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

WHO: Sponsored by the Office of the Federal Register.

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

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

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

WHEN: Tuesday, September 11, 2012
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Reader Aids

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CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 77, No. 161
Monday, August 20, 2012

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

RIN 3245–AG47

Small Business Size Standards; Adoption of 2012 North American Industry Classification System for Size Standards

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule with request for comments.

SUMMARY: The U.S. Small Business Administration (SBA) is amending its Small Business Size Regulations to incorporate the Office of Management and Budget's (OMB) 2012 modifications of the North American Industry Classification System (NAICS), identified as NAICS 2012, into its table of small business size standards. NAICS 2012 has created 76 new industry codes and reused 13 NAICS 2007 industry codes with additional or modified content. Those 89 new and modified industry codes in NAICS 2012 impact 199 industry codes in NAICS 2007. The large majority of the changes involve renumbering and/or redefining NAICS 2007 codes in NAICS 2012, without warranting changes to their size standards. Therefore, for those industries SBA has transferred the size standards of the NAICS 2007 industry to the NAICS 2012 industry. SBA's adoption of NAICS 2012 will result in changes to small business size standards for 41 NAICS 2007 industries and one exception. This will also result in changes to NAICS industry titles for one Subsector and eight industries.

DATES: *Effective Date:* This rule is effective October 1, 2012.

Comment Date: Comments must be received on or before October 19, 2012.

ADDRESSES: You may submit comments, identified by RIN 3245–AG47 by one of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov*, following the instructions for submitting comments; or

(2) *Mail/Hand Delivery/Courier:* Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW., Mail Code 6530, Washington, DC 20416. SBA will not accept comments submitted by email to this interim final rule.

SBA will post all comments to this interim final rule on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov*, you must submit such information to the U.S. Small Business Administration, Khem R. Sharma, Ph.D., Chief, Office of Size Standards, 409 Third Street SW., Mail Code 6530, Washington, DC 20416, or send an email to *sizestandards@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review your information and determine whether it will make the information public. Requests to redact or remove posted comments cannot be honored and the request to redact/remove posted comments will be posted as a comment. See the *www.regulations.gov* help section for information on how to make changes to your comments.

FOR FURTHER INFORMATION CONTACT: Carl Jordan, Office of Size Standards, by phone at (202) 205–6618 or by email at *sizestandards@sba.gov*.

SUPPLEMENTARY INFORMATION: SBA adopted NAICS 1997 industry definitions as a basis for its table of small business size standards, replacing the Standard Industrial Classification (SIC) System, effective October 1, 2000 (65 FR 30836 (May 5, 2000)). Since then, OMB has issued three modifications to NAICS. SBA incorporated OMB's first modification, NAICS 2002 (66 FR 3825 (January 16, 2001)), into its table of size standards, effective October 1, 2002 (67 FR 52597 (August 13, 2002)). SBA incorporated the second modification, NAICS 2007 (71 FR 28532 (March 16, 2006)), into its table of size standards, effective October 1, 2007 (72 FR 49639 (August 29, 2007)). OMB published its third modification, NAICS 2012, in its ''Notice of NAICS 2012 Final Decisions'' in the **Federal Register** on August 17, 2011 (76 FR 51240). SBA is adopting the latest modifications into its table of small business size standards, as explained below, effective October 1, 2012.

NAICS 2012 has created 66 new industry codes with new content either by splitting or merging some of the industries in NAICS 2007. It has also assigned new codes to 10 industries in NAICS 2007 without changing their definition and title. NAICS 2012 has reused 13 NAICS 2007 industry codes (including six with the same industry title) with additional or modified definitions. All these changes have impacted 199 industries under NAICS 2007, of which 179 are in NAICS Sector 31–33, Manufacturing. The vast majority of changes among the manufacturing industries relate to aggregation of many small, detailed industries in NAICS 2007 into fewer industries in NAICS 2012. As a result, the number of 6-digit manufacturing codes has decreased from 472 in NAICS 2007 to 364 in NAICS 2012.

Complete information on the relationship between NAICS 2007 and NAICS 2012 is available on the U.S. Bureau of the Census (Census Bureau) Web site at *http://www.census.gov/eos/www/naics/*. The Web site provides detailed documentation on establishment and implementation of NAICS 2012, including the August 17, 2011 ''Notice of NAICS 2012 Final Decisions.'' The Census Bureau's Web site also provides concordances (*i.e.,* correspondence tables) between SIC and NAICS 1997 and NAICS 2002, and between subsequent NAICS revisions.

How SBA Determined the Size Standards for NAICS 2012 Industries

On October 22, 1999, SBA published in the **Federal Register** (64 FR 57188) a proposed rule to incorporate NAICS 1997 into its table of small business size standards. The proposed rule put forth guidelines or rules that SBA applied to convert the size standards from the SIC System to NAICS. The guidelines were intended to minimize the impact of applying a new industry classification system on SBA's small business size standards. SBA received no negative comments to the proposed guidelines. SBA published a final rule on May 5, 2000 (corrected on September 5, 2000, 65 FR 53533) adopting the resulting table of size standards based on NAICS 1997, as proposed. SBA applied and

adopted the same guidelines when it updated its table of size standards based on NAICS 2002 and NAICS 2007. In this interim final rule, SBA is, in most part, following the same guidelines in adopting NAICS 2012 for its table of size standards. Those guidelines are shown in Table 1, Guidelines (Rules) to Establish Size Standards for Industries under NAICS 2012, below.

Table 2, NAICS 2012 Codes Matched to NAICS 2007 Codes and Size Standards, matches 2012 NAICS Codes and size standards to the affected NAICS 2007 industry codes and parts and their current size standards. Table 2 includes only those NAICS 2007 industries or parts that are either reclassified into other industries or parts or assigned a new code under NAICS 2012.

TABLE 1—GUIDELINES (RULES) TO ESTABLISH SIZE STANDARDS FOR INDUSTRIES UNDER NAICS 2012

If the NAICS 2012 industry is composed of:	The size standard for the NAICS 2012 industry code will be:
1. One NAICS 2007 industry or part of one NAICS 2007 industry	The same size standard as for the NAICS 2007 industry or part.
2. Two or more parts of an NAICS 2007 industry; two or more NAICS 2007 industries; parts of two or more NAICS 2007 industries; or one or more NAICS 2007 industries and part(s) of one or more NAICS 2007 industries, and	
2a. they all have the same size standard	The same size standard as for the NAICS 2007 industries or parts.
2b. they all have the same size measure (e.g., receipts, employees, etc.) but do not all have the same size standard.	The same size standard as for the NAICS 2007 industry or part that most closely matches the economic activity described by the NAICS 2012 industry, *or* The highest size standard among the NAICS 2007 industries and part(s) that comprise the NAICS 2012 industry.
2c. they have different size measures (i.e., for example, some are based on receipts and others on employees) and hence do not all have the same size standard.	The same size standard as for the NAICS 2007 industry or part that most closely matches the economic activity described by the NAICS 2012 industry, *or* The highest size standard among the NAICS 2007 industries and part(s) that comprise the NAICS 2012 industry. To apply this rule, SBA converts all size standards to a single measure (e.g., receipts, employees, etc.) using the size measure for the NAICS 2007 industry or part(s) that most closely match the economic activity described by the NAICS 2012 industry or using the size measure that applies to most of the NAICS industries or parts comprising the NAICS 2012 industry.
3. One or more NAICS 2007 industries and/or parts that were categorized broadly under a particular NAICS Sector (such as Services, Retail Trade, Wholesale Trade, or Manufacturing) but are categorized under different Sectors in NAICS 2012. [Note: SBA is including this guideline to maintain consistency with prior rules, cited above. However, it does not apply to this interim final rule.].	SBA will (a) apply a size standard measure (*e.g.,* number of employees, annual receipts, etc.) that is typical of the NAICS Sector; and (b) apply the corresponding ''anchor'' size standard. The ''anchor'' size standards are $7 million for Services and Retail Trade industries, 500 employees for Manufacturing, and 100 employees for Wholesale Trade (except for Federal procurement programs, where the size standard is 500 employees under the non-manufacturer rule).

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
NAICS 2012					NAICS 2007 (Industry parts in italics indicate that the industry is split to two or more NAICS 2012 industries)		
	Key to status code: * = Part of 2007 NAICS United States industry R = 2007 NAICS Industry code reused with different content N = new NAICS industry for 2012						
221114	Solar Electric Power Generation.	N	1	4 million megawatt hours (see footnote 1).	*221119	Other Electric Power Generation—*solar electric power generation.*	4 million megawatt hours (see footnote 1).
221115	Wind Electric Power Generation.	N	1	4 million megawatt hours (see footnote 1).	*221119	Other Electric Power Generation—*wind electric power generation.*	4 million megawatt hours (see footnote 1).
221116	Geothermal Electric Power Generation.	N	1	4 million megawatt hours (see footnote 1).	*221119	Other Electric Power Generation—*geothermal electric power generation.*	4 million megawatt hours (see footnote 1).

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
221117	Biomass Electric Power Generation.	N	1	4 million megawatt hours (see footnote 1).	*221119	Other Electric Power Generation—*biomass electric power generation*.	4 million megawatt hours (see footnote 1).
221118	Other Electric Power Generation.	N	1	4 million megawatt hours (see footnote 1).	*221119	Other Electric Power Generation—*except solar, wind, geothermal, and biomass electric power generation*.	4 million megawatt hours (see footnote 1).
238190	Other Foundation, Structure, and Building Exterior Contractors.	R	2a	$14 million	*238190	Other Foundation, Structure, and Building Exterior Contractors—*except building fireproofing contractors*.	$14 million.
238310	Drywall and Insulation Contractors.	R	2a	$14 million	238310	Drywall and Insulation Contractors.	$14 million.
					*238190	Other Foundation, Structure, and Building Exterior Contractors—*building fireproofing contractors*.	$14 million.
					*238330	Flooring Contractors—*fireproof flooring construction contractors*.	$14 million.
238330	Flooring Contractors.	R	2a	$14 million	*238330	Flooring Contractors—*except fireproof flooring construction contractors*.	$14 million.
311224	Soybean and Other Oilseed Processing.	N	2b	1,000 employees	311222	Soybean Processing.	500 employees.
					311223	Other Oilseed Processing.	1,000 employees.
311314	Cane Sugar Manufacturing.	N	2b	750 employees	311311	Sugarcane Mills	500 employees.
					311312	Cane Sugar Refining.	750 employees.
311351	Chocolate and Confectionery Manufacturing from Cacao Beans.	N	1	500 employees	311320	Chocolate and Confectionery Manufacturing from Cacao Beans.	500 employees.
311352	Confectionery Manufacturing from Purchased Chocolate.	N	1	500 employees	311330	Confectionery Manufacturing from Purchased Chocolate.	500 employees.
311710	Seafood Product Preparation and Packaging.	N	2a	500 employees	311711	Seafood Canning	500 employees.
					311712	Fresh and Frozen Seafood Processing.	500 employees.
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour.	N	2a	500 employees	311822	Flour Mixes and Dough Manufacturing from Purchased Flour.	500 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
					311823	Dry Pasta Manufacturing.	500 employees.
312230	Tobacco Manufacturing.	N	2b	1,000 employees	312210	Tobacco Stemming and Redrying.	500 employees.
					312221	Cigarette Manufacturing.	1,000 employees.
					312229	Other Tobacco Product Manufacturing.	500 employees.
313110	Fiber, Yarn, and Thread Mills.	N	2a	500 employees	313111	Yarn Spinning Mills.	500 employees.
					313112	Yarn Texturizing, Throwing, and Twisting Mills.	500 employees.
					313113	Thread Mills	500 employees.
313220	Narrow Fabric Mills and Schiffli Machine Embroidery.	N	2a	500 employees	313221	Narrow Fabric Mills.	500 employees.
					313222	Schiffli Machine Embroidery.	500 employees.
313240	Knit Fabric Mills	N	2a	500 employees	313241	Weft Knit Fabric Mills.	500 employees.
					313249	Other Knit Fabric and Lace Mills.	500 employees.
313310	Textile and Fabric Finishing Mills.	N	2b	1,000 employees	313311	Broadwoven Fabric Finishing Mills.	1,000 employees.
					313312	Textile and Fabric Finishing (except Broadwoven Fabric) Mills.	500 employees.
314120	Curtain and Linen Mills.	N	2a	500 employees	314121	Curtain and Drapery Mills.	500 employees.
					314129	Other Household Textile Product Mills.	500 employees.
314910	Textile Bag and Canvas Mills.	N	2a	500 employees	314911	Textile Bag Mills	500 employees.
					314912	Canvas and Related Product Mills.	500 employees.
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills.	N	2b	1,000 employees	314991	Rope, Cordage, and Twine Mills.	500 employees.
					314992	Tire Cord and Tire Fabric Mills.	1,000 employees.
315110	Hosiery and Sock Mills.	N	2a	500 employees	315111	Sheer Hosiery Mills.	500 employees.
					315119	Other Hosiery and Sock Mills.	500 employees.
315190	Other Apparel Knitting Mills.	N	2a	500 employees	315191	Outerwear Knitting Mills.	500 employees.
					315192	Underwear and Nightwear Knitting Mills.	500 employees.
315210	Cut and Sew Apparel Contractors.	N	2a	500 employees	315211	Men's and Boys' Cut and Sew Apparel Contractors.	500 employees.
					315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors.	500 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
315220	Men's and Boys' Cut and Sew Apparel Manufacturing.	N	2a	500 employees	315221	Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing.	500 employees.
					315222	Men's and Boys' Cut and Sew Suit, Coat, and Overcoat Manufacturing.	500 employees.
					315223	Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing.	500 employees.
					315224	Men's and Boys' Cut and Sew Trouser, Slack, and Jean Manufacturing.	500 employees.
					315225	Men's and Boys' Cut and Sew Work Clothing Manufacturing.	500 employees.
					315228	Men's and Boys' Cut and Sew Other Outerwear Manufacturing.	500 employees.
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing.	N	2a	500 employees	315231	Women's and Girls' Cut and Sew Lingerie, Loungewear, and Nightwear Manufacturing.	500 employees.
					315232	Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing.	500 employees.
					315233	Women's and Girls' Cut and Sew Dress Manufacturing.	500 employees.
					315234	Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket, and Skirt Manufacturing.	500 employees.
					315239	Women's and Girls' Cut and Sew Other Outerwear Manufacturing.	500 employees.
					315291	Infants' Cut and Sew Apparel Manufacturing.	500 employees.
315280	Other Cut and Sew Apparel Manufacturing.	N	2a	500 employees	315292	Fur and Leather Apparel Manufacturing.	500 employees.
					315299	All Other Cut and Sew Apparel Manufacturing.	500 employees.
315990	Apparel Accessories and Other Apparel Manufacturing.	N	2a	500 employees	315991	Hat, Cap, and Millinery Manufacturing.	500 employees.
					315992	Glove and Mitten Manufacturing.	500 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
					315993	Men's and Boys' Neckwear Manufacturing.	500 employees.
					315999	Other Apparel Accessories and Other Apparel Manufacturing.	500 employees.
316210	Footwear Manufacturing.	N	2b	1,000 employees	316211	Rubber and Plastics Footwear Manufacturing.	1,000 employees.
					316212	House Slipper Manufacturing.	500 employees.
					316213	Men's Footwear (except Athletic) Manufacturing.	500 employees.
					316214	Women's Footwear (except Athletic) Manufacturing.	500 employees.
					316219	Other Footwear Manufacturing.	500 employees.
316998	All Other Leather Good and Allied Product Manufacturing.	N	2a	500 employees	316991	Luggage Manufacturing.	500 employees.
					316993	Personal Leather Good (except Women's Handbag and Purse) Manufacturing.	500 employees.
					316999	All Other Leather Good and Allied Product Manufacturing.	500 employees.
321999	All Other Miscellaneous Wood Product Manufacturing.	R	2a	500 employees	321999	All Other Miscellaneous Wood Product Manufacturing.	500 employees.
					337129	Wood Television, Radio, and Sewing Machine Cabinet Manufacturing.	500 employees.
322219	Other Paperboard Container Manufacturing.	N	2b	750 employees	322213	Setup Paperboard Box Manufacturing.	500 employees.
					322214	Fiber Can, Tube, Drum, and Similar Products Manufacturing.	500 employees
322215	Nonfolding Sanitary Food Container Manufacturing.			750 employees.			
322220	Paper Bag and Coated and Treated Paper Manufacturing.	N	2a	500 employees	322221	Coated and Laminated Packaging Paper Manufacturing.	500 employees.
					322222	Coated and Laminated Paper Manufacturing.	500 employees.
					322223	Coated Paper Bag and Pouch Manufacturing.	500 employees.
					322224	Uncoated Paper and Multiwall Bag Manufacturing.	500 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
					322225	Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses.	500 employees.
					322226	Surface-Coated Paperboard Manufacturing.	500 employees.
322230	Stationery Product Manufacturing.	N	2a	500 employees	322231	Die-Cut Paper and Paperboard Office Supplies Manufacturing.	500 employees.
					322232	Envelope Manufacturing.	500 employees.
					322233	Stationery, Tablet, and Related Product Manufacturing.	500 employees.
323111	Commercial Printing (except Screen and Books).	R	2a	500 employees	323111	Commercial Gravure Printing.	500 employees.
					323110	Commercial Lithographic Printing.	500 employees.
					323112	Commercial Flexographic Printing.	500 employees.
					323114	Quick Printing	500 employees.
					323115	Digital Printing	500 employees.
					323116	Manifold Business Forms Printing.	500 employees.
					323118	Blankbook, Looseleaf Binders, and Devices Manufacturing.	500 employees.
					323119	Other Commercial Printing.	500 employees.
323120	Support Activities for Printing.	N	2a	500 employees	323121	Tradebinding and Related Work.	500 employees.
					323122	Prepress Services	500 employees.
325130	Synthetic Dye and Pigment Manufacturing.	N	2b	1,000 employees	325131	Inorganic Dye and Pigment Manufacturing.	1,000 employees.
					325132	Synthetic Organic Dye and Pigment Manufacturing.	750 employees.
325180	Other Basic Inorganic Chemical Manufacturing.	N	2b	1,000 employees	325181	Alkalis and Chlorine Manufacturing.	1,000 employees.
					325182	Carbon Black Manufacturing.	500 employees.
					325188	All Other Basic Inorganic Chemical Manufacturing.	1,000 employees.
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing.	N	2b	750 employees	325191	Gum and Wood Chemical Manufacturing.	500 employees.
					325192	Cyclic Crude and Intermediate Manufacturing.	750 employees.
325220	Artificial and Synthetic Fibers and Filaments Manufacturing.	N	2a	1,000 employees	325221	Cellulosic Organic Fiber Manufacturing.	1,000 employees.
					325222	Noncellulosic Organic Fiber Manufacturing.	1,000 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
326199	All Other Plastics Product Manufacturing.	R	2b	750 employees	326199	All Other Plastics Product Manufacturing.	500 employees.
					326192	Resilient Floor Covering Manufacturing.	750 employees.
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing.	N	2b	750 employees	327111	Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing.	750 employees.
					327112	Vitreous China, Fine Earthenware, and Other Pottery Product Manufacturing.	500 employees.
					327113	Porcelain Electrical Supply Manufacturing.	500 employees.
327120	Clay Building Material and Refractories Manufacturing.	N	2b	750 employees	327121	Brick and Structural Clay Tile Manufacturing.	500 employees.
					327122	Ceramic Wall and Floor Tile Manufacturing.	500 employees.
					327123	Other Structural Clay Product Manufacturing.	500 employees.
					327124	Clay Refractory Manufacturing.	500 employees.
					327125	Nonclay Refractory Manufacturing.	750 employees.
331110	Iron and Steel Mills and Ferroalloy Manufacturing.	N	2b	1,000 employees	331111	Iron and Steel Mills.	1,000 employees.
					331112	Electrometallurgical Ferroalloy Product Manufacturing.	750 employees.
331313	Alumina Refining and Primary Aluminum Production.	N	2a	1,000 employees	331311	Alumina Refining	1,000 employees.
					331312	Primary Aluminum Production.	1,000 employees.
331318	Other Aluminum Rolling, Drawing, and Extruding.	N	2a	750 employees	331316	Aluminum Extruded Product Manufacturing.	750 employees.
					331319	Other Aluminum Rolling and Drawing.	750 employees.
331410	Nonferrous Metal (except Aluminum) Smelting and Refining.	N	2b	1,000 employees	331411	Primary Smelting and Refining of Copper.	1,000 employees.
					331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).	750 employees.
331420	Copper Rolling, Drawing, Extruding, and Alloying.	N	2b	1,000 employees	331421	Copper Rolling, Drawing, and Extruding.	750 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
					331422	Copper Wire (except Mechanical) Drawing.	1,000 employees.
					331423	Secondary Smelting, Refining, and Alloying of Copper.	750 employees.
331523	Nonferrous Metal Die-Casting Foundries.	N	2a	500 employees	331521	Aluminum Die-Casting Foundries.	500 employees.
					331522	Nonferrous (except Aluminum) Die-Casting Foundries.	500 employees.
331529	Other Nonferrous Metal Foundries (except Die-Casting).	N	2a	500 employees	331525	Copper Foundries (except Die-Casting).	500 employees.
					331528	Other Nonferrous Foundries (except Die-Casting).	500 employees.
332119	Metal Crown, Closure, and Other Metal Stamping (except Automotive).	N	2a	500 employees	332115	Crown and Closure Manufacturing.	500 employees.
					332116	Metal Stamping	500 employees.
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.	N	2a	500 employees	332211	Cutlery and Flatware (except Precious) Manufacturing.	500 employees.
					332214	Kitchen Utensil, Pot, and Pan Manufacturing.	500 employees.
332216	Saw Blade and Handtool Manufacturing.	N	2a	500 employees	332212	Hand and Edge Tool Manufacturing.	500 employees.
					332213	Saw Blade and Handsaw Manufacturing.	500 employees.
332613	Spring Manufacturing.	N	2a	500 employees	332611	Spring (Heavy Gauge) Manufacturing.	500 employees.
					332612	Spring (Light Gauge) Manufacturing.	500 employees.
332994	Small Arms, Ordnance, and Ordnance Accessories Manufacturing.	R	2b	1,000 employees	332994	Small Arms Manufacturing.	1,000 employees.
					332995	Other Ordnance and Accessories Manufacturing.	500 employees.
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	R	2b	750 employees	332997	Industrial Pattern Manufacturing.	500 employees.
					332998	Enameled Iron and Metal Sanitary Ware Manufacturing.	750 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
					332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.	500 employees.
333241	Food Product Machinery Manufacturing.	N	1	500 employees	333294	Food Product Machinery Manufacturing.	500 employees.
333242	Semiconductor Machinery Manufacturing.	N	1	500 employees	333295	Semiconductor Machinery Manufacturing.	500 employees.
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing.	N	2a	500 employees	333210	Sawmill and Woodworking Machinery Manufacturing.	500 employees.
					333291	Paper Industry Machinery Manufacturing.	500 employees.
333244	Printing Machinery and Equipment Manufacturing.	N	1	500 employees	333293	Printing Machinery and Equipment Manufacturing.	500 employees.
333249	Other Industrial Machinery Manufacturing.	N	2a	500 employees	333220	Plastics and Rubber Industry Machinery Manufacturing.	500 employees.
					333292	Textile Machinery Manufacturing.	500 employees.
					333298	All Other Industrial Machinery Manufacturing.	500 employees.
333316	Photographic and Photocopying Equipment Manufacturing.	N	2b	1,000 employees	333315	Photographic and Photocopying Equipment Manufacturing.	500 employees.
					*334119	Other Computer Peripheral Equipment Manufacturing—*digital camera manufacturing*.	1,000 employees.
333318	Other Commercial and Service Industry Machinery Manufacturing.	N	2b	1,000 employees	333311	Automatic Vending Machine Manufacturing.	500 employees.
					333312	Commercial Laundry, Drycleaning, and Pressing Machine Manufacturing.	500 employees.
					333313	Office Machinery Manufacturing.	1,000 employees.
					333319	Other Commercial and Service Industry Machinery Manufacturing.	500 employees.
333413	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing.	N	2a	500 employees	333411	Air Purification Equipment Manufacturing.	500 employees.
					333412	Industrial and Commercial Fan and Blower Manufacturing.	500 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
333517	Machine Tool Manufacturing.	N	2a	500 employees	333512	Machine Tool (Metal Cutting Types) Manufacturing.	500 employees.
					333513	Machine Tool (Metal Forming Types) Manufacturing.	500 employees.
333519	Rolling Mill and Other Metalworking Machinery Manufacturing.	N	2a	500 employees	333516	Rolling Mill Machinery and Equipment Manufacturing.	500 employees.
					333518	Other Metalworking Machinery Manufacturing.	500 employees.
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing.	N	2a	1,000 employees	334113	Computer Terminal Manufacturing.	1,000 employees.
					*334119	Other Computer Peripheral Equipment Manufacturing—*except digital camera manufacturing.*	1,000 employees.
334416	Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing.	R	2a	500 employees	334416	Electronic Coil, Transformer, and Other Inductor Manufacturing.	500 employees.
					334414	Electronic Capacitor Manufacturing.	500 employees.
					334415	Electronic Resistor Manufacturing.	500 employees.
334419	Other Electronic Component Manufacturing.	R	2a	750 employees	334419	Other Electronic Component Manufacturing.	500 employees.
					334411	Electron Tube Manufacturing.	750 employees.
334519	Other Measuring and Controlling Device Manufacturing.	R	2a	500 employees	334519	Other Measuring and Controlling Device Manufacturing.	500 employees.
					334518	Watch, Clock, and Part Manufacturing.	500 employees.
334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing.	N	2b	750 employees	334611	Software Reproducing.	500 employees.
					334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing.	750 employees.
335210	Small Electrical Appliance Manufacturing.	N	2a	750 employees	335211	Electric Housewares and Household Fan Manufacturing.	750 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
					335212	Household Vacuum Cleaner Manufacturing.	750 employees.
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing.	N	2b	750 employees	336311	Carburetor, Piston, Piston Ring, and Valve Manufacturing.	500 employees.
					336312	Gasoline Engine and Engine Parts Manufacturing.	750 employees.
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing.	N	2b	750 employees	336321	Vehicular Lighting Equipment Manufacturing.	500 employees.
					336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing.	750 employees.
336390	Other Motor Vehicle Parts Manufacturing.	N	2a	750 employees	336391	Motor Vehicle Air-Conditioning Manufacturing.	750 employees.
					336399	All Other Motor Vehicle Parts Manufacturing.	750 employees.
339910	Jewelry and Silverware Manufacturing.	N	2a	500 employees	339911	Jewelry (except Costume) Manufacturing.	500 employees.
					339912	Silverware and Hollowware Manufacturing.	500 employees.
					339913	Jewelers' Material and Lapidary Work Manufacturing.	500 employees.
					339914	Costume Jewelry and Novelty Manufacturing.	500 employees.
339930	Doll, Toy, and Game Manufacturing.	N	2a	500 employees	339931	Doll and Stuffed Toy Manufacturing.	500 employees.
					339932	Game, Toy, and Children's Vehicle Manufacturing.	500 employees.
339940	Office Supplies (except Paper) Manufacturing.	N	2a	500 employees	339941	Pen and Mechanical Pencil Manufacturing.	500 employees.
					339942	Lead Pencil and Art Good Manufacturing.	500 employees.
					339943	Marking Device Manufacturing.	500 employees.
					339944	Carbon Paper and Inked Ribbon Manufacturing.	500 employees.
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.	R	2a	100 employees	* 423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers—*except electric water heaters.*	100 employees.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
					*423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers—*gas household appliances (except gas water heaters)*.	100 employees.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.	R	2a	100 employees	*423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers—*except gas household appliances (except gas water heaters)*.	100 employees.
					*423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers—*electric water heaters*.	100 employees.
441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers.	N	2b	$30 million	441221	Motorcycle, ATV, and Personal Watercraft Dealers.	$30 million.
					441229	All Other Motor Vehicle Dealers.	$7 million.
					(exception)	Including, Aircraft Dealers, Retail (exception to NAICS 441229 in table of size standards).	$25.5 million.
443141	Household Appliance Stores.	N	1	$10 million	443111	Household Appliance Stores.	$10 million
443142	Electronics Stores	N	2b	$30 million	443112	Radio, Television, and Other Electronics Stores.	$25.5 million.
					443120	Computer and Software Stores.	$25.5 million.
					443130	Camera and Photographic Supplies Stores.	$19 million.
					451220	Prerecorded Tape, Compact Disc, and Record Stores.	$30 million.
454310	Fuel Dealers	N	2c	50 employees	454311	Heating Oil Dealers.	50 employees.
					454312	Liquefied Petroleum Gas (Bottled Gas) Dealers.	50 employees.
					454319	Other Fuel Dealers	$7 million.
722511	Full-Service Restaurants.	N	1	$7 million	722110	Full-Service Restaurants.	$7 million.
722513	Limited-Service Restaurants.	N	1	$10 million	722211	Limited-Service Restaurants.	$10 million.
722514	Cafeterias, Grill Buffets, and Buffets.	N	1	$25.5 million	722212	Cafeterias, Grill Buffets, and Buffets.	$25.5 million.

TABLE 2—NAICS 2012 CODES MATCHED TO NAICS 2007 CODES AND SIZE STANDARDS—Continued

NAICS 2012 code	NAICS 2012 U.S. industry title	Status code	Rule (table 1)	NAICS 2012 size standard	NAICS 2007 code	NAICS 2007 U.S. industry title	NAICS 2007 (current) size standard
722515	Snack and Non-alcoholic Beverage Bars.	N	1	$7 million	722213	Snack and Non-alcoholic Beverage Bars.	$7 million.

