program that has subsequently been largely superseded by other statutes, including the Plant Protection Act (7 U.S.C. 7701, et seq.), to control the spread of noxious weeds. The 1990 amendment to the the Federal Noxious Weed Act (7 U.S.C. 2814), has been retained, and requires each Federal land-managing agency to: Designate an office or person adequately trained in managing undesirable plant species to develop and coordinate a program to control such plants on the agency's land; establish and adequately fund this plant management program through the agency's budget process; complete and implement cooperative agreements with the States regarding undesirable plants on agency land; and establish integrated management systems (as defined in the section) to control or contain undesirable plants targeted under the cooperative agreements. In accordance with this direction, the Navy and NPS work to control the introduction of nonnative plant species to the islands and to control or remove those currently present, which are actions that assist in protecting island night lizard habitat.

Soil Conservation and Domestic Allotment Act

The Soil Conservation and Domestic Allotment Act of 1935 (16 U.S.C. 590(a, b), 49 Stat. 163) recognized that the wastage of soil and moisture resources on farm, grazing, and forest lands of the Nation, resulting from soil erosion, is a menace to the national welfare and declared it to be the policy of Congress to provide permanently for the control and prevention of soil erosion and thereby to preserve natural resources, control floods, prevent impairment of reservoirs, and maintain the navigability of rivers and harbors, protect public health, public lands and relieve unemployment, and the Secretary of Agriculture shall coordinate and direct all activities with relation to soil erosion. In order to effectuate this policy, the Secretary of Agriculture authorizes, from time to time, that the following actions may be performed on lands owned or controlled by the United States or any of its agencies, with the cooperation of the agency having jurisdiction: Conduct surveys, investigations, and research relating to the character of soil erosion and the preventive measures needed; to publish the results of any such surveys, investigations, or research; to disseminate information concerning such methods; and to conduct demonstrational projects in areas subject to erosion by wind or water; and carry out preventative measures, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, and changes in use of land. These measures assist island night lizards by encouraging management actions that prevent and control erosion, thus protecting island night lizard habitat.

Factor D Summary

The inadequacy of existing regulatory mechanisms was not indicated as a threat to the island night lizard at the time of listing or in the recent status reviews. Because all islands are under Federal ownership, various laws, regulations, and policies administered by the Federal Government provide protective mechanisms for the species and its habitat. Primary Federal laws that provide some benefit for the species and its habitat absent the Act include NEPA, Sikes Act, Federal Noxious Weed Act, Soil Conservation and Domestic Allotment Act, and NPS Organic Act.

INRMPs are important guiding documents that help to integrate the military's mission with natural resource protection on San Clemente and San Nicolas Island. Although the INRMPs include objectives targeted toward protection of habitat essential to the island night lizard and other native species, Navy operational needs may diverge from INRMP natural resource goals. For example, some control measures may not be implemented effectively or consistently in those areas that are operationally closed due to the presence of unexploded ordnance. However, in most locations, fire management plans, erosion control in accordance with the Soil Conservation and Domestic Allotment Act, and nonnative plant species control in accordance with the Federal Noxious Weed Act, afford protections to the island night lizard on the islands as discussed above under *Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* Absent listing under the Act, the Navy would still be required to develop and implement INRMPs under the Sikes Act. The INRMPs will continue to provide a conservation benefit to the island night lizard through native habitat management efforts, where there is overlap with island night lizard habitat.

The population of island night lizards and their habitat on Santa Barbara Island and Sutil Island are afforded protections by the NPS's Organic Act, which provides management programs to inventory, monitor, restore, and maintain listed species' habitats, and requires the NPS to manage all natural resources regardless of listing status (such as island night lizard after it is delisted).

Delisting the island night lizard would eliminate the requirement to consult with us for actions carried out, funded, or authorized by the Navy and NPS on San Clemente, San Nicolas, and Santa Barbara Islands. However, we anticipate the Navy will continue to implement INRMPs for both San Clemente and San Nicolas Islands that include management for natural resources, native species, and other listed species, which we anticipate will provide an ancillary benefit to the island night lizard. We have no information indicating that management of Santa Barbara Island would be changed or altered in a manner that would be inconsistent with the conservation of natural resources and native species, which includes the island night lizard and its habitat. In conclusion, island night lizards are afforded protection through Federal or military mechanisms and, in absence of the Act, these existing regulatory mechanisms are expected to continue to a degree adequate to conserve the island night lizard and its habitat throughout its range both now and in the future. Therefore, we conclude that the inadequacy of existing regulatory mechanisms is not a current threat to the species on any of the occupied islands, nor is it expected to become a threat in the future.

Factor E. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

The listing rule (42 FR 40682, p. 40684) states that island-adapted taxa are often detrimentally affected by accidental or intentional introduction of nonnative species. This was the only threat attributed to Factor E for any of the seven taxa included in that rule. Because the primary effect of most nonnative taxa was related to habitat or predation, the discussion of introduced nonnative taxa is now included under Factor A as it relates to habitat and Factor C as it relates to predation.

The restricted distribution of the island night lizard on San Nicolas and Santa Barbara Islands makes these populations susceptible to natural catastrophes such as fires, landslides, or prolonged droughts (Service 2006, p. 24). Potential impacts and management efforts to reduce or control effects of fire and erosion are discussed under Factor A. The 2012 5-year review of the island night lizard discusses the potential threat of climate change and its effects

on precipitation, drought, and sea level rise as it relates to the island night lizard (Service 2012a, pp. 39–41), and is further discussed below.

Climate Change

As discussed under Factor A—Climate Change above, climate change poses a potential impact to island night lizards and their habitat based on modeling and climate change projections for southern California from various sources (IPCC 2007, PRBO 2011). Because the best available information for the region that encompasses San Clemente, San Nicolas, Santa Barbara, and Sutil Islands refers only to the marine environment and not the terrestrial environment occupied by island night lizards (PRBO 2011, p.4), we are utilizing projections made for the Southwestern California ecoregion in this threat analysis (see *Factor A*—Climate Change section above for additional discussion on available data, climate model predictions for temperature and precipitation, and potential impacts related to island night lizard habitat).

Currently, climate modeling projections for fog (Field *et al.* 1999, pp. 21–22) and precipitation are the subject of uncertainty, with relatively little consensus concerning projections for the Southwestern California ecoregion (PRBO 2011, p. 40). Additionally and as noted above, we have no specific information related to precipitation and temperature projections specific to the terrestrial environment of the California Channel Islands. Regardless, the best available data indicate that when daily temperatures increase, lizard species spend more time in burrows or refuges and less time foraging (Sinervo *et al.* 2010, p. 894). This reduced foraging time could possibly impact growth and survival of this already highly sedentary lizard. Drought conditions also reduce the arthropod populations in the spring, reducing a food source and compounding the effects of climate change (Knowlton 1949, p. 45; Schwenkmeyer 1949, pp. 37–40; Bolger *et al.* 2000, p. 1242). Therefore, in the event of a prolonged period of warmer air temperature and lower rainfall, the island night lizard's habitat and food supply could also potentially be reduced. However, even with this potential reduction in food availability, Sinervo *et al.* (2010, p. 898) investigated climate change impacts on Xantusidae and predicted that the species extinction risk for this family is zero through 2080. Therefore, we do not consider climate change to be a substantial threat to the island night lizard now or in the future.

Factor E Summary

At the time of listing (42 FR 40682, p. 40684), we did not identify climate change as a threat to the island night lizard. The 2006 and 2012 5-year reviews (Service 2006 p. 24; Service pp. 38–39) suggested that, because the island night lizard is an insular endemic species, it is vulnerable to extirpation from random factors such as environmental stochasticity (lacking predictability) and natural catastrophes. However, it is currently unknown how climate change will affect the island night lizard and its habitat on San Clemente, San Nicolas, and Santa Barbara Islands (Service 2006, p. 24; Service 2012a, pp. 38–39). The island night lizard may be more susceptible to natural catastrophes on San Nicolas and Santa Barbara Island because of its restricted distribution on those islands. Its greater numbers and distribution on San Clemente Island may indicate the island night lizard is less susceptible to stochastic events on that island. Climate change may affect the island night lizard and its habitat, but the best available information does not allow us to make accurate predictions regarding the effects of climate change on the island night lizard at this time. We expect that the lizard's susceptibility to climate change is somewhat reduced by its ability to use varying habitat types and by its broad generalist diet. Continued improvement in habitat quality and reduction of threats by the Navy and NPS is likely to increase the resilience of the lizard and its habitat to changing conditions. Therefore, because of current and expected ongoing management, we do not consider climate change to be a substantial threat to the species at this time or in the future.

Cumulative Effects

A species may be affected by a combination of threats. Within the preceding review of the five listing factors, we identified multiple threats that may have interrelated impacts on the island night lizard or its habitat. Fire (*Factor A)* may increase in intensity and frequency on all occupied islands if there is an abundance of nonnative plants (grasses) (*Factor A*). Similarly, across all islands occupied by the island night lizard, fire (*Factor A*) may become more frequent if climate change results in hotter and drier environmental conditions (*Factor A and E*). An increase in the frequency of fires (*Factor A*) may potentially lead to an increased risk of predation (*Factor C*) due to loss of vegetative cover for the island night lizard in burned areas. On San Clemente and San Nicolas Islands, the land use and development activities (*Factor A*) conducted by the Navy can prompt an increase in erosion (*Factor A*) and the potential for fire (*Factor A*) in island night lizard habitat. Additionally, effects from climate change, such as rising sea level in conjunction with increased storm frequency and high-tide wave action (*Factor A*), could potentially impact island night lizard habitat by accelerating erosion (*Factor A*) on all occupied islands. Although island night lizard productivity may be reduced because of these threats, either alone or in combination, it is not easy to determine whether a specific threat is the primary threat having the greatest impact on the viability of the species, or whether it is exacerbated by, or functioning in combination with, other threats to result in cumulative or synergistic effects on the species. The Navy and NPS are actively managing for the threats described above to minimize impacts to the island night lizard. It is anticipated that their continued management of these threats will maintain the threats at a level where synergistic effects are not likely to result in a substantial impact to the island night lizard or its habitat. Therefore, we do not consider the cumulative impact of these threats to be substantial at this time.

Finding

An assessment of the need for a species' protection under the Act is based on threats to that species and the regulatory mechanisms in place to ameliorate impacts from these threats. As required by the Act, we conducted a review of the status of the taxon and assessed the five factors to determine whether the island night lizard is threatened or endangered throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the lizard. We reviewed petitions received on May 1, 1997, and March 22, 2004; comments and information received after publication of our 90-day finding (71 FR 48900, August 22, 2006); two 5-year status reviews, information available in our files; and other available published and unpublished information. We also consulted with recognized experts on the island night lizard and its habitat, and with other Federal agencies.

In considering which factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds in a way that causes actual impacts to the species. If there is exposure to a factor, but no response or

only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a substantial threat and we then attempt to determine the significance of the threat. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species warrants listing as endangered or threatened, as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could potentially impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative substantial threats that act on the species to the point that the species meets the definition of threatened or endangered under the Act.

The reasons for listing the island night lizard as threatened (42 FR 40682) were: Habitat loss or modification through the introduction of nonnative herbivores such as feral goats and pigs on San Clemente Island; habitat modification through the introduction of nonnative plants throughout the species' range (San Clemente, San Nicolas, and Santa Barbara Islands); predation by feral cats on San Clemente Island; and competition with the southern alligator lizard on San Nicolas Island. The island night lizard was not known to occupy Sutil Island at listing and thus the island was not included in the threats analysis at the time of listing. Since listing, the island night lizard has been twice identified on Sutil Island. Due to the small size of Sutil Island, proximity to Santa Barbara Island, and ownership of Sutil and Santa Barbara Island by the NPS, we included the population of Sutil Island and discussion of threats with the population of Santa Barbara Island.

At the time of listing, several threats related to destruction of habitat were identified for the island night lizard on one or more of the Channel Islands. Since listing, these threats have been addressed by multiple actions through implementation of the Navy's INRMPs and the NPS's management policies. While a variety of threats existed under Factor A, not all threats were present on all three islands.

All nonnative herbivores have been removed from San Clemente, San Nicolas, and Santa Barbara Islands, and the slow process of natural recovery of native habitat is ongoing. Management actions to control, remove, or prevent introduction of nonnative plant species are also implemented on all three islands by the Navy and NPS. Current management efforts on San Clemente and San Nicolas Islands to avoid or minimize impacts from land use and development, fire, and erosion due to military activities have resulted in reduction of threats to the island night lizard or its habitat on those islands. Land use and development is not considered a threat to the lizard or its habitat on Santa Barbara Island. Fire is also not a substantial threat to the lizard or its habitat on Santa Barbara Island due to limited human presence, current fire management policy on the island, and an FMP for Channel Islands National Park (including Santa Barbara Island). Erosion resulting from historical grazing by nonnative herbivores and historical land use practices is exacerbated by current military activities. Efforts to control these sources of erosion on San Clemente and San Nicolas Islands are currently ongoing, as outlined in the Navy's INRMPs. As a result of management efforts by the Navy and NPS, we do not consider any of these habitat threats to be substantial to the island night lizard or its habitat on any of the occupied islands, nor do we expect them to become so in the foreseeable future.

Disease is not a current threat for the island night lizard on any of the islands where it occurs nor do we anticipate it to be in the foreseeable future; however, predation has impacted the species in the past and continues to be a potential impact to individuals on San Clemente Island. We do not consider predation to be a substantial threat currently or in the foreseeable future due to ongoing feral cat removal efforts implemented through the Navy's INRMP. All feral cats have been removed from San Nicolas Island, and predation is not a threat to the lizard on Santa Barbara Island. Finally, research indicates that the southern alligator lizard is not a threat to the island night lizard on San Nicolas Island.

The overutilization for commercial, recreational, scientific, or educational purposes and inadequacy of regulatory mechanisms are not threats to the island night lizard on any of the occupied islands, nor do we anticipate them to become threats in the foreseeable future.

Climate change has been identified as a potential threat with regards to the present or threatened destruction, modification, or curtailments of its habitat, as well as with regard to other human and manmade factors. However, we cannot precisely determine how climate change will potentially impact the island night lizard and its habitat on San Clemente, San Nicolas, and Santa Barbara Islands. While climate change may impact the lizard and its habitat, we are unable to accurately predict the effects to the species and its habitat. However, species biology indicates that the lizard may be able to withstand some changes in habitat conditions. Therefore, we do not consider climate change to be a substantial threat to the species throughout its range now or in the foreseeable future.

At the time of listing, the number of island night lizards on San Clemente, San Nicolas, and Santa Barbara Islands was unknown. Research conducted since then indicates that approximately 21 million island night lizards occur on San Clemente Island, 15,300 lizards occur on San Nicolas Island, and 17,600 lizards occur on Santa Barbara Island. While no new population numbers are available, new habitat assessments indicate that the amount of quality habitat supporting the island night lizard has increased on each of the islands. It is likely that the number of lizards has increased in association with the increase of quality habitat on all three islands. Currently, the Navy conducts monitoring for management actions that impact threatened or endangered species, including the island night lizard, as required by its INRMP. If the island night lizard is removed from the List, the Navy would continue to monitor the lizard and its habitat through post-delisting monitoring efforts to ensure the species is recovering and does not warrant relisting in the foreseeable future. The NPS conducts monitoring on Santa Barbara Island to assess the impacts of management actions on threatened and endangered species, including the island night lizard and its habitat. Additionally, the NPS monitors all natural resources, including the island night lizard, and would also participate in post-delisting monitoring efforts to ensure the species does not warrant relisting in the foreseeable future.

We conclude that, since the time of listing, all substantial threats to the island night lizard have been ameliorated. Any remaining potential threats to the species are currently managed to minimize impacts. The one exception is climate change, for which there is not sufficient information to make accurate predictions about the timing and degree of potential impacts. However, data suggest that the extinction risk for the family Xantusidae (which includes the Island night lizard) is zero through the year 2080 (based on Sinervo *et al.* (2010) evaluation of Xantusidae (see Climate Change section)). Therefore, using 2080 as our frame of reference for determining the foreseeable future (which is generally

the latest time period that most climate change emission scenario models use because they lose confidence beyond this point), we concluded that this is not likely to become a substantial threat now or in the foreseeable future. We also note that all six primary objectives of the Recovery Plan were, or are in the process of, being fulfilled (see Recovery Plan Implementation section). Additionally, since listing, it was determined that over 21 million lizards exist in high-quality habitat among the three islands. Based on the current level of threats, we would not anticipate future declines in population numbers. Therefore, we conclude that the island night lizard is not likely to become endangered in the foreseeable future throughout all of its range, because all substantial threats have been ameliorated, potential threats are currently managed, and Recovery Plan objectives have been initiated or fulfilled. As such, we recommend removing the island night lizard from the List of Endangered and Threatened Wildlife.

Significant Portion of Its Range

The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The definition of ''species'' is also relevant to this discussion. The Act defines ''species'' as follows: ''The term 'species' includes any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

Two recent district court decisions have addressed whether the SPR language allows the Service to list or protect less than all members of a defined ''species'': *Defenders of Wildlife* v. *Salazar,* 729 F. Supp. 2d 1207 (D. Mont. 2010), concerning the Service's delisting of the Northern Rocky Mountain gray wolf (74 FR 15123, Apr. 12, 2009) and *WildEarth Guardians* v. *Salazar,* 2010 U.S. Dist. LEXIS 105253 (D. Ariz. Sept. 30, 2010), concerning the Service's 2008 finding on a petition to list the Gunnison's prairie dog (73 FR 6660, Feb. 5, 2008). The Service had asserted in both of these determinations that it had authority, in effect, under the Act to protect only some members of a ''species,'' as defined by the Act (species, subspecies, or DPS). Both courts ruled that the determinations were arbitrary and capricious on the grounds that this approach violated the plain and unambiguous language of the Act. The courts concluded that reading the SPR language to allow protecting only a portion of a species' range is inconsistent with the Act's definition of ''species.'' The courts concluded that once a determination is made that a species (species, subspecies, or DPS) meets the definition of ''endangered species'' or ''threatened species,'' it must be placed on the list in its entirety and the Act's protections applied consistently to all members of that species (subject to modification of protections through special rules under sections 4(d) and 10(j) of the Act).

Consistent with that interpretation, and for the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, the species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species shall be listed as endangered or threatened, respectively, and the Act's protections shall be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice, as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that, without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species) and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine if a portion's biological contribution is so important that the portion qualifies as ''significant'' by asking whether *without that portion* the representation, redundancy, or

resiliency of the species would be so impaired that the species would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be *currently* imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, that is, if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose in analyzing portions of the range that have no reasonable potential to be significant or in analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant'' *and* (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

We consider the ''range'' of the island night lizard to be San Clemente, San Nicolas, and Santa Barbara Islands (including Sutil Island) of the California Channel Islands.

We considered whether the threats facing the island night lizard might be different on San Clemente Island with approximately 99.85 percent of the population compared to San Nicolas and Santa Barbara Islands with, combined, approximately 0.15 percent of the population (Service 2012b). A detailed spatial evaluation of threats showed that the level of threat, and extent of protective measures, is different on San Clemente Island and San Nicolas Island, compared to Santa Barbara Island due to ownership and activities conducted by the Navy (Service 2012b, unpublished data). However, all substantial threats have been ameliorated from those islands, and the remaining potential threats to the island night lizard are actively managed for by the Navy through implementation of INRMPs, Federal Noxious Weed Act, and Soil Conservation and Domestic Allotment Act. On Santa Barbara Island there are no substantial threats, and the remaining potential threats receive protections provided through the implementation of NPS's management policies and the Channel Islands National Park Wildland FMP, in accordance with the Organic Act. It is our conclusion, based on our evaluation of the current potential threats to the island night lizard on San Clemente, San Nicolas, and Santa Barbara Islands (see Summary of Factors Affecting the Species section), that threats are neither sufficiently concentrated nor of sufficient magnitude to indicate the species is in danger of extinction on any island and thus it is likely to persist throughout its range.

Summary of Finding

According to 50 CFR 424.11(d), a species may be delisted if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of: (1) Extinction, (2) recovery, or (3) error

in the original data for classification of the species. We consider ''recovery'' to apply to the island night lizard because, since listing, all substantial threats to the lizard have been ameliorated. All remaining potential threats to the species and its habitat, with the exception of climate change for which there is not information on which to make accurate predictions, are currently managed through management plans (the Navy's INRMPs on San Clemente and San Nicolas Islands in accordance with the Sikes Act, Federal Noxious Weed Act, and Soil Conservation and Domestic Allotment Act; and the NPS's management policies in accordance with the Organic Act on Santa Barbara Island). Upon completion of this finding, a majority of all six primary objectives of the Recovery Plan have been fulfilled. Therefore, we find that the island night lizard no longer requires the protection of the Act and we propose removing the species from the List of Endangered and Threatened Wildlife.

Effects of This Rule

This rule, if made final, would revise 50 CFR 17.11(h) to remove the island night lizard from the List of Endangered and Threatened Wildlife. Because no critical habitat was designated for this species, this rule would not affect 50 CFR 17.95.

If this species is removed from the List of Endangered and Threatened Wildlife, the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9 of the Act, would no longer apply. Removal of the island night lizard from the List of Threatened and Endangered Wildlife would relieve Federal agencies from the need to consult with us to ensure any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species.

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (50 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule and the draft post-delisting monitoring (PDM) plan. The purpose of peer review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this comment period on this proposed rule and draft PDM plan, and the specific assumptions and conclusions regarding the proposed delisting. Accordingly, the final decision may differ from this proposal.

Post-Delisting Monitoring Plan

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted (50 CFR 17.11, 17.12). The purpose of this post-delisting monitoring (PDM) is to verify that a species remains secure from risk of extinction after it has been removed from the protections of the Act. The PDM is designed to detect the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing under section 4(b)(7) of the Act. Section 4(g) of the Act explicitly requires us to cooperate with the States in development and implementation of PDM programs, but we remain responsible for compliance with section 4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation post-delisting.

Post-Delisting Monitoring Plan Overview

The Service has developed a draft PDM plan for the island night lizard in cooperation with the Navy and NPS. The PDM plan is designed to verify that the island night lizard remains secure from risk of extinction after removal from the list of federally threatened or endangered species by detecting changes in its status and habitat throughout its known range. With this notice, we are soliciting public comments and peer review on the draft PDM Plan including its objectives and procedures (see Public Comments Solicited). All comments on the draft PDM plan from the public and peer reviewers will be considered and incorporated into the final PDM plan as appropriate. Please see the plan, available at *http://www.fws.gov/southwest/es/Library/, http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=C01M,* or *http://www.regulations.gov* for more details.

The draft PDM plan outlines monitoring that will take place for 5 years over a 9-year period (i.e., years 1, 3, 4, 7, and 9). The draft PDM Plan includes the following measures:

(1) Monitoring the overall health of the island night lizard populations on each island through trap capture rates and recruitment at previously established sampling sites. This monitoring will occur in all habitats for 9 years following delisting. Biologists will conduct density assessments using several methodologies including: Pitfall traps, rock-turn surveys, and coverboards arranged in grid arrays or transects. Efforts will be made to sample all sites within each sampling period. Surveys to assess recruitment will be conducted in October for each sampling year.

(2) Monitoring high-quality habitat will occur twice throughout post-delisting monitoring to assess abundance and distribution of habitats on all islands. Recently completed island-wide habitat maps will be utilized as the baseline assessment to compare with post-delisting monitoring mapping efforts.

(3) Identifying thresholds that would trigger an extension of monitoring, alteration of management approach, or a status review will be established related to island night lizard density, recruitment, and habitat.

Additionally, we are recommending that land managers on each island conduct monitoring in previously unsampled areas on each island consisting of different habitats at least once during PDM with a focus on high-quality habitat. Within these new areas, we recommend using already established protocols to allow for comparison of newly sampled island night lizard densities and distribution with previously established sites for each island. We also recommend establishing identical protocols for each island to allow for comparison among islands. Lastly, we recommend that each island continue restoration efforts of high-quality island night lizard habitat to increase distribution and connectivity.

We also expect to monitor the commitments and actions of management plans implemented by the Navy and NPS, which manage potential threats to the island night lizard and its habitat, including the introduction and current persistence of nonnative plants, land use and development, erosion, and fire.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized,

(b) Use the active voice to address readers directly,

(c) Use clear language rather than jargon,

(d) Be divided into short sections and sentences, and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In concurrence with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. We have determined that there are no tribal lands affected by this proposal.

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at *http://www.regulations.gov* or upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this proposed rule is the Carlsbad Fish and Wildlife Office in Carlsbad, California (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Lizard, Island night'' under ''REPTILES'' in the List of Endangered and Threatened Wildlife.

Dated: January 23, 2013.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–02020 Filed 2–1–13; 8:45 am]

BILLING CODE 4310–55–P

FEDERAL REGISTER

Vol. 78 Monday,

No. 23 February 4, 2013

Part IV

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program: Test Procedures for Microwave Ovens (Active Mode); Proposed Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EERE–2010–BT–TP–0023]

RIN 1904–AC26

Energy Conservation Program: Test Procedures for Microwave Ovens (Active Mode)

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to revise its test procedures for microwave ovens established under the Energy Policy and Conservation Act. The proposed amendments would add provisions for measuring the active mode energy use for microwave ovens, including both microwave-only ovens and convection microwave ovens. Specifically, DOE is proposing provisions for measuring the energy use of the microwave-only cooking mode for both microwave-only ovens and convection microwave ovens based on the testing methods in the latest draft version of the International Electrotechnical Commission Standard 60705, ''Household microwave ovens—Methods for measuring performance.'' DOE is proposing provisions for measuring the energy use of the convection-only cooking mode for convection microwave ovens based on the DOE test procedure for conventional ovens in our regulations. DOE is also proposing to calculate the energy use of the convection-microwave cooking mode for convection microwave ovens by apportioning the microwave-only mode and convection-only mode energy consumption measurements based on typical consumer use.

DATES: DOE will hold a public meeting on Tuesday, March 5, 2013, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but submitted no later than April 22, 2013. See section V, ''Public Participation,'' for details.

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

Any comments submitted must identify the NOPR on Test Procedures for Microwave Ovens, and provide docket number EERE–2010–BT–TP–0023 and/or regulatory information number (RIN) 1904–AC26. Comments may be submitted using any of the following methods:

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

2. *Email: MWO-2010-TP-0023@ee.doe.gov.* Include docket number EERE–2010–BT–TP–0023 and/or RIN 1904–AC26 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. *Telephone:* (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=EERE-2010-BT-TP-0023.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment or review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–6590. Email: *ashley.armstrong@ee.doe.gov*.

Mr. Ari Altman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–6307. Email: *ari.altman@hq.doe.gov*.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Pub. L. 110–140 (Dec. 19, 2007)). Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' These include microwave ovens, the subject of today's notice. (42 U.S.C. 6291(1)–(2) and 6292(a)(10))

Under EPCA, this program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use (1) as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) for making representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides in relevant part that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results that measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

EISA 2007 amended EPCA to require DOE to amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if a separate test is technically feasible. (42 U.S.C. 6295(gg)(2)(A))

DOE Microwave Oven Test Procedure

DOE's test procedure for microwave ovens is codified at appendix I to subpart B of Title 10 of the Code of Federal Regulations (CFR) (Appendix I). The test procedure was established in an October 3, 1997 final rule that addressed active mode energy use only. 62 FR 51976.

On July 22, 2010, DOE published in the **Federal Register** a final rule for the microwave oven test procedure rulemaking (July 2010 TP Repeal Final Rule), in which it repealed the regulatory provisions for establishing the cooking efficiency test procedure for microwave ovens under the Energy Policy and Conservation Act (EPCA). 75 FR 42579. In the July 2010 TP Repeal Final Rule, DOE determined that the existing microwave oven test procedure to measure the cooking efficiency, which was based on the IEC Standard 705—Second Edition 1998 and Amendment 2—1993, ''Methods for Measuring the Performance of Microwave Ovens for Households and Similar Purposes'' (IEC Standard 705), did not produce representative and repeatable test results. DOE stated that it was unaware of any test procedures that had been developed that addressed the concerns with the microwave oven cooking efficiency test procedure. DOE was also unaware of any research or data on consumer usage indicating what a representative food load would be, or any data showing the repeatability of test results. 75 FR 42579, 42581. In addition, in comments received in response to a separate test procedure notice of proposed rulemaking (NOPR) published in the **Federal Register** on October 17, 2008, which addressed provisions for measuring standby mode and off mode energy use for microwave ovens (73 FR 62134), interested parties commented that pure water has relatively low specific resistivity, and actual food items that might be cooked in a microwave oven would have more salts and thus absorb microwave energy more efficiently than pure water. Interested parties stated that, as a result, testing with a water load would likely result in lower efficiency measurements than would be expected from using actual food products.

On July 22, 2010, DOE also published in the **Federal Register** a notice of public meeting to initiate a separate rulemaking process to consider new provisions for measuring microwave oven energy efficiency in active (cooking) mode. 75 FR 42611. DOE held the public meeting on September 16, 2010. DOE received no data or comments at or in response to this public meeting suggesting potential methodologies for test procedures for microwave oven active mode.

On October 24, 2011, DOE published a Request for Information (RFI) notice to announce that it has initiated a test procedure rulemaking to develop active mode testing methodologies for microwave ovens (hereafter referred to as the October 2011 RFI). 76 FR 65631. DOE specifically sought information, data, and comments regarding representative and repeatable methods for measuring the energy use of microwave ovens, in particular for the microwave-only and convection-

microwave cooking (*i.e.,* microwave plus convection and any other means of cooking) modes. DOE sought comment on the following: (1) The characteristics of food loads representative of consumer use, (2) the repeatability of energy use measurements using different food loads, and (3) consumer usage data on the hours of operation in active mode, standby mode, and off mode for the development of an integrated energy use metric. In response to the October 2011 RFI, interested parties commented that testing microwave-only ovens and convection microwave ovens with real and artificial food loads do not produce acceptable levels of repeatability and reproducibility. Interested parties also commented that DOE should harmonize its test procedure for microwave-only ovens with IEC Standard 60705, ''Household microwave ovens—Methods for measuring performance'' (IEC Standard 60705).