Changes in Size Standards Resulting From SBA's Adoption of NAICS 2012

As shown above in Table 2, NAICS 2012 Codes Matched to NAICS 2007 Codes and Size Standards, most of the size standards for the affected NAICS 2007 industries are not impacted and therefore remain unchanged under NAICS 2012. The vast majority of the changes consist of revised industry titles or the reclassification of one or more NAICS 2007 industries or parts into other industries or parts in NAICS 2012 without impacting their size standards.

As shown in Table 2, the adoption of the NAICS 2012 modification leads to a revision to the current size standard for 42 NAICS 2007 industries or parts. SBA applied the guidelines in Table 1 to update the size standards for industries in NAICS 2007 to NAICS 2012. This resulted in increases to the size standard for 40 NAICS 2007 industries (including 36 in Manufacturing) and one exception, and a change to the size standard from average annual receipts to number of employees for one industry. Specifically, the $25.5 million size standard for Aircraft Dealers, an exception under NAICS (2007) 441229, All Other Motor Vehicle Dealers, is no longer necessary. NAICS (2012) 441228, Motorcycle, ATV, and All Other Motor Vehicle Dealers, includes aircraft dealers, for which SBA is adopting a $30 million size standard. In addition, the small business size standards for both NAICS (2007) 454311, Heating Oil Dealers, and NAICS (2007) 454312, Liquefied Petroleum Gas (Bottled Gas) Dealers, are 50 employees. However, the size standard for NAICS (2007) 454319, Other Fuel Dealers, is $7 million. Under NAICS 2012, a single NAICS industry, namely 454310, Fuel Dealers, includes all three activities, and 50 employees is therefore the appropriate size standard. In all cases, the adopted size standards were based on the correspondence between NAICS 2007 and NAICS 2012 industry definitions.

Changes in Industry Titles Resulting From SBA's Adoption of NAICS 2012

In addition to changing industry definitions and codes, NAICS 2012 has adopted several NAICS industry title changes to more clearly describe the existing content of industries. These title changes do not change the content or NAICS code of industries, but rather refine how they are described. The title changes affecting the NAICS industry titles in SBA's table of size standards are shown in Table 3, Industry Title Changes in NAICS 2012. Because the title changes do not alter NAICS industry codes or definitions, size standards are not affected. SBA adopts NAICS 2012 industry titles for its table of size standards.

TABLE 3—TITLE CHANGES IN NAICS 2012

NAICS	NAICS 2012 Title	NAICS 2007 Title
Subsector 112	Animal Production and Aquaculture	Animal Production.
236115	New Single-family Housing Construction (Except For-Sale Builders).	New Single-family Housing Construction (Except Operative Builders).
236116	New Multifamily Housing Construction (except For-Sale Builders).	New Multifamily Housing Construction (except Operative Builders).
236117	New Housing For-Sale Builders	New Housing Operative Builders.
334613	Blank Magnetic and Optical Recording Media Manufacturing.	Magnetic and Optical Recording Media Manufacturing.
541850	Outdoor Advertising	Display Advertising.
623110	Nursing Care Facilities (Skilled Nursing Facilities)	Nursing Care Facilities.
623210	Residential Intellectual and Developmental Disability Facilities.	Residential Mental Retardation Facilities.
623312	Assisted Living Facilities for the Elderly	Homes for the Elderly.

Other Considerations: Factoryless Goods Producers

Under NAICS 2012 ''Factoryless Goods Producers'' (FGPs) are defined as manufacturers that outsource manufacturing transformation activities (*i.e.,* the actual physical, chemical or mechanical transformation of inputs into new outputs) to specialized establishments, both foreign and domestic. See 76 FR 51240 (August 17, 2011). An FGP also undertakes all of the entrepreneurial steps and arranges for all required capital, labor, and material inputs required for outsourced companies to make a good. The Economic Classification Policy Committee (ECPC) studied the issue of how to categorize FGPs in NAICS and provided guidance for consistent classification of manufacturing outsourcing establishments across various Federal statistical programs. The ECPC recommended classification of establishments that bear the overall responsibility and risk for bringing together all processes necessary for the production of a good in the manufacturing sector, even if the actual transformation is 100 percent outsourced. The ECPC's full recommendation is available at *http://www.bea.gov/about/pdf/ECPC_Recommendation_for_Classification_of_Outsourcing_1.pdf.* OMB accepted the ECPC's recommendation that FGPs be classified in manufacturing, and therefore be included for statistical purposes in manufacturing under NAICS 2012.

Although this classification of FGPs changes the traditional definition of manufacturing for statistical purposes, SBA's current regulations for Federal government procurement will continue

to apply. In other words, the NAICS 2012 definition of manufacturing includes FGPs, but it does not affect eligibility for Federal procurement programs when a concern must be small to receive available benefits and preferences as a small business. Specifically, the Small Business Act and SBA's regulations generally require that an offeror on a supply contract set aside for small businesses, including 8(a), small businesses located in Historically Underutilized Business Zones (HUBZones), service-disabled veteran-owned small businesses (SDVOSB) and woman-owned small businesses (WOSB), provide the product of a small business made in the United States. Generally, a manufacturer must perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials. 15 U.S.C. 637(a)(14)(A)(ii), 644(o)(1)(B), and 13 CFR 125.6. For size purposes, there can be only one manufacturer of the end item being acquired. The manufacturer is the concern which, with its own facilities, performs the primary activities in transforming inorganic or organic substances, including the assembly of parts and components, into the end item being acquired. The end item must possess characteristics which, as a result of mechanical, chemical or human action, it did not possess before the original substances, parts or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semi-finished as a raw material to be used in further manufacturing. Firms that perform only minimal operations upon the item being procured do not qualify as manufacturers of the end item. In addition, firms that add substances, parts, or components to an existing end item to modify its performance will not be considered the end item manufacturer where those identical modifications can be performed by and are available from the manufacturer of the existing end item. 13 CFR 121.406(b)(2). Accordingly, FGPs that do not comply with these requirements will not qualify as small for Federal procurement programs. However, none of these requirements precludes an FGP from qualifying as a nonmanufacturer when it meets the requirements of 13 CFR 121.406. Under this regulatory provision, for a small business set aside supply contract (including 8(a), SDVO and WOSB, but not HUBZone), SBA can waive the requirement that an offeror supply the product of a small business made in the United States if no small business manufacturers exist.

Alternatives to Adopting NAICS 2012 That SBA Considered

SBA considered retaining the NAICS 2007 industry codes as the basis for small business size standards. That would, however, lead to inconsistency among Federal agencies that adopt NAICS 2012 for their statistical and other programs. OMB stated in its August 17, 2011 ''Notice of NAICS 2012 Final decisions'' that ''Federal statistical establishment data published for reference years beginning on or after January 1, 2012, should be published using the 2012 NAICS United States codes.'' SBA is not a statistical agency, but uses the establishment data collected from other Federal agencies, such as the Economic Census data from the Bureau of the Census for its size standards analysis. If SBA does not adopt NAICS 2012, it will not be able to analyze and evaluate small business size standards adequately and accurately because the forthcoming Economic Census data based on NAICS 2012 industries will not be compatible with NAICS 2007 industries. Without useful data, SBA cannot properly evaluate industry structure and its effect on small business size standards.

Request for Comments

SBA welcomes the public to comment on this interim final rule. If SBA adopts NAICS 2012 for its table of size standards either as outlined in this rule or with modifications, it will publish a final rule. The final rule will address *any* comments received and explain the basis for the Agency's final decision. If SBA receives substantive comments supporting size standards that it has not adopted in this interim final rule, and if SBA agrees with those comments, SBA will modify the size standards in its final rule accordingly.

Justification for Interim Final Rule

In general, SBA publishes a rule for public comment before issuing a final rule in accordance with the Administrative Procedure Act (APA) and SBA regulations. 5 U.S.C. 553 and 13 CFR 101.108, respectively. The APA provides an exception to this standard rulemaking process, where an agency finds good cause to adopt a rule without prior public participation. 5 U.S.C. 553(b)(B). The good cause requirement is satisfied when prior public participation is impracticable, unnecessary, or contrary to the public interest. Under such circumstances, an agency may publish an interim final rule without soliciting public comment.

To reiterate, the changes adopted in this interim rule reflect the NAICS 2012 modifications issued by OMB in August 2011. The NAICS 2012 modifications were adopted after careful consideration of the public comments OMB received in response to two **Federal Register** notices (published on 1/7/2009 and 5/12/2010) detailing the proposed modifications. It is neither necessary nor in the public's interest to revisit the modifications in this rule, after such an extensive comment process. In addition, as discussed further below, in compliance with OMB's direction, this rule necessarily takes effect on October 1, 2012. It would therefore be impractical to solicit public participation prior to implementing the changes outlined in this rule. We note that this rule does provide an opportunity for the public to comment on the changes. Accordingly, SBA finds that good cause exists to publish this as an interim final rule.

Justification for the October 1, 2012 Effective Date

SBA's small business size standards matched to NAICS 2012 will be effective on October 1, 2012, and will apply to all solicitations issued on or after that date, for the following reasons:

1. OMB stated in its August 17, 2011 ''Notice of NAICS 2012 Final decisions'' that ''Federal statistical establishment data published for reference years beginning on or after January 1, 2012, should be published using the NAICS 2012 United States codes.'' SBA is not a statistical agency, but it uses the establishment data collected from other Federal agencies, such as the Economic Census data from the U.S. Bureau of the Census for its size standards analysis. Similarly, other Federal program databases, such as the Federal Procurement Data System—Next Generation (FPDS–NG) and Central Contractor Registration (CCR), are based on NAICS codes from SBA's table of size standards, which is currently based on NAICS 2007. If SBA does not adopt NAICS 2012 for its table of size standards, it will result in inconsistency among various Federal databases. October 1, 2012 is the start of the new Federal Government fiscal year following OMB's adoption of NAICS 2012 effective January 1, 2012, and is consistent with SBA's adoption of previous NAICS revisions effective at the start of the next fiscal year after the OMB's effective date.

2. With the updated size standards based on NAICS 2012, Federal agencies that use NAICS and SBA's size standards could collect data on their small business programs using the latest

NAICS industry definitions. Such data will be comparable and consistent with future Federal statistics that will be based on NAICS 2012 industry codes. Using comparable data enhances the credibility of program and industry analyses.

3. With the October 1, 2012 effective date, Federal agencies that use NAICS and SBA's small business size standards for their programs will have sufficient time to plan and implement the updated size standards, and assess its impact on their programs.

4. To establish, review, and revise, where necessary, small business size standards, SBA uses a special tabulation of industry data that the Agency obtains from the Census Bureau based on its quinquennial Economic Census of U.S. industries and businesses. The next tabulation that SBA will obtain from the Census Bureau will be based on the 2012 Economic Census. Because the 2012 Economic Census and special tabulation will be based on NAICS 2012 industry definitions, SBA needs to use NAICS 2012 as the basis for its table of small business size standards.

5. For the above reasons, it is important that SBA update its size standards to NAICS 2012 prior to the beginning of the next fiscal year. Issuing a proposed rule under the normal rulemaking making process would take considerably more time to implement this action.

Compliance With Executive Orders 12866, 13563, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

OMB has determined that this interim final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866. This interim final rule incorporates the latest revisions of the NAICS, which SBA uses to identify industries in the United States economy for purposes of establishing small business size standards. As discussed in the Supplementary Information above, the size standard of some activities would change because of the NAICS revisions. However, all businesses currently defined as small under the NAICS 2002 industries will continue to be small under the NAICS 2012 industries, as indicated. The interim final rule also affects Federal Government programs that provide a benefit for small businesses. SBA welcomes comments describing the impact on small businesses of the size standard changes resulting from this rule. In order to help explain the need of this rule and the rule's potential benefits and costs, SBA is providing a Cost Benefit Analysis in this section of the rule. This is also not a ''major rule'' under the Congressional Review Act, 5 U.S.C. 800.

Cost Benefit Analysis

1. Is there a need for the regulatory action?

SBA believes that revising its small business size standards based on NAICS 2012 is in the best interests of small businesses. SBA's mission is to aid and assist small businesses through a variety of financial, procurement, business development, and advocacy programs. To assist the intended beneficiaries of these programs effectively, SBA establishes distinct definitions to determine which businesses are deemed small businesses. NAICS 2012 provides the latest industry definitions. The Small Business Act (The Act) delegates to SBA's Administrator the responsibility for establishing definitions for small business. The Act also requires that small business definitions vary to reflect industry differences. 15 USC 632(a). By analyzing and reviewing size standards based on the latest and most comprehensive NAICS definitions, SBA can more accurately and appropriately fulfill its mandate. If SBA does not use the latest industry definitions, size standards would not accurately reflect differences among industries. In addition, the Small Business Jobs Act of 2010 (Jobs Act) requires the Administrator to review one-third of all size standards within each 18-month period from the date of its enactment and to review all size standards at least every five years thereafter. For this, SBA needs data based on the latest NAICS industry definitions available. In this interim final rule, SBA mostly followed the same guidelines that the Agency used for adopting prior NAICS industry modifications, as spelled out under the supplemental information section, above. Size standards based on NAICS 2012 industry definitions and corresponding data will be more accurate and serve SBA's mission more effectively.

2. What are the potential benefits and costs of this regulatory action?

As stated previously, the vast majority of the changes from NAICS 2007 to NAICS 2012 consist of revision to industry titles or reclassification of one or more NAICS 2007 industries or parts into other industries or parts in NAICS 2012 without impacting their size standards. The adoption of NAICS 2012 has resulted in increases to size standards for 40 NAICS 2007 industries and one sub-industry (''exception'') and the change of size standard from average annual receipts to number of employees for one industry. The most significant benefit to businesses as a result of these changes is gaining eligibility for Federal small business assistance programs, including SBA's financial assistance programs, economic injury disaster loans, and Federal procurement opportunities intended for small businesses. Federal small business programs provide targeted opportunities for small businesses under SBA's various business development and contracting programs. These include the 8(a) Business Development program and programs benefiting small businesses located in HUBZones, WOSBs, and SDVOSBs. Other Federal agencies also may use SBA's size standards for a variety of regulatory and program purposes. These programs help small businesses become more knowledgeable, stable, and competitive. Some businesses that exceed current size standards will become small under the higher size standards resulting from the adoption of NAICS 2012. However, SBA cannot estimate with precision the number of businesses that become small because there are no data based on NAICS 2012 industry definitions. Based on the 2007 Economic Census data for the affected NAICS 2007 industries, SBA estimates that approximately 300 additional businesses would gain small business status under the revised size standards. That represents a 0.9 percent increase to the number of small businesses in the affected industries.

The benefits of adopting NAICS 2012 and the resulting revisions to size standards will accrue to three groups in the following ways: (1) Some businesses that are above their current size standards may gain small business status, thereby becoming eligible to participate in Federal small business assistance programs; (2) growing small businesses that are close to exceeding the current size standards for their NAICS 2007 industry may retain their small business status under NAICS 2012, and can continue participating in the programs; and (3) Federal agencies will have a larger pool of small businesses from which to draw for their small business procurement programs because they will be able to define more accurately the principal purposes of their procurements under NAICS 2012, as required by 12 CFR 121.402(b).

Additional firms gaining small business status under NAICS 2012 may receive more Federal contracts, but their number and value cannot be estimated

because of lack of procurement data based on NAICS 2012. Added procurement competition may also result in lower prices to the Government for procurements reserved for small businesses, although SBA cannot quantify this benefit.

Under SBA's 7(a) Loan and 504 Loan Programs, SBA will be able to guarantee more loans, although, in this case too, the number and amount cannot be estimated accurately. Based on data for fiscal years 2008 to 2010, SBA estimates that about 2 to 5 additional loans, totaling about $1.0 million to $1.3 million in Federal loan guarantees could be made to these newly defined small businesses under the revised size standards. Under the Jobs Act, SBA can now guarantee substantially larger loans than in the past. In addition, the Jobs Act established an alternative size standard for SBA's 7(a) and 504 Loan Programs for those applicants that do not meet the size standards for their industries. That is, under the Jobs Act, if a firm applies for a 7(a) or 504 loan but does not meet the size standard for its industry, it might still qualify if, including its affiliates, it has a tangible net worth that does not exceed $15 million and also has an average net income after Federal income taxes (excluding any carry-over losses) for its preceding two completed fiscal years that does not exceed $5.0 million. Thus, increasing the size standards may result in an increase in small business guaranteed loans to small businesses in these industries, but it would be impractical to try to estimate the extent of their number and the total amount loaned.

Newly defined small businesses will also benefit from SBA's Economic Injury Disaster Loan (EIDL) Program. Since this program is contingent on the occurrence and severity of a disaster, SBA cannot make a meaningful estimate of future EIDL benefit.

To the extent that newly defined small firms under NAICS 2012 could become active in Federal procurement programs, this may entail some additional administrative costs to the Federal Government associated with additional bidders for Federal small business procurement opportunities. More firms may seek SBA's guaranteed loans. More will be eligible to enroll in the CCR Dynamic Small Business Search database. Since more firms will qualify as small, more may also seek certification as 8(a) or HUBZone firms, or qualify as WOSB, SDVOSB, and/or small disadvantaged business (SDB) status. However, it is important to point out that most business entities that are already registered in CCR will not be required to update their CCR profiles. However, it will be incumbent on registrants to review their profiles to ensure that they have correct NAICS codes. CCR requires that registered companies update review and update their profiles annually, and therefore, businesses will need to pay particular attention to the changes to determine if they might affect them. They will also have to verify and update, if necessary, their Online Representations and Certification (ORCA) certifications. Among businesses in this group seeking SBA assistance, there could be some additional costs associated with compliance and verification of small business status and protests of small business status. These added costs are likely to be minimal because mechanisms are already in place to handle these administrative requirements.

The costs to the Federal Government may be higher on some Federal contracts under the higher revised size standards under NAICS 2012. With more businesses defined as small, Federal agencies might choose to set aside more contracts for competition among small businesses rather than use full and open competition. The movement from unrestricted to set-aside contracting will likely result in competition among fewer total bidders, although there will be more small businesses in the bidding pool eligible to submit offers. In addition, higher costs may result when additional full and open contracts are awarded to HUBZone businesses because of a price evaluation preference. The additional costs associated with fewer bidders, however, will likely be minor since, as a matter of law, procurements may be set aside for small businesses or reserved for the 8(a), HUBZone, WOSB, or SDVOSB Programs only if awards are expected to be made at fair and reasonable prices.

The revised size standards may have some distributional effects among large and small businesses. Although SBA cannot estimate with certainty the actual outcome of gains and losses among small and large businesses, there are several likely impacts. There may be a transfer of some Federal contracts from large businesses to small businesses. Large businesses may have fewer Federal contract opportunities as Federal agencies decide to set aside more Federal contracts for small businesses. In addition, some agencies may award more Federal contracts to HUBZone concerns instead of large businesses since HUBZone concerns may be eligible for price evaluation adjustments when they compete on full and open bidding opportunities. Similarly, currently defined small businesses may receive fewer Federal contracts due to the increased competition from more businesses defined as small under NAICS 2012. This transfer may be offset by more Federal procurements set aside for all small businesses. The number of newly defined and expanding small businesses that are willing and able to sell to the Federal Government will limit the potential transfer of contracts away from large and small businesses under the existing size standards. The SBA cannot estimate with precision the potential distributional impacts of these transfers.

SBA's adopting NAICS 2012 and revising its size standards accordingly is consistent with SBA's statutory mandate to assist small business. This regulatory action promotes the Administration's objectives. One of SBA's goals in support of the Administration's objectives is to help individual small businesses succeed through fair and equitable access to capital and credit, Government contracts, and management and technical assistance. Appropriate size standards ensure that intended beneficiaries have access to small business programs designed to assist them. The Small Business Act states that ''the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries.'' 15 U.S.C. 632(a)(3). To do that, SBA should use the most current and relevant industry definitions. NAICS 2012 provides the most current and relevant industry definitions.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action including possible distributions impacts that relate to Executive Order 13563 are included above in the Cost Benefit Analysis.

To engage interested parties in this action, SBA has advised Federal agencies that it intends to adopt NAICS 2012 effective October 1, 2012, consistent with other size standard updates based on prior NAICS updates. SBA also has advised Federal agencies to continue using NAICS 2007 until SBA updates its size standards to NAICS 2012.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce

burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For purposes of Executive Order 13132, SBA has determined that this interim final rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, SBA has determined that this interim final rule has no Federalism implications warranting preparation of a Federalism assessment.

Paperwork Reduction Act

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this interim final rule would not impose any new reporting or record keeping requirements.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an initial and final regulatory flexibility analysis only when 5 U.S.C. 553 requires publication of a notice of proposed rulemaking. See 5 U.S.C. 603(a), 604(a). As discussed above, SBA has found good cause under 5 U.S.C. 553(b)(3)(B) to conclude that, with respect to this interim final rule, publication of a notice of proposed rulemaking is impracticable, unnecessary and not in the public's best interest. Accordingly, SBA is not required to perform an initial or final regulatory flexibility analysis for this interim final rule.

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 1. The authority citation for Part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, 694a(9).

■ 2. In § 121.201, amend the table, ''Small Business Size Standards by NAICS Industry'' as follows:

■ a. Revise the industry title of the entry Subsector 112 to read ''Animal Production and Aquaculture'';
■ b. Remove the entry for 221119;
■ c. Add entries for 221114 through 221118;
■ d. Revise the industry title of the entry 236115 to read ''New Single-Family Housing Construction (except For-Sale Builders)'';
■ e. Revise the industry title of the entry 236116 to read ''New Multifamily Housing Construction (except For-Sale Builders)'';
■ f. Revise the industry title of the entry 236117 to read ''New Housing For-Sale Builders.''
■ g. Remove the entries for 311222 and 311223;
■ h. Add an entry for 311224;
■ i. Remove the entries for 311311, 311312, 311313, 311320, 311330, and 311340,;
■ j. Add entries for 311313, 311314, 311340, 311351, and 311352;
■ k. Remove the entries for 311711 and 311712;
■ l. Add an entry for 311710;
■ m. Remove the entries for 311822 and 311823;
■ n. Add an entry for 311824;
■ o. Remove the entries for 312210. 312221, and 312229;
■ p. Add an entry for 312230;
■ q. Remove the entries for 313111, 313112, and 313113;
■ r. Add an entry for 313110;
■ s. Remove the entries for 313221 and 313222;
■ t. Add and entry for 313220;
■ u. Remove the entries for 313241, 313249, 313311, and 313312;
■ v. Add entries for 313240 and 313310;
■ w. Remove the entries for 314121, 314129, 314911, 314912, 314991, and 314992;
■ x. Add entries for 314120, 314910, and 314994;
■ y. Remove entries 315111, 315119, 315191, 315192, 315211, 315212, 315221 through 315225, 315228, 315231 through 315234, 315239, 315291, 315292, and 315999;
■ z. Add entries 315110, 315190, 315210, 315220, 315240, 315280, and 315990;
■ aa. Remove the entries for 316211, 316212, 316213, 316214, and 316219;
■ bb. Add an entry for 316210;
■ cc. Remove the entries for 316991, 316993, and 316999;
■ dd. Add an entry of 316998;
■ ee. Remove entries 322213 through 322215, 322221 through 322226, and 322231 through 322233;
■ ff. Add entries for 322219, 322220, and 322230;
■ gg. Remove the entry for 323110;
■ hh. Revise the industry title of the entry 323111 to read ''Commercial Printing (except Screen and Books)'';
■ ii. Remove the entries for 323112, 323114, 323115, 323116, 323118, 323119, 323121, and 323122;
■ jj. Add an entry for 323120;
■ kk. Remove entries for 325131, 325132, 325181, 325182, 325188, 325191, and 325192;
■ ll. Add entries for 325130, 325180, and 235194;
■ mm. Remove the entries for 325221 and 325222;
■ nn. Add an entry for 325220;
■ oo. Remove the entry 326192;
■ pp. Revise the entry for 326199;
■ qq. Remove the entries 327111 through 327113 and 327121 through 327125;
■ rr. Add entries for 327110 and 327120;
■ ss. Remove the entries for 331111 and 331112;
■ tt. Add an entry for 331110;
■ uu. Remove the entries for 331311 and 331312;
■ vv. Add an entry for 331313;
■ ww. Remove entries 331316, 331319, 331411, 331419, and 331421 through 331423;
■ xx. Add entries for 331318, 331410, and 331420;
■ yy. Remove the entries for 331521 and 331522;
■ zz. Add an entry for 331523;
■ aaa. Remove the entries for 331525 and 331528;
■ bbb. Add an entry for 331529;
■ ccc. Remove the entries for 332115 and 332116;
■ ddd. Add an entry for 332117;
■ eee. Remove the entries for 332211, 322212, 332213, and 332214;
■ fff. Add entries for 332215 and 332216;
■ ggg. Remove the entries for 332611 and 332612;
■ hhh. Add an entry for 332613;
■ iii. Revise the industry title of the entry 332994 to read ''Small Arms, Ordnance, and Ordnance Accessories Manufacturing'';
■ jjj. Remove the entries for 332995, 332997, and 33299;
■ kkk. Revise the entry for 332999;
■ lll. Remove entries for 333210, 333220, 333291 through 333295, and 333298;
■ mmm. Add entries for 333241 through 333244 and 333249;
■ nnn. Remove the entries for 333311, 333312, 333313, 333315, 333319, 333411, and 333412;
■ ooo. Add entries for 333316, 333318, and 333413;
■ ppp. Remove the entries for 333512, 333513, 333516, and 333518;
■ qqq. Add entries for 333517 and 333519;
■ rrr. Remove the entries for 334113 and 334119;
■ sss. Add an entry for 334118;
■ ttt. Remove the entries for 334411, 334414, and 334415;

■ uuu. Revise the industry title of the entry for 334416 to read ''Capacitor, Resistor, Coil, Transformer, and Other Inductor Manufacturing'';
■ vvv. Remove the entries for 334518, 334611, and 334612;
■ www. Revise the industry title of the entry for 334613 to read ''Blank Magnetic and Optical Recording Media Manufacturing'';
■ xxx. Add an entry for 334614;
■ yyy. Remove the entries 335211 and 335212;
■ zzz. Add an entry for 335210;
■ aaaa. Remove the entries for 336311, 336312, 336321, and 336322;
■ bbbb. Add entries for 336310 and 336320;
■ cccc. Remove the entries for 336391 and 336399;
■ dddd. Add an entry for 336390;
■ eeee. Remove the entry for 337129;
■ ffff. Remove the entries for 339911, 339912, 339913, and 339914;
■ gggg. Add an entry for 339910;
■ hhhh. Remove the entries for 339931, 339932, 339941, 339942, 339943, and 339944;
■ iiii. Add entries for 339930 and 339940;
■ jjjj. Revise the industry title of the entry for 423620 to read ''Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers'';
■ kkkk. Remove the entries for 441221 and 441229;
■ llll. Add an entry for 441228;
■ mmmm. Remove the entries for 443111, 443112, 443120, and 443130;
■ nnnn. Add entries for 443141 and 443142;
■ oooo. Remove the entry for 451220;
■ pppp. Remove the entries for 454311, 454312, and 454319;
■ qqqq. Add an entry for 454310;
■ rrrr. Revise the industry title of the entry for 541850 to read ''Outdoor Advertising'';
■ ssss. Revise the industry title of the entry for 623110 to read ''Nursing Care Facilities (Skilled Nursing Facilities)'';
■ tttt. Revise the industry title of the entry for 623210 to read ''Residential Intellectual and Development Disability Facilities'';
■ uuuu. Revise the industry title of the entry for 623312 to read ''Assisted Living Facilities for the Elderly'';
■ vvvv. Remove the entries for 722110, 722211, 722212, and 722213;
■ wwww. Add entries for 722511 and 722513 through 722515; and
■ xxxx. Revise footnote 1 at the end of the table to read as follows:

The additions and revisions read as follows:

§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?

* * * * *

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
	Sector 11—Agriculture, Forestry, Fishing and Hunting		
*	* * * *	*	*
221114	Solar Electric Power Generation	(see footnote 1)	
221115	Wind Electric Power Generation	(see footnote 1)	
221116	Geothermal Electric Power Generation	(see footnote 1)	
221117	Biomass Electric Power Generation	(see footnote 1)	
221118	Other Electric Power Generation	(see footnote 1)	
*	* * * *	*	*
311224	Soybean and Other Oilseed Processing		1,000
*	* * * *	*	*
311313	Beet Sugar Manufacturing		750
311314	Cane Sugar Manufacturing		750
311340	Nonchocolate Confectionery Manufacturing		500
311351	Chocolate and Confectionery Manufacturing from Cacao Beans		500
311352	Confectionery Manufacturing from Purchased Chocolate		500
*	* * * *	*	*
311710	Seafood Product Preparation and Packaging		500
*	* * * *	*	*
311824	Dry Pasta, Dough, and Flour Mixes Manufacturing from Purchased Flour		500
*	* * * *	*	*
312230	Tobacco Manufacturing		1,000
*	* * * *	*	*
313110	Fiber, Yarn, and Thread Mills		500
*	* * * *	*	*
313220	Narrow Fabric Mills and Schiffli Machine Embroidery		500
*	* * * *	*	*
313240	Knit Fabric Mills		500
313310	Textile and Fabric Finishing Mills		1,000
*	* * * *	*	*
314120	Curtain and Linen Mills		500
314910	Textile Bag and Canvas Mills		500
314994	Rope, Cordage, Twine, Tire Cord, and Tire Fabric Mills		1,000

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	*	*	*
315110	Hosiery and Sock Mills		500
315190	Other Apparel Knitting Mills		500
315210	Cut and Sew Apparel Contractors		500
315220	Men's and Boys' Cut and Sew Apparel Manufacturing		500
315240	Women's, Girls', and Infants' Cut and Sew Apparel Manufacturing		500
315280	Other Cut and Sew Apparel Manufacturing		500
315990	Apparel Accessories and Other Apparel Manufacturing		500
*	*	*	*
316210	Footwear Manufacturing		1,000
*	*	*	*
316998	All Other Leather Good and Allied Product Manufacturing		500
*	*	*	*
322219	Other Paperboard Container Manufacturing		750
322220	Paper Bag and Coated and Treated Paper Manufacturing		500
322230	Stationery Product Manufacturing		500
*	*	*	*
323120	Support Activities for Printing		500
*	*	*	*
325130	Synthetic Dye and Pigment Manufacturing		1,000
325180	Other Basic Inorganic Chemical Manufacturing		1,000
*	*	*	*
325194	Cyclic Crude, Intermediate, and Gum and Wood Chemical Manufacturing		750
*	*	*	*
325220	Artificial and Synthetic Fibers and Filaments Manufacturing		1,000
*	*	*	*
326199	All Other Plastics Product Manufacturing		750
*	*	*	*
327110	Pottery, Ceramics, and Plumbing Fixture Manufacturing		750
327120	Clay Building Material and Refractories Manufacturing		750
*	*	*	*
331110	Iron and Steel Mills and Ferroalloy Manufacturing		1,000
*	*	*	*
331313	Alumina Refining and Primary Aluminum Production		1,000
*	*	*	*
331318	Other Aluminum Rolling, Drawing, and Extruding		750
331410	Nonferrous Metal (except Aluminum) Smelting and Refining		1,000
331420	Copper Rolling, Drawing, Extruding, and Alloying		1,000
*	*	*	*
331523	Nonferrous Metal Die-Casting Foundries		500
*	*	*	*
331529	Other Nonferrous Metal Foundries (except Die-Casting)		500
*	*	*	*
332119	Metal Crown, Closure, and Other Metal Stamping (except Automotive)		500
*	*	*	*
332215	Metal Kitchen Cookware, Utensil, Cutlery, and Flatware (except Precious) Manufacturing.		500
332216	Saw Blade and Handtool Manufacturing		500
*	*	*	*
332613	Spring Manufacturing		500
*	*	*	*
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing		750

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees
*	* * * *	*	*
333241	Food Product Machinery Manufacturing		500
333242	Semiconductor Machinery Manufacturing		500
333243	Sawmill, Woodworking, and Paper Machinery Manufacturing		500
333244	Printing Machinery and Equipment Manufacturing		500
333249	Other Industrial Machinery Manufacturing		500
*	* * * *	*	*
333316	Photographic and Photocopying Equipment Manufacturing		1,000
333318	Other Commercial and Service Industry Machinery Manufacturing		1,000
333413	Industrial and Commercial Fan and Blower and Air Purification Equipment Manufacturing.		500
*	* * * *	*	*
333517	Machine Tool Manufacturing		500
333519	Rolling Mill and Other Metalworking Machinery Manufacturing		500
*	* * * *	*	*
334118	Computer Terminal and Other Computer Peripheral Equipment Manufacturing		1,000
*	* * * *	*	*
334614	Software and Other Prerecorded Compact Disc, Tape, and Record Reproducing		750
*	* * * *	*	*
335210	Small Electrical Appliance Manufacturing		750
*	* * * *	*	*
336310	Motor Vehicle Gasoline Engine and Engine Parts Manufacturing		750
336320	Motor Vehicle Electrical and Electronic Equipment Manufacturing		750
*	* * * *	*	*
336390	Other Motor Vehicle Parts Manufacturing		750
*	* * * *	*	*
≤339910	Jewelry and Silverware Manufacturing		500
*	* * * *	*	*
339930	Doll, Toy, and Game Manufacturing		500
339940	Office Supplies (except Paper) Manufacturing		500
*	* * * *	*	*
441228	Motorcycle, ATV, and All Other Motor Vehicle Dealers	30.0	
*	* * * *	*	*
443141	Household Appliance Stores	10.0	
443142	Electronics Stores	30.0	
*	* * * *	*	*
454310	Fuel Dealers		50
*	* * * *	*	*
722511	Full-Service Restaurants	7.0	
722513	Limited-Service Restaurants	10.0	
722514	Cafeterias, Grill Buffets, and Buffets	25.5	
722515	Snack and Nonalcoholic Beverage Bars	7.0	
*	* * * *	*	*

[1] *NAICS codes 221111, 221112, 221113, 221114, 221115, 221116, 221117, 221118, 221121,* and *221122*—A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

* * * * *

Dated: August 8, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–19973 Filed 8–17–12; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30855; Amdt. No. 3490]

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 August 20, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 20, 2012.

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

For Examination—

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

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 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 August 3, 2012.

Ray Towles,

Deputy 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 20 September 2012

Reform, AL, North Pickens, RNAV (GPS) RWY 1, Orig
Reform, AL, North Pickens, RNAV (GPS) RWY 19, Amdt 1
Lake Havasu City, AZ, Lake Havasu City, RNAV (GPS) RWY 14, Orig
Ontario, CA, Ontario Intl, ILS OR LOC RWY 8L, Amdt 9
Sacramento, CA, Sacramento Intl, RNAV (GPS) Y RWY 34L, Amdt 1A
Sacramento, CA, Sacramento Intl, RNAV (GPS) Y RWY 34R, Orig-D
Sacramento, CA, Sacramento Intl, RNAV (RNP) Z RWY 16R, Orig
San Francisco, CA, San Francisco Intl, RNAV (GPS) RWY 28L, Amdt 2
San Francisco, CA, San Francisco Intl, RNAV (GPS) X RWY 10R, Orig-B, CANCELED
San Francisco, CA, San Francisco Intl, RNAV (GPS) Y RWY 10R, Amdt 1
San Francisco, CA, San Francisco Intl, RNAV (RNP) Z RWY 10R, Amdt 1
San Francisco, CA, San Francisco Intl, Takeoff Minimums and Obstacle DP, Amdt 8
San Jose, CA, Norman Y. Mineta San Jose Intl, ILS OR LOC/DME RWY 30L, ILS RWY 30L (SA CAT I), Amdt 22B
Watsonville, CA, Watsonville Muni, WATSONVILLE TWO Graphic DP
Aspen, CO, Aspen-Pitkin CO/Sardy Field, LOC/DME–E, Amdt 1B
Aspen, CO, Aspen-Pitkin CO/Sardy Field, RNAV (GPS)-F, Orig
Aspen, CO, Aspen-Pitkin CO/Sardy Field, VOR/DME–C, Amdt 5
Meeker, CO, Meeker, RNAV (GPS) RWY 3, Amdt 3
Pueblo, CO, Pueblo Memorial, ILS OR LOC/DME RWY 8L, Amdt 23
Pueblo, CO, Pueblo Memorial, ILS OR LOC/DME RWY 26R, Amdt 14
Pueblo, CO, Pueblo Memorial, VOR/DME RWY 26R, Amdt 28
Quincy, FL, Quincy Muni, RNAV (GPS) RWY 14, Orig, CANCELED
Quincy, FL, Quincy Muni, RNAV (GPS) RWY 32, Orig, CANCELED
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 4, Amdt 1
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 11R, Amdt 2
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 22, Amdt 1
Vero Beach, FL, Vero Beach Muni, RNAV (GPS) RWY 29L, Amdt 2
Indianapolis, IN, Indianapolis Rgnl, Takeoff Minimums and Obstacle DP, Amdt 3
Wheaton, MN, Wheaton Muni, NDB OR GPS RWY 34, Amdt 1A, CANCELED
Wheaton, MN, Wheaton Muni, RNAV (GPS) RWY 16, Orig
Wheaton, MN, Wheaton Muni, RNAV (GPS) RWY 34, Orig
Lewistown, MT, Lewistown Muni, RNAV (GPS) RWY 26, Orig
Roundup, MT, Roundup, RNAV (GPS) RWY 7, Orig
Roundup, MT, Roundup, RNAV (GPS) RWY 25, Orig
Roundup, MT, Roundup, Takeoff Minimums and Obstacle DP, Orig
Wolf Point, MT, L M Clayton, NDB RWY 29, Amdt 4
Wolf Point, MT, L M Clayton, RNAV (GPS) RWY 11, Amdt 1
Wolf Point, MT, L M Clayton, RNAV (GPS) RWY 29, Amdt 1
Kearney, NE., Kearney Rgnl, VOR RWY 13, Amdt 2A
Middletown, NY, Randall, NDB RWY 26, Amdt 1A, CANCELED
Middletown, NY, Randall, RNAV (GPS) RWY 8, Amdt 1
Middletown, NY, Randall, RNAV (GPS) RWY 26, Amdt 1
Middletown, NY, Randall, Takeoff Minimums and Obstacle DP, Amdt 3
Middletown, NY, Randall, VOR RWY 8, Amdt 7
Millbrook, NY, Sky Acres, RNAV (GPS) RWY 17, Amdt 2
Saranac Lake, NY, Adirondack Rgnl, ILS OR LOC/DME Z RWY 23, Amdt 9
Saranac Lake, NY, Adirondack Rgnl, LOC Y RWY 23, Orig
Saranac Lake, NY, Adirondack Rgnl, RNAV (GPS) RWY 5, Amdt 1
Saranac Lake, NY, Adirondack Rgnl, RNAV (GPS) RWY 9, Orig
Saranac Lake, NY, Adirondack Rgnl, RNAV (GPS) RWY 23, Orig
Saranac Lake, NY, Adirondack Rgnl, Takeoff Minimums and Obstacle DP, Amdt 7
Saranac Lake, NY, Adirondack Rgnl, VOR RWY 9, Amdt 2
Saranac Lake, NY, Adirondack Rgnl, VOR/DME RWY 5, Amdt 4
Dayton, OH, Greene County-Lewis A. Jackson Rgnl, VOR RWY 7, Orig
Dayton, OH, Greene County-Lewis A. Jackson Rgnl, VOR RWY 25, Orig
Dayton, OH, Greene County-Lewis A. Jackson Rgnl, VOR–A, Orig, CANCELED
Lebanon, OH, Lebanon-Warren County, RNAV (GPS) RWY 1, Amdt 1
Lebanon, OH, Lebanon-Warren County, RNAV (GPS) RWY 19, Amdt 2
Lebanon, OH, Lebanon-Warren County, Takeoff Minimums and Obstacle DP, Amdt 1
Middletown, OH, Middletown Regional/Hook Field, NDB RWY 23, Amdt 9
Middletown, OH, Middletown Regional/Hook Field, NDB–A, Amdt 3
Middletown, OH, Middletown Regional/Hook Field, RNAV (GPS) RWY 5, Orig
Middletown, OH, Middletown Regional/Hook Field, RNAV (GPS) RWY 23, Orig
Middletown, OH, Middletown Regional/Hook Field, Takeoff Minimums and Obstacle DP, Amdt 2
Oklahoma City, OK, Will Rogers World, Takeoff Minimums and Obstacle DP, Amdt 1
Portland, OR, Portland Intl, ILS OR LOC RWY 10L, Amdt 4
Portland, OR, Portland Intl, ILS OR LOC RWY 10R, ILS RWY 10R (CAT II), ILS RWY 10R (CAT III), ILS RWY 10R (SA CAT I), Amdt 34B
Portland, OR, Portland Intl, ILS OR LOC RWY 28L, Amdt 3
Portland, OR, Portland Intl, ILS OR LOC RWY 28R, Amdt 15
Portland, OR, Portland Intl, RNAV (GPS) X RWY 28L, Amdt 2
Portland, OR, Portland Intl, RNAV (GPS) X RWY 28R, Amdt 2
Portland, OR, Portland Intl, RNAV (GPS) Y RWY 10L, Amdt 2
Portland, OR, Portland Intl, RNAV (GPS) Y RWY 10R, Amdt 2
Portland, OR, Portland Intl, RNAV (RNP) Y RWY 28L, Orig
Portland, OR, Portland Intl, RNAV (RNP) Y RWY 28R, Orig
Portland, OR, Portland Intl, RNAV (RNP) Z RWY 10L, Orig
Portland, OR, Portland Intl, RNAV (RNP) Z RWY 10R, Orig
Portland, OR, Portland Intl, RNAV (RNP) Z RWY 28L, Orig
Portland, OR, Portland Intl, RNAV (RNP) Z RWY 28R, Orig
Portland, OR, Portland Intl, Takeoff Minimums and Obstacle DP, Amdt 8
East Stroudsburg, PA, Stroudsburg-Pocono, RNAV (GPS) RWY 8, Orig
East Stroudsburg, PA, Stroudsburg-Pocono, VOR/DME–A, Amdt 6
Johnstown, PA, John Murtha Johnstown-Cambria Co, ILS OR LOC/DME RWY 33, Amdt 7
Johnstown, PA, John Murtha Johnstown-Cambria Co, RNAV (GPS) RWY 5, Amdt 2
Johnstown, PA, John Murtha Johnstown-Cambria Co, RNAV (GPS) RWY 23, Amdt 2
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 26 (SIMULTANEOUS CLOSE PARALLEL), Amdt 4, CANCELED
Philadelphia, PA, Philadelphia Intl, ILS PRM RWY 27L (SIMULTANEOUS CLOSE PARALLEL), Amdt 3, CANCELED
Pittsburgh, PA, Allegheny County, ILS OR LOC RWY 10, Amdt 6
Pittsburgh, PA, Allegheny County, ILS OR LOC RWY 28, Amdt 29
Pittsburgh, PA, Allegheny County, RNAV (GPS) RWY 10, Amdt 4

Dallas, TX, Collin County Rgnl at Mc Kinney, ILS OR LOC RWY 18, Amdt 4
Gainesville, TX, Gainesville Muni, NDB RWY 17, Amdt 9A, CANCELED
Liberty, TX, Liberty Muni, RNAV (GPS) RWY 16, Amdt 2
Midland, TX, Midland Intl, ILS OR LOC RWY 10, Amdt 15
Midland, TX, Midland Intl, LOC BC RWY 28 Amdt 13
Midland, TX, Midland Intl, RADAR–1, Amdt 6
Midland, TX, Midland Intl, RNAV (GPS) RWY 4, Amdt 1
Midland, TX, Midland Intl, RNAV (GPS) RWY 10, Amdt 2
Midland, TX, Midland Intl, RNAV (GPS) RWY 16R, Amdt 1
Midland, TX, Midland Intl, RNAV (GPS) RWY 22, Amdt 1
Midland, TX, Midland Intl, RNAV (GPS) RWY 28, Amdt 2
Midland, TX, Midland Intl, RNAV (GPS) RWY 34L, Amdt 1
Midland, TX, Midland Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Midland, TX, Midland Intl, VOR/DME OR TACAN RWY 34L, Amdt 10
Midland, TX, Midland Intl, VOR OR TACAN RWY 16R, Amdt 23
Tyler, TX, Tyler Pounds Rgnl, ILS OR LOC RWY 13, Amdt 21
Tyler, TX, Tyler Pounds Rgnl, RNAV (GPS) RWY 4, Amdt 2
Tyler, TX, Tyler Pounds Rgnl, RNAV (GPS) RWY 13, Amdt 2
Tyler, TX, Tyler Pounds Rgnl, RNAV (GPS) RWY 22 Amdt 2
Tyler, TX, Tyler Pounds Rgnl, RNAV (GPS) RWY 31, Amdt 2
Tyler, TX, Tyler Pounds Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Tyler, TX, Tyler Pounds Rgnl, VOR RWY 31, Amdt 2
Tyler, TX, Tyler Pounds Rgnl, VOR/DME RWY 4, Amdt 4
Tyler, TX, Tyler Pounds Rgnl, VOR/DME RWY 22, Amdt 4
Rutland, VT, Rutland-Southern Vermont Rgnl, ILS OR LOC/DME Y RWY 19, Orig
Rutland, VT, Rutland-Southern Vermont Rgnl, ILS OR LOC/DME Z RWY 19, Orig
Rutland, VT, Rutland-Southern Vermont Rgnl, LOC Y RWY 19, Amdt 3A, CANCELED
Rutland, VT, Rutland-Southern Vermont Rgnl, LOC Z RWY 19, Amdt 1D, CANCELED
Rutland, VT, Rutland-Southern Vermont Rgnl, RNAV (GPS) Y RWY 19, Amdt 2
Rutland, VT, Rutland-Southern Vermont Rgnl, RNAV (GPS) Z RWY 19, Orig
Rutland, VT, Rutland-Southern Vermont Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4
Vancouver, WA, Pearson Field, Takeoff Minimums and Obstacle DP, Amdt 3
Spencer, WV, Boggs Field, RNAV (GPS) RWY 10, AMDT 1
Spencer, WV, Boggs Field, RNAV (GPS) RWY 28, AMDT 1
Spencer, WV, Boggs Field, Takeoff Minimums and Obstacle DP, Amdt 1

RESCINDED: On July 20, 2012 (77 FR 42627), the FAA published an Amendment in Docket No. 30851, Amdt No. 3486 to Part 97 of the Federal Aviation Regulations under section 97.33. The following 6 entries for Monticello, NY, effective 23 August, 2012, are hereby rescinded in their entirety:

Monticello, NY, Sullivan County Intl, ILS OR LOC RWY 15, Amdt 6
Monticello, NY, Sullivan County Intl, NDB RWY 15, Amdt 7, CANCELED
Monticello, NY, Sullivan County Intl, RNAV (GPS) RWY 15, Amdt 1
Monticello, NY, Sullivan County Intl, RNAV (GPS) RWY 33, Amdt 2
Monticello, NY, Sullivan County Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Monticello, NY, Sullivan County Intl, VOR/DME RWY 33, Amdt 4

RESCINDED: On July 20, 2012 (77 FR 42627), the FAA published an Amendment in Docket No. 30851, Amdt No. 3486 to Part 97 of the Federal Aviation Regulations under section 97.33. The following 4 entries for Rifle, CO, and 1 entry for Plymouth, MA, effective 20 September, 2012, are hereby rescinded in their entirety:

Rifle, CO, Garfield County Rgnl, ILS RWY 26, Amdt 3
Rifle, CO, Garfield County Rgnl, LOC/DME–A, Amdt 9
Rifle, CO, Garfield County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 10
Rifle, CO, Garfield County Rgnl, VOR/DME–C, Amdt 3
Plymouth, MA, Plymouth Muni, ILS OR LOC/DME RWY 6, Amdt 1B

[FR Doc. 2012–19863 Filed 8–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30856; Amdt. No. 3491]

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 August 20, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of August 20, 2012.

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

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; or
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA

Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

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

The Rule

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

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in 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 August 3, 2012.

Ray Towles,

Deputy 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.

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

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

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
20–Sep–12	OR	Salem	McNary Fld	2/0203	7/24/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Amdt 8.
20–Sep–12	AK	Seward	Seward	2/0204	7/24/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Orig.
20–Sep–12	WA	Moses Lake	Grant Co Intl	2/0506	7/24/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Orig.
20–Sep–12	CO	Denver	Centennial	2/3057	7/24/12	ILS OR LOC RWY 35R, Amdt 8B.
20–Sep–12	PA	Shamokin	Northumberland County	2/7091	7/19/12	RNAV (GPS) RWY 8, Orig.
20–Sep–12	IN	Evansville	Evansville Rgnl	2/7672	7/19/12	ILS OR LOC RWY 22, Amdt 21.
20–Sep–12	IN	Evansville	Evansville Rgnl	2/7675	7/19/12	RNAV (GPS) RWY 22, Orig.
20–Sep–12	IN	Evansville	Evansville Rgnl	2/7676	7/19/12	NDB RWY 22 Amdt 13.
20–Sep–12	IN	Evansville	Evansville Rgnl	2/7677	7/19/12	RNAV (GPS) RWY 4, Orig.
20–Sep–12	IN	Evansville	Evansville Rgnl	2/7681	7/19/12	VOR RWY 4, Amdt 6.
20–Sep–12	IL	Fairfield	Fairfield Muni	2/7767	7/19/12	NDB RWY 9 Amdt 3.
20–Sep–12	TX	Amarillo	Rick Husband Amarillo Intl.	2/7768	7/19/12	ILS OR LOC RWY 4, Amdt 22A.
20–Sep–12	MN	Maple Lake	Maple Lake Muni	2/7770	7/19/12	VOR–A, Amdt 4.
20–Sep–12	MI	Cadillac	Wexford County	2/7933	7/19/12	ILS OR LOC RWY 7, Orig-B.
20–Sep–12	MI	Cadillac	Wexford County	2/7934	7/19/12	RNAV (GPS) RWY 25, Orig.
20–Sep–12	MI	Cadillac	Wexford County	2/7935	7/19/12	RNAV (GPS) RWY 7, Orig-A.
20–Sep–12	DC	Washington	Washington Dulles Intl	2/8048	7/19/12	ILS OR LOC RWY 19L, Amdt 15A.
20–Sep–12	TX	Houston	Sugar Land Rgnl	2/8058	7/19/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Amdt 7.
20–Sep–12	MN	Maple Lake	Maple Lake Muni	2/8499	7/19/12	RNAV (GPS) RWY 28, Orig.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
20–Sep–12 ..	CA	Lancaster	General WM J Fox Airfield.	2/9615	7/27/12	NDB C Amdt 3.
20–Sep–12 ..	AK	Nome	Nome	2/9625	7/27/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Amdt 5.
20–Sep–12 ..	TX	Port Aransas	Mustang Beach	2/9652	7/27/12	RNAV (GPS) RWY 30 Orig-B.
20–Sep–12 ..	MN	Minneapolis	Minneapolis-St Paul Intl/ Wold-Chamberlain.	2/9711	7/27/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Amdt 11.

[FR Doc. 2012–19871 Filed 8–17–12; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–67405A; File No. S7–30–11]

RIN 3235–AL19

Extension of Interim Final Temporary Rule on Retail Foreign Exchange Transactions; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Interim final temporary rule; correction.

SUMMARY: On July 16, 2012, the Securities and Exchange Commission (''Commission'') published an interim final temporary Rule 15b12–1T to extend the date on which the rule will expire. That rule omitted a comment date and an addresses section in its preamble. This correction adds the comment date and address information in the following captions.

DATES: *Effective Date:* The rule became effective July 15, 2011, and expires July 16, 2013.

Comment Date: Comments on the amendment to the interim final temporary rule published at FR 77 41671, on July 16, 2012 should be received on or before October 31, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/interim-final-temp.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–30–11 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

All submissions should refer to File Number S7–30–11. This file number should be included on the subject line if email is used. To help the Commission to process and review your comments more efficiently, please use only one method. The Commission will post all comments on its Web site: (*http://www.sec.gov/rules/interim-final-temp.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Joanne Rutkowski, Branch Chief, Bonnie Gauch, Senior Special Counsel, and Leila Bham, Special Counsel, Division of Trading and Markets, at (202) 551–5550, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

Statutory Authority

Pursuant to section 2(c)(2) of the Commodity Exchange Act, as well as the Exchange Act as amended, the Commission amended Exchange Act Rule 15b12–1T on July 16, 2012, and with this document correctly adds a comment date and the pertinent addresses.

List of Subjects in 17 CFR Part 240

Brokers, Consumer protection, Currency, Reporting and recordkeeping requirements.

Dated: August 10, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20089 Filed 8–17–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0747]

Drawbridge Operation Regulation; Grassy Sound Channel, Middle Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Grassy Sound Channel (Ocean Drive) Bridge across the Grassy Sound Channel, mile 1.0, at Middle Township, NJ. The deviation is necessary to accommodate the annual ''The Wild Half'' run. The deviation allows the bridge draw span to remain in the closed-to-navigation position for 3.5 hours during the event.

DATES: This deviation is effective from 7:30 a.m. until 11 a.m. on August 26, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket USCG–2012–0747 are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0747 in the ''Keywords'' box, and then clicking ''Search''. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Jim Rousseau, Bridge Management Specialist, Fifth Coast Guard District, telephone 757–398–6557, email *James.L.Rousseau2@uscg.mil.* If you have questions on reviewing the docket, call Renee V. Wright, Program Manager, Docket Operations, 202–366–9826.

SUPPLEMENTARY INFORMATION: The Event Director for ''The Wild Half'' run, with

approval from the Cape May County Department of Public Works, owner of the drawbridge, has requested a temporary deviation from the current operating schedule to accommodate ''The Wild Half'' run.

The Grassy Sound Channel (Ocean Drive) Bridge across Grassy Sound Channel, mile 1.0, a bascule-lift type drawbridge, in Middle Township, NJ, has a vertical clearance in the closed position of 15 feet, above mean high water.

The Grassy Sound Channel (Ocean Drive) Bridge operating regulations are set out in 33 CFR 117.721. Under normal operating conditions, the draw would open on signal from 6 a.m. to 8 p.m. from May 15 through September 30. From 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year, the draw need not open for vessels. If the fourth Sunday falls on a religious holiday, the draw need not open from 9:15 a.m. to 2:30 p.m. on the third Sunday of March of every year. Two hours advance notice is required for all other openings.

Under this temporary deviation, the drawbridge will be allowed to remain in the closed-to-navigation position from 7:30 a.m. to 11 a.m. on Sunday, August 26, 2012 to accommodate ''The Wild Half'' run.

Vessels able to pass under the closed span may transit under the drawbridge while it is in the closed position. Mariners are advised to proceed with caution. The Coast Guard will inform users of the waterway through our local and broadcast Notices to Mariners of the limited operating schedule for the drawbridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation. There are alternate routes for vessels and the bridge will be able to open in the event of an emergency.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period.

This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 3, 2012.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–20340 Filed 8–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0756]

Drawbridge Operation Regulation; Willamette River, Portland, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Broadway Bridge, mile 11.7, across the Willamette River at Portland, OR. This deviation is necessary to accommodate the 2012 Pints to Pasta foot race event. This deviation allows the bridge to remain in the closed position to allow safe movement of event participants.

DATES: This deviation is effective from 8 a.m. September 9, 2012 through 9 a.m. September 9, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0756 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0756 in the ''Keyword'' box and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282, email *randall.d.overton@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Multnomah County has requested a temporary deviation from the operating schedule for the Broadway Bridge, mile 11.7, crossing the Willamette River at Portland, OR. The requested deviation is to accommodate the Pints to Pasta event. The Broadway Bridge crosses the Willamette River at mile 11.7 and provides 90 feet of vertical clearance above Columbia River Datum 0.0 while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath this bridge during the closure period. Under normal conditions this bridge operates in accordance with 33 CFR 117.897 which allows for the bridge to remain closed between 7 a.m. and 9 a.m. and 4 p.m. and 6 p.m. Monday through Friday. This deviation period is from 8 a.m. on September 9, 2012 through 9 a.m. September 9, 2012. The deviation allows the Broadway Bridge across the Willamette River, mile 11.7, to remain in the closed position and need not open for maritime traffic from 8 a.m. through 9 a.m. on September 9, 2012. The bridge shall operate in accordance to 33 CFR 117.897 at all other times. Waterway usage on this stretch of the Willamette River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridge's operational status via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The bridges will be required to open, if needed, for vessels engaged in emergency response operations during this closure period.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 1, 2012.

Randall D. Overton,

Bridge Administrator.

[FR Doc. 2012–20343 Filed 8–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0199]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor during various periods from August 1, 2012 through August 29, 2012. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks events. Enforcement of this safety zone will establish restrictions upon, and control movement of, vessels in a specified area

immediately prior to, during, and immediately after various fireworks events. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced from 9:15 p.m. on August 1, 2012 to 9:45 p.m. on August 29, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph P. McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7148, email *Joseph.P.McCollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks;* on August 1, 2012 from 9:15 p.m. through 9:45 p.m.; on August 4, 2012 from 10 p.m. through 10:30 p.m.; on August 8, 2012 from 9:15 p.m. through 9:45 p.m.; on August 11, 2012 from 10 p.m. through 10:30 p.m.; on August 15, 2012 from 9:15 p.m. through 9:45 p.m.; on August 18, 2012 from 10 p.m. through 10:30 p.m.; on August 22, 2012 from 9:15 p.m. through 9:45 p.m.; August 25, 2012 from 10 p.m. through 10:30 p.m. and on August 29, 2012 from 9:15 p.m. through 9:45 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: August 8, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012–20339 Filed 8–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0199]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor during various periods from September 1, 2012 through October 27, 2012. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks events. Enforcement of this safety zone will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after various fireworks events. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be effective from 10:15 p.m. on September 1, 2012 to 9:20 p.m. on October 29, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph P. McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7148, email *Joseph.P.McCollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks;* on September 1, 2012 from 10:15 p.m. through 10:30 p.m.; on October 20, 2012 from 9 p.m. through 9:20 p.m.; and on October 27, 2012 from 9 p.m. through 9:20 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: August 8, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012–20344 Filed 8–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2012–0375]

RIN 1625–AA00

Safety Zone; Annual Events Requiring Safety Zones in Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce this safety zone for annual fireworks events in the Captain of the Port, Sector Lake Michigan zone from 9:15 p.m. until 10:45 p.m. on September 7 and 8, 2012. This action is necessary and intended to ensure safety of life on the

navigable waters immediately prior to, during, and immediately after fireworks events. During the enforcement periods announced in this rule, the Coast Guard will enforce restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after fireworks events. No person or vessel may enter the safety zone while it is being enforced without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.935 will be enforceable between 9:15 p.m. and 10:45 p.m. on September 7 and 8, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph P. McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7148, email *Joseph.P.McCollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.935, Safety Zones, Milwaukee Harbor, Milwaukee, WI, for the following events:

(1) *Indian Summer fireworks display* on September 7 and 8, 2012 from 9:15 p.m. through 10:45 p.m.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or a designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.935 Safety Zone, Milwaukee Harbor, Milwaukee, WI and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF–FM Channel 16.