Based on DOE's determination to initiate a microwave oven active mode test procedure rulemaking and comments received on the October 2011 RFI, DOE conducted testing to evaluate potential amendments to its microwave oven test procedure to establish new methods for measuring the active mode energy use for these products, including the microwave-only, convection-only, and convection-microwave cooking modes. On June 5, 2012, DOE published a Notice of Data Availability (NODA) to present test results and analytical approaches that DOE was considering for potential amendments to the microwave oven test procedure and to request additional comment and information on these results (hereafter referred to as the June 2012 NODA). 77 FR 33106. In the June 2012 NODA, DOE presented test results from microwave-only cooking mode testing of water loads and food simulation mixtures consisting of water and basic food ingredients (*i.e.,* fats, sugars, salt, fiber, proteins, etc.). DOE also presented test results from testing using the convection-microwave cooking mode on the following loads: (1) Crisco® All-Vegetable shortening, (2) Russet Burbank potatoes, (3) U.S. Department of Agriculture (USDA) grade A boneless chicken breasts, and (4) food simulation TX–151 gels. [1] Finally, DOE presented test results from testing of the convection-only cooking mode using the aluminum test block specified in the DOE conventional oven test procedure in 10 CFR part 430, subpart B, appendix I. In response to the June 2012 NODA, DOE received comments on the following issues:

- The Association of Home Appliance Manufacturers (AHAM) and Whirlpool Corporation (Whirlpool) commented that the draft revised IEC Standard 60705 produces repeatable and reproducible results and DOE should harmonize with the IEC Standard 60705 when the revised version is published. (AHAM, No. 18 at pp. 2–3; Whirlpool, No. 15 at pp. 1–2)
- AHAM and Whirlpool stated that DOE should not develop test procedures for convection microwave ovens because: (1) They represent only 4 percent of microwave oven shipments, (2) the potential for energy savings is trivial compared to the added test burden, and (3) there are currently no international test standards for these products. (AHAM, No. 18 at p. 3; Whirlpool, No. 15 at pp. 4–6)
- The Appliance Standards Awareness Project (ASAP), and National Resources Defense Council (NRDC) supported the development of test procedures for convection microwave ovens. (ASAP, NRDC, No. 17 at pp. 1–2)

On January 18, 2013, DOE published a final rule (hereafter referred to as the January 2013 Final Rule) amending the test procedure for microwave ovens to incorporate by reference certain provisions of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01 (IEC Standard 62301 (Second Edition)) for measuring standby mode and off mode energy use. 78 FR 4015.

II. Summary of the Notice of Proposed Rulemaking

In today's NOPR, DOE proposes to amend the test procedures for microwave ovens in 10 CFR part 430 to include methods for measuring the active mode energy use. The proposed amendments would add test methods for microwave-only ovens based on the provisions in the draft revised IEC Standard 60705. The proposed test method would involve measuring the energy consumption required to heat water loads of 275 grams (g), 350 g, and 1000 g, in 600 milliliter (ml), 900 ml, and 2000 ml borosilicate glass test containers, respectively, by 45–50 degrees Celsius (°C) and 50–55 °C.[2] The results from the two different temperature rise tests would then be used to linearly interpolate the energy consumption required to heat each load by 50 °C, which is then weighted based on consumer usage to calculate the weighted per-cycle cooking energy consumption. In addition to the cooking cycle energy consumption, the proposed amendments would also require that if the microwave oven is capable of operating in fan-only mode while the microwave is cooling down after the completion of the microwave-only cooking cycle, such energy consumption shall be measured until the end of the fan-only mode. This energy consumption would then be added to the cooking energy consumption to calculate an overall weighted per-cycle energy consumption.

For convection microwave ovens (*i.e.,* microwave ovens that incorporate convection features and possibly other means of cooking), DOE is proposing in today's NOPR that the microwave-only cooking mode be measured according to the procedures described above for microwave-only ovens, which are based on the draft revised IEC Standard 60705. DOE is also proposing that the convection-only cooking mode for convection microwave ovens be measured according to the DOE conventional ovens test procedure in 10 CFR part 430, subpart B, appendix I, with added clarifications and changes. The proposed test method involves setting the temperature controls to 375 degrees Fahrenheit (°F) and heating an 8.5 ± 0.1 pound cylindrical aluminum test block from ambient room temperature until the test block temperature has increased 234 °F above its initial temperature. The proposed amendments would also require that if the microwave oven is capable of operating in fan-only mode after the completion of the convection-only cooking cycle, such energy consumption shall be measured until the end of the fan-only mode. DOE also proposes to calculate the per-cycle energy consumption for the convection-microwave cooking mode by apportioning the microwave-only mode and convection-only mode energy consumption measurements described above based on typical consumer use.

DOE is proposing to require that the microwave-only and convection-only test series each be repeated three times unless the total microwave-only and convection-only per-cycle energy consumption for the second measurement is within 1.5 percent of

[1] TX–151 is a solidifying powder that, when combined with water creates a gel. One consumer product review organization in the United Kingdom used the TX–151 gels to simulate a food load. 77 FR 33106, 33116.

[2] DOE notes that for the proposed microwave-only mode test procedure amendments, all numerical values are presented in metric units in today's notice to demonstrate harmonization with the November 2011 draft IEC Standard 60705. In the regulatory text, all values are presented in U.S. units with metric units in parenthesis.

the value obtained from the first measurement. DOE notes that the proposed requirement for multiple test runs would improve the accuracy of the test results by accounting for the variability from test to test.

DOE is proposing in today's NOPR to establish an integrated annual energy use metric that combines standby mode, off mode, and all available active modes for each product type (*i.e.,* microwave-only ovens and convection microwave ovens). The total annual energy use would be calculated as the sum of the product of the per-cycle energy consumption and the number of annual cooking cycles for each available active mode cooking mode, plus the sum of the product of the average standby mode and off mode power consumption and the annual standby mode and off mode hours.

As noted above, EPCA requires that DOE determine whether a proposed test procedure amendment would alter the measured efficiency of a product, thereby requiring adjustment of existing standards. (42 U.S.C. 6293(e)) Because there are currently no Federal energy conservation standards for microwaves, such requirement does not apply to this rulemaking.

III. Discussion

A. Products Covered by This Test Procedure Rulemaking

DOE defines ''microwave oven'' as a class of kitchen ranges and ovens which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens. 10 CFR 430.2 In the March 2011 Interim Final Rule, DOE determined that this regulatory definition includes all ovens equipped with microwave capability, including convection microwave ovens [3] (*i.e.,* microwave ovens that incorporate convection features and possibly other means of cooking) because they are capable of cooking or heating food by means of microwave energy. 76 FR 12825, 12828–30 (March 9, 2011). In the January 2013 Final Rule, DOE amended the microwave oven test procedure to add a definition of convection microwave oven in 10 CFR 430.2 as a microwave oven that incorporates convection features and any other cooking means in a single compartment. 78 FR 4015, 4018 (Jan. 18, 2013). For the purpose of this active mode test procedure rulemaking, DOE is not proposing to amend the definition of convection microwave oven in 10 CFR 430.2. In today's NOPR, DOE is proposing amendments to address test procedures for both microwave-only ovens and convection microwave ovens.

DOE notes that all products that combine a microwave oven with other appliance functionality would be considered covered products under a microwave oven regulatory requirement, including microwave/conventional ranges, microwave/conventional ovens, microwave/conventional cooking tops, and other combined products such as microwave/refrigerator-freezer/charging stations.[4] However, DOE proposes not to require such ''combined products'' be tested according to the proposed amendments in today's NOPR due to a lack of information regarding appropriate testing methods and proper apportionment of energy use between the different functional components of the combined products.

B. Effective Date for the Test Procedure and Date on Which Use of the Test Procedure Will Be Required

The effective date of the active mode test procedures for microwave ovens would be 30 days after the date of publication of the final rule. DOE's amended test procedure regulations codified in the CFR would clarify, though, that the procedures and calculations adopted in the final rule need not be performed to determine compliance with energy conservation standards until compliance with any final rule establishing amended energy conservation standards for microwave ovens in active mode is required. However, as of 180 days after publication of the final rule, any representations as to the active mode energy consumption of the products that are the subject of this rulemaking would need to be based upon results generated under the applicable provisions of this test procedure. (42 U.S.C. 6293(c)(2))

C. Consumer Usage

DOE notes that Lawrence Berkeley National Laboratories (LBNL) conducted a consumer usage survey to evaluate the consumer usage habits for microwave ovens.[5] The survey collected data from 2258 households on the typical cycle lengths, the annual number of cooking cycles, and the annual hours of use for microwave-only ovens. The survey also collected data from 653 households on the typical cycle lengths, the annual number of cooking cycles, and the annual hours of use for each available cooking mode for convection microwave ovens. The results from the study conducted by LBNL are presented in Table III.1 and Table III.2.

TABLE III.1—ESTIMATE OF CONSUMER USE FOR MICROWAVE-ONLY OVENS

Mode	Cycle length (*min*)	Number of annual cycles	Annual hours (*hours*)
Microwave-Only Cooking	2.62	1026	44.9

TABLE III.2—ESTIMATE OF CONSUMER USE FOR CONVECTION MICROWAVE OVENS

Mode	Cycle length (*min*)	Number of annual cycles	Annual hours (*hours*)
Microwave-Only Cooking	2.54	842	35.7
Convection-Only Cooking	18.70	101	31.7

[3] Note that in the March 2011 Interim Final Rule, DOE referred to such a product as a ''combination oven.''

[4] DOE proposed in the May 2012 TP SNOPR to add a definition of ''microwave/conventional cooking top'' in 10 CFR 430.2 to state that it is a class of kitchen ranges and ovens that is a household cooking appliance consisting of a microwave oven and a conventional cooking top. DOE also proposed to add a definition of a ''microwave/conventional oven'' as a class of kitchen ranges and ovens which consists of a microwave oven and a conventional oven in separate compartments. 77 FR 28805, 28809–10 (May 16, 2012).

[5] Alison Williams, Hung-Chia (Dominique) Yang, Bereket Beraki, Louis-Benoit Desroches, Scott J. Young, Chun Chun Ni, Henry Willem, and Camilla Dunham Whitehead: LBNL; Sally M. Donovan, Consultant, Melbourne, Australia. (2012) *Surveys of Microwave Ovens in U.S. Homes.* Lawrence Berkeley National Laboratory, LBNL–5947E. December.

TABLE III.2—ESTIMATE OF CONSUMER USE FOR CONVECTION MICROWAVE OVENS—Continued

Mode	Cycle length (*min*)	Number of annual cycles	Annual hours (*hours*)
Convection-Microwave Cooking	15.00	69	17.3

In response to the June 2012 NODA, Whirlpool commented that an informal poll of their employees suggested that for convection microwave oven owners, 90 percent of field use is microwave-only cooking, and the remaining 10 percent is a mix of convection-microwave cooking and convection-only cooking. (Whirlpool, No. 15 at p. 5) The field use data presented in Table III.2 shows that microwave-only cooking, convection-only cooking, and convection-microwave cooking account for 83.2 percent, 10.0 percent, and 6.8 percent, respectively, of the total annual cooking cycles. DOE notes that these values are in relative agreement with Whirlpool's informal employee survey. As discussed in section III.F, DOE is proposing to use the consumer usage data in Table III.1 and Table III.2 to calculate the total annual energy consumption for both microwave-only ovens and convection microwave ovens.

Korea commented on the June 2012 NODA that active mode energy use testing is unnecessary for microwave ovens because microwave ovens operate in active mode for only a very short period of time. Korea stated that the European Union and Korea only test microwave ovens in standby mode. Korea commented that if DOE proceeds with a test procedure for microwave oven active mode, DOE should provide scientific data concerning the annual active mode hours for microwave ovens and the percentage of energy consumed in active mode and standby mode. (Korea, No. 20 at p. 2) Based on the data presented in section III.F, DOE estimates for microwave-only ovens that active mode energy use contributes to 75.1 percent of the total annual energy use, whereas standby mode and off mode energy use accounts for the remaining 24.9 percent of the total annual energy use. Similarly for convection microwave ovens, the active mode energy use contributes to 83.9 percent of the total annual energy use, and standby mode and off mode accounts for the remaining 16.1 percent of the total annual energy use. Because the active mode energy use accounts for a significant portion of the total annual energy use, DOE is proposing amendments in today's NOPR for measuring the active mode energy use.

D. Specifications for the Test Methods and Measurements for the Microwave-Only Ovens

1. IEC Standard 60705/Water Test Loads

In today's NOPR, DOE is proposing to add test methods for measuring the energy consumption of the microwave-only cooking mode for microwave-only ovens based on the November 2011 draft IEC Standard 60705. As discussed in section I, before being repealed, DOE's previous active mode test procedure for microwave ovens incorporated by reference portions of IEC Standard 705 for measuring the energy consumption of the microwave-only cooking mode. These test methods measured the amount of energy required to raise the temperature of 1 kilogram (kg) of water by 10 °C under controlled conditions. The ratio of usable output power over input power described the energy factor (EF), a measure of the cooking efficiency.[6]

DOE notes that the IEC published a revised version of IEC Standard 705, which was renamed IEC Standard 60705—Edition 3.0 1999–04, ''Household microwave ovens—Methods for measuring performance'' (IEC Standard 60705 Third Edition). IEC subsequently published an updated version, IEC Standard 60705—Edition 4.0 2010–04 (IEC Standard 60705 Fourth Edition). Both of these test methods maintained the same basic testing methods as IEC Standard 705 for measuring the active mode energy use of microwave ovens.

In the June 2012 NODA, DOE noted that the IEC is in the process of revising its current test standard for microwave ovens, IEC Standard 60705 Fourth Edition. 77 FR 33106, 33108 (June 5, 2012). The latest draft version of the IEC Standard 60705 that DOE was aware of for the June 2012 NODA was dated August 8, 2010 (hereafter referred to as the August 2010 draft IEC Standard 60705.) However, after the June 2012 NODA, DOE was made aware of a more recent draft version of IEC Standard 60705, which is dated November 25, 2011 (hereafter referred to as the November 2011 draft IEC Standard 60705.) DOE will therefore be considering this newer draft version in this rulemaking.

The November 2011 draft IEC Standard 60705 includes a new test method that continues to use water as the cooking load. The draft revised test method involves measuring the energy consumption required to heat water loads of 275 g, 350 g, and 1000 g, in 600 ml, 900 ml, and 2000 ml borosilicate glass test containers,[7] respectively, by 45–50 °C and 50–55 °C. The results from the two different temperature rise tests at each load size are used to linearly interpolate the energy consumption required to heat the load by 50 °C. The cooking cycle energy consumption for each water load size is then weighted based on consumer usage to calculate an average weighted per-cycle cooking energy consumption. The weighting factors are as follows: 275 g = 3/11; 350 g = 6/11; 1000 g = 2/11. According to the November 2011 draft IEC Standard 60705, these weighting factors are related to average household use and represent typical loads.

In addition to the cooking cycle energy consumption, the November 2011 draft IEC Standard 60705 includes methods for measuring the cooling down energy consumption for a period of 15 minutes after the completion of a 50 °C water load temperature rise cooking cycle. Although this measurement method may be applied to all microwave ovens, including those that revert back to standby mode or off mode, the November 2011 draft IEC Standard 60705 notes that the cooling down energy consumption measurement is designed to measure the energy consumption associated with ventilating the microwave oven (*i.e.,* operation of a fan) to cool down the cavity. The November 2011 draft IEC Standard 60705 includes the cooling down energy consumption measurement in an informative annex that is not required to be conducted.

DOE recognizes that the IEC has made changes to the draft IEC Standard 60705

[6] The previous DOE microwave oven test procedure also provided for the calculation of several other measures of energy consumption, including cooking efficiency and annual energy consumption.

[7] The August 2010 draft IEC Standard 60705 evaluated for the June 2012 NODA used a smaller test container for the 275 g water load (400 ml capacity) than specified in the November 2011 draft IEC Standard 60705 (600 ml capacity.) Because the dimensions of both test containers are reasonably similar, however, DOE believes the repeatability and reproducibility of the two test containers will be relatively equivalent.

testing methods and that these testing methods may be subject to further changes during the IEC review process. However, DOE decided to consider the methodology from the November 2011 draft IEC Standard 60705 for potential amendments to the DOE test procedure. In the June 2012 NODA, DOE presented results from testing to evaluate the repeatability of the August 2010 draft IEC Standard 60705 test methods for measuring the cooking cycle energy consumption. 77 FR 33106, 33108–11 (June 5, 2012). The results, summarized in Table III.3, showed minimal test-to-test variation for each water load size. As noted above, DOE believes that the repeatability and reproducibility of test results using the November 2011 draft IEC Standard 60705 would be relatively equivalent to the August 2010 draft IEC Standard 60705.

TABLE III.3—JUNE 2012 NODA DRAFT REVISED IEC STANDARD 60705 COOKING CYCLE TEST RESULTS

		Draft Revised IEC Standard 60705 Cooking Cycle Test			
		275 g Water load	350 g Water load	1000 g Water Load	Overall weighted
Energy Consumption (*Wh*)	Average	37.99	44.34	114.90	56.11
	Min	32.54	39.14	104.86	50.35
	Max	46.61	54.68	130.87	66.54
Test-to-Test Variation—Standard Error (%)	Average	1.08	1.06	0.44	0.58
	Min	0.05	0.10	0.09	0.03
	Max	2.31	2.59	0.78	1.25

DOE also conducted testing for the June 2012 NODA to evaluate the testing methods in the August 2010 draft IEC Standard 60705 for measuring the cooling down energy consumption after the completion of the microwave-only cooking cycle. The test results showed minimal variation in the measured cooling down energy consumption from test to test and also between the different load sizes. DOE also noted that for all of the units in its test sample, which included countertop and over-the-range microwave-only and convection microwave ovens, none contained a fan that operated at the end of the microwave-only cooking cycle. DOE noted that when the door was closed after the load was removed at the end of the cooking cycle, the microwave ovens reverted back to the standby mode. 77 FR 33106, 33111–12 (June 5, 2012).

DOE also noted in the June 2012 NODA that the European Committee for Electrotechnical Standardization (CENELEC) conducted a round-robin testing program to evaluate the repeatability and reproducibility of the August 2010 draft IEC Standard 60705. A total of 5 manufacturer test labs and 5 independent test labs in Europe conducted testing according to the August 2010 draft IEC Standard 60705 on 4 microwave oven models. For the measured weighted cooking cycle energy consumption, the results showed that the test-to-test variation expressed as standard error within each laboratory was on average 0.56 percent and the lab-to-lab variation was on average 2.30 percent. For the measured weighted cooling down energy consumption, the results showed that the test-to-test variation expressed as standard error within each laboratory was on average 0.24 percent and the lab-to-lab variation was on average 6.14 percent. CENELEC determined that the repeatability and reproducibility for both the measured weighted cooking cycle energy consumption and cooling down energy consumption to be acceptable. 77 FR 33106, 33111–12 (June 5, 2012).

DOE requested comments on the test methods and test results presented in the June 2012 NODA, and other issues related to measuring energy consumption of the microwave-only cooking mode.

AHAM and Whirlpool both stated that the levels of repeatability and reproducibility of the August 2010 draft IEC Standard 60705 were determined to be acceptable by the CENELEC round-robin test program. (AHAM, No. 18 at pp. 2–3;[8] Whirlpool, No. 15 at p. 1) AHAM and Whirlpool commented that if DOE proceeds with an active mode test procedure for microwave ovens, DOE should harmonize with IEC Standard 60705 when that revised test procedure is complete for the following reasons:

- Microwave ovens do not represent a large amount of energy consumption as compared to other products and DOE should therefore not direct its limited resources to duplicate what another group has adequately done;
- The August 2010 draft IEC Standard 60705 is based on extensive testing and considered both repeatability and reproducibility;
- International harmonization will provide clarity and consistency for interested parties and reduce testing burden; and
- Issues related to the test procedure are not unique to United States; unlike some other products, microwave ovens do not vary significantly across countries. (AHAM, No. 18 at pp. 2–3; Whirlpool, No. 15 at p. 1)

In the June 2012 NODA, DOE requested comment on whether multiple test runs using the draft revised IEC Standard 60705 should be required. ASAP and NRDC commented that IEC Standard 705 required that the test be conducted three times unless the power measurement variability from the first two tests is sufficiently small. ASAP and NRDC stated that although the draft revised IEC Standard 60705 does not require multiple tests, DOE should maintain the requirement that multiple tests be performed to maintain a high degree of quality among reported data. (ASAP, NRDC, No. 17 at p. 2). Whirlpool stated that based on the CENELEC test results, testing each product twice should be sufficient if the two results show a small variation. (Whirlpool, No. 15 at p. 2)

Whirlpool noted that the cooling fan used in countertop and built-in microwave ovens is typically rated at 20–50 W, whereas a hood fan used for cooling an over-the-range microwave oven is typically rated at 100–200 watts (W). Whirlpool commented that for a microwave oven with a 1000 W rated cooking output, the total energy consumption is typically 1800 W. As a result, the cooling fan for countertop and built-in microwave ovens represents 1 to 3 percent of the total active mode energy consumption, whereas the hood cooling fan for over-

[8] A notation in the form ''AHAM, No. 18 at pp. 2–3'' identifies a written comment: (1) Made by the Association of Home Appliance Manufacturers; (2) recorded in document number 18 that is filed in the docket of the microwave oven active mode test procedure rulemaking (Docket No. EERE–2010–BT–TP–0023) and available for review at *www.regulations.gov;* and (3) which appears on pages 2 through 3 of document number 18.

the-range microwave ovens represents 5 to 10 percent of the total active mode energy consumption. (Whirlpool, No. 15 at p. 3)

The Republic of Korea (Korea) commented that water is not an optimal means of assessing the real-world energy use of microwave ovens. (Korea, No. 20 at p. 2) DOE recognizes Korea's concerns of using water as the test load. However, as discussed later in this section, DOE is unaware of any real or simulation test loads that produce repeatable and reproducible test results.

Whirlpool commented that water hardness has become an issue for other DOE test procedures, but it has not been thoroughly evaluated for microwave ovens. Whirlpool noted that although the water hardness was not measured during the CENELEC round-robin testing, which included test laboratories in ten geographical locations, the normal variation in water hardness was captured lab-to-lab reproducibility of test results. (Whirlpool, No. 15 at p. 1) DOE agrees with Whirlpool that variations in water hardness were likely captured in the lab-to-lab testing. Based on the lab-to-lab variation of 2.30 percent from the CENELEC testing, DOE is not proposing amendments to the microwave oven test procedure to include requirements for the water hardness used for testing. DOE may consider such amendments if data is made available showing that the water hardness has a measurable effect on test results.

Based on DOE and CENELEC testing, DOE agrees with AHAM and Whirlpool that the test methods in August 2010 draft IEC Standard 60705, and equivalently the November 2011 draft IEC Standard 60705, produce repeatable and reproducible results. DOE is proposing in today's NOPR to amend the microwave oven test procedure to include provisions for measuring the microwave-only active mode energy use based on the November 2011 draft IEC Standard 60705, with the following additional language to clarify the application of these provisions.

DOE notes that the current microwave oven test procedure already includes definitions ''built-in'' and ''freestanding'' to describe certain installation configurations. DOE is proposing in today's NOPR to add a definition for ''over-the-range'' to describe the installation configuration for certain microwave ovens that are intended to be installed in the cabinetry above a conventional range or cooktop. DOE is proposing to include in the definition that such products are supported by surrounding cabinetry, walls, or other similar structures on the sides, top, and/or rear of the product.

DOE noted in the June 2012 NODA that for over-the-range microwave ovens, all products equipped with a fan designed to vent air out of the microwave oven cooking cavity offer two installation configurations: (1) Such that the vent fan exhausts air from the cooking cavity to the outdoors and (2) such that the vent fan recirculates air from the cooking cavity back into the room (''recirculation configuration''). For the majority of products in DOE's test sample, the default installation configuration for the venting fan was for air recirculation back into the room. DOE is proposing to amend section 2.1.3 in Appendix I to require that over-the-range microwave ovens be installed with the exhaust vent/recirculation fan installed in the recirculation configuration in accordance with manufacturer's instructions. Requiring over-the-range microwave ovens to have their vent fans installed in the recirculation configuration will reduce testing burden by not requiring specific outdoor venting pipes or requiring the test room be capable of outdoor venting that would be necessary if the vent fan was required to be installed in the outdoor exhaust configuration. DOE also notes that requiring a single configuration for the venting fan will provide a consistent measurement method for all products.

DOE notes that the November 2011 draft IEC Standard 60705 specifies that at the beginning of each test, the oven shall not have been operated for a period of at least 6 hours. The November 2011 draft IEC Standard 60705 also specifies that the temperatures of the magnetron and power supply shall be within 2 °C of the ambient temperature and that forced cooling may be used to assist in cooling the component temperatures to ambient conditions. DOE notes that sections 1.12 and 2.6 in Appendix I currently specify that all areas of the appliance shall attain the normal nonoperating temperature before any testing begins. The normal nonoperating temperature is defined as the temperature that the appliance would attain if it remained in the test room for 24 hours ± 2.8 °C. DOE recognizes that the range in allowable temperature specified in the current DOE test procedure is slightly larger than the range specified in the November 2011 draft IEC Standard 60705. However, DOE is unaware of any data indicating that allowable temperature range will measurably affect the repeatability of the test procedure. DOE believes that the provisions in the November 2011 draft IEC Standard 60705 and the current DOE test procedure in appendix I are effectively equivalent, requiring that the appliance be at the ambient room temperature prior to the start of testing. DOE also notes that methods such as forced air cooling to attain the normal nonoperating temperature would be allowed under appendix I. For these reasons, DOE is not proposing any amendments to the normal nonoperating temperature specified in sections 1.12 and 2.6 in appendix I.

DOE notes that the November 2011 draft IEC Standard 60705 specifies that the water test load should be placed on a thermally insulating pad when making temperature measurements. DOE is proposing in today's NOPR to require the use of an insulating pad with a heat capacity of 1.30 kiloJoule (kJ)/kg-K or less, which is the heat capacity of polystyrene. DOE notes that polystyrene is a low-cost and readily available material that will effectively insulate the water test load while making temperature measurements.

DOE is proposing to include test methods for measuring the energy consumption of the fan-only mode while the microwave is cooling down after the completion of the microwave-only cooking cycle. As noted above, none of the microwave ovens in DOE's test sample were equipped with a fan that operated at the end of the microwave-only cooking cycle to cool down the microwave oven, but instead reverted back to standby mode when the load was removed and the door was closed. However, DOE recognizes that there may be microwave ovens on the market or future microwave ovens that could potentially operate in fan-only mode at the end of the microwave-only cooking cycle. DOE is, therefore, proposing to include provisions for measuring the fan-only mode cooling down energy consumption only for microwave ovens equipped with a fan that operates automatically at the completion of the cooking cycle to cool down the microwave oven. As a result, DOE is proposing to define ''fan-only mode'' as a mode that is not user-selectable and in which a fan circulates air internally or externally to the microwave oven for a finite period of time after the end of the cooking cycle.

DOE is proposing that if the microwave oven is capable of operating in fan-only mode while the microwave is cooling down after the completion of the microwave-only cooking cycle, such energy consumption shall be measured based on the provisions in the November 2011 draft IEC Standard 60705 with the following modification. After the completion of the 50 °C

temperature rise cooking cycle, the test load would then be removed from the microwave oven and the door closed within 30 ± 2 seconds after the completion of the cooking cycle, at which point the fan-only mode energy consumption and duration would then be measured until the end of the fan-only mode. DOE recognizes that the duration of fan-only mode may vary from product to product. DOE is, therefore, proposing to measure energy use and duration of the fan-only mode rather than for a fixed period of 15 minutes as specified in the November 2011 draft IEC Standard 60705.

DOE is not aware of the typical duration of fan-only mode operation after the completion of the microwave-only cooking cycle because none of the microwave ovens in DOE's test sample operated in such a mode. DOE recognizes that for a shorter cycle time, the duration of the fan-only mode may only be a short period of time. As a result, DOE is seeking comment on whether the requirement that the microwave oven door be closed within 30 ± 2 seconds after the completion of the microwave-only cooking cycle is appropriate for all microwave ovens to accurately measure the fan-only mode energy use.

Although the November 2011 draft IEC Standard 60705 does not require multiple repeat test runs, DOE agrees with the comments discussed above that requiring multiple test runs will improve the accuracy of the test results. Based on the provisions in IEC Standard 705, DOE is proposing to require that the full microwave-only test series be repeated three times unless the total microwave-only per-cycle energy consumption for the second measurement is within 1.5 percent of the value obtained from the first measurement.

DOE notes that the proposed amendments would renumber sections currently in Appendix I. As a result, DOE is also proposing to correct the relevant section number references throughout appendix I.

2. Food Simulation Mixture Test Loads

In the June 2012 NODA, DOE conducted testing on a limited sample of microwave ovens using the microwave-only cooking mode to evaluate mixtures that would simulate food loads that may be reheated in a microwave. The mixtures were composed of water and basic food ingredients (*i.e.,* fats, sugars, salt, fiber, proteins, etc.) with a total combined mass of 350 g. DOE selected the 350 g load size (using the 900 ml borosilicate glass container) based on the draft revised IEC Standard 60705 weighting factors for the load size with the highest frequency of use. The ingredients composing each mixture were based on nutritional labels of commonly microwaved foods. DOE also tested mixtures with only one or two key ingredients to evaluate whether the repeatability could be improved by limiting the number of ingredients. The results from this testing showed a higher range and average test-to-test variation compared to the water-only load and compared to the results using the August 2010 draft IEC Standard 60705 test method. 77 FR 33106, 33113 (June 5, 2012).