Dated: August 8, 2012.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2012–20346 Filed 8–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0633]

RIN 1625–AA00

Safety Zone; Cocoa Beach Air Show, Atlantic Ocean, Cocoa Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Ocean located east of Cocoa Beach, Florida during the Cocoa Beach Air Show. The Cocoa Beach Air Show will include aircraft engaging in aerobatic maneuvers. The event is scheduled to take place on Saturday, September 22, 2012, and Sunday, September 23, 2012. The temporary safety zone is necessary for the safety of air show participants, participant aircraft, spectators, and the general public during the event. 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 Jacksonville or a designated representative.

DATES: This rule is effective from 10 a.m. on September 22, 2012 through 5:30 p.m. on September 23, 2012. This rule will be enforced from 10 a.m. to 5:30 p.m. on September 22, 2012, and from 10 a.m. to 5:30 p.m. on September 23, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0633]. 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 Commander Robert S. Butts, Sector Jacksonville Prevention Department, Coast Guard; telephone 904–564–7563, email *Robert.S.Butts@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 necessary information regarding the event with sufficient time to publish an NPRM and to receive public comments prior to the event. Any delay in the effective date of this rule would be contrary to the public interest because immediate action is needed to minimize potential danger to air show participants, participant aircraft, spectators, and the general public.

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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect air show participants, participant aircraft, spectators, and the general public from the hazards associated with aircraft performing low-flying aerobatic maneuvers, and the gathering of large numbers of spectator craft over navigable waters of the United States.

C. Discussion of the Final Rule

On Saturday, September 22, 2012, and Sunday, September 23, 2012, the Brevard Air, Sea and Space foundation, is hosting the Cocoa Beach Air Show. The Cocoa Beach Air Show will include approximately 20 aircraft engaging in aerobatic maneuvers over the Atlantic Ocean east of Cocoa Beach, Florida. It is expected that 50 spectator vessels will be present in the area during the event. The high speed at which participant aircraft will be travelling and the maneuvers they will be performing pose a safety hazard to air show participants, participant aircraft, spectators, and the general public.

The safety zone encompasses certain navigable waters of the Atlantic Ocean in the vicinity of Cocoa Beach, Florida. The safety zone will be enforced from 10 a.m. until 5:30 p.m. on Saturday, September 22, 2012, and from 10 a.m. until 5:30 p.m. on Sunday, September 23, 2012. 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 Jacksonville 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 Jacksonville by telephone at 904–564–7511, or a designated representative via VHF radio on channel 16, to request authorization. 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 13 of these statutes or 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 less than a total of 23 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Jacksonville or a designated representative, they may operate in the surrounding area during the enforcement periods; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Jacksonville or a designated representative; 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 that portion of the Atlantic Ocean encompassed within the safety zone from 10 a.m. until 5:30 p.m. on September 22, 2012 and September 23, 2012. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 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 the rule so that they can better evaluate its effects on them and participate in the rulemaking process. 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 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 establishing a temporary safety zone that will be enforced for less than a total of 23 hours during the specified operating hours of the event. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add a temporary § 165.T07–0633 to read as follows:

§ 165.T07–0633 Safety Zone; Cocoa Beach Air Show, Atlantic Ocean, Cocoa Beach, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the Atlantic Ocean located east of Cocoa Beach, Florida encompassed within an imaginary line connecting the following points: starting at Point 1 in position 28°20.654′ N, 80°35.648′ W; thence South to Point 2 in position 28°19.658′ N, 80°35.736′ W; thence West to Point 3 in position 28°19.701′ N, 80°36.293′ W; thence North to Point 4 in position 28°20.692′ N, 80°36.205′ W; thence east back to 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 Jacksonville 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 Jacksonville 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 Jacksonville by telephone at 904–564–7511, 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 Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville 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 and Enforcement Periods.* This rule is effective from 10 a.m. on September 22, 2012 through 5:30 p.m. on September 23, 2012. This rule will be enforced daily from 10 a.m. until 5:30 p.m. on September 22, 2012, and September 23, 2012.

Dated: July 26, 2012.

R.E. Holmes,

Commander, U.S. Coast Guard, Acting Captain of the Port Jacksonville.

[FR Doc. 2012–20336 Filed 8–17–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0571; FRL–9691–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is finalizing approval of San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 3170, ''Federally Mandated Ozone Nonattainment Fee,'' as a revision to SJVUAPCD's portion of the California State Implementation Plan (SIP). Rule 3170 is a local fee rule submitted to address section 185 of the Clean Air Act (CAA or Act) with respect to the 1-hour ozone standard for anti-backsliding purposes. EPA is also finalizing approval of SJVUAPCD's fee-equivalent program, which includes Rule 3170 and state law authorities that authorize SJVUAPCD to impose supplemental fees on motor vehicles, as an alternative to the program required by section 185 of the Act. EPA has determined that SJVUAPCD's alternative fee-equivalent program is not less stringent than the program required by section 185, and, therefore, is approvable as an equivalent alternative program, consistent with the principles of section 172(e) of the Act.

DATES: This rule is effective on September 19, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0571 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps, multi-volume reports), and some may not be available in either location (e.g., confidential business information (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: Lily Wong, EPA Region IX, (415) 947–4114, *wong.lily@epa.gov.*

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

Table of Contents

I. Proposed Action and Interim Final Determination To Defer Sanctions

On July 28, 2011 (76 FR 45212), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	3170	Federally Mandated Ozone Nonattainment Fee	05/19/11	06/14/11

EPA also proposed to approve SJVUAPCD's fee-equivalent program, which includes Rule 3170 and state law authorities that authorize SJVUAPCD to impose supplemental fees on motor vehicles, as an equivalent alternative to the program required by section 185 of the Act for the 1-hour ozone standard as an anti-backsliding measure.

In addition, on July 28, 2011 (76 FR 45199), EPA published an Interim Final Rule to defer the implementation of sanctions that would have resulted from EPA's final limited approval and limited disapproval of an earlier version of Rule 3170 (75 FR 1716, January 13, 2010).

II. Rationale for Approving Equivalent Alternative Programs

In proposing this action regarding the SJVUAPCD, EPA proposed to allow states to meet the section 185 obligation arising from the revoked 1-hour ozone NAAQS through a SIP revision containing either the fee program prescribed in section 185 of the Act, or an equivalent alternative program. 76 FR 45213 (July 28, 2011). Since our proposed action on SJVUAPCD's alternative section 185 program, EPA has also proposed to approve an alternative section 185 program submitted by the State of California on behalf of the South Coast Air Quality Management District as an equivalent alternative program. 77 FR 1895–01 (January 12, 2012). As further explained below, EPA is today approving through notice-and-comment rulemaking, SJVUAPCD Rule 3170 into the California SIP. We are also approving SJVUAPCD's alternative program as an equivalent alternative program consistent with the principles of section 172(e) of the CAA and not less stringent than a program prescribed by section 185.[1]

Section 172(e) is an anti-backsliding provision of the CAA that requires EPA to develop regulations to ensure that controls in a nonattainment area are ''not less stringent'' than those that applied to the area before EPA revised a NAAQS to make it less stringent. In the Phase 1 Ozone Implementation Rule for the 1997 ozone NAAQS published on April 30, 2004 (69 FR 23951), EPA determined that although section 172(e) does not directly apply where EPA has strengthened the NAAQS, as it did in 1997, it was reasonable to apply to the transition from the 1-hour NAAQS to the more stringent 1997 8-hour NAAQS, the same anti-backsliding principle that would apply to the relaxation of a standard. Thus, as part of applying the principles in section 172(e) for purposes of the transition from the 1-hour standard to the 1997 8-hour standard, EPA can either require states to retain programs that applied for purposes of the 1-hour standard, or can allow states to adopt equivalent alternative programs, but only if such alternatives are determined through notice-and-comment rulemaking to be ''not less stringent'' than the mandated program. EPA has previously identified three types of alternative programs that could satisfy the section 185 requirement: (i) Those that achieve the same emissions reductions; (ii) those that raise the same amount of revenue and establish a process where the funds would be used to pay for emission reductions that will further improve ozone air quality; and (iii) those that would be equivalent through a combination of both emission reductions and revenues.[2] We are today determining through notice-and-comment rulemaking that states can demonstrate an alternative program's equivalency by comparing expected fees and/or emissions reductions directly attributable to application of section 185 to the expected fees, pollution control project funding, and/or emissions reductions from the proposed alternative program. Under an alternative program, EPA concludes that states may opt to proceed as here, shifting the fee burden from a specific set of major stationary sources to non-major sources, such as owners of mobile sources that also contribute to ozone formation. EPA also believes that alternative programs, if approved as ''not less stringent'' than the section 185 fee program, would encourage one-hour ozone NAAQS nonattainment areas to reach attainment as effectively and expeditiously as a section 185 fee program, if not more so, and therefore satisfy the CAA's goal of attainment and maintenance of the NAAQS.

While section 185 focuses most directly on assessing emissions fees, we

[1] EPA has previously set forth this reasoning in a memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Air Division Directors, ''Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS,'' January 5, 2010 (''Section 185 Guidance Memo''). On July 1, 2011, the DC Circuit Court of Appeals vacated this guidance, on the ground that it was final agency action for which notice-and-comment rulemaking procedures were required, and that the Agency's failure to use the required notice and comment procedures rendered the guidance invalid. *NRDC* v. *EPA,* 643 F.3d 311 (DC Cir. 2011). In today's action, EPA, having gone through notice-and-comment rulemaking, adopts the reasoning set forth in that memorandum as it applies to SJVUAPCD's equivalent alternative program as its basis for approving the SJVUAPCD SIP revision. In so doing, we have applied the court's directive to follow the rulemaking requirements set forth in the Administrative Procedures Act to inform consideration of section 185 and equivalent alternative programs.

[2] These types of programs were identified in our proposed rulemaking action concerning SJVUAPCD Rule 3170 and its alternative program 76 FR 45212 (July 28, 2011).

believe it is useful to interpret anti-backsliding requirements for section 185 within the context of the CAA's ozone implementation provisions of subpart 2 (which includes section 185). The subpart 2 provisions are designed to promote reductions of ozone-forming pollutant emissions to levels that achieve attainment of the ozone NAAQS. In this context, to satisfy the anti-backsliding requirements for section 185 associated with the 1-hour NAAQS, we believe it is appropriate for states to implement equivalent alternative programs that maintain a focus on achieving further emission reductions, whether that occurs through the incentives created by fees levied on pollution sources or other funding of pollution control projects, or some combination of both. For any alternative program adopted by a state, the state's demonstration that the program is not less stringent should consist of comparing expected fees and/or emission reductions directly attributable to application of section 185 to the expected fees, pollution control project funding, and/or emissions reductions from the proposed alternative program. For a valid demonstration to ensure equivalency, the state's submissions should not underestimate the expected fees and/or emission reductions from the section 185 fee program, nor overestimate the expected fees, pollution control project funding, and/or emission reductions associated with the proposed alternative program.

We also note that the structure established in Subparts 1 and 2 of the CAA recognizes that successful achievement of clean air goals depends in great part on the development by states of clean air plans that are specifically tailored to the nature of the air pollution sources in each state. The Act recognizes that states are best suited to design plans that will be most effective. Allowing states to put forward an equivalent program under the circumstances that pertain here, and under the authority of section 172(e), is consistent with this principle of the Act.

In sum, in order for EPA to approve an alternative program as satisfying the 1-hour ozone section 185 fee program SIP revision requirement, the state must demonstrate that the alternative program is not less stringent than the otherwise applicable section 185 fee program by collecting fees from owner/operators of pollution sources, providing funding for emissions reduction projects, and/or providing direct emissions reductions equal to or exceeding the expected results of the otherwise applicable section 185 fee program. We have previously accepted public comment on whether it is appropriate for EPA to consider equivalent alternative programs. We have concluded that it is appropriate to do so, and that SJVUAPCD's program is approvable as an equivalent alternative program consistent with the principles of section 172(e) of the Act.

III. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from several parties. The comments and our responses are summarized below.

A. Rule 3170 and Section 185

1. Exemption for Clean Emission Units

a. *Comment:* One commenter stated that Rule 3170, sections 4.1 and 4.2, exempt so-called ''clean emission units,'' but section 185 does not allow for such an exemption. The Act provides no exemption for any major stationary source, regardless of the emission control technology employed. Congress assumed that areas subject to 185 will have adopted reasonably available control technologies (''RACT'') for major stationary sources, that other sources will have gone through new source review and be subject to the lowest achievable emission rate (''LAER'') requirement, and that SIPs may have targeted certain categories for more stringent controls than others. All of this is laid out in subparts 1 and 2 of Title I, Part D of the Act. Section 185 applies when, despite all of these controls, the area still fails to attain. Another commenter stated that Rule 3170 allows exemptions for ''clean emissions units'' and stated that the Act provides no exemption for any major stationary source, regardless of the emission control technology employed.

Response: We agree that section 185 applies when an ozone nonattainment area designated Severe or Extreme fails to reach attainment by its attainment date and requires assessment of a fee for each source, with no exemption for clean emission units. Today's action, however, is to approve Rule 3170, in the context of the revoked 1-hour ozone NAAQS. We conclude that Rule 3170 is approvable into the California SIP and as part of the District's equivalent alternative program because we have determined that Rule 3170 will result in the collection of fees at least equal to the amount that would be collected under section 185, that the fees will be used to reduce ozone pollution, and that the program therefore satisfies the requirements of CAA section 185, consistent with the principles of section 172(e). We also note that the program will raise this amount by a combination of fees from sources that do not qualify as ''clean units'' as defined in Rule 3170 and from a fee on vehicles, which are responsible for approximately 80 percent of ozone formation in SJVUAPCD.[3] Our proposed action contains our analysis of how the District's equivalent alternative program meets the ''not less stringent than'' criterion of section 172(e), and we provide additional explanation below.

b. *Comment:* Congress' decision was to make each major stationary source pay a penalty based on their individual contribution to the continuing problem. Larger emitters pay a larger fee and small emitters pay a smaller fee. There is no suggestion that the best controlled sources are entitled to any other ''reward'' or exemption. Section 185 is not a program to penalize only the less-well regulated sources.

Response: We do not agree with the commenter's statement that section 185 does not provide a ''reward'' or exemption for well-controlled sources. In fact, we believe that section 185 clearly ''rewards'' well-controlled sources by exempting those that reduce emissions by 20 percent or more from the fee requirements. This ''reward,'' however, is available only if the source acts to decrease its emissions after the attainment deadline has passed, which in San Joaquin's case was 2010. Rule 3170, on the other hand, provides an exemption from fees for ''clean emission units,'' which are units that have air pollution controls that reduce pollution by at least 95 percent or units that installed Best Available Control Technology (BACT) anytime between 2006 and 2010. The ''clean unit exemption'' in Rule 3170 is thus not consistent with the timing envisioned by Congress; therefore, we agree with the commenter that the exemption is not consistent with the express language in section 185. We note, however, that in the context of the revoked 1-hour ozone NAAQS, we are approving Rule 3170 into the California SIP and as part of the District's equivalent alternative program because we have determined that Rule 3170 will result in the collection of fees at least equal to the amount that would be collected under section 185, that the fees will be used to reduce ozone pollution, and that the program therefore satisfies the requirements of CAA section 185, consistent with the principles of section 172(e). Our

[3] District comment letter dated August 24, 2011 and the California Air Resources Board's *California Emissions Projection Analysis Model (CEPAM): 2009 Almanac* found at: *http://www.arb.ca.gov/app/emsinv/fcemssumcat2009.php.*

proposed action contains our analysis of how the District's equivalent alternative program meets the ''not less stringent than'' criterion of section 172(e), and we provide additional explanation below.

We also do not agree with the comment that, ''Congress' decision was to make each major stationary source pay a penalty based on their individual contribution to the continuing problem. Larger emitters pay a larger fee and small emitters pay a smaller fee.'' In fact, under section 185 large emitters can completely avoid penalties in any year that they emit 20 percent less than they emitted in the applicable attainment year (2010 for the District). As a result, a source in the District that emits 500 tons of NO_X in 2010 would not pay a section 185 fee in any subsequent year in which its NO_X emissions are 400 tons or less. On the other hand, a source that emits 50 tons of NO_X in 2010 will still have to pay a section 185 fee in every subsequent year that it emits more than 40 tons. Thus, under these scenarios, after the attainment year of 2010, the source that emits 400 tons would pay no fee and the source that emits 41 tons would pay a fee (albeit a nominal one based on 1 ton of emissions above the reduction target). In this respect, then, section 185 does not distinguish between sources based on their relative contribution to ozone non-attainment.

c. *Comment:* That Congress understood that the level of control between sources could vary is expressly acknowledged in section 185(b)(2), which specifies that the baseline comes from the lower of actuals or allowables, and that the allowables baseline is to be based on the emissions allowed ''under the permit'' unless the source has no permit and is subject only to limits provided under the SIP. It would defeat this express language to exempt sources from paying a fee based on some arbitrary notion of being ''clean enough.''

Response: The commenter's characterization of Rule 3170's clean unit exemption as ''arbitrary'' or as based on ''being clean enough'' is inaccurate. In fact, Rule 3170, section 3.3 defines a ''clean unit'' as: an emission unit that (i) has emissions control technology with a minimum control efficiency of at least 95 percent (or at least 85 percent for leanburn, internal combustion engines); or (ii) has emission control technology that meets or exceeds achieved-in-practice BACT as accepted by the Air Pollution Control Officer (APCO) during the period from 2006—2010.'' We believe Rule 3170 reflects the District's considered determination of what it views as ''clean'' sufficient to qualify for an exemption from fees as part of an equivalent alternative program for anti-backsliding purposes.

Nevertheless, we agree with the commenter that Congress did not differentiate between sources according to the ''level of control.'' Thus, section 185 does not distinguish a source with a control efficiency of 1 percent from a source with a control efficiency of 99 percent. Under either scenario, sources are subject to section 185 fees if those reductions occurred prior to the attainment year. This aspect of section 185 does not affect our action to approve Rule 3170 into the California SIP and as part of SJVUAPCD's equivalent alternative program, as discussed further below.

2. Alternative Baseline

a. *Comment:* Two commenters stated that Rule 3170 fails to meet the requirements of section 185 by allowing an alternative baseline period for major stationary sources. They claim there is no statutory basis for section 3.2.2 of Rule 3170, which allows for the establishment of ''[a]n alternative baseline period reflecting an average of at least two consecutive years within 2006 through 2010, if those years are determined by the APCO as more representative of normal source operation.'' They further claim that:

- Section 185 requires the baseline to be the lower of actual emissions or emissions allowed during the attainment year.
- Only sources with emissions that are irregular, cyclical, or otherwise vary significantly from year to year can extend the baseline period to account for that variation.
- The possibility of extending the baseline is not available at the option of the source or at the discretion of the APCO.
- Section 185 allows the option of extending the baseline only with respect to determining actual emissions; section 5.1 suggests that the APCO might be able to change the baseline period for determining allowable emissions, which is not allowed.

Response: Section 185(b)(2) authorizes EPA to issue guidance that allows the baseline to be the lower of average actuals or average allowables determined over more than one calendar year. Section 185(b)(2) further states that the guidance may provide that the average calculation for a specific source may be used if the source's emissions are irregular, cyclical or otherwise vary significantly from year to year. Pursuant to these provisions, EPA developed and issued a memorandum to EPA Regional Air Division Directors, ''Guidance on Establishing Emissions Baselines under Section 185 of the Clean Air Act (CAA) for Severe and Extreme Ozone Nonattainment Areas that Fail to Attain the 1-hour Ozone NAAQS by their Attainment Date,'' William T. Harnett, Director, Air Quality Division, March 21, 2008 (EPA's Baseline Guidance). EPA's Baseline Guidance suggests as an alternative baseline for sources whose annual emissions are ''irregular, cyclical, or otherwise vary significantly from year to year,'' the baseline calculation in EPA's Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21(b)(48). As explained in EPA's Baseline Guidance, the PSD regulations allow a baseline to be calculated using ''any 24-consecutive month period within the past 10 years ('2-in-10' concept) to calculate an average actual annual emissions rate (tons per year).''

Rule 3170, section 3.2.2 allows for an alternative baseline based on the average of at least two consecutive years within 2006 through 2010, ''if those years are determined by the APCO as more representative of normal source operation.'' Therefore, Rule 3170 differs from the PSD-based 2-in-10 concept described in EPA's Baseline Guidance because it allows for an alternative baseline based on 2006–2010, rather than the ''2-in-10'' concept.

In response, we note that EPA's Baseline Guidance stated that the 2-in-10 concept was ''an acceptable alternative method that could be used for calculating the 'baseline amount,' '' leaving open the possibility that other methods might also be appropriate. We also note that EPA's Baseline Guidance described the 2-in-10 concept as warranted because it allows for a determination of a baseline ''that represents normal operation of the source'' over a full business cycle; the similar terminology leads to a reasonable expectation that determinations under Rule 3170 will be similar to those contemplated by EPA's Baseline Guidance. In addition, we believe that Rule 3170's use of a 5 year ''look back,'' rather than a 10 year ''look back'' actually limits the amount of flexibility allowed by Rule 3170's alternative baseline, rather than expanding it beyond the scope of EPA's Baseline Guidance.

We do not agree with the commenter's criticism that Rule 3170 section 5.1 ''suggests that the APCO might be able to change the baseline period for determining allowable emissions'' whereas section 185 allows for extending a baseline based only on actual emissions. Section 185 plainly

states that EPA may issue guidance authorizing a baseline reflecting an emissions period of more than one year based on the ''lower of average actual or average allowables''.

Furthermore, we note that the District's equivalent alternative program uses the attainment year, 2010, as the baseline period to determine the fees that would have been assessed under a direct implementation of section 185 and as the point of comparison for the equivalency demonstration. *See* Rule 3170, Section 7.2.1.3. In this way, we believe the District will be able to make a proper comparison between fees owed under section 185 and revenues resulting from the alternative fee program.

Finally, we note that in the context of the revoked 1-hour ozone NAAQS, we are approving Rule 3170 into the California SIP and as part of the District's equivalent alternative program because we have determined that Rule 3170 will result in the collection of fees at least equal to the amount that would be collected under section 185, that the fees will be used to reduce ozone pollution, and that the program therefore satisfies the requirements of CAA section 185, consistent with the principles of section 172(e). Our proposed action contains our analysis of how the District's equivalent alternative program meets the ''not less stringent than'' criterion of section 172(e).

3. Major Source Definition

a. *Comment:* Cross-references are a bad practice because they create a potential for conflicts between the locally-applicable rule and the SIP-approved rule.

Response: EPA believes that cross-references to other district rules can be problematic and has commented to our state and local agencies to that effect. There are also cases where cross-referencing is an efficient and reasonable approach to local rule development. We do not find that Rule 3170's cross-reference to Rule 2201, New and Modified Stationary Source Review Rule, is an appropriate basis for disapproval, nor does the commenter seem to claim that we should disapprove the rule on that basis.

b. *Comment:* Rule 2201's definition of ''major source'' does not match the definition of 182(e) of the Act, which includes all emissions of VOC or NO_X, with no exemption for fugitive emissions, and looks at the larger of actual or potential emissions. Rule 2201 excludes fugitive emissions for certain sources.

Response: EPA does not agree that Rule 3170's reference to Rule 2201 is clearly inconsistent with the requirements of section 185. First, we note that section 182(e) is silent with respect to whether fugitive emissions should be included when determining whether a source's actual or potential emissions exceed the 10 ton per year threshold. That is, section 182(e) neither expressly includes nor excludes fugitive emissions. Second, we note that Congress' definition of ''major stationary source'' at CAA 302(j) expressly delegates to EPA the authority to address the inclusion of fugitive emissions in major source determinations by rule. EPA has promulgated such definitions in the context of our rules for non-attainment major new source review, prevention of significant deterioration, state operating permit programs, and federal operating permit programs. See 40 CFR part 51, Appendix S, part 52, part 70 and part 71. Each of these regulations excludes a source's fugitive emissions from major source determinations unless the source belongs to one of 28 specifically listed categories. Third, we believe that the District's use of its permitting program's definition of major source to implement the section 185 fee program is reasonable and consistent with congressional intent because Congress itself recognized the relevancy of permit programs to section 185 fee programs when it provided that the baseline amount for calculating 185 fees should be ''the lower of the amount of actual VOC emissions ('actuals') or VOC emissions allowed under the permit applicable to the source''. Fourth, we note that CAA section 185 fee programs are new and that neither EPA nor the states have a history of interpreting or implementing section 185 in a way that would suggest that states should include fugitive emissions when determining which sources are subject to the program or that failure to do so would provide a basis for disapproving Rule 3170.

The commenter's reference to section 182(e) ''look[ing] at the larger of actual or potential emissions'' is not entirely clear. To the extent that the commenter is saying that section 182(e) defines a major source as a source whose actual emissions exceed 10 tons per year or whose potential to emit exceeds 10 tons per year, we agree with the comment. Rule 2201, section 3.23 also defines major stationary source as one whose post-project emissions or post-project PTE exceeds 20,000 pounds (10 tpy).

c. *Comment:* Rule 2201 only includes potential emissions from units with valid permits.

Response: The comment is vague and unclear in its reference to Rule 2201. To the extent the commenter is complaining that a source's potential emissions are included only if the unit has a valid permit, EPA infers that the commenter is referencing Rule 2201, section 4.10, which provides that the calculation of post-project stationary source potential to emit shall include the potential to emit from all units with a valid Authority to Construct (ATC). To the extent that the commenter is concerned that some sources will not be considered major sources subject to section 185 fees because the source includes unpermitted emission units, EPA believes this problem is not an inherent defect in either Rule 2201 or Rule 3170, but rather a problem that should be addressed through enforcement action, which presumably will result in the issuance of an ATC if appropriate, followed by a determination of major source status if warranted.

d. *Comment:* Rule 2201 credits limits in authorities to construct that may or may not reflect actual emissions.

Response: The commenter's complaint that Rule 2201 ''credits limits in authorities to construct that may or may not reflect actual emissions'' is also vague and unclear—both in reference to the application of Rule 2201 itself and to how this aspect of Rule 2201, if it exists, affects determinations of major source status for the purposes of Rule 3170. To the extent the commenter is claiming that the application of Rule 2201 would not result in a calculation of major source status consistent with the CAA, we disagree. Rule 2201, section 3.23 clearly allows for major source determinations to be made based on a source's post-project actual emissions or its post-project PTE and applies the correct trigger for either NO_X or VOCs of 20,000 pounds or 10 tons per year. Furthermore, we note that Rule 3170, section 6.2, requires sources to report actual emissions on an annual basis and that Rule 2201, sections 3.26 and 4.10 provide a clear means to determine a source's potential to emit. Thus, we do not agree with the commenter that Rule 3170 is flawed because of its reference to Rule 2201 as the basis for defining ''major source.''

4. Motor Vehicle Fees as a ''Cure'' for Rule 3170's Clean-Unit Exemption and Alternative Baseline Provisions

Comment: Motor vehicle fees do not qualify SJVUAPCD for either of the fee exemptions provided by the Act: (i) extension years under 7511(a)(5), and (ii) areas with population below 200,000 that can demonstrate transport.

Response: As explained in our proposed action, we are approving Rule

3170 into the California SIP and as part of the District's equivalent alternative program as an anti-backsliding measure for the revoked 1-hour ozone standard because we have determined that Rule 3170 will result in the collection of fees at least equal to the amount that would be collected under section 185, that the fees will be used to reduce ozone pollution, and that the program therefore satisfies the requirements of CAA section 185, consistent with the principles of section 172(e). Thus, it is irrelevant that Rule 3170 does not meet the precise requirements of section 185.

B. EPA's Authority To Approve Alternative Fee Programs that Differ from CAA Section 185

1. Authority Under CAA and Case Law

Comment: One commenter stated that nothing in the plain language of the Act, the ''principles'' behind that language, or *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) gives EPA the power to rewrite the terms of section 185. EPA's argument that it can invent alternatives that fail to comply with the plain language of section 185 has no statutory basis. Another commenter stated that section 185's plain language is unambiguous, that Congress has specified the parameters of the section 185 program and that to approve a fee alternative program that does not meet the minimal requirements explicitly set out in section 185 violates the plain language of the Act. This commenter also stated that the *South Coast* court upheld retention of section 185 nonattainment fees for regions that fail to meet the 1-hour ozone standard. Other commenters supported EPA's action as a reasonable interpretation of the Act and consistent with the *South Coast decision.*

Response: In a 2004 rulemaking governing implementation of the 1997 8-hour ozone standard, EPA revoked the 1-hour ozone standard effective June 15, 2005. 69 FR 23858 (April 30, 2004) and 69 FR 23951 (April 30, 2004) (''2004 Rule''); *see also,* 40 CFR 50.9(b). EPA's revocation of the 1-hour standard was upheld by the Court of Appeals for the District of Columbia Circuit. *South Coast Air Quality Management District* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006) reh'g denied, 489 F.3d. 1245 (D.C. Cir.) 2007) (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review)(''*South Coast*''). Thus, the 1-hour ozone standard that the District failed to attain by its attainment date no longer exists and a different standard now applies.