In the June 2012 NODA, DOE requested comment on the suitability of using actual or simulated food loads for testing. AHAM and Whirlpool commented that, based on DOE's test results and the reasons outlined in their previous comments on the October 2011 RFI, real and simulation food loads do not produce repeatable or reproducible results. AHAM and Whirlpool also added that CENELEC previously sponsored a study that examined different food loads, including real food, artificial food, and salt water, and concluded that food loads cannot meet their requirements of repeatability and reproducibility. (AHAM, No. 18 at p. 2; Whirlpool, No. 15 at pp. 1, 3–4) R.F. Schiffmann Associates, Inc. (Schiffmann) commented that all natural food materials, whether chemically modified or not, are derived from a living material, which may change with time of year, growing location, weather conditions, and storage conditions, and thus cannot be standardized. Schiffmann also stated that food simulants may be a viable alternative, but at minimum, the following properties must be maintained from sample to sample to ensure statistically reproducible materials and conditions:

- Moisture level, pH, water activity, viscosity, and salinity from sample to sample;
- Shape, dimensions, weight, and phase;
- If the simulant is in the form of an emulsion or colloidal suspension, the particle size of the discontinuous phase or suspended particles;
- Ionic strength;
- Location within the microwave oven and heating time from test to test; and
- The amount of time between tests; (Schiffman, No. 19 at p. 1–2)

ASAP and NRDC commented that repeatability and reproducibility of the test procedure are critical, and achieving them may be at the expense of testing representative food loads. ASAP and NRDC stated that the active mode energy savings for microwave ovens may not justify the added test procedure development effort to determine the optimal simulated food load. (ASAP & NRDC, No. 17 at p. 1).

Korea stated that if real food is used for testing, the results need to be repeatable and reproducible by standardizing the composition of food samples used. Korea stated that DOE would also need to ensure that the standardized food samples are readily available at a reasonable cost. (Korea, No. 20 at p. 2)

Based on DOE's test results and the comments from interested parties in response to the June 2012 NODA, DOE is not proposing amendments in today's NOPR to require the use of real or simulated food loads. If data are made available for any real or simulated food loads showing repeatable and reproducible results, DOE may consider amendments to the DOE microwave oven test procedure at that time.

E. Specifications for the Test Methods and Measurements for Convection Microwave Ovens

In today's NOPR, DOE is proposing test methods for measuring the active mode energy consumption of convection microwave ovens. DOE is proposing to measure the energy consumption of the microwave-only cooking mode for convection microwave ovens using the test procedures described above in section III.D.1. DOE is proposing to measure the energy consumption of the convection-only cooking mode for convection microwave ovens based on the DOE conventional ovens test procedure in 10 CFR part 430, subpart B, Appendix I, with added clarifications and changes. Finally, DOE is proposing to calculate the energy consumption of the convection-microwave cooking cycle by apportioning the microwave-only mode and convection-only mode energy consumption measurements based on typical consumer use.

In the June 2012 NODA, DOE noted that convection microwave ovens typically can be operated using the microwave-only cooking mode, convection-only cooking mode, and convection-microwave cooking mode. DOE investigated whether testing procedures could be developed to evaluate the convection-microwave and convection-only cooking modes of convection microwave ovens. 77 FR 33106, 33114 (June 5, 2012).

In response to the June 2012 NODA, ASAP and NRDC commented in support of developing test methods for

measuring the energy consumption of convection microwave ovens to better differentiate products available on the market based on efficiency and design options. ASAP and NRDC also commented that all inherent assumptions should be justified with field usage data, surveys, or other data sources, and question the benefits of adopting a test procedure before such information has been collected. (ASAP & NRDC, No. 17 at pp. 1–2) AHAM and Whirlpool stated that because the convection microwave ovens represented 4.1 percent of total microwave oven shipments in 2010 and because the draft revised IEC Standard 60705 does not include test procedures for the convection-microwave cooking mode, DOE should not develop a test procedure for convection microwave ovens. (AHAM, No. 18 at p. 3; Whirlpool No. 15 at pp. 1, 5)

Based on the information from AHAM and Whirlpool that convection microwave ovens represent approximately 4.1 percent of U.S. microwave oven shipments and data from *Appliance Magazine* showing 9.552 million microwave oven shipments in 2011,[9] convection microwave ovens represent nearly 400,000 annual shipments. DOE believes that convection microwave ovens therefore represent a significant number of shipments and warrant separate test methods. The estimates of the annual energy use of the different cooking modes for a typical convection microwave oven, presented below in section III.F, show that the convection-only cooking mode and convection-microwave cooking mode energy consumption account for a significant portion of the total annual energy consumption for these products (28.2 percent and 16.9 percent, respectively). DOE also notes that, for the reasons discussed in section III.G, the test methods for measuring the convection-only and convection-microwave cooking energy use are not unduly burdensome to conduct. For these reasons, DOE is proposing amendments to measure the convection-only cooking and convection-microwave cooking energy use in convection microwave ovens.

1. Convection-Only Cooking Mode

DOE investigated whether a testing procedure could be developed to evaluate the convection-only cooking mode of a convection microwave oven. For the June 2012 NODA, DOE developed a testing method based on the DOE conventional cooking products test procedure for conventional ovens in 10 CFR part 430, subpart B, appendix I, to measure the energy consumption of the convection cooking mode for convection microwave ovens. The DOE conventional oven test procedure involves setting the temperature control for the convection cooking cycle such that the temperature inside the oven is 325 ± 5 °F higher than the room ambient air temperature (77 ± 9 °F). An 8.5 ± 0.1 pound cylindrical aluminum test block is then heated from ambient room air temperature ± 4 °F until the test block temperature has increased 234 °F above its initial temperature. The measured energy consumption is used to calculate the cooking efficiency and energy factor. 77 FR 33106, 33118 (June 5, 2012).

In the June 2012 NODA, DOE noted that the cavity temperature requirement of 325 ± 5 °F higher than the room ambient air temperature would result in a temperature setting close to 400 °F. Based on DOE's review of products currently available on the U.S. market, a number of convection microwave ovens do not have a 400 °F temperature setting, but all convection microwave ovens that DOE surveyed have a 375 °F temperature setting. As a result, DOE modified the test method to conduct this testing using a temperature control setting of 375 °F to heat the aluminum test block to 234 °F above its initial temperature. In addition, DOE also specified that the aluminum test block be placed on the metal cooking rack provided by the manufacturer. 77 FR 33106, 33118 (June 5, 2012). The results from this testing, summarized in Table III.4, showed minimal test-to-test variation for the convection-only cooking cycle.

TABLE III.4—JUNE 2012 NODA CONVECTION-ONLY COOKING CYCLE TEST RESULTS

		Convection-only cooking cycle
Cooking Efficiency (%)	Average	9.06
	Min	6.51
	Max	12.42
Test-to-Test Variation—Standard Error (%)	Average	1.30
	Min	0.68
	Max	2.11

With regards to the 234 °F temperature rise used in the convection-only test method, Whirlpool commented in response to the June 2012 NODA that if the intent is to accommodate convection microwave ovens that fall 25 °F short of the temperature rise specified in the DOE conventional oven test procedure, an adjustment of 166 °F seems illogical. (Whirlpool, No. 15 at p. 6) DOE notes that it is not considering adjusting any temperatures by 166 °F. DOE clarifies that the temperature control would be set using the user interface controls to 375 °F, and that the temperature rise of the test block during the test cycle would be 234 °F above the initial block temperature.

In the June 2012 NODA, DOE requested comment on whether the cooling fan energy consumption should be included in the efficiency metric for convection microwave ovens. ASAP and NRDC commented that DOE should require the measurement of cooling fan energy use for both microwave-only, and convection microwave ovens. ASAP and NRDC questioned the logic of measuring the cooling fan energy consumption for a specific period of time (*i.e.,* 15 minutes) instead of measuring the energy consumption until the cooking cavity drops by a certain temperature difference. (ASAP & NRDC, No. 17 at p. 2) Whirlpool commented that requiring the measurement of the fan-only mode cooling down energy consumption would add considerable test burden to measure a very small amount of energy in a very small product segment and would not

[9] "60th Annual Appliance Industry Forecast." *Appliance Market Research Report, Appliance Magazine,* May 2012.

contribute to goal of national energy savings. (Whirlpool, No. 15 at p. 6)

Based on the test results and analysis discussed above, DOE is proposing amendments to the microwave oven test procedure in Appendix I, to include test methods for measuring the active mode energy consumption for convection-only cooking mode for convection microwave ovens based on the test methods described above, with the following additional clarifications.

DOE notes that in the January 2013 Final Rule for the microwave oven standby and off mode test procedure, DOE amended the microwave oven test procedure to provide a definition of convection microwave oven in 10 CFR 430.2. The amendment defines convection microwave ovens as a microwave oven that incorporates convection features and any other means of cooking in a single compartment. 78 FR 4015, 4018 (Jan. 18, 2013). DOE believes that the definition for convection microwave ovens is also suitable for today's proposed amendments, and is not proposing to amend this definition.

DOE is proposing to require that if the convection microwave oven allows for the turntable to be turned on or off, the appliance shall be tested with the turntable turned on. DOE notes that the turntable is typically turned on by default, and as a result, is likely the most common configuration used by consumers. DOE believes this will provide a consistent and comparable test method from product to product.

DOE recognizes that different microwave ovens may have different fan-only mode durations. As a result, DOE is proposing in today's NOPR to require that the energy use and duration of the fan-only mode be measured at the end of the convection-only cooking cycle until the completion of the fan-only mode. Based on DOE's testing, the duration of the fan-only mode was between 0 and 7 minutes. DOE believes the added testing time to measure fan-only mode is minimal compared to the overall convection-only cooking test cycle length, which was, on average, approximately 73 minutes among the units in DOE's test sample. As a result, the proposed requirement to measure the fan-only mode would add little to the overall testing burden.

DOE is proposing to add new sections 4.4.7 and 4.4.7.1 in Appendix I to calculate the convection microwave oven convection-only cooking cycle energy consumption using the same basic calculations used for convection ovens specified in 10 CFR part 430, subpart B, appendix I, sections 4.1.1 and 4.1.1.1. DOE is proposing to add the calculated convection-only cooking cycle energy consumption and the measured fan-only mode energy consumption to calculate the total convection-only mode energy consumption. DOE is also proposing to apply a field use factor to the calculation of the convection-only mode energy consumption to account for the typical consumer use of this cooking mode. DOE determined the field use factor based on the quotient of the average convection-only cooking cycle length based on consumer use data presented in section III.C (18.70 minutes) divided by the average measured convection-only cooking cycle test length for the units in DOE's test sample (72.68 minutes). Based on this information, DOE is proposing a convection-only cooking field use factor of 0.26.

Similar to the proposed provisions for the microwave-only cooking mode, DOE is proposing to require that the convection-only test be repeated three times unless the total convection-only per-cycle energy consumption for the second measurement is within 1.5 percent of the value obtained from the first measurement. DOE notes that the proposed requirement for multiple repeat test runs would improve the accuracy of the test results.

2. Convection-Microwave Cooking Mode

In the June 2012 NODA, DOE presented test results to evaluate test loads and test methods for measuring the energy use of the convection-microwave cooking mode using real food loads. The test results for real food loads showed high test-to-test variation for all of the loads tested. DOE noted in the June 2012 NODA that in addition to the issues with test-to-test repeatability, the lab-to-lab reproducibility would also be difficult to maintain because different foods are produced under different conditions (*i.e.,* climate, geography, growing conditions, genetics, breeding, etc.) 77 FR 33106, 33115–16 (June 5, 2012). DOE also evaluated a food simulation load, the TX–151 solidifying powder, using the same basic test method as described above for the shortening tests. The June 2012 NODA test results again showed high levels of test-to-test variation. 77 FR 33106, 33116–8 (June 5, 2012).

In the June 2012 NODA, DOE requested comment on the suitability of incorporating real and simulation food loads for measuring the energy use of convection microwave ovens. Whirlpool commented that there is no known test procedure or test load that is appropriate for convection microwave ovens. Whirlpool stated that food loads are not appropriate for the reasons they provided in response to the October 2011 RFI, and that water loads are not appropriate for convection-only cooking mode because temperatures are much higher than the boiling temperature for water. Whirlpool also commented that IEC Standard 60350, ''Household electrical cooking appliances—Methods for measuring performance,'' is not applicable for a microwave oven because thermocouples are required to be used to measure the temperature of the stone test load during heating. According to Whirlpool, such measurements are not allowed in microwave ovens because the thermocouples will act as antennae and the resulting microwave leakage would reach unacceptable levels. In addition, Whirlpool stated that the microwave oven turntable would make temperature measurements during heating difficult or even impossible. (Whirlpool, No. 15 at p. 4)

Whirlpool also commented that the test-to-test variation for both real and simulated food loads presented by DOE in the June 2012 NODA is too high to allow for a repeatable and reproducible test procedure. Whirlpool noted that for real foods, the variation will likely be much higher when including variation in time of the year and geographical location of the food production, as well as lab-to-lab variations. (Whirlpool, No. 15 at p. 4) Whirlpool also stated that it had previously conducted tests using gels as a food simulation load, but abandoned them due to several issues related to measuring accuracy and repeatability, and the overly burdensome and time-consuming process of preparing the test loads. (Whirlpool, No. 15 at p. 5) As discussed in section III.C, AHAM and Schiffmann also commented that use of actual or simulated food loads for cooking energy consumption measurements does not produce repeatable or reproducible results. (AHAM, No. 18 at p. 2; Schiffmann, No. 19 at pp. 1–2)

Based on the test results in the June 2012 NODA, DOE agrees with commenters that test methods using actual or simulated food loads do not produce repeatable or reproducible results. DOE also agrees that using thermocouples during a convection-microwave cooking cycle would not be appropriate due to safety concerns. As a result, DOE is not proposing amendments to require the use of real or simulation food loads for measuring the energy consumption of convection microwave ovens.

In the June 2012 NODA, DOE stated that it may consider using the results

from the microwave-only cooking and convection-only cooking test measurements to calculate the convection-microwave cooking cycle energy consumption. 77 FR 33106, 33119 (June 5, 2012). AHAM commented that measuring the microwave-only and convection-only cooking modes separately and apportioning the energy use to calculate the per-cycle energy use for the convection-microwave cooking mode would be too burdensome compared to the trivial energy savings associated with convection microwave ovens. (AHAM, No. 18 at p. 3)

Because DOE was unable to identify a test load that produced repeatable and reproducible results for the convection-microwave cooking mode, DOE is proposing to use the results from the microwave-only and convection-only cooking cycle tests to determine the convection-microwave cooking cycle energy consumption. First, because the convection-microwave cooking cycle length is different from the microwave-only and convection-only cooking cycle lengths, DOE is proposing to apply a field use adjustment to both the per-cycle microwave-only and convection-only cooking energy consumption. The field use adjustment would be based on the ratio of the convection-microwave cooking cycle length to either the microwave-only cycle length (15.00/2.54 = 5.91) or convection-only cooking cycle length (15.00/18.70 = 0.80) based on the consumer use data presented in section III.C.

DOE is proposing that the per-cycle convection-microwave cooking mode energy consumption would then be calculated by apportioning the microwave-only cooking energy consumption and convection-only cooking energy consumption based on the amount of time typical convection microwave ovens use each cooking mode during a convection-microwave cooking cycle. DOE noted in the June 2012 NODA that for the majority of microwave ovens in its test sample, the default program setting for convection-microwave cooking only requires the user to set the overall cooking time, and the product cycles between microwave-only cooking and convection-only cooking. The nominal amount of time spent microwave-only cooking and convection only cooking for each individual microwave/convection cycle varies from model to model. However DOE noted that for an overall single cooking cycle, the microwave-only cooking accounted for 30 percent of the cooking time and convection-only cooking accounted for the remaining 70 percent of the total cooking time per-cycle on average for all of the units DOE tested. 77 FR 33106, 33114 (June 5, 2012). As a result, DOE is proposing to use weighting factors of 30 percent for microwave-only cooking and 70 percent for convection-only cooking to calculate the average per-cycle convection-microwave cooking energy consumption.

F. Measures of Energy Consumption

In today's NOPR, DOE is proposing to adopt an integrated annual energy use metric that combines the active mode energy consumption of each possible cooking mode (*i.e.,* microwave-only cooking, convection-only cooking, and convection-microwave cooking) with the standby and off mode energy consumption.

In order to develop an integrated metric that combines the active mode energy consumption of each possible cooking mode with the standby and off mode energy consumption, DOE evaluated the data from the consumer use survey conducted by LBNL, presented in section III.D. In addition, DOE also estimated the average power consumption for each operating mode based on its testing. Based on this data, DOE calculated the estimated annual energy use for each operating mode. The results of this analysis are presented in Table III.5 and Table III.6.

TABLE III.5—ESTIMATE OF CONSUMER USE FOR MICROWAVE-ONLY OVENS

Mode	Cycle length (*min*)	Number of annual cycles	Annual hours (*hours*)	Average power (*W*)	Annual energy use (*kWh*)
Microwave-Only Cooking	2.62	1026	44.9	1582.7	71.063
Microwave-Only Fan-Only Mode	0	0	0	0	0
Standby/Off			8715.1	2.7	23.531

TABLE III.6—ESTIMATE OF CONSUMER USE FOR CONVECTION MICROWAVE OVENS

Mode	Cycle length (min)	Number of annual cycles	Annual hours (hours)	Average power (W)	Annual energy use (kWh)
Microwave-Only Cooking	2.54	842	35.7	1582.7	56.502
Convection-Only Cooking	18.70	101	31.7	1299.4	41.191
Convection-Microwave Cooking	15.00	69	17.3	1421.3	24.588
Microwave-Only Fan-Only Mode	0	0	0	0	0
Convection-Only Fan-Only Mode	*1.10	101	1.9	39.1	0.074
Convection-Microwave Fan-Only Mode	*0.88	69	1.0	39.1	0.039
Standby/Off			8672.4	2.7	23.415

*The consumer use estimates are based on a microwave oven that is capable of operating in fan-only mode. The average fan-only mode cycle length was determined based DOE's testing of the convection-only cooking mode scaled based on the difference between the measured test procedure cycle length and the average consumer cycle length.

DOE is proposing to use the estimates of consumer use for each operating mode presented in Table III.5 and Table III.6 to calculate the total annual energy consumption for both microwave-only ovens and convection microwave ovens. DOE proposes to amend the microwave oven test procedure to determine the annual energy use associated with microwave-only ovens by:

(1) Calculating the product of the total weighted microwave-only per-cycle energy consumption and the number of annual microwave-only cooking cycles for microwave-only ovens;

(2) Calculating the products of the average standby and off mode power and the allocated annual hours for each respective mode;

(3) Summing these results; and

(4) Multiplying the sum by 0.001 to convert from Wh to kWh.

DOE proposes to amend the microwave oven test procedure to determine the annual energy use associated with convection microwave ovens by:

(1) Calculating the products of the microwave-only mode, convection-only mode, and convection-microwave mode per-cycle energy consumption and the allocated hours for each mode for convection microwave ovens;

(2) Calculating the products of the average standby and off mode power and the allocated annual hours for each respective mode;

(3) Summing these results; and

(4) Multiplying the sum by 0.001 to convert from Wh to kWh.

The total number of standby mode and off mode hours would be equal to the total number of non-active mode hours. This would be calculated as the number of total hours in a year (8760) minus the average cooking cycle times based on consumer use and the fan-only mode times (if a product is capable of fan-only mode) for each cooking mode. Because the convection-only cooking fan-only mode time measured under the proposed test procedure would be based on a longer cooking cycle, DOE is proposing to scale the fan-only mode time using the convection-only cooking cycle length field use factor (equal to 0.26) discussed above in section III.E.1. DOE also observed that microwave ovens that operate in fan-only mode after the convection-only cooking cycle also operate in fan-only mode after the convection-microwave cooking cycle. Because the length of the fan-only mode is based on either the cavity temperature or a fixed duration based on the cooking cycle length, DOE believes that the fan-only mode time would likely be equivalent for a convection-only cooking and convection-microwave cooking cycle of the same length. As a result, DOE is proposing to use the convection-only cooking fan-only mode time, but further scaled by the difference between the average convection-microwave cooking cycle length and convection-only cooking cycle length based on the consumer use data (15.00 minutes/18.70 minutes).

DOE is unaware of any microwave ovens currently available on the U.S. market that are capable of operating in both standby mode and off mode. As a result, DOE is not aware of any data available to determine the appropriate split of annual non-active mode hours between standby mode and off mode for products that are capable of operating in both modes. DOE is proposing in today's NOPR, therefore, to split the total hours evenly between standby and off modes for those products capable of functioning in both modes. DOE believes this would provide an incentive to manufacturers to offer an energy saving feature that allows consumers to manually select between standby mode and off mode. If data is made available that indicates a different allocation of hours between standby and off mode, DOE may consider revising this allocation.

G. Compliance With Other EPCA Requirements

1. Test Burden

EPCA requires that test procedures shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In the June 2012 NODA, DOE requested comments on the test burden associated with testing the microwave-only cooking mode and convection-only cooking mode. Whirlpool commented that incorporating the test methods from the draft revised IEC Standard 60705 for measuring the energy consumption of the microwave-only cooking mode would increase test burden. However, Whirlpool did not see any workable alternative. Whirlpool estimated that with one repetition of the testing series (*i.e.,* high/low final water temperature tests for 3 different water load sizes) and 3 trial runs to determine the appropriate heating times, a total of approximately 15 tests would be required, not including any fan-only mode cooling down tests. Based on an average test time of 15 minutes, Whirlpool stated that approximately six tests could be conducted per day, and thus a complete testing series for one product would require two and a half days to complete. (Whirlpool, No. 15 at p. 2) Whirlpool and AHAM both commented that a test procedure for measuring the energy consumption of the convection-only and convection-microwave cooking modes would add significant test burden compared to the small energy savings that would result from addressing convection microwave ovens. (AHAM, No. 18 at p. 3; Whirlpool, No. 15 at p. 6)

The proposed amendments in today's NOPR would add test procedures for measuring the active mode energy use of the microwave-only cooking mode based on the provisions in the November 2011 draft IEC Standard 60705. DOE notes that the cost of test equipment would be similar to the cost of equipment under the previous DOE microwave oven test procedure, but with two additional sized test containers (600 ml and 900 ml). DOE estimates that the one-time investment for test equipment (*i.e.,* 600 ml, 900 ml, 2000 ml test containers; power meter; thermocouples) is approximately $3,000, which is $300 more than the one-time investment for testing under the previous DOE microwave oven test procedure. Manufacturers that already have the test equipment required for the previous DOE test method would only require a one-time investment of $300 for the two additional sized test containers. DOE estimates that the labor for testing a single model would cost between $3,000 and $4,200, depending on the number of repeat tests required, which is approximately $2,600 to $3,600 more than the labor for testing using the previous DOE microwave oven test procedure,

The proposed convection-only test method would require the same equipment that is required for the DOE conventional ovens test procedure in 10 CFR part 430, subpart B, appendix I. DOE estimates that, in addition to the equipment required for proposed microwave-only testing, the one-time investment for test equipment for convection-only testing (*i.e.,* test block) would add $400. DOE estimates that the labor for convection-only testing would cost between $600 and $850 per model, depending on the number of repeat tests required.

DOE does not believe these costs represent an excessive burden for test labs or manufacturers given the significant investment necessary to manufacture, test, and market consumer appliances. For these reasons, DOE tentatively concludes that the proposed amended test procedures would produce test results that measure the energy consumption of microwave ovens during representative use, and that the test procedures would not be unduly burdensome to conduct.

2. Certification Requirements

EPCA authorizes DOE to enforce compliance with the energy and water conservation standards established for certain consumer products. On March 7, 2011, the Department revised, consolidated, and streamlined its existing certification, compliance, and enforcement regulations for certain consumer products and commercial and industrial equipment covered under EPCA, including microwave ovens. 76 FR 12422. These regulations are codified in 10 CFR 429.23 (conventional cooking tops, conventional ovens, microwave ovens).

The certification requirements for microwave ovens consist of a sampling plan for selection of units for testing and requirements for certification reports. Because there are no existing energy conservation standards for microwave ovens, DOE is not proposing any amendments to the certification reporting requirements for these products.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq*) requires preparation of a regulatory flexibility analysis (RFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE's procedures and policies may be viewed on the Office of the General Counsel's Web site (*http://energy.gov/gc/office-general-counsel*). DOE reviewed today's NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

In conducting this review, DOE first determined the potential number of affected small entities. The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than the threshold number of workers specified in 13 CFR part 121 according to the North American Industry Classification System (NAICS) codes. The SBA's Table of Size Standards is available at: *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* The threshold number for NAICS classification 335221, *Household Cooking Appliance Manufacturers,* which includes microwave oven manufacturers, is 750 employees. DOE surveyed the AHAM member directory to identify manufacturers of microwave ovens. In addition, as part of the appliance standards rulemaking, DOE asked interested parties and AHAM representatives within the microwave oven industry if they were aware of any small business manufacturers. DOE consulted publicly available data, purchased company reports from sources such as Dun & Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a small business manufacturing facility and have their manufacturing facilities located within the United States. Based on this analysis, DOE estimates that there is one small business which manufactures a product which combines a microwave oven with other appliance functionality. However, DOE is not proposing at this time to amend the test procedures for microwave ovens to include provisions for measuring the energy use for the microwave portion of such combined products. As a result, DOE tentatively concludes and certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of microwave ovens must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for microwave ovens, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including microwave ovens. (76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

In this proposed rule, DOE is adopting test procedure amendments that it expects will be used to develop and implement future energy conservation standards for microwave ovens. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule would amend the existing test procedures without affecting the amount, quality or distribution of energy usage, and, therefore, would not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of

such regulations. 65 FR 13735. DOE has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel.* DOE examined today's proposed rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action to amend the test procedure for measuring the energy efficiency of microwave ovens is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the DOE Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with

section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. The proposed rule does not incorporate by reference testing methods from commercial standards, so these requirements do not apply.

V. Public Participation

A. Attendance at Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site (*http://www1.eere.energy.gov/buildings/appliance_standards/rulemaking.aspx/ruleid/36*). Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time allows, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The regulations.gov web page will require you to provide your name and contact information. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment.

Do not submit to regulations.gov information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through regulations.gov cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section below.

DOE processes submissions made through regulations.gov before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to regulations.gov. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as

long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery two well-marked copies: one copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. Microwave-Only Oven Test Method

DOE seeks comment on the proposal to measure the active mode energy use of the microwave-only cooking mode for microwave-only ovens based on the provisions in the November 2011 draft IEC Standard 60705. DOE also seeks comment on the requirement to repeat the full microwave-only test series three times unless the total microwave-only per-cycle energy consumption for the second measurement is within 1.5 percent of the value obtained from the first measurement. (*See* section III.D)

2. Convection Microwave Oven Test Method

DOE seeks comment on the proposal to measure the active mode energy use of the microwave-only cooking mode for convection microwave ovens based on the provisions in the November 2011 draft IEC Standard 60705. DOE seeks comment on the proposal to measure the active mode energy use of the convection-only cooking mode for convection microwave ovens based on the provisions in the DOE conventional oven test procedure in 10 CFR part 430, subpart B, appendix I, with additional modifications specific for microwave ovens. DOE also seeks comment on the requirement to repeat the convection-only test three times unless the total convection-only per-cycle energy consumption for the second measurement is within 1.5 percent of the value obtained from the first measurement. Finally DOE seeks comment on the proposed method for calculating the energy use of the convection-microwave cooking mode based on the test results from the microwave-only and convection-only tests. (*See* section III.E)

3. Fan-Only Mode Test Method

DOE seeks comment on the proposal to require that the microwave-only fan-only mode and convection-only fan-only mode be measured for only those products that are capable of operating in fan-only mode. DOE welcomes comment on the proposed requirement to measure the fan-only mode until the end of the fan-only mode, rather than for a fixed period of time. DOE also welcomes comment on whether the proposed requirement to close the microwave oven door within 30 ± 2 after the completion of the microwave-only cooking cycle is appropriate to accurately measure the microwave-only fan-only mode energy use. (*See* sections III.D and III.E)

4. Integrated Annual Energy Use Metric

DOE seeks comment on the proposal to establish an integrated annual energy use metric. DOE specifically seeks comment and additional data on the consumer usage habits for each operating mode for both microwave-only ovens and convection microwave ovens to supplement the data from the LBNL consumer use survey. (*See* section III.F)

5. Test Burden

DOE welcomes comment on the testing burden associated with the proposed amendments, in particular for the microwave-only and convection-only test methods. When providing comments, please quantify and describe the associated testing burdens (in terms of cost and time). (*See* section III.G)

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this proposed rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on January 18, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend part 430 of title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.23 is amended:

■ a. By revising paragraph (i)(1);

■ b. By redesignating paragraphs (i)(12) and (i)(13) as (i)(13) and (i)(14), and

revising newly redesignated paragraph (i)(13); and

■ c. By adding paragraph (i)(12).

The revisions read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(i) *Kitchen ranges and ovens.* (1) The estimated annual operating cost for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens shall be the sum of the following products: (i) The total annual electrical energy consumption for any electrical energy usage, in kilowatt-hours (kWh) per year, times the representative average unit cost for electricity, in dollars per kWh, as provided pursuant to section 323(b)(2) of the Act; plus (ii) the total annual gas energy consumption for any natural gas usage, in British thermal units (Btu) per year, times the representative average unit cost for natural gas, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act; plus (iii) the total annual gas energy consumption for any propane usage, in Btu per year, times the representative average unit cost for propane, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act. The total annual energy consumption for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens shall be as determined according to 4.3, 4.2.2, 4.1.2, and 4.4.10 respectively, of appendix I to this subpart. The estimated annual operating cost shall be rounded off to the nearest dollar per year.

* * * * *

(12) The annual energy use for microwave ovens, expressed in kilowatt-hours per year, as determined in accordance with 4.4.10 of appendix I to this subpart.

(13) Other useful measures of energy consumption for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix I to this subpart.

* * * * *

■ 3. Appendix I to Subpart B of Part 430 is amended:

■ a. In section 1. *Definitions:*

■ 1. By revising section 1.6;

■ 2. By redesignating sections 1.14 through 1.19 as sections 1.15 through 1.20; and

■ 3. By adding section 1.14;

■ b. In section 2. *Test Conditions,* by revising sections 2.1.3, 2.5.1, 2.7, 2.7.1, 2.9.1.1, 2.9.3.1, 2.9.3.2, and 2.9.5 and adding sections 2.8, 2.8.1, 2.8.2, 2.8.3, 2.9.3.5, 2.9.6, and 2.9.7;

■ c. In section 3. *Test Methods and Measurements:*

■ 1. By redesignating section 3.1.4.1 as 3.1.4.8 and revising newly designated section 3.1.4.8;

■ 2. By adding sections 3.1.4.1 through 3.1.4.7;

■ 3. By redesignating section 3.2.4 as 3.2.4.8 and revising newly designated section 3.2.4.8;

■ 4. By adding sections 3.2.4, 3.2.4.1 through 3.2.4.7, and 3.2.4.7.1;

■ 5. By redesignating section 3.3.11 as 3.3.18 and revising newly designated section 3.3.20; and

■ 6. By adding sections 3.3.11 through 3.3.17 and 3.3.17.1;

■ d. In section 4. *Calculation of Derived Results From Test Measurements,* by adding sections 4.4, 4.4.1, 4.4.2, 4.4.3, 4.4.4, 4.4.5, 4.4.6, 4.4.7, 4.4.7.1, 4.4.8, 4.4.9, 4.4.10, 4.4.10.1, and 4.4.10.2.

The revisions read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

* * * * *

1. Definitions

* * * * *

1.6 *Fan-only mode* means an active mode that is not user-selectable and in which a fan circulates air internally or externally to the cooking product for a finite period of time after the end of the heating function, where the end of the heating function is indicated to the consumer by means of a display, indicator light, or audible signal. For microwave ovens, fan-only mode means a mode that is not user-selectable and in which a fan circulates air internally or externally to the microwave oven for a finite period of time after the end of the cooking cycle.

* * * * *

1.14 *Over-the-range* means the product is intended to be installed in the cabinetry above a conventional cooking product. The product is supported by surrounding cabinetry, walls, or other similar structures on the sides, top, and/or rear of the product.

* * * * *

2. Test Conditions

* * * * *

2.1.3 *Microwave ovens.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1 of this appendix. Built-in and over-the-range microwave ovens shall be installed in an enclosure in accordance with the manufacturer's instructions. For over-the-range microwave ovens, install the appliance with the exhaust vent/recirculation fan installed in the configuration to vent the air indoors in accordance with manufacturer's instructions. For standby mode and off mode testing, install the microwave oven in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes. A watt meter must be installed in the circuit and shall be as described in section 2.9.1.3 of this appendix.

* * * * *

2.5 *Ambient room air temperature.*

2.5.1 *Active mode ambient room air temperature.* During the active mode test, maintain an ambient room air temperature, T_R, of 77° ± 9 °F (25° ± 5 °C) for conventional ovens, cooking tops, and for microwave oven convection-only cooking tests, or 73.4° ± 3.6 °F (23° ± 2 °C) for microwave oven microwave-only cooking tests, as measured at least 5 feet (1.5 m) and not more than 8 feet (2.4 m) from the nearest surface of the unit under test and approximately 3 feet (0.9 m) above the floor. The temperature shall be measured with a thermometer or temperature indicating system with an accuracy as specified in section 2.9.3.1.

* * * * *

2.7 *Test blocks for conventional oven, conventional cooking top, and convection microwave ovens.* The test blocks shall be made of aluminum alloy No. 6061, with a specific heat of 0.23 Btu/lb-°F (0.96 kJ/[kg-°C]) and with any temper that will give a coefficient of thermal conductivity of 1073.3 to 1189.1 Btu-in/h-ft2-°F (154.8 to 171.5 W/[m-°C]). Each block shall have a hole at its top. The hole shall be 0.08 inch (2.03 mm) in diameter and 0.80 inch (20.3 mm) deep. Other means may be provided which will ensure that the thermocouple junction is installed at this same position and depth.

The bottom of each block shall be flat to within 0.002 inch (0.051 mm) TIR (total indicator reading). Determine the actual weight of each test block with a scale with an accuracy as indicated in Section 2.9.5.

2.7.1 *Conventional oven and convection microwave oven test block.* The test block for the conventional oven and convection microwave oven, W_1, shall be 6.25 ± 0.05 inches (158.8 ± 1.3 mm) in diameter, approximately 2.8 inches (71 mm) high and shall weigh 8.5 ± 0.1 lbs (3.86 ± 0.05 kg). The block shall be finished with an anodic black coating which has a minimum thickness of 0.001 inch (0.025 mm) or with a finish having the equivalent heat absorptivity.

* * * * *

2.8 *Microwave-only test load.*

2.8.1 *9.7 ounce (275 g) water containers.* The 9.7 ounce (275 g) cylindrical glass test containers shall be made of borosilicate glass with an external height of 4.92 ± .04 inches (125 ± 1 mm), an external diameter of 3.54 ± .04 inches (90 ± 1 mm), a capacity of 36.6 cubic inches (600 ml), and a maximum weight of 7.1 ounces (200 g).

2.8.2 *12.3 ounce (350 g) water containers.* The 12.3 ounce (350 g) cylindrical glass test containers shall be made of borosilicate glass with an external height of 2.99 ± .04 inches (76 ± 1 mm), an external diameter of 5.51 ±

.04 inches (140 ± 1 mm), a capacity of 54.9 cubic inches (900 ml), and a maximum weight of 8.8 ounces (250 g).

2.8.3 *35.3 ounce (1000 g) water containers.* The 35.3 ounce (1000 g) cylindrical glass test containers shall be made of borosilicate glass with an external height of 3.54 ± .04 inches (90 ± 1 mm), an external diameter of 7.48 ± .04 inches (190 ± 1 mm), a capacity of 122.0 cubic inches (2000 ml), and a maximum weight of 15.9 ounces (450 g).

* * * * *

2.9.1.1 *Watt-hour meter.* The watt-hour meter for measuring the electrical energy consumption of conventional ovens and cooking tops shall have a resolution of 1 watt-hour (3.6 kJ) or less and a maximum error no greater than 1.5 percent of the measured value for any demand greater than 100 watts. The watt-hour meter for measuring the active mode energy consumption of microwave ovens shall have a maximum error of no greater than 1 percent of the measured value.

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2.9.3 *Temperature measurement equipment.*

2.9.3.1 *Room temperature indicating system.* The room temperature indicating system shall be as specified in Section 2.9.3.4 for ranges, ovens and cooktops. The room temperature indicating system for microwave ovens shall have a minimum resolution of 0.18 °F (0.1 °C) and a maximum error no greater than 0.18 °F (0.1 °C).

2.9.3.2 *Temperature indicator system for measuring conventional oven and convection microwave oven temperature.* The equipment for measuring the conventional oven and convection microwave oven temperature shall have an error no greater than ±4 °F (±2.2 °C) over the range of 65° to 500 °F (18 °C to 260 °C).

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2.9.3.5 *Water test load temperatures.* The temperature measuring instrument used to measure the water test load temperature shall have a minimum resolution of 0.18 °F (0.1 °C) and a maximum error no greater 2.7 °F (1.5 °C). Any stirring device to which a temperature measuring instrument is attached shall have a heat capacity of 0.287 Btu/lb-°F (1.20 kJ/kg-K) or less.

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2.9.5 *Scale.* The scale used for weighing the test blocks shall have a maximum error no greater than 1 ounce (28.4 g). The scale used for weighing the microwave-only water test load shall have a minimum resolution of .02 ounces (0.5 g) and a maximum error no greater than .04 ounces (1 g).

2.9.6 *Time measurement.* The time measurement instrument used for measuring the microwave oven test cycle length shall have a minimum resolution of 1 second and a maximum error no greater than 1 second.

2.9.7 *Insulation pad for water test load temperature measurements.* All water test loads shall be placed on an insulation pad when making temperature measurements. The insulation pad shall have a thickness of at least 0.5 inches and cover the entire base of the test container with a heat capacity of 0.310 Btu/lb-°F (1.30 kJ/kg-K) or less.

3. Test Methods and Measurements

3.1. *Test methods.*

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3.1.4 *Microwave oven.*

3.1.4.1 *Microwave-only cooking cycle 9.7 ounce (275 g) water load test method.* Establish the testing conditions set forth in Section 2, ''TEST CONDITIONS,'' of this Appendix. Before beginning the test, the empty glass test container and microwave oven must be at their normal nonoperating temperatures as defined in section 1.12 and described in section 2.6. Pour 9.7 ± .04 ounces (275 ± 1 g) of water in to the 9.7 ounce (275 g) test container specified in section 2.8.1 and stir the water using a temperature measuring instrument specified in section 2.9.3.5 until the average temperature of the test container and water is balanced. The initial water temperature must be 50 ± 0.9 °F (10 ± 0.5 °C). Place the test load at the center of the turntable. If the appliance is not fitted with a turntable, place the test load on the reciprocating tray or on the lowest possible shelf position. Set the power control for the microwave-only cooking mode to the highest possible position. If the appliance is equipped with a boost function, activate the boost function. Start measurements after switching on the appliance in the microwave-only cooking mode; measurements must begin within 30 seconds after the preparation of the water load. The microwave oven must be operated to heat the test load to achieve a final temperature of 140–149 °F (60–65 °C), at which point the microwave oven must be switched off. Remove the test load from the microwave oven, and position the test load on the insulation pad specified in section 2.9.7. Stir the water with the temperature measuring instrument specified in section 2.9.3.5, and measure the final temperature within 20 seconds after the microwave-only heating cycle is finished. Allow the microwave oven to reach its normal nonoperating temperature, and repeat the procedure to heat the water test load to a final temperature of 131–140 °F (55–60 °C). The minimum difference between the final temperatures from the two tests must be 3.6 °F (2 °C). In between tests, forced air cooling may be used to assist in reducing the temperature of the appliance. Repeat the test series three times unless the total microwave-only per-cycle energy consumption, as calculated in section 4.4.6, from the second measurement is within 1.5 percent of the value obtained from the first measurement.

3.1.4.2 *Microwave-only cooking cycle 9.7 ounce (275 g) water load fan-only mode test method.* If the microwave oven is capable of operation in fan-only mode, measure the fan-only mode energy consumption for the 9.7 ounce (275 g) water load as follows. Calculate the time required to heat 9.7 ounces (275 g) of water by 90 °F (50 °C), t_{275}, using the equations specified in section 4.4.1. Follow the procedures in section 3.1.4.1, except the microwave oven must be operated to heat the test load for the calculated heating time, t_{275}, at which point the microwave oven must be switched off. Remove the test load from the microwave oven, and close the microwave oven door within 30 ± 2 seconds after the microwave-only heating cycle is finished. Measure the fan-only mode energy consumption until the end of the fan-only mode. Repeat the test series three times unless the total microwave-only per-cycle energy consumption, as calculated in section 4.4.6, from the second measurement is within 1.5 percent of the value obtained from the first measurement.

3.1.4.3 *Microwave-only cooking cycle 12.3 ounce (350 g) water load test method.* Establish the testing conditions set forth in Section 2, ''TEST CONDITIONS,'' of this Appendix. Before beginning the test, the empty glass test container and microwave oven must be at their normal nonoperating temperatures as defined in section 1.12 and described in section 2.6. Pour 12.3 ± .04 ounces (350 ± 1 g) of water in to the 12.3 ounce (350 g) test container specified in section 2.8.2, and stir the water using a temperature measuring instrument specified in section 2.9.3.5 until the average temperature of the test container and water is balanced. The initial water temperature must be 50 ± 0.9 °F (10 ± 0.5 °C). Place the test load at the center of the turntable. If the appliance is not fitted with a turntable, place the test load on the reciprocating tray or on the lowest possible shelf position. Set the power control for the microwave-only cooking mode to the highest possible position. If the appliance is equipped with a boost function, activate the boost function. Start measurements after switching on the appliance in the microwave-only cooking mode; measurements must begin within 30 seconds after the preparation of the water load. The microwave oven must be operated to heat the test load to achieve a final temperature of 140–149 °F (60–65 °C), at which point the microwave oven must be switched off. Remove the test load from the microwave oven, and position the test load on the insulation pad specified in section 2.9.7. Stir the water with the temperature measuring instrument specified in section 2.9.3.5, and measure the final temperature within 20 seconds after the microwave-only heating cycle is finished. Allow the microwave oven to reach its normal nonoperating temperature, and repeat the procedure to heat the water test load to a final temperature of 131–140 °F (55–60 °C). The minimum difference between the final temperatures from the two tests must be 3.6 °F (2 °C). In between tests, forced air cooling may be used to assist in reducing the temperature of the appliance. Repeat the test series three times unless the total microwave-only per-cycle energy consumption, as calculated in section 4.4.6, from the second measurement is within 1.5 percent of the value obtained from the first measurement.

3.1.4.4 *Microwave-only cooking cycle 12.3 ounce (350 g) water load fan-only mode test method.* If the microwave oven is capable of operation in fan-only mode, measure the fan-only mode energy consumption for the 12.3 ounce (350 g) water load as follows. Calculate the time required to heat 12.3 ounces (350 g) of water by 90 °F (50 °C), t_{350}, using the equations specified in section 4.4.2. Follow the procedures in section 3.1.4.3, except the microwave oven must be operated to heat the test load for the calculated heating time, t_{350}, at which point the microwave oven

must be switched off. Remove the test load from the microwave oven, and close the microwave oven door within 30 ± 2 seconds after the microwave-only heating cycle is finished. Measure the fan-only mode energy consumption until the end of the fan-only mode. Repeat the test series three times unless the total microwave-only per-cycle energy consumption, as calculated in section 4.4.6, from the second measurement is within 1.5 percent of the value obtained from the first measurement.

3.1.4.5 *Microwave-only cooking cycle 35.3 ounce (1000 g) water load test method.* Establish the testing conditions set forth in Section 2, ''TEST CONDITIONS,'' of this Appendix. Before beginning the test, the empty glass test container and microwave oven must be at their normal nonoperating temperatures as defined in section 1.12 and described in section 2.6. Pour 35.3 ± .04 ounces (1000 ± 1 g) of water in to the 35.3 ounce (1000 g) test container specified in section 2.8.3 and stir the water using a temperature measuring instrument specified in section 2.9.3.5 until the average temperature of the test container and water is balanced. The initial water temperature must be 50 ± 0.9 °F (10 ± 0.5 °C). Place the test load at the center of the turntable. If the appliance is not fitted with a turntable, place the test load on the reciprocating tray or on the lowest possible shelf position. Set the power control for the microwave-only cooking mode to the highest possible position. If the appliance is equipped with a boost function, activate the boost function. Start measurements after switching on the appliance in the microwave-only cooking mode; measurements must begin within 30 seconds after the preparation of the water load. The microwave oven must be operated to heat the test load to achieve a final temperature of 140–149 °F (60–65 °C), at which point the microwave oven must be switched off. Remove the test load from the microwave oven, and position the test load on the insulation pad specified in section 2.9.7. Stir the water with the temperature measuring instrument specified in section 2.9.3.5, and measure the final temperature is within 20 seconds after the microwave-only heating cycle is finished. Allow the microwave oven to reach its normal nonoperating temperature, and repeat the procedure to heat the water test load to a final temperature of 131–140 °F (55–60 °C). The minimum difference between the final temperatures from the two tests must be 3.6 °F (2 °C). In between tests, forced air cooling may be used to assist in reducing the temperature of the appliance. Repeat the test series three times unless the total microwave-only per-cycle energy consumption, as calculated in section 4.4.6, from the second measurement is within 1.5 percent of the value obtained from the first measurement.

3.1.4.6 *Microwave-only cooking cycle 35.3 ounce (1000 g) water load fan-only mode test method.* If the microwave oven is capable of operation in fan-only mode, measure the fan-only mode energy consumption for the 35.3 ounce (1000 g) water load as follows. Calculate the time required to heat 35.3 ounces (1000 g) of water by 90 °F (50 °C), t_{1000}, using the equations specified in section 4.4.3. Follow the procedures in section 3.1.4.5, except the microwave oven must be operated to heat the test load for the calculated heating time, t_{1000}, at which point the microwave oven must be switched off. Remove the test load from the microwave oven, and close the microwave oven door within 30 ± 2 seconds after the microwave-only heating cycle is finished. Measure the fan-only mode energy consumption until the end of the fan-only mode. Repeat the test series three times unless the total microwave-only per-cycle energy consumption, as calculated in section 4.4.6, from the second measurement is within 1.5 percent of the value obtained from the first measurement.

3.1.4.7 *Convection microwave oven convection-only test method.* Establish the testing conditions set forth in section 2, ''TEST CONDITIONS,'' of this appendix. Before beginning the test, the convection microwave oven must be at its normal nonoperating temperature as defined in section 1.12 and described in section 2.6. Set the convection microwave oven test block $M_{CVblock}$ approximately in the center of the usable baking space on the grilling rack provided by the manufacturer. Program the convection microwave oven for normal baking in accordance with manufacturer's instructions, and set the convection temperature setting to 375 °F. If a convection microwave oven permits baking by either forced convection by using a fan, or without forced convection, test the oven in each of those two modes. The oven must remain on for one complete thermostat ''cut-off/cut-on'' action of the electrical resistance heaters after the test block temperature has increased 234 °F (130 °C) above its initial temperature. If the convection microwave oven allows for the turntable to be turned on/off, test the appliance with the turntable turned on. Once the cooking cycle is complete and turned off, measure the fan-only mode energy consumption with the door closed until the end of the fan-only mode. Repeat the test series three times unless the total convection-only per-cycle energy consumption, as calculated in section 4.4.8, from the second measurement is within 1.5 percent of the value obtained from the first measurement.

3.1.4.8 *Microwave oven test standby mode and off mode power.* Establish the testing conditions set forth in section 2, *Test Conditions,* of this appendix. For microwave ovens that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the microwave oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition). For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes ± 2 sec after an additional stabilization period until the clock time reaches 3:33. If a microwave oven is capable of operation in either standby mode or off mode, as defined in sections 1.18 and 1.13 of this appendix, respectively, or both, test the microwave oven in each mode in which it can operate.

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3.2.4 *Microwave oven test energy consumption.*

3.2.4.1 *Microwave-only cooking cycle 9.7 ounce (275 g) water load test measurements.* Measure the energy consumption for the microwave-only cooking cycle test with a final water temperature of 140–149 °F (60–65 °C), $E_{275,h}$, and the cooking cycle test with a final water temperature of 131–140 °F (55–60 °C), $E_{275,l}$, in watt-hours for the test specified in section 3.1.4.1. In addition, measure the initial water temperature, $T_{275,h1}$ and $T_{275,l1}$, in °F (°C), the final water temperature, $T_{275,h2}$ and $T_{275,l2}$, in °F (°C), and the total heating time, $t_{275,h}$ and $t_{275,l}$ in seconds, for each test.

3.2.4.2 *Microwave-only cooking cycle 9.7 ounce (275 g) water load fan-only mode test measurements.* If the microwave oven is capable of operation in fan-only mode, measure the microwave-only fan-only mode energy consumption, E_{F275}, in watt-hours, and fan-only mode duration, t_{F275}, in seconds, as specified in section 3.1.4.2.

3.2.4.3 *Microwave-only cooking cycle 12.3 ounce (350 g) water load test measurements.* Measure the energy consumption for the microwave-only cooking cycle test with a final water temperature of 140–149 °F (60–65 °C), $E_{350,high}$, and the cooking cycle test with a final water temperature of 131–140 °F (55–60 °C), $E_{350,l}$, in watt-hours for the test specified in section 3.1.4.3. In addition, measure the initial water temperature, $T_{350,h1}$ and $T_{350,l1}$, in °F (°C), the final water temperature, $T_{350,h2}$ and $T_{350,l2}$, in °F (°C), and the total heating time, $t_{350,h}$ and $t_{350,l}$, in seconds, for each test.

3.2.4.4 *Microwave-only cooking cycle 12.3 ounce (350 g) water load fan-only mode test measurements.* If the microwave oven is capable of operation in fan-only mode, measure the microwave-only fan-only mode energy consumption, E_{F350}, in watt-hours, and fan-only mode duration, t_{F350}, in seconds, as specified in section 3.1.4.4.

3.2.4.5 *Microwave-only cooking cycle 35.3 ounce (1000 g) water load test measurements.* Measure the energy consumption for the microwave-only cooking cycle test with a final water temperature of 140–149 °F (60–65 °C), $E_{1000,h}$, and the cooking cycle test with a final water temperature of 131–140 °F (55–60 °C), $E_{1000,l}$, in watt-hours for the test specified in section 3.1.4.5. In addition, measure the initial water temperature, $T_{1000,h1}$ and $T_{1000,l1}$, in °F (°C), the final water temperature, $T_{1000,h2}$ and $T_{1000,l2}$, in °F (°C), and the total heating time, $t_{1000,h}$ and $t_{1000,l}$, in seconds, for each test.

3.2.4.6 *Microwave-only cooking cycle 35.3 ounce (1000 g) water load fan-only mode test measurements.* If the microwave oven is capable of operation in fan-only mode, measure the microwave-only fan-only mode energy consumption, E_{F1000}, in watt-hours, and fan-only mode duration, t_{F1000}, in seconds, as specified in section 3.1.4.6.

3.2.4.7 *Convection microwave oven convection-only test measurements.* If the oven thermostat controls the convection microwave oven temperature without cycling on and off, measure the energy consumed,

$E_{CV,O}$, when the temperature of the block reaches $T_{CV,O}$ ($T_{CV,O}$ is 234 °F (130 °C) above the initial block temperature, $T_{CV,I}$). If the oven thermostat operates by cycling on and off, make the following series of measurements: Measure the block temperature, $T_{CV,A}$, and the energy consumed, $E_{CV,A}$, at the end of the last ''ON'' period of the convection microwave oven before the block reaches $T_{CV,O}$. Measure the block temperature, $T_{CV,B}$, and the energy consumed, $E_{CV,B}$, at the beginning of the next ''ON'' period. Measure the block temperature, $T_{CV,C}$, and the energy consumed, $E_{CV,C}$, at the end of that ''ON'' period. Measure the block temperature, $T_{CV,D}$, and the energy consumed, $E_{CV,D}$, at the beginning of the following ''ON'' period. Energy measurements for $E_{CV,O}$, $E_{CV,A}$, $E_{CV,B}$, $E_{CV,C}$ and $E_{CV,D}$, should be expressed in watt-hours for convection microwave ovens. Measure the total heating time, t_{CV}, expressed in seconds. If the microwave oven is capable of operation in fan-only mode, measure the fan-only mode energy consumption, $E_{CV,F}$, expressed in watt-hours, and fan-only mode duration, $t_{CV,F}$, expressed in seconds.

3.2.4.7.1 *Convection microwave oven convection-only average test energy consumption measurements.* If the convection microwave oven permits baking by either forced convection or without forced convection and the oven thermostat does not cycle on and off, measure the energy consumed, $(E_{CV,O})_1$, and heating time, $(t_{CV})_1$, with the forced convection mode and without the forced convection mode, $(E_{CV,O})_2$, $(t_{CV})_2$ when the temperature of the block reaches $T_{CV,O}$ ($T_{CV,O}$ is 234 °F (130 °C) above the initial block temperature, $T_{CV,I}$). If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat operates by cycling on and off, make the following series of measurements with and without the forced convection mode: Measure the block temperature, $T_{CV,A}$, and the energy consumed, $E_{CV,A}$, at the end of the last ''ON'' period of the convection microwave oven before the block reaches $T_{CV,O}$. Measure the block temperature, $T_{CV,B}$, and the energy consumed, $E_{CV,B}$, at the beginning of the next ''ON'' period. Measure the block temperature, $T_{CV,C}$, and the energy consumed, $E_{CV,C}$, at the end of that ''ON'' period. Measure the block temperature, $T_{CV,D}$, and the energy consumed, $E_{CV,D}$, at the beginning of the following ''ON'' period. Energy measurements for $E_{CV,O}$, $E_{CV,A}$, $E_{CV,B}$, $E_{CV,C}$ and $E_{CV,D}$ should be expressed in watt-hours for convection microwave ovens. Measure the total heating time, t_{CV}, expressed in seconds. If the microwave oven is capable of operation in fan-only mode, measure the fan-only mode energy consumption in the forced convection mode, $(E_{CV,F})_1$, and without the forced convection mode, $(E_{CV,F})_2$, expressed in watt-hours, and the and fan-only mode duration, in the forced convection mode, $(t_{CV,F})_1$, and without the forced convection mode, $(t_{CV,F})_2$, expressed in seconds.

3.2.4.8 *Microwave oven test standby mode and off mode power.* Make measurements as specified in Section 5, Paragraph 5.3 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). If the microwave oven is capable of operating in standby mode, as defined in section 1.18 of this appendix, measure the average standby mode power of the microwave oven, P_{SB}, in watts as specified in section 3.1.4.8 of this appendix. If the microwave oven is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the microwave oven, P_{OM}, as specified in section 3.1.4.8

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3.3.11 Record the measured energy consumption for the microwave-only cooking cycle test with a final water temperature of 140–149 °F (60–65 °C), $E_{275,h}$, and the cooking cycle test with a final water temperature of 131–140 °F (55–60 °C), $E_{275,l}$, in watt-hours; the measured mass of the 9.7 ounce (275 g) water test container, $M_{275,c}$, in pounds (grams), the measured mass of the water for the 140–149 °F (60–65 °C) final water temperature test, $M_{275,h,w}$, and the 131–140 °F (55–60 °C) final water temperature test, $M_{275,l,w}$, in pounds (grams); the initial water temperature $T_{275,h1}$, and final water temperature, $T_{275,h2}$, for the 140–149 °F (60–65 °C) final water temperature test, and the initial water temperature $T_{275,l1}$, and final water temperature, $T_{275,l2}$, for the 131–140 °F (55–60 °C) final water temperature test, in °F (°C); the total heating time, $t_{275,h}$ for the 140–149 °F (60–65 °C) final water temperature test and $t_{275,l}$ for the 131–140 °F (55–60 °C) final water temperature test; as determined in section 3.2.4.1.

3.3.12 Record the measured fan-only mode energy consumption, E_{F275}, in watt-hours, and fan-only mode duration, t_{F275}, in seconds, as determined in section 3.2.4.2.

3.3.13 Record the measured energy consumption for the microwave-only cooking cycle test with a final water temperature of 140–149 °F (60–65 °C), $E_{350,h}$, and the cooking cycle test with a final water temperature of 131–140 °F (55–60 °C), $E_{275,l}$, in watt-hours; the measured mass of the 12.3 ounce (350 g) water test container, $M_{350,c}$, in pounds (grams), the measured mass of the water for the 140–149 °F (60–65 °C) final water temperature test, $M_{350,h,w}$, and the 131–140 °F (55–60 °C) final water temperature test, $M_{350,l,w}$, in pounds (grams); the initial water temperature $T_{350,h1}$, and final water temperature, $T_{350,h2}$, for the 140–149 °F (60–65 °C) final water temperature test, and the initial water temperature $T_{350,l1}$, and final water temperature, $T_{350,l2}$, for the 131–140 °F (55–60 °C) final water temperature test, in °F (°C); the total heating time, $t_{350,h}$ for the 140–149 °F (60–65 °C) final water temperature test and $t_{350,l}$ for the 131–140 °F (55–60 °C) final water temperature test; as determined in section 3.2.4.3.

3.3.14 Record the measured fan-only mode energy consumption, E_{F350}, in watt-hours, and fan-only mode duration, t_{F350}, in seconds, as determined in section 3.2.4.4.

3.3.15 Record the measured energy consumption for the microwave-only cooking cycle test with a final water temperature of 140–149 °F (60–65 °C), $E_{1000,h}$, and the cooking cycle test with a final water temperature of 131–140 °F (55–60 °C), $E_{1000,l}$, in watt-hours; the measured mass of the 35.3 ounce (1000 g) water test container, $M_{1000,c}$, in pounds (grams), the measured mass of the water for the 140–149 °F (60–65 °C) final water temperature test, $M_{1000,h,w}$, and the 131–140 °F (55–60 °C) final water temperature test, $M_{1000,l,w}$, in pounds (grams); the initial water temperature $T_{1000,h1}$, and final water temperature, $T_{1000,h2}$, for the 140–149 °F (60–65 °C) final water temperature test, and the initial water temperature $T_{1000,l1}$, and final water temperature, $T_{1000,l2}$, for the 131–140 °F (55–60 °C) final water temperature test, in °F (°C); the total heating time, $t_{1000,h}$ for the 140–149 °F (60–65 °C) final water temperature test and $t_{1000,l}$ for the 131–140 °F (55–60 °C) final water temperature test; as determined in section 3.2.4.5.

3.3.16 Record the measured fan-only mode energy consumption, E_{F1000}, in watt-hours, and fan-only mode duration, t_{F1000}, in seconds, as determined in section 3.2.4.6.

3.3.17 For a convection microwave oven with a thermostat which operates by cycling on and off, record the convection microwave cooking test measurements $T_{CV,A}$, $E_{CV,A}$, $T_{CV,B}$, $E_{CV,B}$, $T_{CV,C}$, $E_{CV,C}$, $T_{CV,D}$, $E_{CV,D}$, $E_{CV,F}$, t_{CV}, and $t_{CV,F}$, as determined in section 3.2.4.7. If the thermostat controls the oven temperature without cycling on and off, record $E_{CV,O}$, $E_{CV,F}$, $t_{CV,}$ and $t_{CV,F}$, as determined in section 3.2.4.7. Record the measured test block weight, M_{CV}, in pounds, as specified in section 2.7.1.

3.3.17.1 For a convection microwave oven that can be operated with or without forced convection and the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed with the forced convection mode, $(E_{CV,O})_1$, heating time in the forced convection mode, $(t_{CV})_1$, and convection microwave oven fan-only mode energy consumption in the forced convection mode, $(E_{CV,F})_1$, and measure the energy consumed without the forced convection mode, $(E_{CV,O})_2$, heating time without the forced convection mode, $(t_{CV})_2$, and convection microwave oven fan-only mode energy consumption without the forced convection mode, $(E_{CV,F})_2$, as determined in section 3.2.4.7.1. If the convection microwave oven operates with or without forced convection and the thermostat controls the oven temperature by cycling on and off, record the convection microwave oven test measurements $T_{CV,A}$, $E_{CV,A}$, $T_{CV,B}$, $E_{CV,B}$, $T_{CV,C}$, $E_{CV,C}$, $T_{CV,D}$, $E_{CV,D}$, t_{CV}, $E_{CV,F}$, $t_{CV,F}$ as determined in section 3.2.4.7.1. Record the measured test block weight, M_{CV}, in pounds, as specified in section 2.7.1.

3.3.18 Record the average standby mode power, P_{SB}, for the microwave oven standby mode, as determined in section 3.2.4.8 for a microwave oven capable of operating in standby mode. Record the average off mode power, P_{OM}, for the microwave oven off mode power test, as determined in section 3.2.4.8 for a microwave oven capable of operating in off mode.