Section 172(e) provides that, in the event of a relaxation of a primary NAAQS, EPA must promulgate regulations to require ''controls'' that are ''not less stringent'' than the controls that applied to the area before the relaxation. EPA's 8-hour ozone standard is recognized as a strengthening of the NAAQS, rather than a relaxation; however, EPA is applying the ''principles'' of section 172(e) to prevent backsliding of air quality in the transition from regulation of ozone pollution using a 1-hour metric to an 8-hour metric. Our application of the principles of section 172(e) in this context was upheld by the D.C. Circuit in the *South Coast* decision: ''EPA retains the authority to revoke the one-hour standard so long as adequate anti-backsliding provisions are introduced.'' *South Coast,* 472 F.3d at 899. Further, the court stated, that in light of the revocation, ''[t]he only remaining requirements as to the one-hour NAAQS are the anti-backsliding limitations.'' *Id.*

As stated above, section 172(e) requires State Implementation Plans to contain ''controls'' that are ''not less stringent'' than the controls that applied to the area before the NAAQS revision. EPA's 2004 Rule defined the term ''controls'' in section 172(e) to exclude section 185. *See* 2004 Rule, 69 FR at 24000. The D.C. Circuit ruled that EPA's exclusion of section 185 from the list of ''controls'' for Severe and Extreme non-attainment areas was improper and remanded that part of the rule back to EPA. *See South Coast,* 472 F.3d at 902–03. The court did not, however, address the specific issue of whether the principles of section 172(e) required section 185 itself or any other controls not less stringent, and section 172(e) clearly on its face allows such equivalent programs. Further, the court in *NRDC* v. *EPA,* 643 F.3d 311 (D.C. Cir. 2011), specifically noted with respect to equivalent alternative programs that ''neither the statute nor our case law obviously precludes [the program alternative.]'' 643 F.3d at 321. In this rulemaking approving SJVUAPCD Rule 3170, EPA is fully recognizing section 185 as a ''control'' that must be met through the application of the principles of section 172(e). As explained above, the D.C. Circuit stated that EPA must apply the principles of section 172(e) to non-attainment requirements such as section 185. Thus, we are following the D.C. Circuit's holding that the principles of section 172(e) apply in full to implement 185 obligations.

2. Applicability of Section 172(e)

Comment: CAA section 172(e) does not apply to this situation because EPA has adopted a more health protective ozone standard. EPA acknowledges that section 172(e) by its terms does not authorize EPA's action because the newer 8-hour ozone standard is not a relaxation of the prior 1-hour ozone standard. EPA claims that its authority to permit States to avoid the express requirements of section 185 derives from the ''principles'' of section 172(e). But there is no principle in the CAA that Congress intended to give EPA authority to rewrite the specific requirements of section 185 when EPA finds that the health impacts related to ozone exposure are even more dangerous than Congress believed when it adopted the detailed requirements in the 1990 Clean Air Act Amendments. The *South Coast* court upheld retention of section 185 nonattainment fees for regions that fail to meet the 1-hour ozone standard. Other commenters supported EPA's action as a reasonable application of section 172(e).

Response: The *South Coast* court agreed with the application of the principles of section 172(e) despite the fact that section 172(e) expressly refers to a ''relaxation'' of a NAAQS, whereas the transition from 1-hour to 8-hour is generally understood as increasing the stringency of the NAAQS. As the court stated, ''Congress contemplated * * * the possibility that scientific advances would require amending the NAAQS. Section 109(d)(1) establishes as much and section 172(e) regulates what EPA must do with revoked restrictions * * *. The only remaining requirements as to the one-hour NAAQS are the anti-backsliding limitations.'' *South Coast,* 472 F.3d at 899. (citation omitted).

3. Discretion in Title I, Part D, Subparts 1 and 2

Comment: One commenter stated that the Supreme Court in *Whitman* v. *Am. Trucking Assns,* interpreted the CAA as showing Congressional intent to limit EPA's discretion. The D.C. Circuit in *SCAQMD* also held that EPA's statutory interpretation maximizing agency discretion was contrary to the clear intent of Congress in enacting the 1990 amendments. EPA's approach [with respect to 185] would allow EPA to immediately void the specific statutory scheme Congress intended to govern for decades. EPA cannot reasonably claim that Congress meant to give EPA the discretion to revise the carefully prescribed statutory requirements like section 185 that Congress adopted to address these exposures. EPA proposes to accept a program other than that provided by Congress in section 185. Given that Congress provided a specific

program, EPA has no discretion to approve an alternative. Another commenter also stated that given that Congress provided a specific program, EPA has no discretion to approve an alternative.

Response: While one holding in *Whitman* v. *Am. Trucking Assns,* 531 U.S. 457 (2001) stands for the general proposition that Congress intended to set forth prescriptive requirements for EPA and states, particularly the requirements contained in Subpart 2, the D.C. Circuit has noted that the Court did not consider the issue of how to implement Subpart 2 for the 1-hour standard after revocation. *See, South Coast,* 472 F.3d at 893 (''when the Supreme Court assessed the 1997 Rule, it thought that the one- and eight-hour standards were to coexist.''). Thus, the Court did not consider how section 172(e)'s anti-backsliding requirements might be applied in the current context of a revoked NAAQS.

We also believe that the commenter's reliance on *South Coast* to argue that it precludes EPA's use of section 172(e) principles to implement section 185 is similarly misplaced. The holding cited by the commenter relates to an entirely different issue than EPA's discretion and authority under section 172(e)—whether EPA had properly allowed certain 8-hour ozone non-attainment areas to comply with Subpart 1 in lieu of Subpart 2. In fact, the *South Coast* court not only upheld EPA's authority under section 109(d) to revise the NAAQS, it recognized its discretion and authority to then implement section 172(e):

Although Subpart 2 of the Act and its table 1 rely upon the then-existing NAAQS of 0.12 ppm, measured over a one-hour period, elsewhere the Act contemplates that EPA could change the NAAQS based upon its periodic review of 'the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health' that the pollutant may cause. CAA sections 108(a), 109(d), 42 U.S.C. sections 7408(a), 7409(d). The Act provides that EPA may relax a NAAQS but in so doing, EPA must 'provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.' CAA 172(e), 42 U.S.C. 7502(e). *South Coast,* 472 F.3d at 888.

Further, as noted above, EPA believes that *South Coast* supports our reliance on section 172(e) principles to approve Rule 3170 and SJVUAPCD's alternative program as fulfilling section 185 requirements for the revoked 1-hour standard. As the court stated, ''EPA was not, as the Environmental petitioners contend, arbitrary and capricious in withdrawing the one-hour requirements, having found in 1997 that the eight-hour standard was 'generally even more effective in limiting 1-hour exposures of concern than is the current 1-hour standard.' * * * The only remaining requirements as to the one-hour NAAQS are the anti-backsliding limitations.'' *Id.* (citation omitted).

C. EPA's Proposed Action and Consistency With Section 172(e)

1. Statutory Analysis for Alternatives to a 185 Program

Comment: EPA's different and inconsistent tests for determining ''not less stringent'' undermine the reasonableness of these options as valid interpretations of the Act. EPA's interpretation means that a program that achieves the same emission reductions as section 185 and a program that achieves fewer emission reductions than section 185 can both be considered ''not less stringent.'' However, stringency is either a measure of the emission reductions achieved or it is not. If it is, then a program that does not achieve equivalent reductions cannot pass the test. EPA did not actually interpret the term ''stringent'' and offers no basis for claiming that Congress intended this term to have different meanings and allow for different metrics for guarding against backsliding.

Response: We believe that the three alternatives we identified in our proposed action (i.e., same emission reductions; same amount of revenue to be used to pay for emission reductions to further improve ozone air quality; a combination of the two) are reasonable and consistent with Congress' intent. First, we note that Congress did not define the phrase ''not less stringent'' or the term ''stringent'' in the Act. EPA, therefore, may use its discretion and expertise to reasonably interpret section 172(e). Furthermore, we note that the D.C. Circuit, in *NRD.C.* v. *EPA,* 643 F.3d 311 (D.C. Cir. 2011), while finding that EPA's guidance document providing our initial presentation of various alternatives to section 185 [4] should have been promulgated through notice-and-comment rulemaking, declined to rule on whether the types of alternative programs we considered in connection with our proposed action on SJVUAPCD Rule 3170 were illegal, stating, ''neither the statute nor our case law obviously precludes [the program alternative].'' *Id.* at 321.

We do not agree that evaluating a variety of metrics (e.g., fees, emissions reductions, or both) to determine whether a state's alternative program meets section 172(e)'s ''not less stringent'' criterion undermines our interpretation. On its face, section 185 results in assessing and collecting emissions fees, but the fact that section 185 is also part of the ozone nonattainment requirements of Part D, Subpart 2, suggests that Congress also anticipated that section 185 might lead to emissions reductions that would improve air quality, and ultimately facilitate attainment of the 1-hour ozone standard.[5] Thus, EPA believes it is reasonable to assess stringency of alternative programs on the basis of either the monetary or emissions-reduction aspects of section 185 or on the combination of both.

Lastly, as discussed in our proposal, SJVUAPCD has demonstrated that Rule 3170 will result in the collection of at least as much revenue from owners/operators of relevant emission sources as a fee program directly implemented under section 185. In addition, it is reasonable to expect that SJVUAPCD's alternative program will achieve more emission reductions than direct implementation of section 185 because the District's alternative program uses fees to reduce emissions, while section 185 has no such direct requirement. While the comment suggests that EPA's logic, if unreasonably extended, might theoretically lead it to approve a program that achieves fewer emission reductions than a program directly implemented under section 185, we are clearly not doing that here, and have no intention of doing so in the future.

2. ''Not Less Stringent'' and Target of Fees

a. *Comment:* To be ''not less stringent,'' a control must be no less rigorous, strict, or severe; all of these qualities focus on the burden to the entities responsible for complying with the rule or standard. The purpose of Rule 3170 is less stringent than section 185 because Rule 3170 exempts large categories of major industrial sources and dilutes section 185's target by spreading its impact across the millions of individuals registering cars in the SJV.

[4] ''Guidance on Developing Fee Programs Required by Clean Air Act Section 185 for the 1-hour Ozone NAAQS, Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Division Directors, Regions I–X, Jan. 5, 2010,'' vacated, *NRD.C.* v. *EPA,* 643 F.3d 311 (D.C. Cir. 2011).

[5] EPA previously articulated the dual nature of section 185 in its now-vacated section 185 guidance. *See id.* at 4. Although the section 185 guidance policy has been vacated, we agree with, and here in this notice and comment rulemaking adopt, its reasoning on this point.

Response: It is difficult to try to assess the relative stringency of section 185 and Rule 3170 based on a comparison of which entities are responsible for paying fees. The two types of fee programs target different types of sources, such that all stationary sources have the fee obligation under section 185 while less well-controlled stationary sources, along with motor vehicle owners have the obligation under Rule 3170. Overall, however, we believe that SJVUAPCD's alternative program is not less stringent than section 185 because it will generate at least as much revenue as a program that directly implements section 185. Rule 3170 by its explicit terms requires a demonstration that the revenue generated by the alternative program will equal or exceed the amount that would have been generated by a 185 program.

In addition, we believe that SJVUAPCD's alternative program will result in emissions reductions because the demonstration required by Rule 3170 must rely on ''California Vehicle Code fees'' to offset any fees that would otherwise be due from direct implementation of section 185. Rule 3170's definition of ''California Vehicle Code fees'' specifies that these fees ''are required by Health and Safety Code Section 40612 to be expended on establishing and implementing incentive-based programs * * *. These fees shall therefore be used in programs designed to reduce NO_X and VOC emissions in the San Joaquin Valley.'' In addition, state law clearly requires that the fees be directed towards programs that reduce NO_X and VOC emissions in the San Joaquin Valley. Cal. Health and Safety Code 40612.

Furthermore, we note that, according to the District, stationary sources currently contribute approximately 20 percent of the ozone precursor emissions, while mobile sources are responsible for approximately 80 percent of such emissions in the SJVUAPCD.[6] The District also states that most stationary sources in its jurisdiction have already installed air pollution controls as a result of new source review or retrofitting requirements and that the only options to such businesses to avoid fees would be to either curtail production or to cease operation.[7] Rule 3170 places the burden of fees under its equivalent alternative program on major stationary sources that do not qualify as ''clean emissions units'' and on motor vehicle owners. To the extent that stringency can be evaluated based on which entities are subject to fees, we believe that SJVUAPCD's alternative program is not less stringent than section 185 because it imposes the fee obligation on the sources most responsible for continuing ozone pollution in the Valley. And, as noted, it also requires that the fees be used to fund ozone reduction, something section 185 does not do.

b. *Comment:* Rule 3170 is less stringent than section 185. Section 185 is not a standard-based provision, nor is it based on a specific fee collection amount. The purpose of section 185 is to penalize major stationary sources in Severe and Extreme nonattainment areas. The stringency of section 185 does not stem from a dollar figure or emission target, but rather from three requirements: (i) Each major stationary source pay a fee; (ii) the fee be equal to $5000, adjusted for inflation, per ton of VOC or NO_X emitted in excess of 80 percent of the baseline; and (iii) the baseline amount be established from the attainment year inventory, unless the source's emissions are irregular, cyclical, or otherwise varying significantly from year to year. Charging motor vehicle fees merely adds a revenue stream. It fails to make up for the shortfall of not charging all major stationary sources penalty fees and basing those fees on the attainment year baseline, etc.

Response: We do not agree that an alternative program must adhere to the specific criteria identified by the commenter. In the context of the revoked 1-hour ozone NAAQS, and applying the principles of section 172(e) as upheld by the D.C. Circuit, the alternative program must be demonstrated to be ''not less stringent'' than the otherwise applicable required ''control,'' i.e., section 185. We are approving Rule 3170 into the California SIP and as part of the District's equivalent alternative program because we have determined that Rule 3170 will result in the collection of fees at least equal to the amount that would be collected under section 185, that the fees will be used to reduce ozone pollution, and that the program therefore satisfies the requirements of CAA section 185, consistent with the principles of section 172(e). Moreover, as explained above, we believe that the District's alternative program, by imposing fees on mobile sources—the sources most responsible for the Valley's continuing ozone nonattainment problems—advances the legislative policy of creating incentives to facilitate attainment that underlay section 185 when it was enacted by Congress in 1990.

In addition, we note that Rule 3170 allows only money generated by motor vehicle registration fees and spent on ozone pollution reduction projects in the Valley to offset fees that would otherwise be due from direct implementation of section 185. In addition, state law requires that these fees be used to reduce NO_X and VOC pollution in the San Joaquin Valley which is consistent with section 185's place within the ozone non-attainment provisions of CAA Title 1, part D, subpart 2.

3. ''Not Less Stringent'' and Equivalent Fees

Comment: A program that raises an equivalent amount of money is not supported by section 185's structure and legislative history. Section 185 was not intended as a revenue generating provision.

Response: Section 185 explicitly mandates a specific fee, requires that the fee be indexed for inflation, establishes a baseline for measuring such fees, and authorizes an alternative method for calculating that fee. For those reasons, and the additional reasons discussed above, we believe that section 185 has both monetary and emissions-related aspects and that it is reasonable for EPA to assess stringency of alternative programs on the basis of either aspect of section 185 or on the combination of both. Nevertheless, EPA notes that Rule 3170 imposes fees on those major stationary sources that do not meet the criteria for the ''clean emissions unit'' exemption and thereby provides an incentive for those stationary sources to reduce their emissions.[8] In addition, SJVUAPCD's alternative program imposes a fee on motor vehicles, the largest source of emissions in the Valley, thereby supporting emissions

[6] District comment letter dated August 24, 2011 and the California Air Resources Board's *California Emissions Projection Analysis Model (CEPAM): 2009 Almanac* found at: *http://www.arb.ca.gov/app/emsinv/fcemssumcat2009.php*.

[7] ''Most stationary sources in the San Joaquin Valley are already equipped with Best Available Retrofit Control Technology (BARCT) or Best Available Control Technology (BACT) * * * most businesses have already made significant investments and installed the most advanced controls available for their facilities.'' Memorandum from Seyed Sadredin, Executive Director/APCO to SJVUAPCD Hearing Board, re ''Alternatives for the Equitable Application of Mandated Federal Nonattainment Penalties to Sources within the San Joaquin Valley through the use of Motor Vehicle Fees,'' Oct. 21, 2010, at 4.

[8] Rule 3170's clean unit exemption applies only to: (i) Units equipped with emissions control technology that meets a minimum control efficiency of at least 95% or 85% for lean-burn internal combustion engines; or (ii) units equipped with BACT as accepted by the APCO during 2006 through 2010).

reductions from that source as well and in that respect will be no less effective in reducing ozone-formation than a section 185 fee program on major sources not meeting the ''clean emissions unit'' exemption would be. We further note that SJVUAPCD's alternative program will direct the revenues generated from the motor vehicle registration fee to VOC and NO_X emissions reductions programs.

4. ''Not Less Stringent'' and Equivalent Emission Reductions

a. *Comment:* The measure of equivalency should be section 185's emission reduction incentive. Penalties end if an area attains the standard or a source reduces its emissions by 20 percent. As the DC Circuit noted, ''these penalties are designed to constrain ozone pollution.'' Nothing in the legislative history indicates that Congress' intent was to collect a certain amount of money.

Response: The comment correctly points to the fact that section 185 states that fees must be paid until an area is redesignated to attainment for ozone and that section 185 does not require fees from sources that reduce emissions by 20 percent (compared to emissions during the baseline period). Thus, one consequence of a section 185 fee program may be a reduction in VOC and/or NO_X emissions. However, EPA does not agree with the comment to the extent it is saying that emission reductions must be the sole basis for determining whether an alternative program is ''not less stringent'' than a section 185 program. As we stated above, we believe the stringency of an alternative program may be evaluated by comparing either the fees (which must be used to pay for emissions reductions) or emission reductions otherwise achieved from the proposed alternative program to the fees or emissions reductions directly attributable to application of section 185 (or by comparing a combination of fees and reductions).

In addition, the comment does not acknowledge that section 185 allows major sources to pay fees and not reduce emissions. The comment also does not acknowledge that SJVUAPCD is required by state law to use the revenues generated by the alternative fee program to fund incentive-based programs that will result in NO_X and VOC emissions reductions in the San Joaquin Valley. We believe this aspect of the District's alternative program reflects the emission reductions aspects of section 185. We also believe that it is possible that SJVUAPCD's alternative program could result in more emission reductions than a section 185 program that funds unrelated programs.

b. *Comment:* Section 185 is a market-based policy device to internalize the external costs of pollution and thereby incentivize emission reductions at major stationary sources. EPA should assess how the incentives in Rule 3170 compare to the incentives in section 185. This analysis would look at how a pollution tax might drive sources to improve controls, and how the potential increase in the price of goods would cause consumers to look for alternatives that are not subject to the same tax.

Response: We do not agree that the comparison of ''incentives'' or a pollution tax proposed by the commenter is the only approach to evaluating the relative stringency of an alternative program, as explained above. In addition, we believe that Rule 3170 will have a beneficial effect on air quality in the San Joaquin Valley because state law requires that the fees generated by the rule be spent on air pollution reduction programs in the Valley.

c. *Comment:* Rule 3170 severs the link between the fee and pollution levels. A new Prius is subject to the same fee as a dirty clunker, while stationary sources exempted from the fee have no incentive to improve performance.

Response: While we agree that in theory a section 185 program may reduce emissions, section 185 in itself does not mandate such reductions. Moreover, the link between section 185 and emission reductions is uncertain to the extent that section 185 requires fees from a unit that lowered its emissions by less than 20 percent at any time, or even by more than 20 percent if it did so before the attainment year deadline, but creates a perverse incentive by exempting a source that defers 20 percent emission reductions until after the attainment year.

In addition, as stated above, Rule 3170 continues to impose section 185 fees on emissions units that have not taken the emission reduction measures needed to qualify for the ''clean emissions unit'' exemption. Moreover, the District has determined that most stationary sources have installed pollution controls that meet BARCT or BACT standards and thus there is little more these sources can do to reduce emissions other than curtailing production or ceasing operation.

5. ''Not Less Stringent'' and Alternative Baseline

Comment: Rule 3170 is less stringent because it exempts certain stationary sources from paying penalty fees and because it allows sources to use an alternative baseline of a 2 year average even if the source's emissions are not irregular, cyclical or otherwise vary from year to year.

Response: We do not agree that the District's alternative program is less stringent than section 185. As explained above, section 185 has both monetary and emissions reductions characteristics. We believe that the District's alternative program implements both aspects of section 185 by assessing fees on major contributors to air pollution in the San Joaquin Valley (major sources not qualifying for the clean unit exemption and motor vehicles), and by obligating these fees to NO_X and VOC pollution reduction programs. Moreover, as explained previously, we are approving SJVUAPCD's program as a not less stringent alternative program for anti-backsliding purposes and therefore determine that it complies with the statute even though it does not strictly follow the requirements of 185.

6. ''Not Less Stringent'' and Process for Revenues To Be Spent on Air Quality Programs

a. *Comment:* EPA's analysis did not demonstrate that Rule 3170 includes a process for revenues to be spent on emission reductions to improve ozone air quality. EPA states that alternative programs might include those that raise the same amount of revenue and establish a process where the revenues would be used to pay for emission reductions that will further improve ozone air quality. But Rule 3170 includes no process or mention of how fees will be spent.

Response: Rule 3170, section 7.2 requires the District to prepare an ''Annual Fee Equivalency Demonstration Report.'' Section 7.2.2 specifies that the report must demonstrate whether the sum total of fees collected under Rule 3170 and ''California Vehicle Code fees'' is equal to or greater than the fees that would be due under a direct implementation of section 185. Rule 3170's definition of ''California Vehicle Code fees'' specifies that these fees ''are required by Health and Safety Code Section 40612 to be expended on establishing and implementing incentive-based programs * * * These fees shall therefore be used in programs designed to reduce NO_X and VOC emissions in the San Joaquin Valley.'' We believe that Rule 3170, therefore, will result in the expenditure of fees on ozone air pollution reduction programs.

In addition, we note that Health & Safety Code section 40612(a)(1) authorizes SJVUAPCD to increase motor

vehicle fees by up to $30 per motor vehicle per year to establish and maintain incentive-based programs that are intended to address air pollution caused by motor vehicles and achieve and maintain state and federal air quality standards. Health & Safety Code section 40612(b) specifies that at least ten million dollars of motor vehicle registration fees be used to mitigate air pollution impacts on disadvantaged communities. Section 40612(c) requires the District and the California Air Resources Board (CARB) to take certain steps to effectuate the supplemental motor vehicle fee: (1) The District must notify CARB that it has adopted the fee and provide an estimate of the amount of revenue that will be generated; (2) CARB must file with the California Secretary of State written findings that the District has performed the above requirements and that the District has undertaken all feasible measure to reduce nonattainment air pollutants from sources within the District's jurisdiction and regulatory control.

To demonstrate its authority to charge the supplemental motor vehicle registration fee, the District submitted Governing Board Resolution No. 10–10–14 dated October 21, 2010 to document that its governing board had exercised its authority to increase motor vehicle fees by $12 per year per motor vehicle and that it estimated the additional fee would generate approximately $34 million in additional funds. The District also submitted California Air Resources Board Executive Order G–10–126, dated December 10, 2010, to document that CARB had made the findings required by Health & Safety Code 40612, as well as documentation that the findings had been submitted to the California Secretary of State.

b. *Comment:* Although the state law AB2522 requires the District to use revenues to fund incentive based programs resulting in NO_X and VOC emission reductions in the SJVUAPCD, there is no analysis or demonstration of how or whether the District will comply with this requirement.

Response: In our above response to the preceding comment, we explained how Rule 3170 will result in the expenditure of fees on ozone air pollution reduction programs. We also provided additional explanation of how state law requires the District to use the supplemental motor vehicle fees to fund incentive-based programs that will result in NO_X and VOC emission reductions in the San Joaquin Valley. We believe it is reasonable to presume that the District will obey the law and the documents noted above indicated that it has done so for 2010 and 2011.

c. *Comment:* EPA has not previously given emission reduction credit for incentive based programs. It is arbitrary for EPA to now assume that funds collected by Rule 3170 will in any way improve ozone air quality.

Response: Our basis for approving Rule 3170 is that it is not less stringent than the requirements of section 185 because it will result in the collection of fees equal to the fees that would be collected under section 185. Furthermore, we have determined that Rule 3170 provides adequate oversight and enforcement mechanisms though an annual demonstration of fee equivalency that will be made available to the public and mailed to EPA by November 1 of each year. Additionally, we believe that the District's alternative program will result in improvements in air quality by providing the District with approximately $34 million annually to use on projects that will reduce NO_X and VOC emissions in the Valley. Finally, we note that section 185 does not require that the fees paid pursuant to a directly implemented section 185 program be directed to any particular purpose. This finding is consistent with our actions referenced in the comment regarding other incentive programs. In those cases, we acknowledged that SJVUAPCD's incentive programs would result in some emission reductions but noted that SJVUAPCD had not adequately demonstrated a specific amount of reductions. Similarly, while SJVUAPCD has not demonstrated a specific amount of emission reductions from Rule 3170's fees, it is reasonable to expect that it could be more than the reductions resulting from direct implementation of section 185, which does not require that fees be directed towards emission reductions.

D. Enforceability of Rule 3170

1. Emission Standards or Limitations

a. *Comment:* Section 110(a)(2)(A) requires each SIP to include enforceable emission limitation and control measures such that any person can enforce such standards or limitations under section 304(a). Rule 3170 provides no standards or limitations and is unenforceable.

Response: Section 110(a)(2)(A) provides that each SIP shall ''include enforceable emissions limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.'' Rule 3170 contains enforceable requirements such as annual emissions reporting and annual equivalency demonstrations. Therefore, we disagree that Rule 3170 does not meet the enforceability requirements of the Act and should not be approved.

b. *Comment:* Because the equivalency demonstration is not an emission standard or limitation, citizens are not able to enforce the manner in which the District demonstrates equivalency. The air district methodology provided to calculate equivalency is not an emission standard or limitation upon which citizens can bring suits.

Response: We note that CAA section 304(f)(4) defines the term ''emission standard or limitation'' for the purposes of citizen suit enforcement, including ''any other standard, limitation, or schedule established * * * under any applicable State implementation plan approved by the Administrator.'' Further, we note that Rule 3170, section 6 contains affirmative obligations on subject sources to report emissions and Rule 3170, section 7 requires the District to track actual emissions and to demonstrate equivalency between fees obtained through the alternative program and fees that would have been due under a direct implementation of a section 185 fee program. We believe the obligations set forth in these provisions are sufficiently clear and specific that they meet the definition of emissions standard or limitation and thus the failure of a source or the District to comply could be enforced.

2. Practical Enforceability

Comment: Enforcement of Rule 3170 is not practical because it is virtually impossible for citizens or EPA to determine whether CARB and the District have, in fact, raised funds equivalent to that which would be generated under the section 185 penalty fee program.

Response: We disagree that it is virtually impossible to determine if the District has demonstrated equivalent funds. Section 7.2.1.3 of Rule 3170 specifically requires the District to calculate the fees that would have been collected from major stationary sources under Section 185 of the Act. This provision is consistent with Section 185. The fee obligation is calculated based on a source's actual emissions in 2010 for the baseline year as well as actual emissions in the relevant demonstration year.

Sections 7.1 and 7.2 specify the procedures for the equivalency demonstration and require the District to track collected fees and demonstrate equivalency. The tracking provisions are

clear and straightforward. If the amount of fees collected is not at least equal to the amount of fees that would have been collected under a direct implementation of section 185, Rule 3170 requires the District to collect additional fees from stationary sources to make up the shortfall. If approved into the SIP, Rule 3170, including the District's obligations, become federally enforceable and may serve as the basis of citizen suits. We do not agree that citizens cannot enforce the manner in which the District demonstrates equivalency.

3. Federal Enforceability

Comment: CARB and the District propose to implement the $12 motor vehicle fee through state law mechanisms which are not federally enforceable. Neither EPA nor private citizens can enforce the state mandated $12 motor vehicle fee. Rule 3170 does not include the motor vehicle registration funding mechanism itself, but rather relies on state law to implement and enforce the fee. Even if Rule 3170 becomes part of the California SIP, EPA will have no way to enforce the fee.

Response: As the commenter states, the District's alternative program relies in part on the collection of a $12 motor vehicle fee. The commenter is correct that EPA's action will not make the payment of the motor vehicle fee federally enforceable. However, the requirement for the District to demonstrate equivalency under Rule 3170 is federally enforceable, as is the requirement to collect additional fees from major stationary sources if necessary to cover any shortfall and demonstrate equivalence.

4. Analysis of Enforceability

Comment: The proposed rule fails to include any analysis or make any finding with respect to enforceability. The TSD sets forth a single, conclusory sentence stating that the rule is enforceable. EPA must articulate a rational connection between the facts found and the choice made. Because EPA fails to make any factual finding of enforceability, and fails to articulate a rational basis for concluding that Rule 3170 is enforceable, EPA's decision to approve Rule 3170 is arbitrary and capricious.

Response: EPA's proposed rule described the various requirements of Rule 3170 that the District is obligated to perform. For example, our proposed rule described Rule 3170's requirements for the APCO to track emissions data, calculate, assess and collect fees from stationary sources and track motor vehicle registration fees. 76 FR 45214. Our proposal also described Rule 3170's requirement for the APCO to prepare and submit to EPA an annual report that shows that the sum of fees collected from stationary sources and motor vehicle registrations are equal to or greater than the fees that would have been collected under a direct implementation of section 185. *Id.* Our proposal also described Rule 3170's requirement that the APCO collect additional funds from stationary sources if the annual demonstration shows a shortfall. *Id.* Our intention in describing these provisions and referring to them as ''requirements'' was to communicate our conclusion that Rule 3170 contained enforceable provisions that ''will result in the collection of fees equal to the fees that would be collected under section 185.'' *Id.* at 45215.

To further clarify our determination with respect to the enforceability of Rule 3170, we add that the provisions of Rule 3170 are sufficiently clear and specific as to what is required and when these obligations must be completed. In particular, we are referring to the requirements in Sections 6 and 7 of Rule 3170. Section 6 requires sources to report baseline period actual emissions information by a date certain and to provide annual emission statements for the prior calendar year. *See* Rule 3170, Sections 6.1 and 6.2. Section 7 requires the APCO to track emissions and to conduct an annual reconciliation process comparing fees under Rule 3170 to fees that would have been collected under a direct implementation of section 185 and to submit a report with the results of this analysis to EPA by November 1 of each year. *See* Rule 3170, Sections 7.1 and 7.2. Finally, if there is a shortfall in funding, section 7.3 requires the District to bill major sources, within 90 days following the demonstration of the shortfall, ''sufficient fees to recover the entire amount of the shortfall.'' *See* Rule 3170, Section 7.3. Because these provisions are clear and specific and compliance can be determined by a date certain, we determined that Rule 3170 is enforceable.