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4. Calculation of Derived Results from Test Measurements

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4.4 *Microwave oven.*

4.4.1 *9.7 ounce (275 g) water load microwave-only cooking cycle time and energy consumption.* Calculate the time

required, t_{275}, in seconds, and the energy consumption, E_{275}, in watt-hours, to heat 9.7 ounce (275 g) of water by 90 °F (50 °C), as follows:

$$\Delta T_{275,h} = T_{275,h2} - T_{275,h1}$$

$$\Delta T_{275,l} = T_{275,l2} - T_{275,l1}$$

$$Total\ \Delta T_{275,h} = \frac{\left(C_c \times M_{275,c} \times \Delta T_{275,h}\right)}{C_w \times M_{275,h}} + \Delta T_{275,h}$$

$$Total\ \Delta T_{275,l} = \frac{\left(C_c \times M_{275,c} \times \Delta T_{275,l}\right)}{C_w \times M_{275,l}} + \Delta T_{275,l}$$

$$norm\ \Delta T_{275,h} = total\ \Delta T_{275,h} \times \frac{M_{275,h,w}}{M_{275,w}}$$

$$norm\ \Delta T_{275,l} = total\ \Delta T_{275,l} \times \frac{M_{275,l,w}}{M_{275,w}}$$

$$t_{275} = t_{275,l} + \left(\frac{t_{275,h} - t_{275,l}}{norm\ \Delta T_{275,h} - norm\ \Delta T_{275,l}}\right) \times \left(\Delta T_n - norm\ \Delta T_{275,l}\right)$$

$$E_{275} = E_{275,low} + \left(\frac{E_{275,h} - E_{275,low}}{norm\ \Delta T_{275,h} - norm\ \Delta T_{275,l}}\right) \times \left(\Delta T_n - norm\ \Delta T_{275,low}\right)$$

Where,

C_c = 0.131 Btu per lb-°F (0.55 joules per gram-°C), the specific heat of the borosilicate glass test container.

C_w = 1.0 Btu per lb-°F (4.187 joules per gram-°C), the specific heat of water.

$\Delta T_{275,h}$ = the water temperature rise in °F (°C) for the 140–149 °F (60–65 °C) final water temperature test.

$\Delta T_{275,l}$ = the water temperature rise in °F (°C) for the 131–140 °F (55–60 °C) final water temperature test.

ΔT_n = 90 °F (50 °C), the nominal water temperature rise.

E_{275} = the energy consumption required to heat 9.7 ounce (275 g) of water by 90 °F (50 °C), in watt-hours.

$E_{275,h}$ = the measured energy consumption in watt-hours during the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.11.

$E_{275,l}$ = the measured energy consumption in watt-hours during the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.11.

$M_{275,c}$ = the actual mass of the 9.7 ounce (275 g) water load test container in pounds (g), as recorded in section 3.3.11.

$M_{275,h,w}$ = the actual mass of water in pounds (g) for the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.11.

$M_{275,l,w}$ = the actual mass of water in pounds (g) for the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.11.

$M_{275,w}$ = 0.61 pounds (275 g), the nominal mass of water.

norm $\Delta T_{275,h}$ = the normalized water temperature rise in °F (°C) for the of 140–149 °F (60–65 °C) final water temperature test.

norm $\Delta T_{275,l}$ = the normalized water temperature rise in °F (°C) for the of 131–140 °F (55–60 °C) final water temperature test.

t_{275} = the calculated time in seconds to heat up 9.7 ounces (275 g) of water by 90 °F (50 °C).

$t_{275,h}$ = the measured time in seconds, including the magnetron heating-up time, to heat 9.7 ounces (275 g) of water to a final temperature of 140–149 °F (60–65 °C), as recorded in section 3.3.11.

$t_{275,l}$ = the measured time in seconds, including the magnetron heating-up time, to heat 9.7 ounces (275 g) of water to a final temperature of 131–140 °F (55–60 °C), as recorded in section 3.3.11.

$T_{275,h1}$ = the initial water temperature in °F (°C) for the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.11.

$T_{275,h2}$ = the final water temperature in °F (°C) for the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.11.

$T_{275,l1}$ = the initial water temperature in °F (°C) for the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.11.

$T_{275,l2}$ = the final water temperature in °F (°C) for the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.11.

Total $\Delta T_{275,h}$ = the total temperature rise accounting for the heat capacity of the test container for the 140–149 °F (60–65 °C) final water temperature test, in °F (°C).

Total $\Delta T_{275,l}$ = the total temperature rise accounting for the heat capacity of the test container for the 131–140 °F (55–60 °C) final water temperature test, in °F (°C).

4.4.2 *12.3 ounce (350 g) water load microwave-only cooking cycle time and energy consumption.* Calculate the time required, t_{350}, in seconds, and the energy consumption, E_{350}, in watt-hours, to heat 12.3 ounces (350 g) of water by 90 °F (50 °C), as follows:

$$\Delta T_{350,l} = T_{350,l2} - T_{350,l1}$$

$$Total\ \Delta T_{350,h} = \frac{\left(C_c \times M_{350,c} \times \Delta T_{350,h}\right)}{C_w \times M_{350,h}} + \Delta T_{350,h}$$

$$Total\ \Delta T_{350,l} = \frac{\left(C_c \times M_{350,c} \times \Delta T_{350,l}\right)}{C_w \times M_{350,l}} + \Delta T_{350,l}$$

$$norm\ \Delta T_{350,h} = total\ \Delta T_{350,h} \times \frac{M_{350,h,w}}{M_{350,w}}$$

$$norm\ \Delta T_{350,l} = total\ \Delta T_{350,l} \times \frac{M_{350,l,w}}{M_{350,w}}$$

$$t_{350} = t_{350,l} + \left(\frac{t_{350,h} - t_{350,l}}{norm\ \Delta T_{350,h} - norm\ \Delta T_{350,l}}\right) \times \left(\Delta T_n - norm\ \Delta T_{350,l}\right)$$

$$E_{350} = E_{350,l} + \left(\frac{E_{350,h} - E_{350,l}}{norm\ \Delta T_{350,h} - norm\ \Delta T_{350,l}}\right) \times \left(\Delta T_n - norm\ \Delta T_{350,l}\right)$$

Where,

ΔT_n, C_c, and C_w as defined in 4.4.1.

$\Delta T_{350,h}$ = the water temperature rise in °F (°C) for the 140–149 °F (60–65 °C) final water temperature test.

$\Delta T_{350,l}$ = the water temperature rise in °F (°C) for the 131–140 °F (55–60 °C) final water temperature test.

E_{350} = the calculated energy consumption required to heat 12.3 ounces (350 g) of water by 90 °F (50 °C), in watt-hours.

$E_{350,h}$ = the measured energy consumption in watt-hours during the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.13.

$E_{350,l}$ = the measured energy consumption in watt-hours during the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.13.

$M_{350,c}$ = the actual mass of the 12.3 ounce (350 g) water load test container in pounds (g), as recorded in section 3.3.13.

$M_{350,h,w}$ = the actual mass of water in pounds (g) for the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.13.

$M_{350,l,w}$ = the actual mass of water in pounds (g) for the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.13.

$M_{350,w}$ = 0.77 pounds (350 g), the nominal mass of water.

norm $\Delta T_{350,h}$ = the normalized water temperature rise in °F (°C) for the of 140–149 °F (60–65 °C) final water temperature test.

norm $\Delta T_{350,l}$ = the normalized water temperature rise in °F (°C) for the of 131–140 °F (55–60 °C) final water temperature test.

t_{350} = the calculated time in seconds to heat up 12.3 ounces (350 g) of water by 90 °F (50 °C).

$t_{350,h}$ = the measured time in seconds, including the magnetron heating-up time, to heat 12.3 ounces (350 g) of water to a final temperature of 140–149 °F (60–65 °C), as recorded in section 3.3.13.

$t_{350,l}$ = the measured time in seconds, including the magnetron heating-up time, to heat 12.3 ounces (350 g) of water to a final temperature of 131–140 °F (55–60 °C), as recorded in section 3.3.13.

$T_{350,h1}$ = the initial water temperature in °F (°C) for the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.13.

$T_{350,h2}$ = the final water temperature in °F (°C) for the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.13.

$T_{350,l1}$ = the initial water temperature in °F (°C) for the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.13.

$T_{350,l2}$ = the final water temperature in °F (°C) for the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.13.

Total $\Delta T_{350,h}$ = the total temperature rise accounting for the heat capacity of the test container for the 140–149 °F (60–65 °C) final water temperature test, °F (°C).

Total $\Delta T_{350,l}$ = the total temperature rise accounting for the heat capacity of the test container for the 131–140 °F (55–60 °C) final water temperature test, °F (°C).

4.4.3 *35.3 ounce (1000 g) water load microwave-only cooking cycle time and energy consumption.* Calculate the time required, t_{350}, in seconds, and the energy consumption, E_{1000}, in watt-hours, to heat 35.3 ounce (1000 g) of water by 90 °F (50 °C), as follows:

$$\Delta T_{1000,h} = T_{1000,h2} - T_{1000,h1}$$

$$\Delta T_{1000,l} = T_{1000,l2} - T_{1000,l1}$$

$$Total\ \Delta T_{1000,h} = \frac{\left(C_c \times M_{1000,c} \times \Delta T_{1000,h}\right)}{C_w \times M_{1000,h}} + \Delta T_{1000,h}$$

$$Total\ \Delta T_{1000,l} = \frac{\left(C_c \times M_{1000,c} \times \Delta T_{1000,l}\right)}{C_w \times M_{1000,l}} + \Delta T_{1000,l}$$

$$norm\ \Delta T_{1000,h} = total\ \Delta T_{1000,h} \times \frac{M_{1000,h,w}}{M_{1000,w}}$$

$$norm\ \Delta T_{1000,l} = total\ \Delta T_{1000,low} \times \frac{M_{1000,l,w}}{M_{1000,w}}$$

$$t_{1000} = t_{1000,l} + \left(\frac{t_{1000,h} - t_{1000,l}}{norm\ \Delta T_{1000,h} - norm\ \Delta T_{1000,l}}\right) \times \left(\Delta T_n - norm\ \Delta T_{1000,l}\right)$$

$$E_{1000} = E_{1000,l} + \left(\frac{E_{1000,h} - E_{1000,l}}{norm\ \Delta T_{1000,h} - norm\ \Delta T_{1000,l}}\right) \times \left(\Delta T_n - norm\ \Delta T_{1000,l}\right)$$

Where,

ΔT_n, C_c, and C_w as defined in 4.4.1.

$\Delta T_{1000,h}$ = the water temperature rise in °F (°C) for the 140–149 °F (60–65 °C) final water temperature test.

$\Delta T_{1000,l}$ = the water temperature rise in °F (°C) for the 131–140 °F (55–60 °C) final water temperature test.

E_{1000} = the calculated energy consumption required to heat 35.3 ounces (1000 g) of water by 90 °F (50 °C), in watt-hours.

$E_{1000,h}$ = the measured energy consumption in watt-hours during the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.15.

$E_{1000,l}$ = the measured energy consumption in watt-hours during the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.15.

$M_{1000,c}$ = the actual mass of the 35.3 ounce (1000 g) water load test container in pounds (g), as recorded in section 3.3.15.

$M_{1000,h,w}$ = the actual mass of water in pounds (g) for the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.15.

$M_{1000,l,w}$ = the actual mass of water in pounds (g) for the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.15.

$M_{1000,w}$ = 2.20 pounds (1000 g), the nominal mass of water.

norm $\Delta T_{1000,h}$ = the normalized water temperature rise in °F (°C) for the of 140–149 °F (60–65 °C) final water temperature test.

norm $\Delta T_{1000,l}$ = the normalized water temperature rise in °F (°C) for the of 131–140 °F (55–60 °C) final water temperature test.

t_{1000} = the calculated time in seconds to heat up 35.3 ounces (1000 g) of water by 90 °F (50 °C).

$t_{1000,h}$ = the measured time in seconds, including the magnetron heating-up time, to heat 35.3 ounces (1000 g) of water to a final temperature of 140–149 °F (60–65 °C), as recorded in section 3.3.15.

$t_{1000,l}$ = the measured time in seconds, including the magnetron heating-up time, to heat 35.3 ounces (1000 g) of water to a final temperature of 131–140 °F (55–60 °C), as recorded in section 3.3.15.

$T_{1000,h1}$ = the initial water temperature in °F (°C) for the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.15.

$T_{1000,h2}$ = the final water temperature in °F (°C) for the 140–149 °F (60–65 °C) final water temperature test, as recorded in section 3.3.15.

$T_{1000,l1}$ = the initial water temperature in °F (°C) for the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.15.

$T_{1000,l2}$ = the final water temperature in °F (°C) for the 131–140 °F (55–60 °C) final water temperature test, as recorded in section 3.3.15.

Total $\Delta T_{1000,h}$ = the total temperature rise accounting for the heat capacity of the test container for the 140–149 °F (60–65 °C) final water temperature test, in °F (°C).

Total $\Delta T_{1000,l}$ = the total temperature rise accounting for the heat capacity of the test container for the 131–140 °F (55–60 °C) final water temperature test, in °F (°C).

4.4.4 *Total microwave-only cooking per-cycle energy consumption and heating time.* Calculate the total microwave-only cooking per-cycle energy consumption, $E_{MW,C}$, in watt-hours, and the per-cycle heating time, $t_{MW,C}$, in seconds, as follows:

$$E_{MW,C} = \frac{3 \times E_{275} + 6 \times E_{350} + 2 \times E_{1000}}{11}$$

$$t_{MW,C} = \frac{3 \times t_{275} + 6 \times t_{350} + 2 \times t_{1000}}{11}$$

Where:

E_{275} and t_{275} as defined in section 4.4.1, W_{350} and t_{350} are described in section 4.4.2, and E_{1000} and t_{1000} are described in section 4.4.3.

4.4.5 *Total microwave-only per-cycle fan-only mode energy consumption and duration.* Calculate the total microwave-only per-cycle fan-only mode energy consumption, $E_{MW,F}$, in watt-hours, and the per-cycle fan-only mode time, $t_{MW,F}$, in seconds, as follows:

$$E_{MW,F} = \frac{3 \times E_{F275} + 6 \times E_{F350} + 2 \times E_{F1000}}{11}$$

$$t_{MW,F} = \frac{3 \times t_{F275} + 6 \times t_{F350} + 2 \times t_{F1000}}{11}$$

Where:

E_{F275} = the measured fan-only mode energy consumption after heating 275 g of water by 50 °C in watt-hours, as recorded in section 3.3.12.

E_{F350} = the measured fan-only mode energy consumption after heating 350 g of water by 50 °C in watt-hours, as recorded in section 3.3.15.

E_{F1000} = the measured fan-only mode energy consumption after heating 1000 g of water by 50 °C in watt-hours, as recorded in section 3.3.16.

t_{F275} = the duration of fan-only mode after heating 275 g of water by 50 °C in seconds, as recorded in section 3.3.12.

t_{F350} = the duration of fan-only mode after heating 350 g of water by 50 °C in seconds, as recorded in section 3.3.14.

t_{F1000} = the duration of fan-only mode after heating 1000 g of water by 50 °C in seconds, as recorded in section 3.3.16.

4.4.6 *Total microwave-only per-cycle energy consumption.* Calculate the total microwave-only per-cycle energy consumption, E_{MW}, in watt-hours, using the equation below. The calculation is repeated two or three times as required in section 3.1.4. The average E_{MW} is used for the calculations in sections 4.4.9 and 4.4.10.

$$E_{MW} = E_{MW,C} + E_{MW,F}$$

Where:

$E_{MW,C}$ as defined in 4.4.4.

$E_{MW,F}$ as defined in 4.4.5.

4.4.7 *Convection microwave oven convection-only cooking cycle test energy consumption.* For a convection microwave oven with a thermostat which operates by cycling on and off, calculate the convection microwave convection-only cooking cycle test energy consumption, $E_{CV,O}$, expressed in watt-hours, and defined as:

$$E_{CV,O} = \left(E_{CV,AB} + \left(\frac{T_{CV,O} - T_{CV,AB}}{T_{CV,CD} - T_{CV,AB}} \right) \times (E_{CV,CD} - E_{CV,AB}) \right)$$

Where:

$T_{CV,O}$ = 234 °F (130 °C) plus the initial test block temperature.

and,

$$E_{CV,AB} = \frac{E_{CV,A} + E_{CV,B}}{2}$$

$$E_{CV,CD} = \frac{E_{CV,C} + E_{CV,D}}{2}$$

$$T_{CV,AB} = \frac{T_{CV,A} + T_{CV,B}}{2}$$

$$T_{CV,CD} = \frac{T_{CV,C} + T_{CV,D}}{2}$$

Where:

$E_{CV,A}$ = electric energy consumed in Wh at the end of the last ''ON'' period before the test block reaches $T_{CV,O}$.

$E_{CV,B}$ = electric energy consumed in Wh at the beginning of the ''ON'' period following the measurement of $T_{CV,A}$.

$E_{CV,C}$ = electric energy consumed in Wh at the end of the ''ON'' period which starts with $T_{CV,B}$.

$E_{CV,D}$ = electric energy consumed in Wh at the beginning of the ''ON'' period which follows the measurement of $T_{CV,C}$.

$T_{CV,A}$ = block temperature in °F at the end of the last ''ON'' period of the convection microwave oven before the test block reaches T_O.

$T_{CV,B}$ = block temperature in °F at the beginning of the ''ON'' period following the measurement of $T_{CV,A}$.

$T_{CV,C}$ = block temperature in °F at the end of the ''ON'' period which starts with $T_{CV,B}$.

$T_{CV,D}$ = block temperature in °F at the beginning of the ''ON'' period which follows the measurement of $T_{CV,C}$.

4.4.7.1 *Convection microwave oven convection-only cooking cycle average test energy consumption.* If the convection microwave oven can be operated with or without forced convection, determine the convection microwave cooking average test energy consumption, $E_{CV,O}$, in watt-hours, the convection microwave cooking average heating time, t_{CV}, in seconds, the average convection microwave oven fan-only mode cooling energy consumption, $E_{CV,F}$, in watt-hours, and the convection microwave oven fan-only mode time, $t_{CV,F}$, in seconds, using the following equations:

$$E_{CV,O} = \frac{(E_{CV,O})_1 + (E_{CV,O})_2}{2}$$

$$t_{CV,O} = \frac{(t_{CV,O})_1 + (t_{CV,O})_2}{2}$$

$$E_{CVcool} = \frac{(E_{CV,F})_1 + (E_{CV,F})_2}{2}$$

$$t_{CV,F} = \frac{(t_{CV,F})_1 + (t_{CV,F})_2}{2}$$

Where:

$(E_{CV,O})_1$ = the test energy consumption using the forced convection mode in watt-hours for convection microwave ovens as recorded in section 3.3.17.1.

$(E_{CV,O})_2$ = the test energy consumption without using the forced convection mode in watt-hours for convection microwave ovens as recorded in section 3.3.17.1.

$(E_{CV,F})_1$ = the fan-only mode cooling energy consumption using the forced convection mode in watt-hours for convection microwave ovens as recorded in section 3.3.17.1.

$(E_{CV,F})_2$ = the fan-only mode cooling energy consumption without using the forced convection mode in watt-hours for convection microwave ovens as recorded in section 3.3.17.1.

$(t_{CV,O})_1$ = the test heating time using the forced convection mode in seconds for convection microwave ovens as measured as recorded in section 3.3.17.1.

$(t_{CV,O})_2$ = the test heating time without using the forced convection mode in seconds for convection microwave ovens as recorded in section 3.3.17.1.

$(t_{CV,F})_1$ = the fan-only mode time using the forced convection mode in seconds for convection microwave ovens as recorded in section 3.3.17.1.

$(t_{CV,F})_2$ = the fan-only mode time without using the forced convection mode in seconds for convection microwave ovens as recorded in section 3.3.17.1.

4.4.8 *Total convection microwave oven convection-only per-cycle energy consumption.* Calculate the total convection microwave oven convection-only per-cycle energy consumption, $E_{total,CV}$, in watt-hours, using the equations below. The calculation is repeated two or three times as required in section 3.1.4.7. The average $E_{total,CV}$ is used for the calculations in sections 4.4.9 and 4.4.10.

$$E_{CV} = (E_{CV,O} + E_{CV,F}) \times F_{CV}$$

Where:

$E_{CV,O}$ = the convection microwave oven convection-only cooking cycle test energy consumption in watt-hours as determined in section 3.3.17 and 4.4.7.

$E_{CV,F}$ = the convection microwave oven convection-only cooking cycle test energy consumption in watt-hours as determined in section 3.3.17 and 4.4.7.

F_{CV} = 0.26, a field use factor based on consumer use of the convection-only cooking mode.

4.4.9 *Total convection microwave oven convection-microwave per-cycle energy consumption.* Calculate the total convection microwave oven convection-microwave per-cycle energy consumption, E_{CMW}, in watt-hours, as follows:

$$E_{CMW} = \left(E_{MW} \times \frac{t_{CMW,field}}{t_{MW,field}} \times 0.3\right) + \left(E_{CV} \times \frac{t_{CMW,field}}{t_{CV,field}} \times 0.7\right)$$

Where:

E_{CV} as defined in 4.4.8.

E_{MW} as defined in 4.4.6.

$t_{CMW,field}$ = 15.00, the average convection microwave oven convection-microwave cooking cycle length in minutes based on consumer use.

$t_{CV,field}$ = 18.70, the average convection microwave oven convection-only cooking cycle length in minutes based on consumer use.

$t_{MW,field}$ = 2.54, the average convection microwave oven microwave-only cooking cycle length in minutes based on consumer use.

0.3 = an experimentally established value for the percentage of time during a single convection-microwave cooking cycle that the appliance operates in microwave-only cooking mode.

0.7 = an experimentally established value for the percentage of time during a single convection-microwave cooking cycle that the appliance operates in convection-only cooking mode.

4.4.10 *Annual energy use.*

4.4.10.1 *Microwave-only oven annual energy use.* Calculate the microwave-only oven annual energy use, $E_{annual,MWO}$, in kilowatt-hours per year, as follows:

$$E_{annual,MWO} = [E_{MW} \times N_{MWO} + P_{SB} \times S_{MWO,SB} + P_{OM} \times S_{MWO,OFF}] \times K$$

Where:

E_{MW} as defined in section 4.4.6.

N_{MWO} = 1026, annual number of microwave-only cooking cycles for microwave-only ovens based on consumer use.

P_{SB} = the average measured standby mode power in watts, as recorded in section 3.3.18.

P_{OM} = the average measured off mode power in watts, as recorded in section 3.3.18.

$S_{MWO,TOT}$ equals the total number of standby mode and off mode hours per year for microwave-only ovens.

If the microwave-only oven has fan-only mode, $S_{MWO,TOT}$ equals $(8715.1 - (t_{MW,F}/3600))$ hours, where $t_{MW,F}$ is the

microwave-only oven fan-only mode duration, in seconds, as calculated in section 4.4.5, and 3600 is the conversion factor for seconds to hours; otherwise, $S_{MWO,TOT}$ is equal to 8715.1 hours.

If the microwave-only oven has both standby mode and off mode, $S_{MWO,SB}$ and $S_{MWO,OFF}$ both equal $S_{MWO,TOT}/2$.

If the microwave-only oven has standby mode but no off mode, the standby mode annual hours, $S_{MWO,SB}$, is equal to $S_{MWO,TOT}$ and the off mode annual hours, $S_{MWO,OFF}$, is equal to 0.

If the microwave-only oven has an off mode but no standby mode, $S_{MWO,SB}$ is equal to 0 and $S_{MWO,OFF}$ is equal to $S_{MWO,TOT}$.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.4.10.2 *Convection microwave oven annual energy use.* Calculate the convection microwave oven annual energy use, $E_{annual,CMWO}$, in kilowatt-hours per year, as follows:

$$E_{annual,CMWO} = [E_{MW} \times N_{CMWO,MW} + E_{CV} \times N_{CMWO,CV} + E_{CMW} \times N_{CMWO,CMW} + P_{SB} \times S_{CMWO,SB} + P_{OM} \times S_{CMWO,OFF}] \times K$$

Where:

E_{CMW} as defined in section 4.4.9.

E_{MW} as defined in section 4.4.6.

E_{CV} as defined in section 4.4.8.

P_{SB}, P_{OM}, and K as defined in section 4.4.10.1.

$N_{CMWO,MW}$ = 842, annual number of microwave-only cooking cycles for convection microwave ovens based on consumer use.

$N_{CMWO,CV}$ = 101, annual number of convection-only cooking cycles for convection microwave ovens based on consumer use.

$N_{CMWO,CMWcycles}$ = 69, annual number of convection-microwave cooking cycles for convection microwave ovens based on consumer use.

$S_{CMWO,TOT}$ equals the total number of standby mode and off mode hours per year for microwave-only ovens.

If the convection microwave oven has fan-only mode, $S_{CMWO,TOT}$ equals:

$$S_{CMWO,TOT} = 8675.3 - \frac{t_{MW,F} \times N_{CMWO,MW} + (t_{CV,F} \times F_{CV} \times N_{CMWO,CV}) + \left(t_{CV,F} \times F_{CV} \times \frac{t_{CMW,field}}{t_{CV,field}} \times N_{CMWO,CMW}\right)}{60}$$

Where:

$t_{MW,F}$ is the microwave-only fan-only mode duration, in minutes, as calculated in section 4.4.5; $t_{CV,F}$ is the measured convection-only fan-only mode duration, in minutes, as recorded in section 3.3.17; F_{CV} as defined in section 4.4.8; $t_{CMW,field}$ and $t_{CV,field}$ as defined in section 4.4.9; and 60 is the conversion factor for minutes to hours. Otherwise, $S_{CMWO,TOT}$ is equal to 8675.3 hours.

If the convection microwave oven has both standby mode and off mode, $S_{CMWO,SB}$ and $S_{CMWO,OFF}$ both equal $S_{CMWO,TOT}/2$.

If the convection microwave oven has standby mode but no off mode, the standby mode annual hours, $S_{CMWO,SB}$, is equal to $S_{CMWO,TOT}$ and the off mode annual hours, $S_{CMWO,OFF}$, is equal to 0.

If the convection microwave oven has an off mode but no standby mode, $S_{MWO,SB}$ is equal to 0 and $S_{CMWO,OFF}$ is equal to $S_{CMWO,TOT}$.

[FR Doc. 2013–01537 Filed 2–1–13; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 78 Monday,

No. 23 February 4, 2013

Part V

Social Security Administration

20 CFR Parts 404 and 416

Revised Medical Criteria for Evaluating Respiratory System Disorders; Proposed Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2006–0149]

RIN 0960–AF58

Revised Medical Criteria for Evaluating Respiratory System Disorders

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to revise the criteria in the Listing of Impairments (listings) that we use to evaluate claims involving respiratory disorders in adults and children under titles II and XVI of the Social Security Act (Act). The proposed revisions reflect our program experience, advances in medical knowledge, and comments we received from medical experts and the public at an outreach policy conference and in response to an Advance Notice of Proposed Rulemaking (ANPRM).

DATES: To ensure that your comments are considered, we must receive them by no later than April 5, 2013.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2006–0149 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2006–0149. The system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Cheryl Williams, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

What revisions are we proposing?

We propose to:

- Revise and expand the introductory text to the respiratory system listings for both adults (section 3.00) and children (section 103.00);
- Remove reference listings; and
- Update the listing criteria to reflect medical advances in evaluating respiratory disorders.

Why are we proposing these revisions and on what information are they based?

We are proposing these revisions to reflect our program experience and medical advances in evaluating respiratory disorders. We last published final rules making comprehensive revisions to section 3.00—the respiratory system listings for adults (people who are at least 18 years old)—and section 103.00—the respiratory system listings for children (people under age 18)—on October 7, 1993.[1] In the preamble to those rules, we indicated that we would periodically review and update the listings in light of medical advances and our program experience. Since that time, however, we have only extended the effective date of the rules.[2]

In developing these proposed rules, we considered the public comments that we received in response to an ANPRM that we published in the **Federal Register** on April 13, 2005.[3] In the ANPRM, we announced our plans to update and revise this body system, and we invited interested people and organizations to send us written comments and suggestions. We also received public comments at an outreach policy conference on ''Respiratory Disorders in the Disability Programs'' that we hosted in Chicago, Illinois, on August 25–26, 2005.[4]

In developing these proposed rules, we also used information from a variety of sources, including:

- Medical experts in the field of pulmonology, experts in other related fields, advocacy groups for people with respiratory disorders, and people with respiratory disorders and their families;
- People who make and review disability determinations and decisions for us in State agencies, in our Office of Quality Performance, and in our Office of Disability Adjudication and Review; and
- The published sources we list in the References section at the end of this preamble.

We describe in more detail below the revisions we propose to make to the introductory text of the adult listings, the adult listings text, the introductory text of the childhood listings, and the childhood listings text.

What changes are we proposing to the introductory text of the respiratory disorders listings for adults?

In the following paragraphs, we describe the significant changes we propose to make to the introductory text of the adult respiratory listings in part A of appendix 1 to subpart P of part 404 using the order of the current introductory text.

Section 3.00A

We propose to reorganize and revise current 3.00A (*Introduction*) by creating separate sections for easier reference. These sections include the following: The kinds of disorders we evaluate in this body system (proposed 3.00A); the common signs and symptoms of respiratory disorders (proposed 3.00B); the abbreviations we use in this body system (proposed 3.00C); and the documentation we may need to evaluate respiratory disorders (proposed 3.00D).

We propose to clarify our guidance regarding documentation of respiratory disorders. For example, we state in proposed 3.00D1 that we may not need all of the different kinds of medical evidence we describe in that paragraph, depending upon the person's particular respiratory disorder and its effects on

[1] 58 FR 52346; corrected at 59 FR 1274 (January 10, 1994). These listings appear in appendix 1 to subpart P of part 404.

[2] See 65 FR 57946 (2000), 67 FR 43537 (2002), 68 FR 36911 (2003), 70 FR 35028 (2005), 72 FR 33662 (2007), and 73 FR 31025 (2008). The current listings will no longer be effective as of July 2, 2012 unless we extend them. 75 FR 33166 (2010).

[3] 70 FR 19358 (2005).