E. Title VI Implications

1. Rule 3170 and Disparate Impact

Comment: Rule 3170 penalizes vehicle owners instead of owners of major stationary sources. Because the motor vehicle owners in the Valley are largely low-income and people of color, where owners of major stationary sources are not, this rule disparately impacts low-income and people of color, in violation of Title VI of the Civil Rights Act, EPA's regulations implementing Title VI, and President Clinton's Executive Order 12898. Because the District receives federal funding, it is EPA's duty to ensure that the District does not administer its Clean Air Act programs in a manner that violates Title VI.

Response: In response to the comment on environmental justice, this action 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). Specifically, 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 and EPA regulations. 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 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 response to the comment on Title VI, EPA Region 9 forwarded a copy of this comment to the Office of Civil Rights in Washington, DC, which as provided in EPA's regulations implementing Title VI of the Civil Rights Act, has the responsibility to administer Title VI in the Agency, including the decision to accept, reject or refer to another Federal agency the matter for investigation. 40 CFR 7.20, 7.125.

Finally, we note that enabling legislation for the District's alternative fee program, AB2522, provides: ''At least ten million dollars ($10,000,000) shall be used to mitigate the impacts of air pollution on public health and the environment in disproportionately impacted environmental justice communities in the San Joaquin Valley.'' Cal. Health & Safety Code, § 40612((b).

F. Miscellaneous Comments

1. Other Demonstrations of ''Not Less Stringent''

Comment: One commenter asked EPA to clarify in our final action that alternative programs meeting the ''not

less stringent'' criteria would not be limited to just fee-equivalent, emissions reduction-equivalent, or a hybrid of the two. The commenter suggested other options, including (1) programs that have a broader environmental purpose and would not be limited to only those programs that can reduce NO_X and VOC emissions, and (2) result in reductions of NO_X and VOC in different proportion to that on which the 185 fees were assessed.

Response: Our action relates to SJVUAPCD Rule 3170 and SJVUAPCD's alternative program, which rely on an annual fee equivalency demonstration to show that it is not less stringent than section 185. We acknowledge the comment and the possibility that another program could use different elements to demonstrate that it meets the not less stringent than standard in section 172(e). EPA has not assessed any such elements in this rulemaking and will do so if and when such alternatives are submitted.

2. Types of Projects to Improve Air Quality

Comment: One commenter recommended that EPA allow sources to apply the calculated section 185 fees to a number of projects at the major stationary source or at other sources in either the nonattainment area or upwind areas. The commenter suggested ten examples of eligible projects including installing emissions control technology, enhancing existing pollution control equipment, energy efficiency and renewable energy measures, lower emitting fuels, retirement or repowering of a higher emitting facility, mobile source retrofit program, clean vehicle fleets, and increasing mass transit ridership.

Response: EPA is acting on SJVUAPCD's Rule 3170 and SJVUAPCD's alternative program, which do not include these program features. If these program features are included in a specific SIP submittal for another alternative program, EPA would evaluate them at that time.

G. Interim Final Determination To Defer Sanctions

1. Sanctions Should Continue To Apply Because Rule 3170 Contains Two Deficiencies and Should Be Disapproved

Comment: Rule 3170 is deficient because it exempts ''clean units'' from fee requirements and because it allows for an alternative baseline period of two consecutive years if the APCD determines it would be more representative of normal operations.

Response: Our proposed action was to approve Rule 3170 and SJVUAPCD's alternative program in the context of the revoked 1-hour ozone NAAQS. We concluded that Rule 3170 is approvable into the California SIP and as part of the District's alternative fee-equivalent program because we have determined that Rule 3170 will result in the collection of fees at least equal to the amount that would be collected under section 185, that the fees will be used to reduce ozone pollution, and that the program therefore satisfies the requirements of CAA section 185, consistent with the principles of section 172(e). Our proposed action contained our analysis of how the District's alternative fee-equivalent program meets the ''not less stringent than'' criterion of section 172(e), and we are providing additional explanation in this notice. For these reasons we conclude that the SIP deficiency has been corrected and sanctions would no longer be appropriate.

2. EPA's Interim Final Determination Violates the Administrative Procedures Act (APA)

a. *Comment:* EPA did not provide an opportunity for comment before the action took effect. Considering whether public comments warrant a reversal of action is not the same as providing an opportunity to participate in the rulemaking.

Response: As explained in our Interim Final Rule, we invoked the good cause exception under the APA as the basis for not providing public comment before the action took effect. Our review of the State's submittal indicated that it was more likely than not that the State had submitted a revision to the SIP that addressed the issues we identified in our earlier action that started the sanctions clocks. We concluded that it was therefore not in the public interest to impose sanctions. We also explained that the offset sanction was due to be imposed 18 months after February 12, 2010, or August 12, 2011, which was approximately 15 days from the date of publication of the Interim Final Rule. Therefore, it would not have been possible for us to provide an opportunity for comment before the offset sanction would have been imposed. Our use of the good cause exception thus relieved a restriction and avoided the imposition of sanctions that, as explained below, were unnecessary because the State had already taken the steps it needed to take to submit an approvable rule. The only action that remained to be taken was EPA's action to complete our rulemaking, including reviewing and responding to public comments on our proposed action. As explained in our Interim Final Rule, we could have disapproved the rule, if justified by public comments. However, we are now finalizing our action with an approval of the State's submittal, which further supports the reasonableness of our use of the good cause exception to avoid needless hardship on entities and individuals in the San Joaquin Valley.

b. *Comment:* The Good Cause exception does not apply because deferring sanctions does not present an ''imminent threat'' or otherwise qualify for the exception. The danger is actually in deferring monetary pressure because it relieves pressure to achieve cleaner air.

Response: At the time of our Interim Final Rule, the State had already taken the steps necessary to correct the issues we had identified in a previous action. Specifically, on May 19, 2011, SJVUAPCD adopted a revised version of Rule 3170 and on June 14, 2011, CARB submitted the revised rule to EPA. Thus, the deferral of sanctions accomplished by EPA's Interim Final Rule did not ''relieve pressure'' on the District or CARB. For the same reasons, EPA believes that the imposition of sanctions would not have had any effect towards achieving clean air, as the local agency and the State had already revised the rule and submitted it to EPA for incorporation into the State Implementation Plan.

IV. EPA Action

EPA is finalizing approval of Rule 3170, ''Federally Mandated Ozone Nonattainment Fee,'' as a revision to SJVUAPCD's portion of the California SIP. EPA is also finalizing approval of SJVUAPCD's fee-equivalent program, which includes Rule 3170 and state law authorities that authorize SJVUAPCD to impose supplemental fees on motor vehicles, as an alternative to the program required by section 185 of the Act for anti-backsliding purposes with respect to the 1-hour ozone standard.

No comments were submitted that change our assessment that Rule 3170 and SJVUAPCD's alternative program comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving Rule 3170 into the California SIP and SJVUAPCD's alternative program as an equivalent alternative program, consistent with the principles of section 172(e) of the Act. Final approval of Rule 3170 and SJVUAPCD's equivalent alternative program satisfy California's obligation under sections 182(d)(3), (e) and (f) to develop and submit a SIP revision for

the SJVUAPCD 1-hour ozone nonattainment area to meet the requirements for a program no less stringent than that of section 185. Final approval of Rule 3170 and SJVUAPCD's equivalent alternative program also permanently terminates all sanctions and the Federal Implementation Plan (FIP) implications associated with section 185 for the 1-hour ozone NAAQS and previous action (75 FR 1716, January 13, 2010) regarding SJV.

V. 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 (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 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 October 19, 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 dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 11, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(412) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(412) New regulations were submitted on June 14, 2011 by the Governor's designee.

(i) Incorporation by Reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 3170, ''Federally Mandated Ozone Nonattainment Fee,'' amended on May 19, 2011.

* * * * *

[FR Doc. 2012–20268 Filed 8–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2008–0633; FRL–9713–8]

Approval and Promulgation of Air Quality Implementation Plans; Arkansas; Infrastructure Requirements for the 1997 Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS and Interstate Transport Requirements for the 1997 Ozone NAAQS and 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving submittals from the State of Arkansas pursuant to the Clean Air Act (CAA or the Act) that address certain infrastructure elements specified in the CAA necessary to implement, maintain, and enforce the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or standards). EPA is also making a correction to an attainment status table in its regulations to accurately reflect the redesignation date of Crittenden County, Arkansas to attainment for the 1997 8-hour ozone standard.

DATES: This final rule is effective on September 19, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–

2008–0633. 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 Arkansas Department of Environmental Quality, Planning and Air Quality Analysis Branch, 5301 Northshore Drive, North Little Rock, Arkansas 72118.

FOR FURTHER INFORMATION CONTACT: 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) 665–7263; email address: *riley.jeffrey@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

Table of Contents

I. Background

The background for today's action is discussed in detail in our February 9, 2012, proposal (77 FR 6711). In that notice, we proposed to partially approve and partially disapprove submittals from the State of Arkansas, pursuant to the CAA, that address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone, the 1997 and 2006 $PM_{2.5}$ NAAQS. Those submittals are dated December 17, 2007, March 28, 2008, and September 16, 2009, respectively. We noted that those submittals did not include revisions to the SIP, but documented how the current Arkansas SIP already included the required infrastructure elements. Therefore, we proposed to find that the following section 110(a)(2) elements were contained in the current Arkansas SIP and provided the infrastructure for implementing the 1997 8-hour ozone standard: CAA Sections 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), (M), and portions of (C), (D)(ii), and (J). EPA also proposed to find that the following section 110(a)(2) elements were contained in the current Arkansas SIP and provided the infrastructure for implementing the 1997 and 2006 $PM_{2.5}$ standards: CAA Sections 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), and (M). EPA also proposed to find that the current Arkansas SIP does not meet the infrastructure requirements for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS at 110(a)(2) for portions of (C), (D)(ii), and (J) because the EPA-approved SIP prevention of significant deterioration (PSD) program does not apply to greenhouse gas (GHG) emitting sources. We also proposed to find that the current Arkansas SIP does not meet the infrastructure requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS at 110(a)(2) for (C), (D)(ii), and (J) because Arkansas has not submitted the PSD SIP revision required by EPA's Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (73 FR 28321, May 16, 2008). Further, for the 1997 8-hour ozone NAAQS, we proposed to partially approve and partially disapprove the provisions of SIP submissions intended to satisfy the section 110(a)(2)(D)(i)(II) infrastructure element pertaining to emissions from sources in Arkansas not interfering with measures required in the SIP of any other State under part C of the CAA to prevent significant deterioration of air quality. For the 2006 $PM_{2.5}$ NAAQS, we proposed to disapprove the provisions of SIP submissions intended to satisfy this section 110(a)(2)(D)(i)(II) infrastructure element. Finally, for purposes of the 1997 8-hour ozone NAAQS, EPA proposed to approve four severable portions of SIP revisions to modify the Arkansas PSD SIP to include NO_X as an ozone precursor.

Our February 9, 2012, proposal provides a detailed description of the submittals and the rationale for EPA's proposed actions, together with a discussion of the opportunity to comment. The public comment period for these actions closed on March 12, 2012, and we did not receive any comments.

II. Final Action

We are partially approving and partially disapproving the submittals provided by the State of Arkansas to demonstrate that the Arkansas SIP meets the requirements of Section 110(a)(1) and (2) of the Act for the 1997 ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. For the 1997 ozone standard, we are finding that the current Arkansas SIP meets the infrastructure elements listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Program for enforcement of control measures (110(a)(2)(C) of the Act), except for the portion that addresses GHGs;

Interstate Transport, pursuant to section 110(a)(2)(D)(ii) of the Act, except for the portion that addresses GHGs;

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act), except for the portion that addresses GHGs;

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

For the 1997 ozone standard, we are finding that the current Arkansas SIP does not meet the infrastructure elements listed below:

Program for enforcement of control measures (110(a)(2)(C) of the Act), only as it relates to GHGs;

Interstate transport, pursuant to section 110(a)(2)(D)(ii) of the Act, only as it relates to GHGs; and

Prevention of significant deterioration (110(a)(2)(J) of the Act), only as it relates to GHGs.

We are also approving the Arkansas Interstate Transport SIP provisions that

address the requirement of section 110(a)(2)(D)(i)(II) that emissions from sources in Arkansas do not interfere with measures required in the SIP of any other State under part C of the CAA to prevent significant deterioration of air quality, except as they relate to GHGs for the 1997 ozone NAAQS.

We are disapproving the portion of the Arkansas Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II), as it relates to GHGs, that emissions from sources in Arkansas do not interfere with measures required in the SIP of any other State under part C of the CAA to prevent significant deterioration of air quality, for the 1997 ozone NAAQS.

For the 1997 and 2006 $PM_{2.5}$ standards, we are finding that the current Arkansas SIP meets the infrastructure elements listed below:

Emission limits and other control measures (110(a)(2)(A) of the Act);

Ambient air quality monitoring/data system (110(a)(2)(B) of the Act);

Adequate resources (110(a)(2)(E) of the Act);

Stationary source monitoring system (110(a)(2)(F) of the Act);

Emergency power (110(a)(2)(G) of the Act);

Future SIP revisions (110(a)(2)(H) of the Act);

Consultation with government officials (110(a)(2)(J) of the Act);

Public notification (110(a)(2)(J) of the Act);

Air quality modeling data (110(a)(2)(K) of the Act);

Permitting fees (110(a)(2)(L) of the Act); and

Consultation/participation by affected local entities (110(a)(2)(M) of the Act).

For the 1997 and 2006 $PM_{2.5}$ standards, we are finding that the current Arkansas SIP does not address the 110(a)(2) infrastructure elements listed below:

Program for enforcement of control measures (110(a)(2)(C) of the Act);

Interstate Transport, pursuant to section 110(a)(2)(D)(ii) of the Act; and

Prevention of significant deterioration and visibility protection (110(a)(2)(J) of the Act).

We are also disapproving the portion of the Arkansas Interstate Transport SIP that addresses the requirement of section 110(a)(2)(D)(i)(II)—that emissions from sources in Arkansas do not interfere with measures required in the SIP of any other State under part C of the CAA to prevent significant deterioration of air quality—for the 2006 $PM_{2.5}$ NAAQS.

Under section 110(c) of the Act, disapproval of a SIP in whole or in part requires EPA to promulgate a federal implementation plan (FIP) at any time within two years following final disapproval, unless the State submits a plan or plan revision that corrects the deficiency—and the EPA approves the plan or plan revision—before the EPA promulgates such FIP. This two-year period is commonly referred to as the ''FIP clock.'' Here, based on Arkansas's failure to submit the required $PM_{2.5}$ PSD SIP revision, and because Arkansas cannot issue permits for GHG emissions, we are disapproving for the 1997 and 2006 $PM_{2.5}$ standard and partially disapproving for the 1997 ozone NAAQS certain severable elements of the Arkansas infrastructure SIP. Accordingly, EPA is required by law to promulgate a FIP at any time within two years of this final rulemaking, unless Arkansas submits and we approve a new SIP or SIP revisions that correct the deficiencies, or unless EPA has already fulfilled its FIP obligation.

EPA is also approving the following revisions to APCEC Regulation 19, Chapter 9, submitted by the State of Arkansas on February 17, 2010:

1. The substantive change adding NO_X to the definition of *Major Modification* through incorporation by reference of 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005.

2. The substantive change adding NO_X to the definition of *Major Stationary Source* through incorporation by reference of 40 CFR 52.21(b) and 40 CFR 51.301 as of November 29, 2005.

3. The substantive change adding NO_X as a precursor to the table's criteria and other pollutants listing for ozone through incorporation by reference of 40 CFR 52.21(b)(23)(i).

4. The substantive change allowing for an exemption with respect to ozone monitoring for a source with a net emissions increase less than 100 tpy of NO_X through incorporation by reference of 40 CFR 52.21(i)(5)(i).

EPA is taking these actions in accordance with section 110 and part C of the Act and EPA's regulations and consistent with EPA guidance. We are also making ministerial corrections to the attainment status table in 40 CFR 81.304 to accurately reflect the redesignation date of Crittenden County, Arkansas to attainment for the 1997 8-hour ozone standard. On March 24, 2010, we redesignated the county with an effective date of April 23, 2010 (75 FR 14077).

III. 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 act on State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law.

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* because this SIP partial approval/partial disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any requirements or create impacts on small entities. This SIP partial approval/partial disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself

create any new requirements but simply approves, in part, and disapproves, in part, certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (*e.g.,* a FIP) may or will flow from this partial disapproval does not mean that EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that the action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action partially approves and partially disapproves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely partially approves and partially disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the action EPA is finalizing neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with EPA policy, EPA nonetheless is offering consultation to Tribes regarding this rulemaking action. EPA will respond to relevant comments in the final rulemaking action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This SIP partial approval/disapproval under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new regulations but simply partially approves and partially disapproves certain State requirements for inclusion into the SIP.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the CAA.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely partially approves and partially disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in-and-of itself create any new requirements. Accordingly, it 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.

K. Congressional Review Act

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).

L. Judicial Review

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 October 19, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purpose 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 31, 2012.

Samuel Coleman,

Acting Regional Administrator, Region 6.

40 CFR parts 52 and 81 are 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 E—Arkansas

■ 2. Section 52.170 is amended as follows:

■ a. In the table in paragraph (c), revise the entries for Reg. 19.903 and Reg. 19.904.

■ b. At the end of the third table in paragraph (e) entitled ''EPA-Approved Non-Regulatory Provisions and Quasi-Regulatory Measures in the Arkansas SIP'', add entries for ''Infrastructure for the 1997 Ozone NAAQS'', ''Infrastructure for the 1997 and 2006 $PM_{2.5}$ NAAQS'', and ''Interstate transport for the 1997 ozone NAAQS (Noninterference with measures required to prevent significant deterioration of air quality in any other State)''.

The revisions and additions read as follows:

§ 52.170 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE ARKANSAS SIP

State citation	Title/subject area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
Reg. 19.903	Definitions	02/03/2005	04/12/2007 (72 FR 18394).	The addition of NO_X to the definitions of Major Modification and Major Stationary Source submitted on 2/17/2010 is approved 8/20/2012. [Insert FR page number where document begins].
Reg. 19.904	Adoption of Regulations	02/03/2005	04/12/2007 (72 FR 18394).	The following revisions submitted on 2/17/2010 are approved: (1) Addition of 40 tons per year of NO_X to the definition of ''significant'', and (2) The ozone monitoring exemption for a source with a net emissions increase less than 100 tons per year of NO_X. 8/20/2012 [Insert FR page number where document begins].
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
Infrastructure for the 1997 Ozone NAAQS.	Statewide	12/17/2007 3/28/2008	8/20/2012 [Insert FR page number where document begins].	Approval for CAA elements 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), and (M). Approval for CAA elements 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality), (D)(ii), and (J) for the 1997 ozone NAAQS, except as it relates to Greenhouse Gas (GHG) emissions.

EPA-APPROVED NON-REGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE ARKANSAS SIP—Continued

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
Infrastructure for the 1997 and 2006 $PM_{2.5}$ NAAQS.	Statewide	3/28/2008 9/16/2009	8/20/2012 [Insert FR page number where document begins].	Approval for CAA elements 110(a)(2)(A), (B), (E), (F), (G), (H), (K), (L), and (M).
Interstate transport for the 1997 ozone NAAQS (Noninterference with measures required to prevent significant deterioration of air quality in any other State).	Statewide	4/5/2011	8/20/2012 [Insert FR page number where document begins].	Approved except as it relates to GHGs.

■ 3. Section 52.172 is amended by designating the existing text as paragraph (a) and adding paragraphs (b), (c), and (d) to read as follows:

§ 52.172 Approval status.

* * * * *

(b) 1997 8-hour ozone NAAQS: The SIPs submitted December 17, 2007 and March 28, 2008 are partially disapproved for Clean Air Act (CAA) elements 110(a)(2)(C), (D)(i)(II) (interfere with measures in any other state to prevent significant deterioration of air quality), (D)(ii), and (J), only as it relates to Greenhouse Gas emissions.

(c) 1997 $PM_{2.5}$ NAAQS: The SIP submitted March 28, 2008 is disapproved for CAA elements 110(a)(2)(C), (D)(ii), and (J).

(d) 2006 $PM_{2.5}$ NAAQS: The SIPs submitted March 28, 2008 and September 16, 2009 are disapproved for CAA elements 110(a)(2)(C), (D)(i)(II)) (interfere with measures in any other state to prevent significant deterioration of air quality), (D)(ii), and (J).

PART 81—[AMENDED]

■ 4. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 5. Section 81.304 is amended:

■ a. By revising the entry for entitled for ''Memphis TN–AR: (AQCR Metropolitan Memphis Interstate) Crittenden County'' in the table entitled ''Arkansas—1997 8-Hour Ozone NAAQS (Primary and Secondary)''.

■ b. By revising footnote 2 in the table entitled ''Arkansas—1997 8-Hour Ozone NAAQS (Primary and Secondary)''.

The revisions read as follows:

§ 81.304 Arkansas.

* * * * *

ARKANSAS—1997 8-HOUR OZONE NAAQS (PRIMARY AND SECONDARY)

Designated area	Designation [a]		Category/classification	
	Date[1]	Type	Date[1]	Type
* * *	*	*	*	*
Memphis TN–AR: (AQCR Metropolitan Memphis Interstate) Crittenden County.		Attainment	([2])	
* * *	*	*	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Effective April 23, 2010.

* * * * *

[FR Doc. 2012–20085 Filed 8–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9718–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hooker (Hyde Park) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is publishing a direct final Notice of Deletion of the Hooker (Hyde Park) Superfund Site (Site), located in Niagara Falls, New York, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New York, through the Department of Environmental Conservation, because EPA has determined that all appropriate

response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective September 30, 2012 unless EPA receives adverse comments by September 19, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: sosa.gloria@epa.gov.*
- *Fax:* To the attention of Gloria M. Sosa at 212–637–4283.
- *Mail:* To the attention of Gloria M. Sosa, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866.
- *Hand delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (telephone: 212–637–4308), (Monday to Friday from 9 a.m. to 5 p.m.). Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, Telephone: (212) 637–4308, Hours: Monday to Friday from 9 a.m. to 5 p.m.

U.S. EPA Western NY Public Information Office, 86 Exchange Place, Buffalo, NY 14204–2026, Telephone: (716) 551–4410, Hours: Monday to Friday from 8:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Gloria M. Sosa, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866, telephone: (212) 637–4283, email: *sosa.gloria@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region 2 is publishing this direct final Notice of Deletion of the Hooker (Hyde Park) Superfund Site (Site), from the National Priorities List (NPL). The NPL constitutes Appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective September 30, 2012 unless EPA receives adverse comments by September 19, 2012. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent To Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Hyde Park Landfill Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the state of New York prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the state 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the State, through the New York Department of Environmental Conservation, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in *Niagara Gazette,* a major local newspaper. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent To Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Background and History

The Site, EPA ID No. NYD00831644, consists of approximately fifteen acres and is located in the northwest corner of the Town of Niagara, New York. The Site is immediately surrounded by several industrial facilities and property owned by the New York Power Authority. Residential neighborhoods are located to the northwest and south of the landfill. The Niagara River, an international boundary, is located 2,000 feet to the northwest, down the Niagara Gorge which descends approximately 350 feet below the surface of the landfill. The Niagara River flows into Lake Ontario approximately 10 miles downstream of the Site. Lake Ontario is a drinking-water source for millions. Niagara University, which has three thousand students, is less than one mile in distance from the Site.

The Bloody Run is a small drainage area flowing north from the landfill and considered part of the Site. The stream flows under a neighboring industry via a storm sewer, and under University Drive via a storm sewer which emerges at the Niagara Gorge.

The geology underlying the Site is glacial overburden overlying the fractured Lockport Dolomite bedrock. Groundwater in the vicinity of the landfill flows in both the overburden and the bedrock. Generally, the overburden is saturated at depths below ten feet. The groundwater movement from the landfill is both downward and horizontal. Some of this groundwater exits the Niagara Gorge Face in the form of seeps which flow into the Niagara River. Contaminants migrate from the landfill in two forms: Aqueous phase liquid (APL or contaminated groundwater) and dense non-aqueous phase liquid (NAPL).

Hooker Chemical and Plastic Corporation, now Occidental Chemical Corporation (OCC), disposed of approximately 80,000 tons of waste (drummed and bulk liquids, and solids) at the Site, from 1953 to 1975, primarily chlorobenzenes, chlorotoluenes, halogenated aliphatics and 2,4,5-trichlorophenol (TCP) still bottoms. An estimated 3,300 tons of TCP were disposed of at the Site; TCP wastes are known to contain significant amounts of 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD). EPA has estimated that approximately 0.7–1.6 tons of TCDD were associated with the TCP wastes at the Site.

The Site was proposed to the NPL in December 1982 (47 FR 58476) and was listed on the NPL in September 1983 (48 FR 40658).

Remedial Investigation and Feasibility Study (RI/FS)

EPA filed a lawsuit in 1979 in federal district court under the authority of the Resource Conservation and Recovery Act and the Clean Water Act seeking to require that OCC remediate the Site. EPA, New York State and OCC filed a *Stipulation and Judgment Approving Settlement Agreement* (Settlement Agreement) in January 1981, which the Court approved in April 1982. The Settlement Agreement required OCC to perform an Aquifer Survey (which can be compared to a Remedial Investigation) to define the extent of contamination in the overburden and bedrock and assess remedial alternatives. OCC completed this effort in 1983. The results of the aquifer survey were used by the negotiation team (EPA/NY State and OCC) to agree on remedial actions to be performed at the Site. These required remedial actions were documented in a *Stipulation on Requisite Remedial Technology* (RRT Stipulation), which was approved by the Court in August 1986. During the RRT negotiations, EPA performed a risk assessment using worst case exposure scenarios which indicated that the greatest risk from the Site was the consumption of fish contaminated with TCDD.

Selected Remedy

EPA issued an Enforcement Decision Document (EDD—a precursor and equivalent to a Record of Decision) on November 26, 1985, which documented the remedial action selected for Site cleanup. EPA acknowledged that the APL and NAPL plumes would not be remediated to drinking water standards because of the persistent nature of NAPL. Therefore, the goal of the remedies selected in the EDD was to hydraulically contain contaminated groundwater (APL plume) in the vicinity of the Site, while extracting as much NAPL as is practicable.

The major components of the 1985 EDD included the following:

- Source control (prototype extraction wells);

- Containment and collection of APL and NAPL in the overburden;
- Containment and collection of APL and NAPL in the bedrock;
- Treatment of collected APL and NAPL;
- Community Monitoring Program (monitoring wells for early detection of Site chemicals);
- Intermediate and Deep Formations Study (monitoring wells);
- Industrial Protection Program (remediation of sumps and sealing of manholes);
- Perimeter Capping (clay cap around perimeter of landfill);
- Gorge face seeps remediation;
- Bloody Run Excavation or Capping;
- Final capping and Site closure; and,
- TCDD Bioaccumulation Study in Lake Ontario.

The RRT established APL Plume Flux Action Levels for the following chemicals: TCDD (0.5 grams/year); perchloropentacyclodecane [Mirex] (0.005 lbs/day); Aroclor 1248 (0.005 lbs/day); and, chloroform (1.7 lbs/day). These action levels represent concentrations of these contaminants that, if detected entering the river (flux of contaminants to the river) at or above these concentrations, would cause OCC to take additional remedial actions (*e.g.* increased pumping, installing additional wells or other remedial measures) to reduce these contaminant levels.

On May 7, 2012, EPA issued an ESD which had two components. This ESD documented the placement of an institutional control, a Declaration of Restrictive Covenants and Environmental Easement, on the property which constitutes the former Hyde Park Landfill. In addition, this ESD clarifies that the selected remedy for the Site in the EDD is a containment remedy and not an aquifer restoration remedy intended to restore the aquifer to its best beneficial use (i.e., a source of drinking water). The goal of a containment remedy is to prevent the migration of disposed waste and leachate along with affected groundwater from a landfill or site.

Response Actions

Source Control

The purpose of the source control program is to reduce the amount of chemicals migrating downward from the landfill by removing any mobile NAPL remaining in the landfill. OCC installed 6 source controls wells (two 36-inch wells and four 2-inch wells) in the landfill. Nine monitoring wells were also installed in the landfill. One source-control well has since been converted to a monitoring well because of low NAPL collection. The source control program has not yielded large amounts of NAPL. EPA believes that most of NAPL which was once present in the overburden in the landfill has either sorbed to the bedrock, been captured, or remains in pockets or pools that are not hydraulically connected to the source control wells. In addition, the installation of the final cap on the landfill has eliminated the continued production of leachate from rainfall and thereby dramatically reduced the hydraulic head of APL within the landfill, removing the driving force for the NAPL.

NAPL is extracted by the source-control wells and flows into a decanter at the onsite Storage and Treatment Facility. NAPL is transported by truck to a permitted offsite facility for incineration. To date, more than 300,000 gallons of NAPL have been removed and destroyed.

Overburden APL and NAPL Plume Containment System

The Overburden Barrier Collection System (OBCS), a drain around the entire landfill to contain and collect contaminated groundwater, was installed by OCC in 1991. Pumping wells create an inward hydraulic gradient. Water-level measurements indicate that an inward gradient is being achieved in the overburden, thereby capturing the contaminated groundwater associated with the Site. Both APL (above MCLs) and NAPL were not observed in any of the overburden monitoring well locations after 1996, indicating that the OBCS serves as an effective barrier to offsite NAPL migration.