[4] Although we indicated in the ANPRM that we would not summarize or respond to the comments, we read and considered them carefully. You can read the ANPRM, the comments we received in response to the ANPRM, and a transcript of the policy conference at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2006–0149.

the person. We would also clarify in proposed 3.00D1 that medical evidence should include descriptions of any prescribed treatment and the response to it. We are including this provision because treatment may have improved a person's functional status. As under our current rules, however, we would not require a person to receive treatment to show the existence of an impairment that meets the criteria of a listing.

We also propose to add section 3.00S (*How do we evaluate respiratory disorders that do not meet one of these listings?*). For easier reference and to conform to the order in which this guidance appears in other body systems, we would include this guidance in a new section at the end of the introductory text rather than in section 3.00A as it now appears in the current introductory text.

Section 3.00B

We propose to revise current 3.00B (*Mycobacterial, mycotic, and other chronic persistent infections of the lung*) and redesignate it as 3.00R (*How do we evaluate mycobacterial, mycotic, and other chronic infections of the lungs?*). We also propose to clarify that we would evaluate chronic infections of the lungs under 3.02.

Section 3.00C

We propose to remove current 3.00C (*Episodic respiratory disease*), which explains how we evaluate respiratory disorders that can be episodic in nature, such as asthma, cystic fibrosis (CF), and bronchiectasis. For easier reference, we would create separate sections for each of these disorders. The proposed sections are: 3.00I (*What is asthma, and how do we evaluate it?*), 3.00J (*What is CF, and how do we evaluate it?*), and 3.00L (*What is bronchiectasis, and how do we evaluate it?*). In these sections, we explain the nature of each disorder, the evidence we need to document the disorder, and how we would evaluate the disorder under the applicable listing.

Several of the proposed listings for episodic disorders would require a specific number of events within a 12-month period. We provide additional information about this requirement in proposed 3.00O (*How do we evaluate episodic respiratory disorders?*). This guidance describing the 12-month period is not in current 3.00C.

Section 3.00D

As a result of the proposed changes to current 3.00C described above, we propose to revise current 3.00D (*Cystic fibrosis*) and redesignate it as 3.00J.

Sections 3.00E and 3.00F

We propose to reorganize and revise current 3.00E (*Documentation of pulmonary function testing*) and current 3.00F (*Documentation of chronic impairment of gas exchange*), by creating separate sections for three major types of pulmonary function tests (PFTs). The proposed sections for these tests are: Spirometry (3.00E, *What is spirometry, and what are our requirements for an acceptable test and report?*), diffusing capacity of the lungs for carbon monoxide (DLCO) (3.00F, *What is a DLCO test, and what are our requirements for an acceptable test and report?*), and arterial blood gas (ABG) testing (3.00G, *What is an ABG test, and what are our requirements for an acceptable test and report?*). In each of these sections, we explain the nature of each test and simplify our documentation requirements for an acceptable test and report.

We propose to modify some of our current documentation requirements for spirometry, which simply restate testing standards. Such testing standards are usually not documented in medical records, and our program experience has shown that there is no need to require verification that the person administering the test followed such testing standards. For example, we would no longer require proof of equipment calibration on the day of the spirometric measurement because we believe that we can reasonably presume that the device has been properly calibrated. Daily equipment calibration is the current standard of care for providers who administer spirometry, and in our experience that standard of care has been met.

We would also no longer require the spirometric tracings for the satisfactory forced expiratory maneuvers. The current standard of care requires the performance of at least three satisfactory forced expiratory maneuvers. The person administering the test uses the spirometric tracings to determine whether the maneuvers are satisfactory before reporting the person's highest values. This modification would be consistent with our documentation requirements in other areas where we routinely rely on the reports of test results rather than require additional documentation to enable independent verification. For example, we rely on findings referenced in radiologists' reports; we do not require the x-rays to verify those findings independently.

We believe that these modifications of our current spirometry documentation requirements may reduce the number of CEs we purchase and decrease case processing time without affecting the quality of our determinations and decisions. We are specifically interested in any comments and suggestions you have about the proposed modifications to our current spirometry documentation requirements.

We also propose to remove the requirement that our program physician must determine whether obtaining a particular PFT would present a significant risk to the person because this requirement is redundant of our other regulations that require a program physician to approve the ordering of a test whenever there is any significant risk. See 20 CFR 404.1519m and 416.919m. However, we would include a reminder in each of the proposed sections on PFTs that the medical source we designate to administer the particular PFT is solely responsible for deciding whether it is safe for the person to do the test and for how to administer the test. This provision is consistent with our current regulations, which provide that the responsibility for deciding whether to administer the test rests with the medical source designated to perform the consultative examination.

We explain in proposed 3.00G3a that we would not purchase exercise ABG tests. Spirometry, DLCO tests, resting ABG tests, and pulse oximetry offer a sufficiently comprehensive range of PFTs to properly evaluate respiratory disorders. Therefore, we propose to remove current 3.00F3 and 3.00F4, which explain our rules for exercise testing with ABGs we may purchase under the current listings, because we would no longer need these sections.

We also propose to provide guidance on the use of pulse oximetry in proposed 3.00H (*What is pulse oximetry, and what are our requirements for an acceptable test and report?*). We explain the nature of the test and our documentation requirements for an acceptable test and report. We believe that, to evaluate impairments of gas exchange, we may substitute an acceptable pulse oximetry test for DLCO and ABG tests, which are often difficult to obtain. Pulse oximetry is a simple, non-invasive method of assessing a person's respiratory function by measuring the oxygen saturation of arterial blood. To increase the reliability and validity of pulse oximetry results, we would require a graphical printout showing the oximetry values concurrently with the pulse (see proposed 3.00H3b). A pulse wave helps ensure that the associated pulse oximetry value is a true measure of the oxygen saturation of arterial blood and not the result of certain artifactual

inaccuracies, such as movement. We recognize that printouts of pulse readings are not routinely done in pulse oximetry. Thus, we expect that we would use only pulse oximetry that we purchase to determine that an impairment meets proposed 3.02C4 or 3.04D4.

We provide guidance in proposed 3.00K (*What is respiratory failure, and how do we evaluate it?*) for the evaluation of respiratory failure because we are proposing a new separate listing, proposed 3.14 (*Respiratory failure*), and we include a criterion for respiratory failure associated with CF in proposed 3.04D2. Respiratory failure requiring continuous assisted (mechanical) ventilatory support for the period specified in 3.04D2 and 3.14 reflects the failure of the lungs to perform their basic function of gas exchange and is a serious complication regardless of the underlying chronic respiratory disorder.

Section 3.00G

We propose to redesignate and revise current 3.00G (*Chronic cor pulmonale and pulmonary vascular disease*) to proposed 3.00M (*What is chronic pulmonary hypertension, and how do we evaluate it?*) to reflect current medical terminology for this disorder. We explain the nature of the disorder and our documentation requirements under proposed 3.09.

Section 3.00H

We propose to redesignate and revise current 3.00H (*Sleep-related breathing disorders*) to proposed 3.00Q (*What are sleep-related breathing disorders, and how do we evaluate them?*). Since we propose to remove current 3.10 (*Sleep-related breathing disorders*), we would further explain the nature of sleep-related breathing disorders and their complications, including how we evaluate those complications under the affected body system(s). We also state that we would not purchase a polysomnography test to evaluate a sleep-related breathing disorder.

Section 3.00I

We propose to redesignate and revise current 3.00I (*Effects of obesity*) to proposed 3.00P (*How do we consider the effects of obesity when we evaluate your respiratory disorder?*). We also propose minor editorial revisions in this section.

Section 3.00N

We propose to add 3.00N (*How do we evaluate lung transplantation?*) to explain how we would evaluate a respiratory disorder after a person has received a lung transplant. Under current 3.11, we consider a person who has received a lung transplant to be disabled for 1 year after the date of transplantation. We propose to extend that time to 3 years. We base this proposal on a recommendation we received at our policy conference and on our program experience. The revision would recognize that, although most lung transplant recipients do well within 1 year of transplantation, nearly all deteriorate after 1 year. We also explain that lung transplant patients generally have impairments that meet our definition of disability before they get their transplants. This section would clarify that we may decide that a lung transplant recipient's disability began before the impairment met proposed 3.11. We would determine the onset of disability based on the facts of the case.

What changes are we proposing to the respiratory disorders listings for adults?

The following chart provides a comparison of the current adult listings and the proposed listings.

Current	Proposed
3.02 *Chronic pulmonary insufficiency*	3.02 *Chronic respiratory disorders*
3.03 *Asthma*	3.03 *Asthma*
3.04 *Cystic fibrosis*	3.04 *Cystic fibrosis*
3.05 [Reserved]	3.05 [Reserved]
3.06 *Pneumoconiosis*	3.06 [Reserved] Would be evaluated under proposed 3.02
3.07 *Bronchiectasis*	3.07 *Bronchiectasis*
3.08 *Mycobacterial, mycotic, and other chronic persistent infections of the lung.*	3.08 [Reserved] Would be evaluated under proposed 3.02
3.09 *Cor pulmonale secondary to chronic pulmonary vascular hypertension.*	3.09 *Chronic pulmonary hypertension due to any cause*
3.10 *Sleep-related breathing disorders*	3.10 [Reserved] Would be evaluated under a listing in the affected body system
3.11 *Lung transplant*	3.11 *Lung transplantation* 3.12 [Reserved] 3.13 [Reserved] 3.14 *Respiratory failure*

We are proposing to remove current 3.06 (*Pneumoconiosis*), 3.07A (for bronchiectasis that results in pulmonary insufficiency), 3.08 (*Mycobacterial, mycotic, and other chronic persistent infections of the lung*), 3.09B (for cor pulmonale), and 3.10 (*Sleep-related breathing disorders*). These listings simply cross-refer to other listings and do not contain separate medical criteria. We would instead evaluate these disorders under proposed 3.02, another respiratory listing, or another listing in an affected body system. For example, we are including a reference to pneumoconiosis in proposed 3.00A1.

We describe the significant changes to the respiratory listings for adults below, using the headings of the proposed listings.

Listing 3.02, Chronic Respiratory Disorders

We propose to make the following changes to current 3.02, which we use to evaluate chronic respiratory disorders that impair lung function, except for CF:

- Revise the heading of current 3.02, (*Chronic pulmonary insufficiency*), to *Chronic respiratory disorders,* to simplify our terminology. We also propose to clarify that this listing does not apply to people with CF because we would continue to have a separate listing to evaluate that disorder.
- Revise and reorganize current 3.02. Depending on the nature of the disorder, we may use the results of a number of PFTs to assess the severity of a person's respiratory disorder under 3.02. We explain each of these PFTs and our documentation requirements in proposed 3.00D, 3.00E, 3.00F, 3.00G, and 3.00H.

• Add categories for age and gender to the spirometry tables and modify the spirometry values for 3.02A (forced expiratory volume (FEV_1)) and 3.02B (forced vital capacity (FVC)) to recognize the differences in predicted normal values between females and males. We base the tables on reference values from Hankinson, *et al.*,[5] who used data from the Third National Health and Nutrition Examination Survey conducted by the Centers for Disease Control and Prevention (CDC).

• Revise the height categories in the spirometry tables to provide equivalent values for height both in centimeters and in inches.

• Provide separate tables for people age 18 to the attainment of age 20 (proposed tables I–A and II–A) and age 20 and older (proposed tables I–B and II–B) under proposed 3.02A and 3.02B to account for the continuing physical maturation process for such young adults.

• Remove the term ''chronic obstructive pulmonary disease'' from 3.02A and the term ''chronic restrictive ventilatory disease'' from current 3.02B, but retain revised FEV_1 and FVC tables (proposed tables I and II) for evaluating certain chronic respiratory disorders, except CF. A chronic respiratory disorder may be obstructive, restrictive, or a combination of both. The distinction is not important for our adjudicative purposes.

• Add a table (proposed table III) for evaluating chronic respiratory disorders under proposed 3.02C1 using DLCO. We are proposing this change because we believe that we need to provide specific values that account for a person's gender and height, as we do for the spirometry criteria under 3.02A and 3.02B.

• Add a listing (proposed 3.02C4) based on a combination of pulse oximetry and spirometry results. The new listing would reflect technological advancements in the assessment of respiratory disorders that affect gas exchange impairment. We believe that, because of these advancements, we are now able to accept pulse oximetry, subject to the requirements in proposed 3.00H, as an alternative method for the assessment of respiratory disorders. We would also provide separate tables for the necessary spirometry values in proposed 3.02C4b(i) (tables V–A and V–B) and 3.02C4b(ii) (tables VI–A and VI–B).

Listing 3.03, Asthma

We propose to make the following changes to current 3.03:

• Remove current 3.03A because it only cross-refers to current 3.02A.

• Move the requirement for baseline airflow obstruction from current 3.00C to proposed 3.03A and add spirometry criteria to the proposed listing (using the spirometry values in proposed tables V–A and V–B) to quantify the degree of baseline airflow obstruction.

• Use the term ''exacerbations'' in proposed 3.03B, instead of ''attacks,'' the term we use in current 3.03B, because we believe the term ''exacerbations'' provides a clearer and more medically appropriate description of the asthmatic condition.

• Revise the length of hospitalization due to an exacerbation of asthma from at least 24 hours to at least 48 hours, including hours in an emergency department immediately before the hospitalization. We would also require at least 30 days between each hospitalization to be certain that each exacerbation is a separate event. This provision for requiring at least 30 days between events is consistent with the criteria in similar listings in other body systems.

• Require three hospitalizations instead of exacerbations requiring outpatient physician intervention occurring every 2 months or at least six times a year. Based on the advice of medical experts and our program experience, we believe such interventions do not accurately identify people with listing-level impairments.

• Remove the requirement that an exacerbation occur despite following prescribed treatment. We would consider any hospitalization for an exacerbation of asthma lasting at least 48 hours to be despite prescribed treatment, unless we have evidence to the contrary.

• Add a criterion that we would consider a person to be disabled for 1 year from the discharge date of the last hospitalization. Our program experience has shown that people who have experienced the type of exacerbations in proposed 3.03B need a period of 1 year for medical improvement to occur.

Listing 3.04, Cystic Fibrosis

We propose to make the following changes to current 3.04:

• Add categories for age and gender to the spirometry tables and modify the values in proposed 3.04A (FEV_1) to recognize the differences in predicted normal values between females and males.

• Provide separate tables for people age 18 to the attainment of age 20 (proposed table VII–A) and age 20 and older (proposed table VII–B) under proposed 3.04A to account for the continuing physical maturation process for such young adults.

• Require a less severe ventilatory defect for listing-level impairment in proposed 3.04A in recognition of the fact that people with CF are disabled at a comparatively higher level of lung function than others who do not have CF.

• Add criteria for evaluating a chronic impairment of gas exchange to include ABG test values for the evaluation of CF (proposed 3.04B).

• Replace current 3.04B (for episodes of bronchitis, pneumonia, hemoptysis, or respiratory failure) and current 3.04C (for persistent pulmonary infection) with proposed 3.04C, for exacerbations and complications of CF, and revise the criteria for how we consider hospitalizations under this proposed listing. We do not specify a minimum length of hospitalization because hospitalizations for exacerbations and complications of CF are invariably long enough for purposes of our listings. For complications of bronchitis, pneumonia, or hemoptysis (more than blood-streaked sputum), in people with CF, we would no longer consider physician interventions, either as an outpatient or in an emergency department. When these types of complications in CF occur, they are too severe to treat on an outpatient basis. We consider this level of severity more reflective of a listing-level impairment.

• Provide an expanded list of acute and chronic CF complications that, when in specified combinations, reflect a listing-level impairment under proposed 3.04D. We would add the following criteria for acute CF complications: Spontaneous pneumothorax requiring chest tube treatment (proposed 3.04D1), respiratory failure requiring continuous assisted ventilation (proposed 3.04D2), and pulmonary hemorrhage requiring vascular embolization (proposed 3.04D3). We would also add the following criteria for chronic CF complications: Hypoxemia (proposed 3.04D4), weight loss accompanied by certain other requirements for a specified period (proposed 3.04D5), and CF-related diabetes (CFRD, proposed 3.04D6). We may also evaluate any of these complications under proposed 3.04C if they result in hospitalization.

[5] Hankinson, J. L., Odencrantz, J. R., & Fedan, K. B. (1999). Spirometric reference values from a sample of the general U.S. population. *American Journal of Respiratory and Critical Care Medicine, 159*(1), 179–187. We relied on reference values from Hankinson, *et al.*, in modifying all of the spirometric tables referenced in our proposed rules.

Listing 3.07, Bronchiectasis

We propose to revise current 3.07, *Bronchiectasis,* by removing the criterion for outpatient physician intervention in current 3.07B for the same reason we propose to remove the criterion from current 3.03B. We would include the same requirement for hospitalizations due to exacerbations or complications of bronchiectasis as in proposed 3.03B.

Listing 3.09, Chronic Pulmonary Hypertension Due to Any Cause

We propose to rename and revise current 3.09, *Cor pulmonale secondary to chronic pulmonary vascular hypertension,* to *Chronic pulmonary hypertension due to any cause,* to reflect current medical terminology. We propose to remove the criterion for arterial hypoxemia (current 3.09B) because it only cross-refers to 3.02C2, and we are removing all reference listings. We would revise the criteria in current 3.09A for pulmonary mean artery pressure determined by cardiac catheterization to include 40 mm Hg based on a recommendation by the Institute of Medicine in its report, *Cardiovascular Disability—Updating the Social Security Listings.*[6]

We would add criteria in proposed 3.09B for systolic pulmonary artery pressure determined by echocardiogram. We have determined that the criteria we are proposing for echocardiography results would also be acceptable for our purposes, and we see the results of this kind of testing in medical evidence more often than cardiac catheterization. Thus, the proposed listing would help us to adjudicate some cases more quickly while still maintaining the accuracy of our adjudications.

Listing 3.11, Lung Transplantation

We propose to rename and revise current 3.11 to be consistent with similar listings in other body systems. For reasons we have already explained, we also propose to extend the period for which the impairment would meet the listing from 1 year to 3 years. After that, we will evaluate the residual impairment(s) a person has to determine if he or she is still disabled. This provision for evaluating the residual impairment(s) is the same as in current 3.11 and is consistent with the criteria in similar listings in other body systems.

[6] Institute of Medicine. (2010). Cardiovascular disability: Updating the Social Security listings. Washington, DC: The National Academies Press.

Listing 3.14, Respiratory Failure

We propose to add 3.14, *Respiratory failure,* to provide criteria that recognize the medical severity of respiratory disorders that lead to two or more episodes of respiratory failure requiring continuous assisted ventilation for a specified period within a 12-month period.

What changes are we proposing to the introductory text of the respiratory disorders listings for children?

The same basic rules for evaluating respiratory disorders in adults also apply to children. Except for minor editorial changes to make the text specific to children, we have repeated much of the introductory text of proposed 3.00 in the introductory text of proposed 103.00, although we provide fewer sections because we provide fewer childhood listings. Since we have already described these proposed rules under the explanation of proposed 3.00, we describe here only sections of the proposed rules that are unique to children or that require further explanation.

- We would remove the guidance regarding ABGs and pulse oximetry in current section 103.00C because we do not include this testing as a criterion in the proposed childhood listings. However, in the rare case where ABG or pulse oximetry results are in the medical evidence, we would consider these results in determining disability.
- In proposed section 103.00E (*What is spirometry, and what are our requirements for an acceptable test and report?*), we explain that before we purchase spirometry for children, a medical consultant, preferably one experienced in the care of children with respiratory disorders, must review the case record to determine if we need the test. Unlike adults, children do not routinely undergo spirometry, and we recognize that the decision to obtain spirometry for assessing disability in children involves medical expertise.
- We would redesignate and revise current 103.00E (*Bronchopulmonary dysplasia (BPD)*) to proposed 103.00F (*What is CLD, and how do we evaluate it?*). The change would reflect current medical terminology. There have been advances in the treatment and management of chronic lung disease of infancy (CLD), and we no longer believe it is appropriate to find disability in all infants with CLD whose impairments meet the criteria of current 103.02E at birth or shortly after birth. Within the first 6 months of life, most infants with CLD improve and are successfully weaned from assisted ventilation and oxygen supplementation. The proposed rule provides that, if an infant with CLD receives oxygen supplementation, we would not evaluate the CLD under proposed 103.02C until he or she has attained age 6 months. If the child was born prematurely, we would use a corrected chronological age. The infant would need to be on oxygen supplementation then or afterwards to have CLD that meets this proposed listing. We also provide that we may make a fully favorable determination before age 6 months under other rules. For a child from birth up to the attainment of age 2, we would evaluate the frequency of the child's CLD exacerbations or related complications that require hospitalization under proposed 103.02E. After the child attains age 2, we would evaluate the CLD under the proposed 103.03 asthma listing.
- We would add guidance in proposed 103.00H (*What is CF, and how do we evaluate it?*) that is the same as in proposed 3.00J. We also indicate in proposed 103.00H7 that we can evaluate CF-related growth failure under 100.00 or 105.00, and CFRD under 109.00 or under another body system affected by the disorder.
- We would add proposed 103.00J (*How do we evaluate growth failure due to any chronic respiratory disorder?*) because we are removing current 103.02E6, 103.02F2, 103.02H, 103.03D, and 103.04E. We explain that we may evaluate growth failure under a growth impairment listing in 100.00 or under 105.00.

What changes are we proposing to the respiratory disorders listings for children?

The proposed childhood respiratory listings are designated 103.02, 103.03, 103.04, 103.11, and 103.14. They have the same headings as their counterparts in the proposed adult listings. Some of the criteria we propose for children are the same as, or based on, the current childhood respiratory criteria. For example, proposed 103.02D includes the same rule for children under age 3 who have tracheostomies as in current 103.02D, but also includes a new rule for children age 3 and older.

We are not proposing childhood rules to correspond to proposed adult listings 3.07 (for bronchiectasis) and 3.09 (for chronic pulmonary hypertension due to any cause). Bronchiectasis in children is not a distinct disorder as it is in adults, but is associated with CF, which we would evaluate under 103.04. Chronic pulmonary hypertension is unusual in children, but when it does occur, we can evaluate it under the adult listings

or under 104.02 for chronic heart failure.

Listing 103.02, Chronic Respiratory Disorders

We propose to make the following changes to current 103.02:

- Revise the heading of current 103.02, *Chronic pulmonary insufficiency,* to *Chronic respiratory disorders,* to parallel what we proposed in 3.02 for adults because we apply the same principles to children as we do for adults.
- Add categories for age and gender to the spirometry tables for children age 13 to the attainment of age 18 and modify the spirometry tables in 103.02A and 103.02B to recognize the differences in predicted normal values between females and males that start at puberty. For children age 6 to the attainment of age 13, we propose to add spirometry values without a distinction for gender, as prepubertal females and males have similar normal spirometry values. We do not include values for children under age 6 in our proposed tables because we do not expect those children to have undergone spirometric testing, and predicted normal values have not been established for this age group.
- Provide FEV_1 and FVC values for females and males age 13 to the attainment of age 18.
- Increase the number of height categories in the spirometry tables in 103.02A and 103.02B to provide better differentiation by height for listing-level impairments, and provide equivalent values for height both in centimeters and in inches.
- Remove current 103.02C1 (the frequent need for ''mechanical ventilation'') because we are proposing 103.14 for respiratory failure requiring continuous assisted ventilation and defining what we mean by how frequently such failure must occur under the listing.
- Revise the criterion for oxygen supplementation in current 103.02C2, and specify in proposed 103.02C the amount and duration of oxygen supplementation that is listing-level for children.
- Replace current 103.02E with the same requirement for three hospitalizations in a 12-month period as in other proposed listings. We would remove current 103.02E1 through 103.02E4 because these criteria are out of date. Due to advances in pediatric therapy, the clinical and radiographic findings and the bronchodilator and diuretic therapies in the current listing no longer reflect listing-level severity for CLD.
- Remove current 103.02E5 because we would evaluate the need for supplemental oxygen under proposed 103.02C.
- Remove current 103.02E6, which refers to involuntary weight loss or failure to gain weight at an appropriate rate, because we would evaluate growth failure due to any chronic respiratory disorder (not just CLD) under a growth impairment listing in 100.00 or under 105.00. We also provide that we would consider a child whose impairment meets 103.02E under a disability for 1 year from the discharge date of the last hospitalization or until the attainment of age 2, whichever is later, after which we would evaluate the impairment(s) under 103.03 or as otherwise appropriate. This is because CLD exacerbations after age 2 are clinically similar to asthmatic exacerbations, and medical treatment is the same as for asthma.
- Remove current 103.02F because we would evaluate hospitalizations due to a chronic respiratory disorder under proposed 103.02E and growth failure due to any chronic respiratory disorder under a growth listing in 100.00 or under 105.00.
- Remove current 103.02G, for chronic hypoventilation or chronic cor pulmonale. Chronic hypoventilation of the magnitude in current 103.02G (elevated P_aCO_2) is likely to be treated as respiratory failure, which we would evaluate under proposed 103.14, *Respiratory failure.* For chronic cor pulmonale, we only cross-refer to current 104.02, and we are removing all reference listings.
- Remove current 103.02H, which is a reference listing to 100.00. We would evaluate growth failure under a growth impairment listing in 100.00 or under 105.00.

Listing 103.03, Asthma

We propose to make the following changes to current 103.03:

- Provide the same listing criteria as in proposed 3.03B for adults. Current 103.03A is based on spirometry, and physicians rarely obtain spirometry for children with asthma because these children often have normal spirometry between asthma exacerbations. However, in the rare case where spirometry results are in the medical evidence, we would consider these results in determining disability.
- Remove current 103.03C because it is out of date. Persistent low-grade wheezing, nocturnal use of bronchodilators, and short-course steroids (current 103.03C) are no longer reliable indicators of listing-level severity.
- Remove current 103.03D because it only cross-refers to 100.00.

Listing 103.04, Cystic Fibrosis

We propose to make the following changes to current 103.04:

- Add categories for age and gender to the spirometry tables for children age 13 to the attainment of age 18 and modify the spirometry tables in 103.04A to recognize the differences in predicted normal values between females and males starting at puberty. For children age 6 to the attainment of age 13, we would add spirometry values without a distinction for gender because prepubertal females and males have similar normal spirometry values.
- Revise and reorganize current 103.04B to clarify that the criteria in proposed 103.04B apply only to children under age 6 (that is, children who cannot have pulmonary function testing). We would require findings of abnormalities on imaging in every case because imaging is essential for identifying such abnormalities. We would also revise current 103.04B1 into two separate criteria for clarity and remove the criterion for cyanosis, which we would evaluate under proposed 103.04C.
- Add criteria for hypoxemia documented by a specified level of continuous oxygen supplementation in proposed 103.04C to parallel what we propose in 103.02C for chronic respiratory disorders due to any cause except CF.
- Remove current 103.04E for growth impairment (a reference listing to 100.00), and replace it with proposed 103.04E5 for weight loss in combination with another CF complication. We agreed with CF experts at our policy conference who told us that the decision to initiate and continue supplemental enteral or parenteral nutrition indicates a serious worsening of CF and in combination with another CF complication represents a listing-level impairment. We may also evaluate growth failure under a growth impairment listing in 100.00 or under 105.00.

Other Change

We also propose to remove the first example of functional equivalence from 20 CFR 416.926a(m), which is for a documented need for major organ transplant. We no longer need this example because our rules now include specific listings for the major organs that can be transplanted.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

Under the Act, we have full power and authority to make rules and regulations and to establish necessary and appropriate procedures to carry out such provisions. Sections 205(a), 702(a)(5), and 1631(d)(1).

How long would these proposed rules be effective?

If we publish these proposed rules as final rules, they will remain in effect for 5 years after the date they become effective, unless we extend them, or revise and issue them again.

Clarity of These Proposed Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, *e.g.,* grouping and order of sections, use of headings, paragraphing?

When will we start to use these rules?

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish final rules, we will include a summary of those relevant comments we received along with responses and an explanation of how we will apply the new rules.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

Regulatory Flexibility Act

We certify that these proposed rules would not have a significant economic impact on a substantial number of small entities because they affect individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

These proposed rules do not create any new or affect any existing collections and do not require OMB approval under the Paperwork Reduction Act.

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We consulted the following references when we developed these proposed rules:

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In addition, the American Thoracic Society (ATS) (*www.thoracic.org*) and the European Respiratory Society (ERS) (*dev.ersnet.org*) published the following joint statements:

—(2004). Standards for the diagnosis and treatment of patients with COPD: A summary of the ATS/ERS position paper. *European Respiratory Journal, 23,* 932–946. doi:10.1183/09031936.04.00014304.

—(2005). General considerations for lung function testing. *European Respiratory Journal, 26,* 153–161. doi:10.1183/09031936.05.00034505.

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—(2005). Standardisation of the single-breath determination of carbon monoxide uptake in the lung. *European Respiratory Journal, 26,* 720–735. doi:10.1183/09031936.05.00034905.

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We will make these references available to you for inspection if you are interested in reading them. Please make arrangements with the contact person shown in this preamble if you would like to review any reference materials.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income).

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: January 25, 2013.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend 20 CFR part 404 subpart P and part 416 subpart I as set forth below:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising item 4 of the introductory text before part A of appendix 1 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

4. Respiratory Disorders (3.00 and 103.00): [DATE 5 YEARS FROM THE EFFECTIVE DATE OF THE FINAL RULES].

* * * * *

■ 3. Amend part A of appendix 1 to subpart P of part 404 by revising the body system name for section 3.00 in the table of contents to read as follows:

Part A

* * * * *

3.00 Respiratory Disorders.

* * * * *

■ 4. Revise section 3.00 in part A of appendix 1 to subpart P of part 404 to read as follows:

* * * * *

3.00 RESPIRATORY DISORDERS

A. *What disorders do we evaluate in this body system?*

1. We evaluate respiratory disorders that result in obstruction (difficulty moving air out of the lungs) or restriction (difficulty moving air into the lungs), or that interfere with diffusion (gas exchange) across cell membranes in the lungs. Examples of such disorders and the listings we use to evaluate them include chronic obstructive pulmonary disease (primarily, chronic bronchitis and emphysema) (3.02), pulmonary fibrosis and pneumoconiosis (3.02), asthma (3.02 and 3.03), cystic fibrosis (3.04), and bronchiectasis (3.02 and 3.07). We also use listings in this body system to evaluate recurrent episodes of respiratory failure (3.04D2 and 3.14), chronic pulmonary hypertension due to any cause (3.09), and lung transplantation (3.11).

2. We evaluate cancers affecting the respiratory system under the malignant neoplastic diseases listings in 13.00. We evaluate neuromuscular disorders affecting the respiratory system under the neurological listings in 11.00 or under the immune system disorders listings in 14.00.

B. *What are common signs and symptoms of respiratory disorders?* Common signs and symptoms of respiratory disorders are shortness of breath, coughing, wheezing, sputum production, hemoptysis (coughing up blood from the respiratory tract), and chest pain.

C. *What abbreviations do we use in this body system?*

1. *ABG* means arterial blood gas.
2. *BTPS* means body temperature and ambient pressure, saturated with water vapor.
3. *CF* means cystic fibrosis.
4. *CFRD* means CF-related diabetes.
5. *CO* means carbon monoxide.
6. *COPD* means chronic obstructive pulmonary disease.
7. *DLCO* means diffusing capacity of the lungs for carbon monoxide.
8. FEV_1 means forced expiratory volume in the first second of a forced expiratory maneuver.
9. *FVC* means forced vital capacity.
10. *L* means liter.
11. *mL CO (STPD)/min/mmHg* means milliliters of carbon monoxide in standard temperature and pressure, dry, per minute, per millimeters of mercury.
12. P_aO_2 means arterial blood partial pressure of oxygen.
13. P_aCO_2 means arterial blood partial pressure of carbon dioxide.
14. S_pO_2 means percentage of oxygen saturation of blood hemoglobin, as measured by pulse oximetry.
15. *6MWT* means six-minute walk test, which is a standardized test of sub-maximal exercise ability in people with heart and respiratory disorders.
16. *VI* means volume of inhaled gas.

D. *What documentation do we need to evaluate your respiratory disorder?*

1. We need *medical evidence* to assess the effects of your respiratory disorder. Medical evidence should include your medical history, physical examination findings, the results of imaging (see 3.00D2), pulmonary function tests (see 3.00D3), other relevant laboratory tests, and descriptions of any prescribed treatment and your response to it. If you use supplemental oxygen, we still need medical evidence to establish the severity of your respiratory disorder. We may not need all of this information depending upon your particular respiratory disorder and its effects on you.

2. *Imaging* refers to medical imaging techniques, such as x-ray, computerized tomography, and echocardiography. The imaging must be consistent with the prevailing state of medical knowledge and clinical practice as the proper technique to support the evaluation of the disorder.

3. *Pulmonary function tests* include *spirometry* (which measures ventilation of the lungs), *DLCO* tests (which measures gas diffusion in the lungs), *ABG* tests (which measure dissolved oxygen and carbon dioxide in the arterial blood), and *pulse oximetry* (which measures oxygen saturation of hemoglobin in the blood). Pulmonary function tests must be conducted in accordance with the most recently published standards of the American Thoracic Society (ATS).

E. *What is spirometry, and what are our requirements for an acceptable test and report?*

1. Spirometry measures how well you move air into and out of your lungs. In accordance with ATS testing standards, spirometry involves at least three forced expiratory maneuvers. A forced expiratory maneuver is a maximum inhalation followed by a forced maximum exhalation, and measures exhaled volumes of air over time. The volume of air you exhale in the first second of the forced expiratory maneuver is the FEV_1. The total volume of air that you exhale during the entire forced expiratory maneuver is the FVC. We use your highest FEV_1 value to evaluate your respiratory disorder under 3.02A, 3.02C4b(i), 3.03A, and 3.04A. We use your highest FVC value to evaluate your respiratory disorder under 3.02B and 3.02C4b(ii).

2. We have the following requirements for spirometry under these listings:

a. You must be medically stable at the time of the test. Examples of when we would not

consider you to be medically stable include when you are:

(i) Within 2 weeks of a change in your prescribed respiratory medication.

(ii) Experiencing, or within 30 days of completion of treatment for, a lower respiratory tract infection.

(iii) Experiencing, or within 30 days of completion of treatment for, an acute exacerbation (temporary worsening) of a chronic respiratory disorder. Chronic wheezing by itself does not indicate that you are not medically stable.

(iv) Hospitalized for, or within 30 days of a hospital discharge for, an acute myocardial infarction (heart attack).

b. During testing, if your FEV_1 is less than 70 percent of your predicted normal value, we require repeat spirometry after inhalation of a bronchodilator to evaluate your respiratory disorder under these listings, unless it is medically contraindicated. If you used a bronchodilator before the test and your FEV_1 is less than 70 percent of your predicted normal value, we still require a post-bronchodilator test unless the supervising physician determines that it is not safe for you to take a bronchodilator again. If you do not have post-bronchodilator spirometry, the test report must explain why. We can use the results of spirometry administered without bronchodilators when the use of bronchodilators is contraindicated.

c. We use the highest of at least three FEV_1 values and the highest of at least three FVC values obtained during the same test session, regardless of whether the highest FEV_1 value and the highest FVC value are from the same forced expiratory maneuver or different forced expiratory maneuvers. If the results of your spirometry include only one FEV_1 value and one FVC value, we will presume each reported value is the highest value from the test session, unless we have evidence to the contrary and subject to the post-bronchodilator requirements in 3.00E2b.

3. The spirometry report must include the following information:

a. The date of the test and your name, age or date of birth, gender, and height without shoes. (We will assume that your recorded height on the date of the test is without shoes, unless we have evidence to the contrary.) If your spine is abnormally curved (for example, you have kyphoscoliosis), we will substitute the longest distance between your outstretched fingertips with your arms abducted 90 degrees in place of your height when this measurement is greater than your standing height without shoes.

b. Any factors, if applicable, that can affect the interpretation of the test results (for example, your lack of cooperation or effort in doing the test).

4. If we purchase spirometry, the medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

F. *What is a DLCO test, and what are our requirements for an acceptable test and report?*

1. A DLCO test measures the gas exchange across cell membranes in your lungs. It measures how well CO diffuses from the alveoli (air sacs) of your lungs into your blood. DLCO may be severely reduced in some disorders, such as interstitial lung disease (for example, idiopathic pulmonary fibrosis, asbestosis, and sarcoidosis) and COPD (particularly emphysema), even when the results of spirometry are not significantly reduced. We use your unadjusted measured DLCO (that is, uncorrected for hemoglobin concentration) reported in mL CO (STPD)/min/mmHg to evaluate your respiratory disorder under 3.02C1.

2. We have the following requirements for DLCO tests under these listings:

a. You must be medically stable at the time of the test. See 3.00E2a.

b. The test must use the single-breath technique.

(i) The VI during the DLCO maneuver must be at least 85 percent of your current FVC, and your time of inhalation must be less than 4 seconds. See 3.00E for our rules for programmatically acceptable spirometry. If you do not have an FVC measurement on the same day as the DLCO test, we may use a programmatically acceptable FVC administered no more than 90 days before the DLCO test.

(ii) Your breath-hold time must be between 8 and 12 seconds.

(iii) Your total exhalation time must be less than or equal to 4 seconds, with a sample collection time of less than 3 seconds. If your FVC is at least 2.0 L, the washout volume must be between 0.75 L and 1.0 L. If your FVC is less than 2.0 L, the washout volume must be at least 0.5 L.

3. The DLCO test report must include the following information:

a. The date of the test and your name, age or date of birth, gender, and height without shoes. (We will assume that your recorded height on the date of the test is without shoes, unless we have evidence to the contrary.) If your spine is abnormally curved (for example, you have kyphoscoliosis), we will substitute the longest distance between your outstretched fingertips with your arms abducted 90 degrees in place of your height when this measurement is greater than your standing height without shoes.

b. Any factors, if applicable, that can affect the interpretation of the test results (for example, your lack of cooperation or effort in doing the test).

c. Tracings of your VI, breath-hold maneuver, and volume of exhaled gas showing your name and the date of the test for each DLCO maneuver.

d. The average of at least two acceptable DLCO measurements, as defined above (see 3.00F2), within 3 mL CO (STPD)/min/mmHg of each other or within 10 percent of the highest value.

4. We may need to purchase a DLCO test to determine whether your disorder meets 3.02C1 when we have evidence showing that you have a chronic respiratory disorder that could result in impaired gas exchange, unless we can make a fully favorably determination or decision on another basis. Since the DLCO calculation requires a current FVC measurement, we may also purchase spirometry at the same time as the DLCO test, even if we already have programmatically acceptable spirometry.

5. Before we purchase a DLCO test, a medical consultant (see §§ 404.1616 and 416.1016 of this chapter), preferably one with experience in the care of people with respiratory disorders, must review your case record to determine if we need the test. The medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

G. *What is an ABG test, and what are our requirements for an acceptable test and report?*

1. *General.* An ABG test measures P_aO_2, P_aCO_2, and the concentration of hydrogen ions in your arterial blood. We use a resting ABG measurement to evaluate your respiratory disorder under 3.02C2 and 3.04B1. We use an exercise ABG measurement to evaluate your respiratory disorder under 3.02C3 and 3.04B2.

2. *Resting ABG tests.*

a. We have the following requirements for resting ABG tests under these listings:

(i) You must be medically stable at the time of the test. See 3.00E2a.

(ii) The test must be administered while you are breathing room air; that is, without oxygen supplementation.

b. The resting ABG test report must include the following information:

(i) Your name, the date of the test, and either the altitude or both the city and State of the test site.

(ii) The P_aO_2 and P_aCO_2 values.

c. We may need to purchase resting ABG tests to determine whether your disorder meets 3.02C2 or 3.04B1 when we have evidence showing that you have a chronic respiratory disorder that could result in impaired gas exchange, unless we can make a fully favorably determination or decision on another basis. If your case record contains a report of one programmatically acceptable resting ABG test with the values in the appropriate table (Table IV–A, IV–B, or IV–C), we may purchase a second resting ABG test to determine if your disorder meets 3.02C2 or 3.04B1, even if you have not had programmatically acceptable spirometry or a DLCO test.

d. Before we purchase a resting ABG test, a medical consultant (see §§ 404.1616 and 416.1016 of this chapter), preferably one with experience in the care of people with respiratory disorders, must review your case record to determine if we need the test. The medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

3. *Exercise ABG tests.*

a. We will not purchase an exercise ABG test. We have the following requirements for exercise ABG tests under these listings:

(i) You must have done the exercise under steady state conditions while breathing room air. If you were tested on a treadmill or bicycle ergometer, you generally must have exercised for at least 4 minutes at a grade and speed providing oxygen (O_2) consumption of approximately 17.5 ml/kg/min (5 metabolic equivalents (METs)).

(ii) We may use a test in which you have not exercised for at least 4 minutes. If you were unable to complete at least 4 minutes of steady state exercise, we need a statement by the person administering the test about

whether the results are a valid indication of your respiratory status. For example, this statement may include information about your cooperation or effort in doing the test and whether you were limited in completing the test because of your respiratory disorder or another impairment.

b. The exercise ABG test report must include the following information:

(i) Your name, the date of the test, and either the altitude or both the city and State of the test site.

(ii) The P_aO_2 and P_aCO_2 values.

H. *What is pulse oximetry, and what are our requirements for an acceptable test and report?*

1. Pulse oximetry measures the S_pO_2 of blood hemoglobin. We need pulse oximetry and spirometry to evaluate your respiratory disorder under 3.02C4 and only pulse oximetry to evaluate your CF under 3.04D4.

2. We have the following requirements for pulse oximetry under these listings:

a. You must be medically stable at the time of the test. See 3.00E2a.

b. Your pulse oximetry measurement must be recorded while you are breathing room air; that is, without oxygen supplementation.

c. Your pulse oximetry measurement (while at rest and, if needed, after a 6MWT) must be stable and show a concurrent, acceptable pulse wave, as described in 3.00H3b. By ''stable,'' we mean that the range of pulse oximetry values (that is, lowest to highest) during any 15-second interval cannot exceed 2 percentage points. For example: (1) The measurement is stable if the lowest pulse oximetry value during a 15-second interval is 87 percent and the highest value is 89 percent—a range of 2 percentage points. (2) The measurement is not stable if the lowest value is 86 percent and the highest value is 89 percent—a range of 3 percentage points.

d. If you have had two tests (that is, at rest and after a 6MWT), we will use the values from the test with the lower oximetry values.

3. The pulse oximetry report must include the following information:

a. Your name, the date of the test, and either the altitude or both the city and State of the test site.

b. A graphical printout showing your pulse oximetry values concurrently with your pulse. An acceptable pulse wave is one that shows the characteristic pulse wave; that is, sawtooth-shaped with a rapid systolic upstroke (nearly vertical) followed by a slower diastolic downstroke (angled downward).

4. We may purchase resting pulse oximetry to determine whether your disorder meets 3.02C4 or 3.04D4 when we have evidence showing that you have a chronic respiratory disorder that could result in impaired gas exchange, unless we can make a fully favorably determination or decision on another basis. We may purchase pulse oximetry after a 6MWT if your resting pulse oximetry measurements are greater than the values in 3.02C4 or 3.04D4.

5. Before we purchase pulse oximetry, a medical consultant (see §§ 404.1616 and 416.1016 of this chapter), preferably one with experience in the care of people with respiratory disorders, must review your case record to determine if we need the test. The medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

I. *What is asthma, and how do we evaluate it?*

1. *Asthma* is a chronic inflammatory disorder of the lung airways that we evaluate under 3.02 or 3.03.

2. Under 3.03:

a. We need evidence showing that you have documented baseline airflow obstruction (see Table V in 3.02) while you are medically stable.

b. The phrase ''consider under a disability for 1 year'' in 3.03B explains how long your asthma can meet the requirements of the listing. It does not refer to the date on which your disability began, only to the date on which we must reevaluate whether your asthma continues to meet a listing or is otherwise disabling.

c. We will determine the onset of your disability based on the facts of your case, but it will be no later than the admission date of your first of three hospitalizations that satisfy the criteria of 3.03B.

J. *What is CF, and how do we evaluate it?*

1. *CF,* which we evaluate under 3.04, is a genetic disorder that results in abnormal functioning of the cells lining the lung airways and of the cells in other body systems. We need the evidence described in 3.00J2, 3.00J3, or 3.00J4 to establish that you have CF.

2. A report signed by a physician showing both a. and b.:

a. One of the following:

(i) A positive newborn screen for CF; or

(ii) A history of CF in a sibling; or

(iii) Documentation of at least one specific CF phenotype or clinical criterion (for example, chronic sino-pulmonary disease with persistent colonization or infections with typical CF pathogens, pancreatic insufficiency, or salt-loss syndromes); *and*

b. One of the following definitive laboratory tests:

(i) An elevated sweat chloride concentration equal to or greater than 60 millimoles per L; or

(ii) The identification of two CF gene mutations affecting the cystic fibrosis transmembrane conductance regulator (CFTR); or

(iii) Characteristic abnormalities in ion transport across the nasal epithelium.

3. When we have the report described in 3.00J2 but it is not signed by a physician, we also need a report from a physician stating that you have CF.

4. When we do not have the report described in 3.00J2, we need a report from a physician that is persuasive that a positive diagnosis was confirmed by appropriate laboratory analysis or another method. To be persuasive, this report must state that you had the appropriate definitive laboratory study or studies for diagnosing CF and provide the results or explain how your diagnosis was established by other methods consistent with the prevailing state of medical knowledge and clinical practice.

5. In 3.04C, examples of exacerbations or complications of CF that may result in hospitalizations include increased cough and sputum production, hemoptysis, increased shortness of breath, increased fatigue, and reduction in pulmonary function.

6. For 3.04D, you must have at least two complications from the list of complications in 3.04D1 through 3.04D6 occurring within a 12-month period. You may have two of the same complications or two different ones.

a. If you have two of the acute complications we describe in 3.04D1 (spontaneous pneumothorax), 3.04D2 (respiratory failure), and 3.04D3 (pulmonary hemorrhage), there must be at least 30 days between the two complications; for example, between an episode of spontaneous pneumothorax and an episode of respiratory failure or between two episodes of respiratory failure.

b. The chronic complications we describe in 3.04D4 through 3.04D6 can occur at the same time as any of the other complications in 3.04D. For example, your CF meets 3.04D if you have the weight loss we describe in 3.04D5 and the CFRD we describe in 3.04D6 even if they do not occur 30 days apart. Your CF also meets 3.04D if you have the weight loss we describe in 3.04D5 and the spontaneous pneumothorax we describe in 3.04D1 even if the spontaneous pneumothorax occurs during the same 90-day period we describe in 3.04D5.

c. Your CF also meets 3.04D if you have two episodes of one of the chronic complications in 3.04D4 through 3.04D6.

7. CF may also affect the digestive and endocrine body systems. We evaluate nonpulmonary CF-related digestive disorders that are not covered by 3.04D under 5.00. We evaluate CFRD under 3.04D or under a body system affected by the diabetes.

K. *What is bronchiectasis, and how do we evaluate it?* Bronchiectasis is a chronic respiratory disorder that is characterized by abnormal and irreversible dilatation of the bronchi (airways below the trachea), which may be associated with the accumulation of mucus, bacterial infections, and eventual airway scarring. We require imaging (see 3.00D2) to document this disorder. We evaluate your bronchiectasis under 3.02, or under 3.07 if you are having acute exacerbations.

L. *What is chronic pulmonary hypertension, and how do we evaluate it?*

1. *Chronic pulmonary hypertension* is an increase in the pressure of the blood vessels of the lungs. We evaluate chronic pulmonary hypertension due to any cause under 3.09.

2. We will not purchase cardiac catheterization. We may purchase echocardiography to determine if your impairment meets 3.09B. Before we purchase an echocardiogram, a medical consultant (see §§ 404.1616 and 416.1016 of this chapter), preferably one with experience in the care of people with respiratory disorders, must review your case record to determine if we need the test. The medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

M. *How do we evaluate lung transplantation?* If you receive a lung transplant (or a lung transplant simultaneous

with other organs, such as the heart), we will consider you to be disabled under 3.11 for 3 years from the date of the transplant. After that, we will evaluate your residual impairment(s) by considering the adequacy of your post-transplant function, the frequency and severity of any rejection episodes you have, complications in other body systems, and adverse treatment effects. People who receive organ transplants generally have impairments that meet our definition of disability before they undergo transplantation. We will determine the onset of your disability based on the facts of your case.

N. *What is respiratory failure, and how do we evaluate it?* Respiratory failure is the inability of the lungs to perform their basic function of gas exchange. We use 3.04D2 if you have CF-related respiratory failure. We use 3.14 if you have respiratory failure due to any other respiratory disorder. Respiratory therapy that only increases air pressure in your throat, such as continuous positive airway pressure (CPAP) or bi-level positive airway pressure (BiPAP), does not meet the criterion for continuous assisted (mechanical) ventilation in 3.04D2 or 3.14.

O. *How do we evaluate episodic respiratory disorders?* Some respiratory disorders listings require a specific number of events within a 12-month period. See 3.02C2, 3.03B, 3.04B1, 3.04C, 3.04D, 3.07, and 3.14. When we use such criteria, the 12-month period must occur within the period we are considering in connection with your application or continuing disability review.

P. *How do we consider the effects of obesity when we evaluate your respiratory disorder?* Obesity is a medically determinable impairment that is often associated with disorders of the respiratory system. Obesity makes it harder for the chest and lungs to expand. This means that the respiratory system must work harder to provide needed oxygen. This in turn makes the heart work harder to pump blood to carry oxygen to the body. Since the body is working harder at rest, its ability to perform additional work is less than would otherwise be expected. Thus, the combined effects of obesity with respiratory impairments can be greater than the effects of each of the impairments considered separately. We must consider any additional and cumulative effects of your obesity when we determine whether you have a severe respiratory impairment, a listing-level respiratory impairment, a combination of impairments that medically equals the severity of a listed impairment, and when we assess your residual functional capacity.

Q. *What are sleep-related breathing disorders, and how do we evaluate them?*

1. *Sleep-related breathing disorders* (for example, sleep apnea) are characterized by transient episodes of interrupted breathing during sleep that disrupt normal sleep patterns. Prolonged episodes can result in disorders such as hypoxemia (low blood oxygen) and pulmonary vasoconstriction (restricted blood flow in pulmonary blood vessels). Over time, these disorders may lead to chronic pulmonary hypertension. We will not purchase polysomnography (sleep study).

2. We evaluate the complications of sleep-related breathing disorders under the affected body system(s). For example, we evaluate chronic pulmonary hypertension due to any cause under 3.09; chronic heart failure under 4.02; and disturbances in mood, cognition, and behavior under 12.02 or another appropriate mental disorders listing.

R. *How do we evaluate mycobacterial, mycotic, and other chronic infections of the lungs?* We evaluate chronic infections of the lungs that result in limitations in your respiratory function under 3.02.

S. *How do we evaluate respiratory disorders that do not meet one of these listings?*

1. These listings are only examples of common respiratory disorders that we consider severe enough to prevent you from doing any gainful activity. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system. For example, if your CF has resulted in chronic pancreatic or hepatobiliary disease, we will evaluate your impairment under the digestive system listings in 5.00.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. See §§ 404.1526 and 416.926 of this chapter. Respiratory disorders may be associated with disorders in other body systems, and we consider the combined effects of multiple impairments when we determine whether they medically equal a listing. If your impairment(s) does not meet or medically equal a listing, you may or may not have the residual functional capacity to engage in substantial gainful activity. We proceed to the fourth step and, if necessary, the fifth step of the sequential evaluation process in §§ 404.1520 and 416.920 of this chapter. We use the rules in §§ 404.1594 and 416.994 of this chapter, as appropriate, when we decide whether you continue to be disabled.

3.01 Category of Impairments, Respiratory Disorders

3.02 *Chronic respiratory disorders* due to any cause except cystic fibrosis (see 3.04), with:

A. FEV_1 (see 3.00E1) less than or equal to the value in Table I–A or I–B for your age, gender, and height without shoes (see 3.00E3a).

OR

B. FVC (see 3.00E1) less than or equal to the value in Table II–A or II–B for your age, gender, and height without shoes (see 3.00E3a).

OR

C. Chronic impairment of gas exchange with one of the following:

1. Single-breath DLCO test (see 3.00F1) less than or equal to the value in Table III for your gender and height without shoes (see 3.00F3a); or

2. Arterial P_aO_2 and P_aCO_2 (see 3.00G1) measured concurrently while at rest breathing room air (see 3.00G2) less than or equal to the applicable values in Table IV–A, IV–B, or IV–C, twice within a 12-month period and at least 30 days apart; or

3. Arterial P_aO_2 and P_aCO_2 measured concurrently during steady state exercise breathing room air (the level of exercise less than or equal to 17.5 mL O_2 consumption/kg/min) (see 3.00G3) less than or equal to the applicable values in Table IV–A, IV–B, or IV–C; or

4. With both a and b.

a. S_pO_2 measured by pulse oximetry (see 3.00H), either at rest or after a 6MWT, which is:

(i) Less than or equal to 87 percent for test sites less than 3,000 feet above sea level; or

(ii) Less than or equal to 85 percent for test sites from 3,000 through 6,000 feet above sea level; or

(iii) Less than or equal to 83 percent for test sites over 6,000 feet above sea level; *and*

b. One of the following:

(i) FEV_1 (see 3.00E1) less than or equal to the value in Table V–A or V–B for your age, gender, and height without shoes (see 3.00E3a); or

(ii) FVC (see 3.00E1) less than or equal to the value in Table VI–A or VI–B for your age, gender, and height without shoes (see 3.00E3a).

TABLE I—FEV_1 CRITERIA FOR 3.02A

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table I–A*		*Table I–B*	
		Age 18 to attainment of age 20		Age 20 or older	
		Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<153.0	<60.25	1.30	1.40	1.10	1.20
153.0 to <159.0	60.25 to <62.50	1.40	1.50	1.20	1.30
159.0 to <164.0	62.50 to <64.50	1.50	1.60	1.30	1.40
164.0 to <169.0	64.50 to <66.50	1.60	1.70	1.40	1.50
169.0 to <174.0	66.50 to <68.50	1.70	1.80	1.50	1.60

TABLE I—FEV_1 CRITERIA FOR 3.02A—Continued

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table I–A*		*Table I–B*	
		Age 18 to attainment of age 20		Age 20 or older	
		Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
174.0 to <180.0	68.50 to <70.75	1.80	1.90	1.60	1.70
180.0 to <185.0	70.75 to <72.75	1.90	2.00	1.70	1.80
185.0 or more	72.75 or more	2.00	2.10	1.80	1.90

TABLE II—FVC CRITERIA FOR 3.02B

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table II–A*		*Table II–B*	
		Age 18 to attainment of age 20		Age 20 or older	
		Females FVC less than or equal to (L, BTPS)	Males FVC less than or equal to (L, BTPS)	Females FVC less than or equal to (L, BTPS)	Males FVC less than or equal to (L, BTPS)
<153.0	<60.25	1.55	1.65	1.35	1.45
153.0 to <159.0	60.25 to <62.50	1.65	1.75	1.45	1.55
159.0 to <164.0	62.50 to <64.50	1.75	1.85	1.55	1.65
164.0 to <169.0	64.50 to <66.50	1.85	1.95	1.65	1.75
169.0 to <174.0	66.50 to <68.50	1.95	2.05	1.75	1.85
174.0 to <180.0	68.50 to <70.75	2.05	2.15	1.85	1.95
180.0 to <185.0	70.75 to <72.75	2.15	2.25	1.95	2.05
185.0 or more	72.75 or more	2.25	2.35	2.05	2.15

TABLE III—DLCO CRITERIA FOR 3.02C1

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	Females DLCO less than or equal to (mL/min/mmHg)	Males DLCO less than or equal to (mL/min/mmHg)
<153.0	< 60.25	8.0	9.0
153.0 to <159.0	60.25 to <62.50	8.5	9.5
159.0 to <164.0	62.50 to <64.50	9.0	10.0
164.0 to <169.0	64.50 to <66.50	9.5	10.5
169.0 to <174.0	66.50 to <68.50	10.0	11.0
174.0 to <180.0	68.50 to <70.75	10.5	11.5
180.0 to <185.0	70.75 to <72.75	11.0	12.0
185.0 or more	72.75 or more	11.5	12.5

Tables IV–A, IV–B, and IV–C: ABG Criteria for 3.02C2, 3.02C3, and 3.04B

TABLE IV–A

[Applicable at test sites less than 3,000 feet above sea level]

Arterial P_aCO_2 (mm Hg) and	Arterial P_aO_2 less than or equal to (mm Hg)
30 or below	65
31	64
32	63
33	62
34	61
35	60
36	59
37	58
38	57
39	56
40 or above	55

TABLE IV–B

[Applicable at test sites from 3,000 through 6,000 feet above sea level]

Arterial P_aCO_2 (mm Hg) and	Arterial P_aO_2 less than or equal to (mm Hg)
30 or below	60
31	59
32	58
33	57
34	56
35	55
36	54
37	53
38	52
39	51
40 or above	50

TABLE IV–C

[Applicable at test sites over 6,000 feet above sea level]

Arterial P_aCO_2 (mm Hg) and	Arterial P_aO_2 less than or equal to (mm Hg)
30 or below	55
31	54
32	53
33	52
34	51
35	50
36	49
37	48
38	47
39	46
40 or above	45

TABLE V—FEV_1 CRITERIA FOR 3.02C4B(I) AND 3.03A

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table V–A* Age 18 to attainment of age 20		*Table V–B* Age 20 or older	
		Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<153.0	<60.25	1.55	1.65	1.35	1.45
153.0 to <159.0	60.25 to <62.50	1.65	1.75	1.45	1.55
159.0 to <164.0	62.50 to <64.50	1.75	1.85	1.55	1.65
164.0 to <169.0	64.50 to <66.50	1.85	1.95	1.65	1.75
169.0 to <174.0	66.50 to <68.50	1.95	2.05	1.75	1.85
174.0 to <180.0	68.50 to <70.75	2.05	2.15	1.85	1.95
180.0 to <185.0	70.75 to <72.75	2.15	2.25	1.95	2.05
185.0 or more	72.75 or more	2.25	2.35	2.05	2.15

TABLE VI—FVC CRITERIA FOR 3.02C4B(II)

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table VI–A* Age 18 to attainment of age 20		*Table VI–B* Age 20 or older	
		Females FVC less than or equal to (L, BTPS)	Males FVC less than or equal to (L, BTPS)	Females FVC less than or equal to (L, BTPS)	Males FVC less than or equal to (L, BTPS)
<153.0	<60.25	1.90	2.00	1.70	1.80
153.0 to <159.0	60.25 to <62.50	2.00	2.10	1.80	1.90
159.0 to <164.0	62.50 to <64.50	2.10	2.20	1.90	2.00
164.0 to <169.0	64.50 to <66.50	2.20	2.30	2.00	2.10
169.0 to <174.0	66.50 to <68.50	2.30	2.40	2.10	2.20
174.0 to <180.0	68.50 to <70.75	2.40	2.50	2.20	2.30
180.0 to <185.0	70.75 to <72.75	2.50	2.60	2.30	2.40
185.0 or more	72.75 or more	2.60	2.70	2.40	2.50

3.03 *Asthma* (see 3.00I), with both A and B:

A. FEV_1 (see 3.00E1) less than or equal to the value in Table V–A or V–B (under 3.02) for your age, gender, and height without shoes (see 3.00E3a) within the same 12-month period as the hospitalizations in 3.03B.

AND

B. Exacerbations requiring three hospitalizations within a 12-month period and at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization. Consider under a disability for 1 year from the discharge date of the last hospitalization; after that, evaluate the residual impairment(s).

3.04 *Cystic fibrosis* (documented as described in 3.00J), with:

A. FEV_1 (see 3.00E1) less than or equal to the value in Table VII–A or VII–B for your age, gender, and height without shoes (see 3.00E3a).