Bedrock NAPL Plume Containment System

The Bedrock NAPL Plume Containment System, consisting of extraction (pumping) wells, was designed and installed by OCC in a phased approach between 1990 and 1997. A total of 16 extraction wells were installed and are pumped to achieve an inward hydraulic gradient. Water-levels are measured quarterly to ensure capture of contaminated groundwater.

Bedrock APL Plume Containment System

The APL Plume Containment System, consisting of three purge wells installed at the Niagara Gorge Face in 1994, contains and collects a significant portion of the APL plume. The portion of the APL plume not collected by these wells is monitored by 3 flux monitoring well clusters to the west of the Site and 3 piezometer clusters in the northern and eastern portion of the APL plume.

Leachate Storage and Treatment Facility

APL is treated onsite at the Leachate Storage and Treatment Facility constructed by OCC which began operating in April 1990. The APL/NAPL mixture is pumped from the wells through force mains into a decant tank. The NAPL, denser than water, settles to the bottom. APL is taken off the top of the decanter and pumped into the storage tanks. The APL first passes through sacrificial activated carbon beds (which cannot be recycled because of the dioxin and are disposed of offsite). The APL is then treated in an activated carbon system. The facility currently has a capacity to treat 400 gallons per minute.

Landfill Cap

The perimeter cap of the landfill was completed in 1991, and the entire landfill was capped in 1994. The final cap consisted of the following: 36 inches of low-permeability clay; a synthetic membrane; a drainage layer and topsoil seeded with native vegetation for barrier protection. EPA routinely inspects the landfill cap for erosion. The current condition of the cap is excellent.

Bloody Run Remediation

The Bloody Run received drainage from the landfill prior to any remedial measures being conducted at the Site. OCC excavated approximately thirty thousand cubic yards of contaminated sediment from the Bloody Run drainage area. The area was then backfilled and covered with riprap. This work was completed in January 1993. The Bloody Run now flows via a storm sewer which surfaces at the Niagara Gorge. The restored area was observed to have abundant vegetation during a Site visit in June 2011.

Niagara River Gorge Face Remediation

Groundwater seeps from the rock at the Niagara Gorge, approximately 2000 feet from the Site. TCDD was detected in one sample from a seep during remedial investigations at 0.2 parts per trillion (ppt). EPA and New York State determined that humans should be isolated from the seeps to prevent an exposure pathway to the contaminants. The Gorge Face Seeps were remediated in 1988, except for the Bloody Run portion, which was remediated in 1994. Access by humans to the seeps has been prevented by the installation of fences and the diversion of seeps into culverts. All contaminated sediments were scraped away. Annual inspections of the

Gorge Face are conducted by representatives of EPA, New York State and OCC. The pumping of the APL wells has strongly influenced the seeps, drying many.

Institutional Controls

A Declaration of Restrictive Covenants and Environmental Easement was placed on the property and lodged with the County of Niagara on October 7, 2010. The Grantor (OCC) grants a permanent restrictive covenant and an environmental easement to the Grantee (Town of Niagara) to provide a right of access over the approximately twenty-one acre property (the ''Property'') for purposes of implementing, facilitating and monitoring the remedial action. The Property includes the Site as well as the Bloody Run Drainage area. The covenant/easement also imposes on the property use restrictions that will run with the land for the purpose of protecting human health and the environment in the future.

The following restrictions apply to the use of the Property, run with the land, and are binding on the Grantor: The Property shall not be used in any manner that would interfere with or adversely affect the implementation, integrity, or effectiveness of the remedial action performed at the Site, including, but not limited to: (a) The extraction of on-site groundwater; (b) any digging, excavation, extraction of materials, construction, or other activity outside the requirements of the remedial action that would disturb the cap placed upon the Landfill at the Site; or (c) other activity that would disturb or interfere with any portion of the remedial action for the Site enumerated in the RRT Stipulation. The Property may not be used for residential use. However, the Property may be used for commercial or industrial use as long as designated, and long term engineering controls are employed and remain effective, specifically, the operation of the portion of the Response Action pertaining to the extraction wells, treatment facility and maintenance of the cap.

In addition to the Site-specific institutional control, the Niagara County Department of Health imposes restrictions on the drilling and usage of wells. These restrictions ensure that drinking-water wells are not installed in areas of contaminated groundwater, effectively preventing exposure to Site-related contaminants through ingestion.

Additional Remedial Actions

OCC has performed additional remedial actions at the Site in addition to those previously discussed. The onsite lagoons were remediated in 1991. NAPL in the lagoons was pumped into the leachate storage facility and the lagoons were closed. NAPL was also pumped from four railroad tank cars, which had been used onsite for years as storage for NAPL generated from remedial investigations because there was no facility permitted to destroy dioxin. In 1991, the tank cars were placed in the waste disposal cells.

OCC also remediated sewers in the area. Sewers provided preferential pathways for contaminants to migrate through the overburden. OCC relocated a sewer at TAM Ceramics and remediated the College Heights sewer. The remediation of the University Drive (bordering Niagara University) sewer was completed in August 1993. NAPL contaminated soils were removed from under University Avenue.

Additional Studies Conducted

OCC conducted an Intermediate Formations Study to determine if contaminants from the Site had penetrated the Rochester Shale (aquitard) formation below the Lockport Dolomite. Most of the parameters were not detected above the concentrations of Lower Formation Survey Parameters listed in the RRT Stipulation. However, phenol, total organic halogen, PCB-1248 and conductivity did exceed the survey levels. OCC calculated a flux in the monitoring report which was four to five orders of magnitude below the Flux Action Level. OCC was not required to install monitoring wells in the Deep Formations because the Intermediate Formations' investigation indicated that Site contaminants had not migrated through the shale and were not present in the Intermediate Formations.

Lake Ontario TCDD Bioaccumulation Study

The RRT established APL Plume Flux Action Levels based on EPA's worst-case bioaccumulation assumptions for the following chemicals: TCDD (0.5 grams/year); perchloropentacyclodecane [Mirex] (0.005 lbs/day); Aroclor 1248 (0.005 lbs/day); and, chloroform (1.7 lbs/day). These action levels represent concentrations of these contaminants that, if detected entering the river (flux of contaminants to the river) at or above these concentrations, would require OCC to take additional remedial actions (e.g. increased pumping, installing additional wells or other remedial measures) to reduce these contaminant levels. The only parameter detected in 2001 was TCDD. OCC calculated the flux of TCDD to the Niagara River as $7.06 \times 10-5$ grams/year, which is several orders of magnitude below the Flux Action.

The predicted steady-state TCDD concentrations for an input comparable to the TCDD APL Plume Flux Action Level of 0.5 grams/year are 0.026 nanograms/year (sorbed sediment concentrations) and $9.5 \times 10-5$ picograms/liter (water column dissolved concentration).

The TCDD Study, together with the model, indicated that TCDD was bioaccumulating in the tissues of various species of Lake Ontario fish at a range of rates such that the overall TCDD APL Plume Flux Action Level of 0.5 grams/year stipulated by the RRT remains protective.

Community Monitoring Program

The Community Monitoring Wells, a system of wells installed in 1987 in both the overburden and shallow bedrock throughout the neighborhood, provide early warning of the presence of Site-related contaminants in the groundwater. These wells are sampled and analyzed quarterly. Should Site-related contaminants be detected, OCC must take further remedial action. Site-related contaminants have never been detected in these wells. The data collected have demonstrated that the groundwater flow is vertically downward in the nearby community. EPA and New York State review the analytical results from sampling of these wells to ensure the community is being protected.

Vapor monitoring is performed in the overburden community monitoring wells annually during the third quarter when temperature is high and the volatilization potential is greatest. If vapor readings for total VOCs exceed 0.050 parts per million by volume (ppmv), OCC is required to take a groundwater quality sample. Vapor readings, as documented in the 2011 Annual Report, have been at 0 parts per billion by volume (ppbv) for all Community Monitoring Wells.

Cleanup Goals

The RRT established APL Plume Flux Action Levels for the following chemicals: TCDD (0.5 grams/year); perchloropentacyclodecane [Mirex] (0.005 lbs/day); Aroclor 1248 (0.005 lbs/day); and, chloroform (1.7 lbs/day). Sampling results from December 2011 indicate that the concentrations of the APL Flux parameters are significantly below their respective Flux Action Levels. None of the APL Flux Parameters were detected above their detection levels and calculation of the flux to the Niagara River Gorge was not required. The detection levels for the Polychlorinated Biphenyls (PCBs) are as follows: Pentachlorobiphenyl is 0.20

micrograms per liter (µg/L), Tetrachlorobiphenyl is 0.20 µg/L and Trichlorobiphenyl is 0.098 µg/L. The detection levels for the pesticides are as follows: alpha-BHC 0.050 µg/L, beta-BHC 0.050 µg/L, delta-BHC 0.050 µg/L, gamma-Chlordane 0.050 µg/L. The detection limit for Mirex is 0.050 µg/L and for 2,3,7,8-TCDD) is 9.52 picograms/L.

The performance goal for the remedy is containment of contaminated groundwater. EPA utilized multiple lines of evidence to determine that site related contamination is being hydraulically contained. These multiple lines of evidence include: Potentiometric surface maps for the eight monitored flow zones; groundwater quality data; groundwater flow budget and particle tracking analysis using a numerical groundwater flow model; vertical hydraulic gradient data; historical groundwater quality trends from the NAPL Performance Monitoring Wells; groundwater relative age dating based on sulfate concentrations; and, comparison of the chemistry of the seeps in the Niagara River gorge to the chemistry of the bedrock groundwater.

Following all these lines of evidence, EPA concluded that the performance objectives of the remedy were maintained throughout the year. Based upon these results, the EDD remedy selected for the Site is deemed to be effective in protecting human health and the environment. Groundwater monitoring continues to demonstrate that hydraulic containment is being achieved at the Site. The results of the groundwater monitoring are presented in the Site annual reports which document containment.

Although cleanup levels were not developed for Bloody Run, post excavation sampling indicated that contaminants were remediated to concentrations below 1 microgram per kilogram (µg/kg) for TCDD and 25 milligram per kilogram (mg/kg) for Arochlor 1248. The excavated area was backfilled with clean soil and covered in riprap, further reducing exposure.

Operation and Maintenance

OCC and CRA prepared the Hyde Park Collection and APL Treatment System Operation and Maintenance Manual (O&M Manual) in December 2003, which was approved by EPA and NYSDEC. The O&M Manual was subsequently revised and incorporated into the Performance Monitoring Plan in 2006.

The treatment system treats more than fifty million gallons of water each year and is monitored on a daily, weekly and quarterly basis to ensure compliance with the discharge requirements. There are nine locations in the system where water samples are collected to monitor system performance. The carbon beds at the Treatment Facility are routinely changed and regenerated. The sacrificial carbon beds, which cannot be regenerated, must also be changed and disposed.

OCC must perform extensive well and pump maintenance, as NAPL often fouls wells and pumps. Annual inspections of the monitoring wells are conducted to ensure that the casings and caps are in good condition.

Five-Year Review

Hazardous substances remain at the Site above levels that would allow for unlimited use with unrestricted exposure. Pursuant to Section 121(c) of CERCLA, EPA reviews site remedies where such hazardous substances, pollutants, or contaminants remain no less often than every five years after the initiation of a remedy at a site.

Three Five-Year Reviews have been completed at this Site. The fourth Five-Year Review, completed in September 2011, concluded that the remedy is functioning as intended by the Site's decision documents. There have been no changes in the physical conditions of the Site that would affect the protectiveness of the remedy. The hydraulic containment stipulated in the EDD and RRT has been achieved. There have been no changes in the toxicity factors for the contaminants of concern and there has been no change to the standardized risk assessment methodology that could affect the protectiveness of the remedy. There is no other information that calls into question the protectiveness of the remedy. The next Five-Year Review is scheduled to be completed before September 2016.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k), and Section 117, 42 U.S.C. 9617. EPA held numerous public meetings through the remedy selection process and subsequent implementation of remedial activities by OCC. All other documents and information which EPA relied on or considered in recommending this deletion are available for the public to review at the information repositories.

Determination That the Site Meets the Criteria for Deletion in the NCP

All of the completion requirements for this Site have been met, as described in the August 2012 Final Close-Out Report. The State of New York, in a July 29, 2008 letter, concurred with the proposed deletion of this Site from the NPL.

The NCP specifies that EPA may delete a site from the NPL if ''all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate.'' 40 CFR 300.425(e)(1)(ii). EPA, with the concurrence of the State of New York, through NYSDEC, believes that this criterion for deletion has been met because landfill cap has decreased leachate generation and as a result, NAPL mobility has decreased. In addition, overburden and bedrock hydraulic containment is effective in containing both NAPL and APL plumes within the TI zone documented in the 2011 ESD and prevent contaminants from seeping into the Niagara River. Finally, ICs prevent disturbance of the landfill cap and consumption of contaminated groundwater. Consequently, EPA is deleting this Site from the NPL. Documents supporting this action are available in the Site files.

V. Deletion Action

The EPA, with concurrence of the State of New York through the Department of Environmental Conservation, has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and Five-Year Reviews have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective on September 30, 2012 unless EPA receives adverse comments by September 19, 2012. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 9, 2012.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of Appendix B to part 300 is amended by removing ''Hooker (Hyde Park)'', ''Niagara Falls '' under NY.

[FR Doc. 2012–20267 Filed 8–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0011; FRL 9717–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the W.R. Grace & Co., Inc./Wayne Interim Storage (USDOE) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region II is publishing a direct final Notice of Deletion of the W.R. Grace & Co., Inc./Wayne Interim Storage (USDOE) Superfund Site (the Site), located at 868 Black Oak Ridge Road, Wayne Township, NJ 07470, from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of New Jersey, through the Department of Environmental Protection, because EPA has determined that all appropriate response actions under CERCLA, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective on September 30, 2012, unless EPA receives adverse comments by September 19, 2012. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2005–0011, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: ingrisano.paul@epa.gov.*
- *Fax:* 212–637–3256.
- *Mail:* Paul G. Ingrisano, Project Manager, Federal Facilities Section, Emergency & Remedial Response Division, U.S. EPA, Region II, 290 Broadway, 18th floor, New York, NY 10007–1866.
- *Hand Delivery:* U.S. EPA Superfund Records Center, Region II, 290 Broadway, 18th floor, New York, NY 10007–1866. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2005–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Superfund Records Center, Region II, 290 Broadway, 18th floor, New York, NY 10007–1866. Business hours: 9 a.m. to 5 p.m., Monday through Friday. Phone 212–637–4308.

Wayne Public Library, 461 Valley Road, Wayne, NJ 07470. Business hours: 9 a.m. to 9 p.m., Monday through Thursday; 9 a.m. to 5:30 p.m., Friday; 10 a.m. to 5 p.m., Saturday; closed Sunday, June through August; 1 p.m. to 5 p.m., September through May. Phone 973–694–4272.

FOR FURTHER INFORMATION CONTACT: Paul G. Ingrisano, Project Manager, U.S. EPA, Region II, 18th Floor, 290 Broadway, New York, NY 10007–1866, 212–637–4337, email: *ingrisano.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA Region II is publishing this direct final Notice of Deletion of the Site, from the NPL The NPL constitutes Appendix B of 40 CFR part 300, which is the NCP, which EPA promulgated pursuant to section 105 of CERCLA, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). As described in 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective on September 30, 2012, unless EPA receives adverse comments by September 19, 2012. Along with this direct final Notice of Deletion, EPA is co-publishing a Notice of Intent To Delete in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a

timely withdrawal of this direct final Notice of Deletion before the effective date of the deletion, and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent To Delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State of New Jersey prior to developing this direct final Notice of Deletion and the Notice of Intent to Delete co-published today in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Delete prior to their publication today, and the state, through the Department of Environmental Protection, has concurred on the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Deletion, a notice of the availability of the parallel Notice of Intent to Delete is being published in a major local newspaper, *The North Jersey Herald & News.* The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the Site from the NPL.

(4) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent to Delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the W.R Grace & Co., Inc./Wayne Interim Storage (USDOE) Superfund Site (the Site) from the NPL:

Site Background and History

The Site is approximately 6.5 acres located at 868 Black Oak Ridge Road at the intersection with Pompton Plains Cross Road in Wayne Township, Passaic County, New Jersey. The Vicinity Properties (VPs) are commercial and residential areas, and a Township Park, all located within one-half mile to the west and west-southwest of the Site which were affected by contaminant migration from the Site along Sheffield Brook, which flows downstream to the Pompton River. The Site is in a highly developed area of northern New Jersey, approximately 20 miles north-northwest of Newark, New Jersey. The Site CERCLIS ID Number is NJ1891837980.

From 1948 through 1957, Rare Earths, Inc. processed monazite sand at the Site to extract thorium and rare earth metals. The Davison Chemical Division of W.R. Grace acquired the Site in 1957 and processing activities continued until July 1971. After processing ceased in 1971, the facility was licensed by the Atomic Energy Commission (AEC) for storage only. In 1974, W.R. Grace partially decontaminated the Site. Some buildings were razed and the rubble and processing equipment were buried on the property.

In 1974, the Nuclear Regulatory Commission (NRC) assumed licensing responsibilities formerly held by the AEC. In 1975, the storage license for radioactive materials was terminated by the NRC following Site decommissioning and the Site was released without radiological restriction; the only stipulation was that the property deed state that radioactive materials were buried on the property.

In 1981, as part of the review of formerly licensed facilities, the NRC measured direct radiation levels and radionuclide concentrations in soil on the Site. Elevated survey measurements were noted, indicating the Site was contaminated with radium (Ra)-226, thorium (Th)-232, and uranium (U)-238, and associated daughter products. The chemical contaminants of concern (COC) are antimony, arsenic, chromium, lead, mercury, molybdenum, and thallium.

In July 1983, the U.S. Department of Energy (USDOE) was authorized by the Energy and Water Development Appropriations Act of 1984 to conduct a decontamination research and development project at the Site. From 1984 to October 1997, the USDOE managed the Site under the Formerly Utilized Sites Remedial Action Program (FUSRAP). The Site was proposed to the NPL on September 8, 1983, (48 FR 40674). The Site was included on the NPL on September 21, 1984 (49 FR 37070). In September 1985, ownership of the Site transferred from W.R. Grace & Co. to the U.S. Government.

In July 1990, the USDOE signed a Federal Facility Agreement (FFA) that established cleanup responsibilities under CERCLA. The FFA was signed by the EPA in September 1990.

In October 1997, Congress transferred administration and execution of the FUSRAP program from the USDOE to the U.S. Army Corps of Engineers (USACE) in the Energy and Water Development Appropriations Act of 1998. In March 1998, the original USDOE/EPA Site FFA was renegotiated between EPA and the USACE.

Between 1985 and 1987, the USDOE conducted removal actions to remove contaminated material from some of the off-site VP locations in the vicinity of the Site. The adjacent VPs had received contaminants during historical W.R. Grace processing operations, which required remediation. Excavated soils

and debris were stored at the Site where the historic thorium processing operations occurred because no disposal facilities were available which were licensed or permitted to accept radiological wastes at the time. These actions were outlined in the *Action Description Memorandum, Proposed FY 1984 Remedial Actions at Wayne, New Jersey* (1984).

During 1993, removal actions at the remaining Site VPs were conducted under the *Engineering Evaluation/Cost Analysis (EE/CA) for the Proposed Removal of Contaminated Materials from Vicinity Properties at the Wayne Site* (1993). The majority of the waste from the 1993 cleanup actions was shipped directly to a commercial disposal facility. A small amount of contaminated soil from the 1993 cleanup actions was added to the interim storage pile at the Site due to off-site waste disposal constraints in effect at the time.

For the VPs surrounding the Site, the USDOE implemented residual contamination guidelines governing the release of formerly contaminated property for unrestricted use. The *DOE Guidelines for Residual Radioactivity at FUSRAP and Remote SPMP Sites (1985),* provided the following guidelines:

- External gamma radiation levels on a site released for unrestricted use to not exceed 20 microRems/hour above the ground surface;
- Maximum permissible concentration of Ra-226 and Th-232 in soil above background levels averaged over 100 cubic meters; 5 picoCuries/gram (pCi/g) averaged over the first 15 centimeters (cm) of soil at the surface; 15 pCi/g when averaged over 15-cm thick soil layers more than 15 cm below the surface (i.e., for sub-surface soils at depths greater than 15 cm); and,
- Maximum permissible concentration of U-238 in soil; 150 pCi/g above background.

The guidelines were derived using conservative assumptions protective of human health and the environment. The USDOE applied the surface and subsurface soil criteria when evaluating the effectiveness of the removal actions. The USDOE implemented the guidelines on the basis of compatibility with the criteria used for the same purpose by the EPA. No further removal was conducted when sampling data demonstrated that the residual contamination guidelines for soil were met for that property.

The USDOE revised the guidelines in the early 1990's by the application of the As Low As Reasonably Achievable (ALARA) principle. In applying the principle of reducing exposure to levels ALARA, the USDOE established cleanup goals for properties of 5 pCi/g, regardless of depth of contamination. These guidelines applied to Th-232 and Ra-226 concentrations; however, they were not applicable to naturally occurring background radioactivity in soils near the Site.

In 1997, when disposal facilities which were licensed or permitted to accept radiological wastes came online, the approximately 38,500-cubic yard interim storage pile was removed by the USDOE and shipped off-site for disposal.

Approximately 41,500 cubic yards of buried contaminated materials within the footprint of the former interim storage pile were removed and shipped off-site for disposal by the USACE under a separate CERCLA removal action that began in 1998. This action is documented in the *Engineering Evaluation/Cost Analysis for the Removal of Subsurface Materials at the Wayne Site* (1998).

Remedial Investigation and Feasibility Study

The Site was addressed through a Remedial Investigation/Feasibility Study (RI/FS) process which evaluated the conditions at the Site, the need for remedial action, and the possible cleanup alternatives. In late 1989, the USDOE began an intensive study of the remaining contamination at and around the Site. The field work was completed in December 1991. Historical data and the results documented in the RI Report (1993) delineated the nature and extent for contamination. The Baseline Risk Assessment (BRA) evaluated potential health and ecological risks if no remedial action was taken at the Site. The BRA determined that remedial action was warranted because of the potential for cancer risks above the upper risk threshold of 10^{-4} identified by EPA as protective to occur if existing institutional controls are not maintained in the future. The main exposure pathway of concern was direct contact with radiologically contaminated soils remaining at the Site.

The FS Report (1999) evaluated the alternatives for remedial action at the Site. The evaluation of a range of remedial actions for the Site was based upon the risk assessment presented in the FS. The overall strategy was to address the radioactively contaminated wastes which had been disposed at the Site. The FS evaluated technologies that were appropriate for the media of concern, developed and screened alternatives capable of addressing the contaminated media, and evaluated in detail a subset of the developed alternatives using evaluation criteria specified under CERCLA.

Selected Remedy

In May 2000, the EPA and the USACE issued a Record of Decision (ROD) identifying the selected remedy to address the remaining radioactive wastes, chemical waste, operations building demolition, and groundwater at the Site. The Remedial Action Objectives specified in the ROD were:

- To eliminate or minimize the potential for humans to ingest, come into dermal contact with, or inhale particulates of radioactive constituents, or to be exposed to external gamma radiation to achieve the level of protection required by the NCP (10^{-4} to 10^{-6} risk range) and meet the substantive requirements of 10 CFR part 20, subpart E.
- To reduce chemical COC levels in impacted media to levels that would be protective based on site-specific risk and groundwater impact evaluations.
- To return impacted groundwater to conditions consistent with groundwater applicable or relevant and appropriate requirements (ARARs).
- To protect the integrity of the clay layer in order to ensure protection of the lower groundwater aquifer.
- To reduce potential exposure to radium and thorium in soil to levels that would be protective for the intended land use as established by site-specific risk analysis.
- To reduce exposure to uranium to levels that would be protective for the intended land use.
- To eliminate or minimize toxicity, mobility, and/or volume of impacted soils.
- To eliminate or minimize the potential migration of contaminants into stream and storm drain sediments by surface water runoff, or by infiltration or percolation that would result in contamination of the groundwater.
- To comply with chemical and action-specific ARARs.
- To prevent exposures from radioactivity in buildings and structures greater than the guideline limits.
- To access and address the contaminated soils beneath the building.
- To eliminate or minimize potential exposure to external gamma radiation.
- To eliminate or minimize toxicity or mobility, and/or volume of contaminants.

The major components of the selected remedy and remedial actions performed at the Site are summarized below:

- Excavation and disposal of the remaining contaminated subsurface

materials to an average concentration of 5 pCi/g of Ra-226 and Th-232 combined, above naturally occurring background concentrations at the Site, and an average concentration of 100 pCi/g of total uranium above naturally occurring background, as determined by surveys consistent with the *Multi-Agency Radiation Survey and Site Investigation Manual* (MARSSIM) (2000).

- Excavation and disposal of chemically contaminated soils above levels calculated to be protective of groundwater or above levels protective for unrestricted uses of the property (with regard to chemicals of concern) as specified in the ROD.
- Decontamination and demolition of the site operations building on the Site, removal and off-site disposal of demolition debris, and removal and off-site disposal of contaminated materials under this building.
- Removal and treatment of groundwater encountered during excavation to meet the pretreatment discharge standards of the receiving Publicly Owned Treatment Works prior to release.
- Implementation of a five-year groundwater monitoring program to establish groundwater quality after contaminated soil has been removed.
- Maintenance of the integrity of the subsurface clay layer that acts as a hydraulic barrier protecting the lower aquifer at the Site.
- Site restoration activities that will allow for beneficial unrestricted use in the future.

Remedial Actions

Wayne Interim Storage Site (The Site)

Under the May 2000 ROD, an additional 55,410 cubic yards of contaminated material and building debris were excavated and disposed of at an off-site licensed disposal facility. The elements of the remedial construction activities and construction quality assurance and quality control (QC) are detailed in the *Post Remedial Action Report Wayne Interim Storage Site (PRAR)* (2004). The USACE managed and supervised all construction activities to ensure compliance with the remedial design, work plans, and construction specifications. The EPA provided oversight of the cleanup actions.

Vicinity Properties

Following the remedial actions at the Site, the USACE reviewed the cleanup actions previously taken by the USDOE at the VPs. The review consisted of comparing the USDOE radiological screening and sampling data from the VPs and the unrestricted use criteria applied by the USDOE to the cleanup values established in the ROD, and as appropriate, the State of New Jersey Administrative Code.

A Technical Memorandum documented the evaluation of the VPs and specifically identified and listed each property previously remediated by the USDOE. On the basis of this paper review, the USACE conducted additional subsurface soil sampling at four VPs in May and June 2003. Following the review and sampling, the USACE determined that prior USDOE actions were sufficient to meet the ROD cleanup criteria at all VPs, with the exception of the Wayne Township (Sheffield) Park and a small right-of-way (ROW) area adjacent to the Pompton Plains Cross Road.

The USACE conducted additional excavation and off-site disposal of contaminated residual soils in July and August 2003 at the Wayne Township (Sheffield) Park and the road ROW property consistent with the cleanup levels documented in the ROD. These actions were documented in an *Explanation of Significant Differences (ESD)* (2003). Final Status Surveys performed in compliance with MARSSIM demonstrated that ROD cleanup levels were achieved for radiological and chemical constituents of concern. Approximately 2,300 cubic yards of additional soil were excavated from these two VPs.

The elements of the remedial construction activities including construction QC requirements, the USACE inspections, post-excavation final status surveys, and final as-built drawings, are described in the *Post Remedial Action Report Wayne Interim Storage Site Vicinity Properties Wayne Township (Sheffield) Park* (2008) and *Post Remedial Action Report Wayne Interim Storage Site Vicinity Properties Pompton Plains Crossroad Right-of-Way Property* (2008). The USACE managed and supervised all construction activities at the VPs to ensure compliance with the remedial action work plans and construction specifications. The EPA provided oversight of the cleanup actions.

Transfer of the real property at 868 Black Oak Ridge Road, Wayne Township, New Jersey from the U.S. Government to the Township of Wayne was completed in 2006.

Inaccessible Soils

After the remediation of the Site, documented in the PRAR, it became necessary to examine the then-current status of a section of Black Oak Ridge Road and Pompton Plains Cross Road that is adjacent to the Site. In August 2004, a characterization survey of this roadway was performed and the results showed areas of subsurface contamination remained along certain roadway and utility features. These findings were also documented in the EPA Five-Year Review, indicating that this area would need to be addressed in the future.

The previously inaccessible soils in this area were made accessible and addressed in 2009 and 2010. During the 2009 remediation at the Black Oak Ridge Road, a total of 13 intermodal containers were filled with 475,000 pounds (237 tons) of contaminated soil and disposed of at U.S. Ecology in Grandview, Idaho (USEI). During the 2010 remediation, 43 containment sacks containing 447,550 pounds (224 tons) of contaminated soil, pipe, and debris were disposed of at USEI.

For radiologically-contaminated soil below the Black Oak Ridge Road roadway, the selected remedy in the ROD, complete excavation and off-site disposal, was applied. All regions of contamination in previously inaccessible soils under the Black Oak Ridge Road have been completely remediated. The analytical data presented in the *Construction Close-Out Report for Roadways and Inaccessible Soils* (2011) demonstrate compliance with the unrestricted use cleanup criteria as set forth in the ROD.

Groundwater Monitoring

A Long-Term Groundwater Monitoring Program was implemented to monitor groundwater quality at the Site within the unconfined and confined aquifers for a period of five years from the conclusion of remedial activities. Criteria in the ROD were used to evaluate radioactive and chemical constituent results. A total of 21 wells were monitored from 2002 until 2006 in accordance with the *Wayne Interim Storage Site Long-Term Groundwater Monitoring Plan Addendum for USACE In-House Sampling* (2003).