TABLE VII—FEV_1 CRITERIA FOR 3.04A

Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	*Table VII–A* Age 18 to attainment of age 20		*Table VII–B* Age 20 or older	
		Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<153.0	<60.25	1.55	1.65	1.35	1.45
153.0 to <159.0	60.25 to <62.50	1.65	1.75	1.45	1.55
159.0 to <164.0	62.50 to <64.50	1.75	1.85	1.55	1.65
164.0 to <169.0	64.50 to <66.50	1.85	1.95	1.65	1.75
169.0 to <174.0	66.50 to <68.50	1.95	2.05	1.75	1.85
174.0 to <180.0	68.50 to <70.75	2.05	2.15	1.85	1.95
180.0 to <185.0	70.75 to <72.75	2.15	2.25	1.95	2.05
185.0 or more	72.75 or more	2.25	2.35	2.05	2.15

OR

B. Chronic impairment of gas exchange with one of the following:

1. Arterial P_aO_2 and P_aCO_2 (see 3.00G1) measured concurrently while at rest breathing room air (see 3.00G2) less than or equal to the applicable values in Table IV–A, IV–B, or IV–C (under 3.02), twice within a 12-month period and at least 30 days apart; or

2. Arterial P_aO_2 and P_aCO_2 measured concurrently during steady state exercise breathing room air (see 3.00G3) less than or equal to the applicable values in Table IV–A, IV–B, or IV–C (under 3.02).

OR

C. Exacerbations or complications of CF (see 3.00J5) requiring three hospitalizations of any length within a 12-month period and at least 30 days apart.

OR

D. Any two of the following complications of CF that occur within a 12-month period. There must be at least 30 days between the acute complications in 3.04D1, 3.04D2, and 3.04D3 (see 3.00J6).

1. Spontaneous pneumothorax requiring chest tube treatment.

2. Respiratory failure (see 3.00N) requiring continuous assisted (mechanical) ventilation for at least 48 hours, or for at least 72 hours if postoperatively.

3. Pulmonary hemorrhage requiring vascular embolization to control bleeding.

4. Hypoxemia documented by one S_pO_2 measurement, measured by pulse oximetry (see 3.00H), which is:

a. Less than or equal to 89 percent for test sites less than 3,000 feet above sea level; or

b. Less than or equal to 87 percent for test sites from 3,000 through 6,000 feet above sea level; or

c. Less than or equal to 85 percent for test sites over 6,000 feet above sea level.

5. Weight loss requiring daily supplemental enteral nutrition via a gastrostomy for at least 90 consecutive days or parenteral nutrition via a central venous catheter for at least 90 consecutive days.

6. CFRD requiring daily insulin therapy for at least 90 consecutive days.

3.05 [Reserved]

3.06 [Reserved]

3.07 *Bronchiectasis* (see 3.00K), documented by imaging (see 3.00D2) with exacerbations or complications requiring three hospitalizations within a 12-month period and at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization.

3.08 [Reserved]

3.09 *Chronic pulmonary hypertension due to any cause* (see 3.00L) lasting or expected to last at least 12 months, documented while medically stable (see 3.00E2a) by A or B:

A. Mean pulmonary artery pressure equal to or greater than 40 mm Hg as determined by cardiac catheterization.

OR

B. Systolic pulmonary artery pressure equal to or greater than 65 mm Hg as determined by echocardiogram.

3.10 [Reserved]

3.11 *Lung transplantation* (see 3.00M). Consider under a disability for 3 years from the date of the transplant; after that, evaluate the residual impairment(s).

3.12 [Reserved]

3.13 [Reserved]

3.14 *Respiratory failure* (see 3.00N) resulting from any underlying chronic respiratory disorder except CF, requiring continuous assisted (mechanical) ventilation for at least 48 hours, or for at least 72 hours if postoperatively, and with two episodes within a 12-month period. The episodes must be at least 30 days apart. (For CF, see 3.04D.)

* * * * *

■ 5. Amend part B of appendix 1 to subpart P of part 404 by revising the body system name for section 103.00 in the table of contents to read as follows:

Part B

* * * * *

103.00 Respiratory Disorders.

* * * * *

■ 6. Revise section 103.00 in part B of appendix 1 to subpart P of part 404 to read as follows:

103.00 Respiratory Disorders

A. *What disorders do we evaluate in this body system?*

1. We evaluate respiratory disorders that result in obstruction (difficulty moving air out of the lungs) or restriction (difficulty moving air into the lungs), or that interfere with diffusion (gas exchange) across cell membranes in the lungs. Examples of such disorders and the listings we use to evaluate them include chronic obstructive pulmonary disease (103.02), chronic lung disease of infancy (previously known as bronchopulmonary dysplasia) (103.02C and 103.02E), pulmonary fibrosis (103.02), asthma (103.02 and 103.03), and cystic fibrosis (103.04). We also use listings in this body system to evaluate recurrent episodes of respiratory failure (103.04E2 and 103.14) and lung transplantation (103.11).

2. We evaluate cancers affecting the respiratory system under the malignant neoplastic diseases listings in 113.00. We evaluate neuromuscular disorders affecting the respiratory system under the neurological listings in 111.00 or under the immune system disorders listings in 114.00.

B. *What are common signs and symptoms of respiratory disorders?* Common signs and symptoms of respiratory disorders are shortness of breath, coughing, wheezing, sputum production, hemoptysis (coughing up blood from the respiratory tract), and chest pain.

C. *What abbreviations do we use in this body system?*

1. *BTPS* means body temperature and ambient pressure, saturated with water vapor.

2. *CF* means cystic fibrosis.

3. *CFRD* means CF-related diabetes.

4. *CLD* means chronic lung disease of infancy.

5. *FEV_1* means forced expiratory volume in the first second of a forced expiratory maneuver.

6. *FVC* means forced vital capacity.

7. *L* means liter.

D. *What documentation do we need to evaluate your respiratory disorder?*

1. We need *medical evidence* to assess the effects of your respiratory disorder. Medical evidence should include your medical history, physical examination findings, the results of imaging (see 103.00D2), spirometry if age appropriate (see 103.00E), other relevant laboratory tests, and descriptions of any prescribed treatment and your response to it. We may not need all of this information depending upon your particular respiratory disorder and its effects on you.

2. *Imaging* refers to medical imaging techniques, such as x-ray, computerized tomography, and echocardiography. The imaging must be consistent with the prevailing state of medical knowledge and clinical practice as the proper technique to support the evaluation of the disorder.

3. *Spirometry* must be conducted in accordance with the most recently published standards of the American Thoracic Society (ATS).

E. *What is spirometry, and what are our requirements for an acceptable test and report?*

1. Spirometry measures how well you move air into and out of your lungs. In accordance with ATS testing standards, spirometry involves at least three forced expiratory maneuvers. A forced expiratory maneuver is a maximum inhalation followed by a forced maximum exhalation, and measures exhaled volumes of air over time. The volume of air you exhale in the first second of the forced expiratory maneuver is the FEV_1. The total volume of air that you exhale during the entire forced expiratory maneuver is the FVC. We use your highest FEV_1 value to evaluate your respiratory disorder under 103.02A and 103.04A. We use your highest FVC value to evaluate your respiratory disorder under 103.02B.

2. We have the following requirements for spirometry under these listings:

a. You must be medically stable at the time of the test. Examples of when we would not consider you to be medically stable include when you are:

(i) Within 2 weeks of a change in your prescribed respiratory medication.

(ii) Experiencing, or within 30 days of completion of treatment for, a lower respiratory tract infection.

(iii) Experiencing, or within 30 days of completion of treatment for, an acute exacerbation (temporary worsening) of a chronic respiratory disorder. Chronic wheezing by itself does not indicate that you are not medically stable.

b. During testing, if your FEV_1 is less than 70 percent of your predicted normal value, we require repeat spirometry after inhalation of a bronchodilator to evaluate your respiratory disorder under these listings, unless it is medically contraindicated. If you used a bronchodilator before the test and your FEV_1 is less than 70 percent of your predicted normal value, we still require a post-bronchodilator test unless the supervising physician determines that it is not safe for you to take a bronchodilator again. If you do not have post-bronchodilator

spirometry, the test report must explain why. We can use the results of spirometry administered without bronchodilators when the use of bronchodilators is contraindicated.

c. We use the highest of at least three FEV_1 values and the highest of at least three FVC values obtained during the same test session, regardless of whether the highest FEV_1 value and the highest FVC value are from the same forced expiratory maneuver or different forced expiratory maneuvers. If the results of your spirometry include only one FEV_1 value and one FVC value, we will presume each reported value is the highest value from the test session, unless we have evidence to the contrary and subject to the post-bronchodilator requirements in 103.00E2b.

3. The spirometry report must include the following information:

a. The date of the test and your name, age or date of birth, gender, and height without shoes. (We will assume that your recorded height on the date of the test is without shoes, unless we have evidence to the contrary.) If your spine is abnormally curved (for example, you have kyphoscoliosis), we will substitute the longest distance between your outstretched fingertips with your arms abducted 90 degrees in place of your height when this measurement is greater than your standing height without shoes.

b. Any factors, if applicable, that can affect the interpretation of the test results (for example, your lack of cooperation or effort in doing the test).

4. If you have attained age 6, we may need to purchase spirometry to determine whether your disorder meets a listing, unless we can make a fully favorable determination or decision on another basis. We will not purchase spirometry for children who have not attained age 6 or any other pulmonary function tests for children of any age.

5. Before we purchase spirometry for a child age 6 or older, a medical consultant (see § 416.1016 of this chapter), preferably one with experience in the care of children with respiratory disorders, must review your case record to determine if we need the test. The medical source we designate to administer the test is solely responsible for deciding whether it is safe for you to do the test and for how to administer it.

F. *What is CLD, and how do we evaluate it?*

1. *CLD,* previously known as bronchopulmonary dysplasia, or BPD, is scarring of the immature lung. CLD may develop as a complication of assisted ventilation and oxygen therapy for infants with significant neonatal respiratory problems. Within the first 6 months of life, most infants with CLD are successfully weaned from assisted ventilation, and then weaned from oxygen supplementation. Two listings apply to children under age 2 with CLD: 103.02C and 103.02E.

2. We will evaluate your CLD under 103.02C if you are at least 6 months old and need 24-hour-per-day oxygen supplementation. If you were born prematurely, we use your corrected chronological age. See § 416.924b(b) of this chapter. We will use 103.02C if you were not weaned off oxygen supplementation by the time you were 6 months old, or were weaned off oxygen supplementation but needed it again by the time you were 6 months old or older.

3. If you have CLD, are not yet 6 months old, and need 24-hour-per-day oxygen supplementation, we will not adjudicate your case under 103.02C until you are 6 months old. Depending on the evidence in your case record, we may make a favorable determination or decision under other rules before you are 6 months old.

4. We use 103.02E if you are any age from birth to the attainment of age 2 and have recurrent CLD exacerbations or related complications (for example, wheezing, lower respiratory tract infections, or acute respiratory distress) that require hospitalization. For the purpose of 103.02E, we will count your initial birth hospitalization as one hospitalization.

5. After you have attained age 2, we will evaluate your CLD under 103.03.

G. *What is asthma, and how do we evaluate it?*

1. *Asthma* is a chronic inflammatory disorder of the lung airways that we evaluate under 103.02 or 103.03.

2. Under 103.03:

a. The phrase ''consider under a disability for 1 year'' explains how long your asthma can meet the requirements of the listing. It does not refer to the date on which your disability began, only to the date on which we must reevaluate whether your asthma continues to meet a listing or is otherwise disabling.

b. We will determine the onset of your disability based on the facts of your case, but it will be no later than the admission date of your first of three hospitalizations that satisfy the criteria of 103.03.

H. *What is CF, and how do we evaluate it?*

1. *CF,* which we evaluate under 103.04, is a genetic disorder that results in abnormal functioning of the cells lining the lung airways and of the cells in other body systems. We need the evidence described in 103.00H2, 103.00H3, or 103.00H4 to establish that you have CF.

2. A report signed by a physician showing both a. and b.:

a. One of the following:

(i) A positive newborn screen for CF; or

(ii) A history of CF in a sibling; or

(iii) Documentation of at least one specific CF phenotype or clinical criterion (for example, chronic sino-pulmonary disease with persistent colonization or infections with typical CF pathogens, pancreatic insufficiency, or salt-loss syndromes); *and*

b. One of the following definitive laboratory tests:

(i) An elevated sweat chloride concentration equal to or greater than 60 millimoles per L; or

(ii) The identification of two CF gene mutations affecting the cystic fibrosis transmembrane conductance regulator (CFTR); or

(iii) Characteristic abnormalities in ion transport across the nasal epithelium.

3. When we have the report described in 103.00H2 but it is not signed by a physician, we also need a report from a physician stating that you have CF.

4. When we do not have the report described in 103.00H2, we need a report from a physician that is persuasive that a positive diagnosis was confirmed by appropriate laboratory analysis or another method. To be persuasive, this report must state that you had the appropriate definitive laboratory study or studies for diagnosing CF and provide the results or explain how your diagnosis was established by other methods consistent with the prevailing state of medical knowledge and clinical practice.

5. In 103.04D, examples of exacerbations or complications of CF that may result in hospitalizations include increased cough and sputum production, hemoptysis, increased shortness of breath, increased fatigue, and reduction in pulmonary function.

6. For 103.04E, you must have at least two complications from the list of complications in 103.04E1 through 103.04E6 occurring within a 12-month period. You may have two of the same complications or two different ones.

a. If you have two of the acute complications we describe in 103.04E1 (spontaneous pneumothorax), 103.04E2 (respiratory failure), and 103.04E3 (pulmonary hemorrhage), there must be at least 30 days between the two complications; for example, between an episode of spontaneous pneumothorax and an episode of respiratory failure or between two episodes of respiratory failure.

b. The chronic complications we describe in 103.04E4 through 103.04E6 can occur at the same time as any of the other complications in 103.04E. For example, your CF meets 103.04E if you have the weight loss we describe in 103.04E5 and the CFRD we describe in 103.04E6 even if they do not occur 30 days apart. Your CF also meets 103.04E if you have the weight loss we describe in 103.04E5 and the spontaneous pneumothorax we describe in 103.04E1 even if the spontaneous pneumothorax occurs during the same 90-day period we describe in 103.04E5.

c. Your CF also meets 103.04E if you have two episodes of one of the chronic complications in 103.04E4 through 103.04E6.

7. CF may also affect the growth, digestive, and endocrine body systems. We evaluate CF-related growth failure under 100.00 or 105.00. We evaluate nonpulmonary CF-related digestive disorders that are not covered by 103.04E under 105.00. We evaluate CFRD under 103.04E, under 109.00, or under a body system affected by the diabetes.

I. *How do we evaluate lung transplantation?* If you receive a lung transplant (or a lung transplant simultaneous with other organs, such as the heart), we will consider you to be disabled under 103.11 for 3 years from the date of the transplant. After that, we will evaluate your residual impairment(s) by considering the adequacy of your post-transplant function, the frequency and severity of rejection episodes you have, complications in other body systems, and adverse treatment effects. Children who receive organ transplants generally have impairments that meet our definition of disability before they undergo transplantation. We will determine the onset of your disability based on the facts of your case.

J. *What is respiratory failure, and how do we evaluate it?* Respiratory failure is the inability of the lungs to perform their basic function of gas exchange. We use 103.04E2 if you have CF-related respiratory failure. We use 103.14 if you have respiratory failure due to any other respiratory disorder. Respiratory therapy that only increases air pressure in your throat, such as continuous positive airway pressure (CPAP) or bi-level positive airway pressure (BiPAP), does not meet the criterion for continuous assisted (mechanical) ventilation in 103.04E2 or 103.14.

K. *How do we evaluate growth failure due to any chronic respiratory disorder?* We evaluate linear growth failure under a growth impairment listing in 100.00. If your growth failure does not meet or medically equal the criteria of a listing in 100.00, we will consider whether your respiratory disorder meets or medically equals the criteria of a listing in another body system. For example, if your respiratory disorder has resulted in weight loss or a combination of weight loss and linear growth failure, we will evaluate your impairment under a digestive system listing in 105.00.

L. *How do we evaluate episodic respiratory disorders?* Some respiratory disorders listings require a specific number of events within a 12-month period. See 103.02E, 103.03, 103.04D, 103.04E, and 103.14. When we use such criteria, the 12-month period must occur within the period we are considering in connection with your application or continuing disability review.

M. *How do we evaluate respiratory disorders that do not meet one of these listings?*

1. These listings are only examples of common respiratory disorders that we consider severe enough to result in marked and severe functional limitations. If your impairment(s) does not meet the criteria of any of these listings, we must also consider whether you have an impairment(s) that meets the criteria of a listing in another body system. For example, if your CF has resulted in chronic pancreatic or hepatobiliary disease, we will evaluate your impairment under the digestive system listings in 105.00.

2. If you have a severe medically determinable impairment(s) that does not meet a listing, we will determine whether your impairment(s) medically equals a listing. See § 416.926 of this chapter. Respiratory disorders may be associated with disorders in other body systems, and we consider the combined effects of multiple impairments when we determine whether they medically equal a listing. If your impairment(s) does not meet or medically equal a listing, we will also consider whether it functionally equals the listings. See § 416.926a of this chapter. We use the rules in § 416.994a of this chapter when we decide whether you continue to be disabled.

103.01 Category of Impairments, Respiratory Disorders

103.02 *Chronic respiratory disorders* due to any cause except cystic fibrosis (see 103.04), with:

A. FEV_1 (see 103.00E1) less than or equal to the value in Table I–A or I–B for your age, gender, and height without shoes (see 103.00E3a).

TABLE I—FEV_1 CRITERIA FOR 103.02A

Table I–A			*Table I–B*			
Age 6 to attainment of age 13 (For both females and males)			Age 13 to attainment of age 18			
Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	FEV_1 less than or equal to (L, BTPS)	Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<123.0	<48.50	0.70	<153.0	<60.25	1.30	1.40
123.0 to <129.0	48.50 to <50.75	0.80	153.0 to <159.0	60.25 to <62.50	1.40	1.50
129.0 to <134.0	50.75 to <52.75	0.90	159.0 to <164.0	62.50 to <64.50	1.50	1.60
134.0 to <139.0	52.75 to <54.75	1.00	164.0 to <169.0	64.50 to <66.50	1.60	1.70
139.0 to <144.0	54.75 to <56.75	1.10	169.0 to <174.0	66.50 to <68.50	1.70	1.80
144.0 to <149.0	56.75 to <58.75	1.20	174.0 to <180.0	68.50 to <70.75	1.80	1.90
149.0 or more	58.75 or more	1.30	180.0 or more	70.75 or more	1.90	2.00

OR

B. FVC (see 103.00E1) less than or equal to the value in Table II–A or II–B for your age, gender, and height without shoes (see 103.00E3a).

TABLE II—FVC CRITERIA FOR 103.02B

Table II–A			*Table II–B*			
Age 6 to attainment of age 13 (For both females and males)			Age 13 to attainment of age 18			
Height witihout shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	FVC less than or equal to (L, BTPS)	Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	Females FVC less than or equal to (L, BTPS)	Males FVC less than or equal to (L, BTPS)
<123.0	<48.50	0.95	<153.0	<60.25	1.55	1.65
123.0 to <129.0	48.50 to <50.75	1.05	153.0 to <159.0	60.25 to <62.50	1.65	1.75
129.0 to <134.0	50.75 to <52.75	1.15	159.0 to <164.0	62.50 to <64.50	1.75	1.85
134.0 to <139.0	52.75 to <54.75	1.25	164.0 to <169.0	64.50 to <66.50	1.85	1.95
139.0 to <144.0	54.75 to <56.75	1.35	169.0 to <174.0	66.50 to <68.50	1.95	2.05
144.0 to <149.0	56.75 to <58.75	1.45	174.0 to <180.0	68.50 to <70.75	2.05	2.15
149.0 or more	58.75 or more	1.55	180.0 or more	70.75 or more	2.15	2.25

OR

C. Hypoxemia with the need for at least 1.0 L/min of continuous (24 hours per day) oxygen supplementation for at least 90 consecutive days.

OR

D. The presence of a tracheostomy, with one of the following:

1. For children who have not attained age 3, consider under a disability until the attainment of age 3; after that, evaluate under 103.02D2, or evaluate the residual impairment(s); or

2. For children age 3 to the attainment of age 18, documented need for assisted (mechanical) ventilation via a tracheostomy for at least 4 hours per day and for at least 90 consecutive days.

OR

E. For children who have not attained age 2, CLD with exacerbations or related complications requiring three hospitalizations within a 12-month period (see 103.00F4). Each hospitalization must be at least 30 days apart. Consider under a disability for 1 year from the discharge date of the last hospitalization or until the attainment of age 2, whichever is later. After that, evaluate the impairment(s) under 103.03 or as otherwise appropriate.

103.03 *Asthma,* for children of any age, with exacerbations (see 103.00G) requiring three hospitalizations within a 12-month period and at least 30 days apart. Each hospitalization must last at least 48 hours, including hours in a hospital emergency department immediately before the hospitalization. Consider under a disability for 1 year from the discharge date of the last hospitalization; after that, evaluate the residual impairment(s).

103.04 *Cystic fibrosis* (documented as described in 103.00H), with:

A. FEV_1 (see 103.00E1) less than or equal to the value in Table III–A or Table III–B for your age, gender, and height without shoes (see 103.00E3a).

TABLE III—FEV_1 CRITERIA FOR 103.04A

Table III–A			*Table III–B*			
Age 6 to attainment of age 13 (For both females and males)			Age 13 to attainment of age 18			
Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	FEV_1 less than or equal to (L, BTPS)	Height without shoes (centimeters) < means *less than*	Height without shoes (inches) < means *less than*	Females FEV_1 less than or equal to (L, BTPS)	Males FEV_1 less than or equal to (L, BTPS)
<123.0	<48.50	0.95	<153.0	<60.25	1.55	1.65
123.0 to <129.0	48.50 to <50.75	1.05	153.0 to <159.0	60.25 to <62.50	1.65	1.75
129.0 to <134.0	50.75 to <52.75	1.15	159.0 to <164.0	62.50 to <64.50	1.75	1.85
134.0 to <139.0	52.75 to <54.75	1.25	164.0 to <169.0	64.50 to <66.50	1.85	1.95
139.0 to <144.0	54.75 to <56.75	1.35	169.0 to <174.0	66.50 to <68.50	1.95	2.05
144.0 to <149.0	56.75 to <58.75	1.45	174.0 to <180.0	68.50 to <70.75	2.05	2.15
149.0 or more	58.75 or more	1.55	180.0 or more	70.75 or more	2.15	2.25

OR

B. For children who have not attained age 6, findings on imaging (see 103.00D2) of thickening of the proximal bronchial airways, nodular-cystic lesions, segmental or lobular atelectasis, or consolidation, and documentation of one of the following:

1. Shortness of breath with activity; or

2. Accumulation of secretions as manifested by repetitive coughing; or

3. Bilateral rales or rhonchi, or reduction of breath sounds.

OR

C. Hypoxemia with the need for at least 1.0 L/min of continuous (24 hours per day) oxygen supplementation for at least 90 consecutive days.

OR

D. Exacerbations or complications of CF (see 103.00H5) requiring three hospitalizations of any length within a 12-month period and at least 30 days apart.

OR

E. Any two of the following complications of CF that occur within a 12-month period. There must be at least 30 days between the acute complications in 103.04E1, 103.04E2, and 103.04E3 (see 103.00H6).

1. Spontaneous pneumothorax requiring chest tube treatment.

2. Respiratory failure (see 103.00J) requiring continuous assisted (mechanical) ventilation for at least 48 hours, or for at least 72 hours if postoperatively.

3. Pulmonary hemorrhage requiring vascular embolization to control bleeding.

4. Hypoxemia with the need for at least 1.0 L/min of oxygen supplementation for at least 4 hours per day and for at least 90 consecutive days.

5. Weight loss requiring daily supplemental enteral nutrition via a gastrostomy for at least 90 consecutive days or parenteral nutrition via a central venous catheter for at least 90 consecutive days.

6. CFRD requiring daily insulin therapy for at least 90 consecutive days.

103.05 [Reserved]

103.06 [Reserved]

103.07 [Reserved]

103.08 [Reserved]

103.09 [Reserved]

103.10 [Reserved]

103.11 *Lung transplantation* (see 103.00I). Consider under a disability for 3 years from the date of the transplant; after that, evaluate the residual impairment(s).

103.12 [Reserved]

103.13 [Reserved]

103.14 *Respiratory failure* (see 103.00J) resulting from any underlying chronic respiratory disorder except CF, requiring continuous assisted (mechanical) ventilation for at least 48 hours, or for at least 72 hours if postoperatively, and with two episodes within a 12-month period. The episodes must be at least 30 days apart. (For CF, see 103.04E2.)

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 7. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

§ 416.926a [Amended]

■ 8. Amend § 416.926a by removing paragraph (m)(1) and redesignating paragraphs (m)(2) through (m)(8) as (m)(1) through (m)(7).

[FR Doc. 2013–02165 Filed 2–1–13; 8:45 am]

BILLING CODE 4191–02–P

FEDERAL REGISTER

Vol. 78 Monday,

No. 23 February 4, 2013

Part VI

The President

Memorandum of January 30, 2013—Coordination of Policies and Programs To Promote Gender Equality and Empower Women and Girls Globally

Federal Register
Vol. 78, No. 23
Monday, February 4, 2013

Presidential Documents

Title 3—

The President

Memorandum of January 30, 2013

Coordination of Policies and Programs To Promote Gender Equality and Empower Women and Girls Globally

Memorandum for the Heads of Executive Departments and Agencies

Promoting gender equality and advancing the status of all women and girls around the world remains one of the greatest unmet challenges of our time, and one that is vital to achieving our overall foreign policy objectives. Ensuring that women and girls, including those most marginalized, are able to participate fully in public life, are free from violence, and have equal access to education, economic opportunity, and health care increases broader economic prosperity, as well as political stability and security.

During my Administration, the United States has made promoting gender equality and advancing the status of women and girls a central element of our foreign policy, including by leading through example at home. Executive Order 13506 of March 11, 2009, established the White House Council on Women and Girls to coordinate Federal policy on issues, both domestic and international, that particularly impact the lives of women and girls. This commitment to promoting gender equality is also reflected in the National Security Strategy of the United States, the Presidential Policy Directive on Global Development, and the 2010 U.S. Quadrennial Diplomacy and Development Review.

To elevate and integrate this strategic focus on the promotion of gender equality and the advancement of women and girls around the world, executive departments and agencies (agencies) have issued policy and operational guidance. For example, in March 2012, the Secretary of State issued *Policy Guidance on Promoting Gender Equality to Achieve our National Security and Foreign Policy Objectives,* and the United States Agency for International Development (USAID) Administrator released *Gender Equality and Female Empowerment Policy.* The Millennium Challenge Corporation issued *Gender Integration Guidelines* in March 2011 to ensure its existing gender policy is fully realized. My Administration has also developed a National Action Plan on Women, Peace, and Security, created pursuant to Executive Order 13595 of December 19, 2011, to strengthen conflict resolution and peace processes through the inclusion of women, and a Strategy to Prevent and Respond to Gender-based Violence Globally, implemented pursuant to Executive Order 13623 of August 10, 2012, to combat gender-based violence around the world. Improving interagency coordination and information sharing, and strengthening agency capacity and accountability will help ensure the effective implementation of these and other Government efforts to promote gender equality and advance the status of women and girls globally.

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to further strengthen the capacity of the Federal Government to ensure that U.S. diplomacy and foreign assistance promote gender equality and advance the status of women and girls worldwide, I hereby direct the following:

Section 1. *Strengthening Capacity and Coordination to Promote Gender Equality and Advance the Status of Women and Girls Internationally.* (a) Enhancing U.S. global leadership on gender equality requires dedicated resources, personnel with appropriate expertise in advancing the status of women and girls worldwide, and commitment from senior leadership, as

exemplified by the critical and historic role played by the Office of Global Women's Issues at the Department of State. To assure maximum coordination of efforts to promote gender equality and advance the status of women and girls, the Secretary of State (Secretary) shall designate a coordinator (Coordinator), who will normally also be appointed by the President as an Ambassador at Large (Ambassador at Large) subject to the advice and consent of the Senate. The Ambassador at Large, who shall report directly to the Secretary of State, shall lead the Office of Global Women's Issues at the Department of State and provide advice and assistance on issues related to promoting gender equality and advancing the status of women and girls internationally.

(b) The Ambassador at Large shall, to the extent the Secretary may direct and consistent with applicable law, provide guidance and coordination with respect to global policies and programs for women and girls, and shall lead efforts to promote an international focus on gender equality more broadly, including through diplomatic initiatives with other countries and partnerships and enhanced coordination with international and nongovernmental organizations and the private sector. To this end, the Ambassador at Large shall also, to the extent the Secretary may direct, assist in:

(i) implementing existing and developing new policies, strategies, and action plans for the promotion of gender equality and advancement of the status of women and girls internationally, and coordinating such actions with USAID and other agencies carrying out related international activities, as appropriate; and

(ii) coordinating such initiatives with other countries and international organizations, as well as with nongovernmental organizations.

(c) Recognizing the vital link between diplomacy and development, and the importance of gender equality as both a goal in itself and as a vital means to achieving the broader aims of U.S. development assistance, the Senior Coordinator for Gender Equality and Women's Empowerment at USAID shall provide guidance to the USAID Administrator in identifying, developing, and advancing key priorities for U.S. development assistance, coordinating, as appropriate, with other agencies.

(d) The Assistant to the President for National Security Affairs (or designee), in close collaboration with the Chair of the White House Council on Women and Girls (or designee) and the Ambassador at Large (or designee), shall chair an interagency working group to develop and coordinate Government-wide implementation of policies to promote gender equality and advance the status of women and girls internationally. The Working Group shall consist of senior representatives from the Departments of State, the Treasury, Defense, Justice, Agriculture, Commerce, Labor, Health and Human Services, Education, and Homeland Security; the Intelligence Community, as determined by the Director of National Intelligence; the United States Agency for International Development; the Millennium Challenge Corporation; the Peace Corps; the U.S. Mission to the United Nations; the Office of the United States Trade Representative; the Office of Management and Budget; the Office of the Vice President; the National Economic Council; and such other agencies and offices as the President may designate.

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

(i) the authority granted by law or Executive Order to an executive department, 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) Upon designation as such by the Secretary, the Coordinator shall exercise the functions of the Ambassador at Large set forth in this memorandum.

(d) 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.

(e) The Secretary of State is hereby authorized and directed to publish this memorandum in the *Federal Register*.

THE WHITE HOUSE,
Washington, January 30, 2013.

[FR Doc. 2013–02569
Filed 2–1–13; 11:15 am]
Billing code 4710–10

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