Over the course of the five-year monitoring period, a few results did exceed ROD and other criteria, but did not impact the conclusion that all groundwater criteria in the ROD had been met. Arsenic was detected in one well in excess of the ROD criteria, but did not exceed the EPA maximum contaminant level. This well was in a confined aquifer located up-gradient of all former disposal areas and was considered representative of background conditions. Chromium was detected above the ROD criteria in one monitoring well during the May 2006 sampling event. The elevated result was

found in a well that was in a confined aquifer located up-gradient of all former disposal areas. The well was considered to be representative of background conditions. The source of the elevated reading was attributed to chromium leaching into the well water column from the stainless steel well casing and screen. Previously, an on-site stainless steel well demonstrated similar elevated chromium results and was replaced by a polyvinyl chloride (PVC) well. The PVC-cased well demonstrated true groundwater chromium much less than the ROD criteria.

Following the March 2006 sampling event, the USACE determined that all monitoring requirements set forth in the ROD had been met. The Five-Year Review Report completed by EPA in September 2008 stated that the groundwater monitoring program requirements, as established in the ROD, had been met. The 21 monitoring wells were abandoned in September 2011 in accordance with New Jersey Department of Environmental Protection (NJDEP) regulations, specifically *Well Construction and Maintenance; Sealing of Abandoned Wells,* N.J.A.C. 7:9D.

Cleanup Goals

The cleanup levels for contaminated soils and groundwater at the Site and VPs are listed in Table 1, of the *Final Close-Out Report for the W.R. Grace and Co./Wayne Interim Storage Site* (2012). Attainment of these levels will allow for unrestricted use and unlimited exposure of the properties, as demonstrated in the risk assessment.

Post remedial action sampling was conducted following excavation at the Site property and VPs including the Wayne Township (Sheffield) Park, a small ROW area adjacent to the Pompton Plains Cross Road, and a section of Black Oak Ridge Road. Access was obtained to all properties and soil was excavated. Post excavation sampling indicated all cleanup levels for these soils had been met.

After five years of groundwater monitoring, the USACE determined that all monitoring requirements set forth in the ROD had been met. This was stated in the 2008 Five-Year Review Report.

Operation and Maintenance

No ongoing monitoring or maintenance is required by the U.S. Government at the Site. The remediation of previously inaccessible soils in 2009 and 2010 allowed for the Site to be closed with no land use controls to monitor.

Five-Year Review

The EPA published a Five-Year Review Report for the Site in September 2008. The assessment of this five-year review was that the selected remedy was functioning as intended by the decision documents and was protective of human health and the environment in the short-term.

The *Issues, Recommendations, and Follow-Up Actions and Protectiveness Statement* of the Five-Year Review Report both state that ''the implemented remedy has left all groundwater and soils suitable for use without restriction, except for two suspected sub-soil areas which are currently not accessible.'' The areas in question were located beneath a roadway to which the USACE could not gain access for characterization and remediation. The Five-Year Review Report went on to explain that there were no current risks for either groundwater or soils and none were expected, as long as access controls for the inaccessible areas were maintained, resulting in the likely need for a deed restriction on the areas. However, funds made available through the American Reinvestment and Recovery Act of 2009 allowed the USACE to work with Passaic County and remediate the areas consistent with the selected remedy in the ROD and ESD. This remediation is documented in the *Construction Close-Out Report for Roadways and Inaccessible Soils* (2011).

The remediation of previously inaccessible soils under the roadway allowed for the Site to be released for unrestricted use with no need for further Five-Year Reviews.

Community Involvement

Public participation activities for this Site have been satisfied as required in CERCLA sections 113(k) and 117, 42 U.S.C. 9613(k) and 9617. Throughout the removal and remedial process, EPA and the NJDEP have kept the public informed of the activities being conducted at the Site by way of public meetings, progress fact sheets, and the announcement through local newspaper advertisements on the availability of documents such as the RI/FS, Risk Assessment, ROD, Proposed Plan and the Five-Year Review Report.

Determination That the Site Meets the Criteria for Deletion in the NCP

The Site meets all site completion requirements as specified in the OSWER Directive 9320.2–22, *Close-Out Procedures for National Priorities List Sites.* All remedial activities at the Site are complete and the implemented remedy achieves the degree of cleanup specified in the ROD and ESD, for all pathways of exposure. Therefore, EPA has determined that no further response action is necessary at the Site to protect human health and the environment.

V. Deletion Action

The EPA, with concurrence of the State of New Jersey, through the Department of Environmental Protection, dated on June 22, 2012, has determined that all appropriate response actions under CERCLA have been completed. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective on September 30, 2012, unless EPA receives adverse comments by September 19, 2012. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion, and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 2, 2012.

Judith A. Enck,

Regional Administrator, Region II.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

■ 2. Table 2 of Appendix B to Part 300 is amended by removing ''W. R. Grace & Co., Inc./Wayne Interim Storage (USDOE)'', ''Wayne Township'' under NJ.

[FR Doc. 2012–20388 Filed 8–17–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 02–10; FCC 12–79]

Procedures To Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) modifies its C-band and Ku-band licensing and service rules for Earth Stations on Board Vessels (ESVs) in order to promote greater ESV operational flexibility without causing harmful interference to the Fixed-Satellite Service (FSS) operators.

DATES: Effective September 19, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Balatan or Howard Griboff, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Order on Reconsideration,* adopted on July 17, 2012, and released on July 19, 2012 (FCC 12–79). The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street SW., Washington, DC 20554. The document is also available for download over the Internet at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0719/FCC–12–79A1.doc.* The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, in person at 445 12th Street SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via email at *Commission@bcpiweb.com.*

Summary of the Second Order on Reconsideration

On December 15, 2004, the Commission adopted the *ESV Report and Order* in IB Docket No. 02–10 (*ESV Order*) (70 FR 4775–01, January 31, 2005, as amended at 40 FR 34665–01, June 15, 2005), establishing licensing and service rules for ESVs operating in the 5925–6425 MHz/3700–4200 MHz (C-band) and 14.0–14.5 GHz/11.7–12.2 GHz (Ku-band) frequencies. On July 30, 2009, the Commission adopted the *Order on Reconsideration* (*ESV Reconsideration Order*), (74 FR 47100–01, September 15, 2009, as amended at 75 FR 7975–01, February 23, 2010) which revises some of the ESV licensing and service rules adopted in the *ESV Order.* In this *Second Order on Reconsideration* (*Second Reconsideration Order*), the Commission revises the ESV rules by adopting requirements for a certain type of ESV system: a system that operates multiple co-frequency terminals simultaneously, with each terminal using a different data rate or power level (variable power ESV system). Specifically, the *Second Reconsideration Order* adopts an aggregate power-density rule that will allow variable power ESV systems to operate their individual transmitters simultaneously while using varying off-axis EIRP-density levels instead of requiring each transmitter within the system to use the same EIRP-density. The aggregate power-density rule requires variable power ESV systems to operate at least one dB below the off-axis EIRP-density limits in order to protect the FSS from harmful interference. In addition, the Order requires ESV applicants seeking a waiver of the one dB requirement to file a report regarding their system operations. Further, the *Second Reconsideration Order* requires variable power ESV systems to cease transmissions if the power-density from an individual terminal exceeds the off-axis EIRP-density limits or the power-density of one or more terminals causes the aggregate power to exceed the off-axis EIRP-density limits. The revisions this *Second Reconsideration Order* adopts for variable power ESVs should provide greater operational flexibility for those ESVs while continuing to ensure that the FSS operators are protected from harmful interference in the C-band and Ku-band.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA). In light of the rules adopted in the *ESV Order,* we find that there are only two categories of licensees that would be affected by the new rules. These categories of licensees are Satellite Telecommunications and Fixed-Satellite Transmit/Receive Earth Stations. The SBA has determined that the small business size standard for Satellite Telecommunications is a business that has $15 million or less in average annual receipts. Currently there are approximately 3,390 operational fixed-satellite transmit/received earth stations authorized for use in the C- and Ku-bands. The Commission does not request or collect annual revenue information, and thus is unable to estimate the number of earth stations that would constitute a small business under the SBA definition. Of the two classifications of licensees, we estimate that only 15 entities will provide ESV service. For the reasons described below, we certify that the policies and rules adopted in this *Second Reconsideration Order* will not have a significant economic impact on a substantial number of small entities.

In the *ESV Order,* the Commission established licensing and service rules for ESVs operating in the 5925–6425 MHz/3700–4200 MHz (C-band) and 14.0–14.5 GHz/11.7–12.2 GHz (Ku-band) frequencies. These rules allow ESV operations in the C- and Ku-bands, while ensuring that ESVs protect the fixed service (FS) and fixed-satellite service (FSS) operators, and a limited number of Government operations in these bands from harmful interference. In the *Order on Reconsideration,* the Commission clarified and modified certain ESV rules designed to protect the FSS and the FS in the C- and Ku-bands in order to allow greater operational flexibility for ESVs. For example, ESVs may operate at higher off-axis power-density levels as long as the ESV remains within the parameters of the coordination agreements between the target satellite and adjacent satellites. In this *Second Reconsideration Order,* we further promote operational flexibility while ensuring that the FSS are protected from harmful interference by adopting an aggregate power-density rule and a cessation of emission rule for variable power ESV systems. The Commission does not expect a substantial number of small entities to be directly impacted by the rule changes adopted in this *Second Reconsideration Order.* Specifically, we

expect that fewer than ten entities will be affected by the variable power rule provisions adopted in this Order. In addition, we believe these new rule provisions will not impose a significant economic impact on small entities and, in fact, will benefit both large and small entities utilizing variable power systems by allowing greater operational flexibility in providing ESV service. Therefore, we certify that the requirements adopted in this *Second Reconsideration Order* will not have a significant economic impact on a substantial number of small entities.

Final Paperwork Reduction Act of 1995 Analysis

This *Order on Reconsideration* does not contain new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission will send a copy of this Second Order on Reconsideration to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

It is ordered that, pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r), this Second Order on Reconsideration *is adopted.* Part 25 of the Commission's rules *is amended,* as specified below in the rule revisions, effective September 19, 2012.

It is further ordered that the Petition for Reconsideration filed by The Boeing Company *is granted* in part to the extent described above and *is denied* in all other respects.

It is further ordered that the Petition for Reconsideration filed by ViaSat, Inc. *is denied.*

It is further ordered that the Final Regulatory Flexibility Certification, as required by section 604 of the Regulatory Flexibility Act, *is adopted.*

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

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rule

For the reasons discussed above, the Federal Communications Commission amends 47 CFR part 25 as follows:

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for Part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 332, unless otherwise noted.

■ 2. Amend § 25.221 as follows:
■ a. Revise paragraph (a) introductory text;
■ b. Revise paragraphs (a)(1)(ii) introductory text and (a)(1)(iii) introductory text;
■ c. Revise paragraph (a)(2) introductory text;
■ d. Revise paragraph (a)(2)(iii);
■ e. Redesignate paragraphs (a)(3) through (a)(12) as paragraphs (a)(4) through (a)(13);
■ f. Add new paragraph (a)(3);
■ g. Revise newly redesignated paragraph (a)(12);
■ h. Revise paragraph (b) introductory text;
■ i. Revise paragraph (b)(2) introductory text;
■ j. Revise paragraph (b)(2)(iv);
■ k. Redesignate paragraphs (b)(3) through (b)(5) as paragraphs (b)(4) through (b)(6); and
■ l. Add new paragraphs (b)(3) and (b)(7).

§ 25.221 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 3700–4200 MHz (space-to-Earth) frequency band and transmitting in the 5925–6425 MHz (Earth-to-space) frequency band, operating with Geostationary Satellite Orbit (GSO) Satellites in the Fixed-Satellite Service.

(a) The following ongoing requirements govern all ESV licensees and operations in the 3700–4200 MHz (space-to-Earth) and 5925–6425 MHz (Earth-to-space) bands transmitting to GSO satellites in the fixed-satellite service. ESV licensees must comply with the requirements in paragraph (a)(1), (a)(2) or (a)(3) of this section and all of the requirements set forth in paragraphs (a)(4) through (a)(13) of this section. Paragraph (b) of this section identifies items that must be included in the application for ESV operations to demonstrate that these ongoing requirements will be met.

(1) * * *

(ii) Except for ESV systems operating under paragraph (a)(3) of this section, each ESV transmitter must meet one of the following antenna pointing error requirements:

* * * * *

(iii) Except for ESV systems operating under paragraph (a)(3) of this section, each ESV transmitter must meet one of the following cessation of emission requirements:

* * * * *

(2) The following requirements shall apply to an ESV that uses off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section. An ESV or ESV system operating under this paragraph (a)(2) shall file certifications and provide a detailed demonstration(s) as described in paragraph (b)(2) of this section.

* * * * *

(iii) The ESV shall operate in accordance with the off-axis EIRP spectral-densities that the ESV supplied to the target satellite operator in order to obtain the certifications listed in paragraph (b)(2) of this section. Except for ESVs with variable power systems, the ESV shall automatically cease emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator. For ESVs using variable power systems, the individual ESV transmitter shall automatically cease or reduce emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP-density limits supplied to the target satellite operator; the individual transmitter must be self-monitoring and capable of shutting itself off; and if one or more ESV transmitters causes the aggregate off-axis EIRP-densities to exceed the off-axis EIRP-density limits supplied to the target satellite operator, then the transmitter or transmitters shall cease or reduce emissions within 100 milliseconds of receiving a command from the system's central control and monitoring station.

(3) The following requirements shall apply to an ESV system that uses variable power-density control of individual simultaneously transmitting co-frequency ESV earth stations in the same satellite receiving beam unless that ESV system operates pursuant to paragraph (a)(2) of this section. An ESV system operating under this paragraph (a)(3) shall provide a detailed

demonstration as described in paragraph (b)(3) of this section.

(i) The effective aggregate EIRP-density from all terminals shall be at least 1 dB below the off-axis EIRP-density limits defined in paragraph (a)(1)(i) of this section, with the value of N = 1. In this context the term ''effective'' means that the resultant co-polarized and cross-polarized EIRP-density experienced by any GSO or non-GSO satellite shall not exceed that produced by a single transmitter operating 1 dB below the off-axis EIRP-density limits defined in paragraph (a)(1)(i) of this section. An ESV system operating under this paragraph (a)(3) shall provide a detailed demonstration as described in paragraph (b)(3)(i) of this section.

(ii) The individual ESV transmitter shall automatically cease or reduce emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP-density limits specified in paragraph (a)(3)(i) of this section. The individual transmitter must be self-monitoring and capable of shutting itself off. If one or more ESV transmitters causes the aggregate off-axis EIRP-densities to exceed the off-axis EIRP-density limits specified in paragraph (a)(3)(i) of this section, then the transmitter or transmitters shall cease or reduce emissions within 100 milliseconds of receiving a command from the system's central control and monitoring station.

* * * * *

(12) ESVs operating within 200 km from the baseline of the United States, or within 200 km from a U.S.-licensed fixed service offshore installation, shall complete coordination with potentially affected U.S.-licensed fixed service operators prior to operation. The coordination method and the interference criteria objective shall be determined by the frequency coordinator. The details of the coordination shall be maintained and available at the frequency coordinator, and shall be filed with the Commission electronically via the International Bureau Filing System (*http://licensing.fcc.gov/myibfs/*) to be placed on public notice. The coordination notifications must be filed in the form of a statement referencing the relevant call signs and file numbers. Operation of each individual ESV may commence immediately after the public notice is released that identifies the notification sent to the Commission. Continuance of operation of that ESV for the duration of the coordination term shall be dependent upon successful completion of the normal public notice process. If, prior to the end of the 30-day comment period of the public notice, any objections are received from U.S.-licensed fixed service operators that have been excluded from coordination, the ESV licensee shall immediately cease operation of that particular station on frequencies used by the affected U.S.-licensed fixed service station until the coordination dispute is resolved and the ESV licensee informs the Commission of the resolution.

* * * * *

(b) Applications for ESV operation in the 5925–6425 MHz (Earth-to-space) band to GSO satellites in the Fixed-Satellite Service must include, in addition to the particulars of operation identified on Form 312, and associated Schedule B, the applicable technical demonstrations in paragraph (b)(1), (b)(2) or (b)(3) of this section and the documentation identified in paragraphs (b)(4) through (b)(7) of this section.

* * * * *

(2) An ESV applicant proposing to implement a transmitter under paragraph (a)(2) of this section and using off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section shall provide the following certifications and demonstration(s) as exhibits to its earth station application:

* * * * *

(iv) Except for variable power ESV applicants, a demonstration from the ESV operator that the ESV system is capable of detecting and automatically ceasing emissions within 100 milliseconds when the transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator. Variable power ESV applicants shall provide a detailed showing that an individual ESV terminal is capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator; that the individual transmitter is self-monitoring and capable of shutting itself off; and that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving the appropriate command from the system's central control and monitoring station if the aggregate off-axis EIRP spectral-densities of the transmitter or transmitters exceed the off-axis EIRP spectral-densities supplied to the target satellite operator.

(3) An ESV applicant proposing to implement an ESV system under paragraph (a)(3) of this section and using variable power-density control of individual simultaneously transmitting co-frequency ESV earth stations in the same satellite receiving beam shall provide the information in paragraphs (b)(3)(i) and (b)(3)(ii) of this section as exhibits to its earth station application. The International Bureau will place these showings on Public Notice along with the application.

(i) The ESV applicant shall provide a detailed showing of the measures it intends to employ to maintain the effective aggregate EIRP-density from all simultaneously transmitting co-frequency terminals operating with the same satellite transponder at least 1 dB below the EIRP-density limits defined in paragraph (a)(1)(i) of this section. In this context the term ''effective'' means that the resultant co-polarized and cross-polarized EIRP-density experienced by any GSO or non-GSO satellite shall not exceed that produced by a single ESV transmitter operating at 1 dB below the limits defined in paragraph (a)(1)(i) of this section.

(ii) The ESV applicant shall provide a detailed showing that an individual ESV terminal is capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP-density limit specified in paragraph (a)(3)(i) of this section and that the individual transmitter is self-monitoring and capable of shutting itself off. The ESV applicant shall also provide a detailed showing that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving the appropriate command from the system's central control and monitoring station if the aggregate off-axis EIRP spectral-densities of the transmitter or transmitters exceed the off-axis EIRP-density limits specified in paragraph (a)(3)(i) of this section.

* * * * *

(7) Except for ESV systems operating pursuant to paragraph (a)(2) of this section, ESV systems authorized pursuant to this section shall be eligible for a license that lists ALSAT as an authorized point of communication.

■ 3. Amend § 25.222 as follows:

■ a. Revise paragraph (a) introductory text;

■ b. Revise paragraphs (a)(1)(ii) introductory text and (a)(1)(iii) introductory text;

■ c. Revise paragraph (a)(2) introductory text;

■ d. Revise paragraph (a)(2)(iii);

■ e. Redesignate paragraphs (a)(3) through (a)(7) as paragraphs (a)(4) through (a)(8);

■ f. Add new paragraph (a)(3);

■ g. Revise paragraph (b) introductory text;
■ h. Revise paragraph (b)(2) introductory text;
■ i. Revise paragraph (b)(2)(iv);
■ j. Redesignate paragraphs (b)(3) through (b)(5) as paragraphs (b)(4) through (b)(6); and
■ k. Add new paragraphs (b)(3) and (b)(7).

§ 25.222 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), 11.7–12.2 GHz (space-to-Earth) frequency bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band, operating with Geostationary Orbit (GSO) Satellites in the Fixed-Satellite Service.

(a) The following ongoing requirements govern all ESV licensees and operations in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), 11.7–12.2 GHz (space-to-Earth) frequency bands and 14.0–14.5 GHz (Earth-to-space) bands transmitting to GSO satellites in the fixed-satellite service. ESV licensees must comply with the requirements in paragraph (a)(1), (a)(2) or (a)(3) of this section and all of the requirements set forth in paragraphs (a)(4) through (a)(8) of this section. Paragraph (b) of this section identifies items that must be included in the application for ESV operations to demonstrate that these ongoing requirements will be met.

(1) * * *

(ii) Except for ESV systems operating under paragraph (a)(3) of this section, each ESV transmitter must meet one of the following antenna pointing error requirements:

* * * * *

(iii) Except for ESV systems operating under paragraph (a)(3) of this section, each ESV transmitter must meet one of the following cessation of emission requirements:

* * * * *

(2) The following requirements shall apply to an ESV that uses off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section. An ESV or ESV system operating under this paragraph (a)(2) shall file certifications and provide a detailed demonstration(s) as described in paragraph (b)(2) of this section.

* * * * *

(iii) The ESV shall operate in accordance with the off-axis EIRP spectral-densities that the ESV supplied to the target satellite operator in order to obtain the certifications listed in paragraph (b)(2) of this section. Except for ESVs with variable power systems, the ESV shall automatically cease emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator. For ESVs using variable power systems, the individual ESV transmitter shall automatically cease or reduce emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP-density limits supplied to the target satellite operator; the individual transmitter must be self-monitoring and capable of shutting itself off; and if one or more ESV transmitters causes the aggregate off-axis EIRP-densities to exceed the off-axis EIRP-density limits supplied to the target satellite operator, then the transmitter or transmitters shall cease or reduce emissions within 100 milliseconds of receiving a command from the system's central control and monitoring station.

(3) The following requirements shall apply to an ESV system that uses variable power-density control of individual simultaneously transmitting co-frequency ESV earth stations in the same satellite receiving beam unless that ESV system operates pursuant to paragraph (a)(2) of this section. An ESV system operating under this paragraph (a)(3) shall provide a detailed demonstration as described in paragraph (b)(3) of this section.

(i) The effective aggregate EIRP-density from all terminals shall be at least 1 dB below the off-axis EIRP-density limits defined in paragraph (a)(1)(i) of this section, with the value of N=1. In this context the term ''effective'' means that the resultant co-polarized and cross-polarized EIRP-density experienced by any GSO or non-GSO satellite shall not exceed that produced by a single transmitter operating 1 dB below the limits defined in paragraph (a)(1)(i) of this section. An ESV system operating under this paragraph (a)(3) shall provide a detailed demonstration as described in paragraph (b)(3)(i) of this section.

(ii) The individual ESV transmitter shall automatically cease or reduce emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP-density limits specified in paragraph (a)(3)(i) of this section. The individual transmitter must be self-monitoring and capable of shutting itself off. If one or more ESV transmitters causes the aggregate off-axis EIRP-densities to exceed the off-axis EIRP-density limits specified in paragraph (a)(3)(i) of this section, then the transmitter or transmitters shall cease or reduce emissions within 100 milliseconds of receiving a command from the system's central control and monitoring station.

* * * * *

(b) Applications for ESV operation in the 14.0–14.5 GHz (Earth-to-space) band to GSO satellites in the fixed-satellite service must include, in addition to the particulars of operation identified on Form 312, and associated Schedule B, the applicable technical demonstrations in paragraph (b)(1), (b)(2) or (b)(3) of this section and the documentation identified in paragraphs (b)(4) through (b)(7) of this section.

* * * * *

(2) An ESV applicant proposing to implement a transmitter under paragraph (a)(2) of this section and using off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section shall provide the following certifications and demonstration(s) as exhibits to its earth station application:

* * * * *

(iv) Except for variable power ESV applicants, a demonstration from the ESV operator that the ESV system is capable of detecting and automatically ceasing emissions within 100 milliseconds when the transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator. Variable power ESV applicants shall provide a detailed showing that an individual ESV terminal is capable of automatically ceasing or reducing emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP spectral-densities supplied to the target satellite operator; that the individual transmitter is self-monitoring and capable of shutting itself off; and that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving the appropriate command from the system's central control and monitoring station if the aggregate off-axis EIRP spectral-densities of the transmitter or transmitters exceed the off-axis EIRP spectral-densities supplied to the target satellite operator.

(3) An ESV applicant proposing to implement an ESV system under paragraph (a)(3) of this section and using variable power-density control of individual simultaneously transmitting co-frequency ESV earth stations in the same satellite receiving beam shall provide the information in paragraphs (b)(3)(i) and (b)(3)(ii) of this section as exhibits to its ESV application. The International Bureau will place these showings on Public Notice along with the application.

(i) The ESV applicant shall provide a detailed showing of the measures it intends to employ to maintain the effective aggregate EIRP-density from all simultaneously transmitting co-frequency terminals operating with the same satellite transponder at least 1 dB below the EIRP-density limits defined in paragraph (a)(1)(i) of this section. In this context the term ''effective'' means that the resultant co-polarized and cross-polarized EIRP-density experienced by any GSO or non-GSO satellite shall not exceed that produced by a single ESV transmitter operating at 1 dB below the limits defined in paragraph (a)(1)(i) of this section.

(ii) The ESV applicant shall provide a detailed showing that an individual ESV terminal is capable of automatically ceasing emissions within 100 milliseconds if the ESV transmitter exceeds the off-axis EIRP-density limit specified in paragraph (a)(3)(i) of this section and that the individual transmitter is self-monitoring and capable of shutting itself off. The ESV applicant shall also provide a detailed showing that one or more transmitters are capable of automatically ceasing or reducing emissions within 100 milliseconds of receiving the appropriate command from the system's central control and monitoring station if the aggregate off-axis EIRP spectral-densities of the transmitter or transmitters exceed the off-axis EIRP-density limits specified in paragraph (a)(3)(i) of this section.

* * * * *

(7) Except for ESV systems operating pursuant to paragraph (a)(2) of this section, ESV systems authorized pursuant to this section shall be eligible for a license that lists ALSAT as an authorized point of communication.

* * * * *

[FR Doc. 2012–20202 Filed 8–17–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 12–1207]

Radio Broadcasting Services; Westley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division unreserved Channel 239A at Westley, California for noncommercial educational (''NCE'') use by operation of law since none of the applications in NCE Reserved Allotment Group No. 8 would provide the requisite level of first and second NCE use. The window period for filing applications for Channel 239A at Westley, California will not be opened at this time. Instead, the issue of opening this allotment for auction for commercial use will be addressed by the Commission in a subsequent order. Accordingly, we are amending the FM Table of Allotments by removing the NCE ''asterisk'' from Channel 239A at Westley, California.

DATES: Effective August 20, 2012 and applicable July 27, 2012.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Letter,* released July 27, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12fth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. This document is not subject to the Congressional Review Act. Therefore, the Commission is not required to submit a copy of this Report and Order to the Government Accountability Office and Congress, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because these rules are rules of particular applicability and are not subject to the Commission's notice and comment procedures.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Peter H. Doyle,

Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel *239A and by adding Channel 239A at Westley.

[FR Doc. 2012–19729 Filed 8–17–12; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 77, No. 161
Monday, August 20, 2012

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0846; Directorate Identifier 2012–CE–021–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Cessna Aircraft Company Models 172R and 172S airplanes. This proposed AD was prompted by reports of chafed fuel return line assemblies, which were caused by the fuel return line assembly rubbing against the right steering tube assembly during full rudder pedal actuation. This proposed AD would require you to inspect the fuel return line assembly for chafing; replace the fuel return line assembly if chafing is found; inspect the clearance between the fuel return line assembly and both the right steering tube assembly and the airplane structure; and adjustment as necessary. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by October 4, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Cessna Aircraft Company, Customer service, P.O. Box 7706, Wichita, KS 67277; telephone: (316) 517–5800; fax: (316) 517–7271; Internet: *http://www.cessnasupport.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, MO 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jeff Janusz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 S. Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4148; fax: (316) 946–4107; email: *jeff.janusz@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0846; Directorate Identifier 2012–CE–021–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

In January 2012, we issued AD 2012–02–02 (77 FR 6003, February 7, 2012) for certain Cessna Aircraft Company (Cessna) Models 172R and 172S airplanes. That AD required inspection of the fuel return line assembly for chafing; replacement of the fuel return line assembly if chafing is found; inspection of the clearance between the fuel return line assembly and both the right steering tube assembly and the airplane structure; and adjustment as necessary. That AD resulted from reports of chafed fuel return line assemblies, which were caused by the fuel return line assembly rubbing against the right steering tube assembly during full rudder pedal actuation. We issued that AD to detect and correct chafing of the fuel return line assembly, which could result in fuel leaking under the floor and fuel vapors entering the cabin. This condition could lead to fire under the floor or in the cabin area.

We were recently notified that the unsafe condition also applies to airplanes with an installed engine fuel return system modification kit.

Relevant Service Information

We reviewed Cessna Service Bulletin SB07–28–01, Revision 1, dated September 22, 2011. The service information describes the following procedures:

- Inspecting the fuel return line assembly;
- Replacing the fuel return line assembly if chafing is found; and
- Inspecting the clearance between the fuel return line assembly and both the right steering tube assembly and the airplane structure, adjusting as necessary.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under

''Differences Between the Proposed AD and the Service Information.''

This proposed AD will apply to only the Cessna Models 172R and 172S airplanes that have installed an engine fuel return system modification kit.

AD 2012–02–02 (77 FR 6003, February 7, 2012) will remain in effect for the airplanes without the modification kit.

Differences Between the Proposed AD and the Service Information

The service information permits tube damage up to a depth of 0.0035 inch. There is no known method to accurately measure the thickness damage on a tube. We propose to require replacement of the fuel return line assembly if any damage is found.

If no chafing is found in the inspection of the fuel return line assembly, the service information does not require inspection for clearance around the fuel return line assembly. We propose to require you to inspect the clearance between the fuel return line assembly and both the right steering tube assembly and airplane structure if no chafing is found and if the fuel return line assembly requires replacing.

The service information does not specify a minimum clearance requirement between the fuel return line assembly and the right steering tube assembly, only that the fuel return line assembly does not touch either the right steering tube assembly or the airplane structure. We propose to require a minimum of 0.5 inch of clearance between the fuel return line assembly and the right steering tube assembly and require visible positive clearance between the fuel return line assembly and the airplane structure, during full rudder pedal actuation.

The serial numbers this proposed AD apply to are not included in the Effectivity of the service information. However, the procedures in the service information for inspection and replacement of the fuel return line assembly are still accurate for the serial numbers this proposed AD applies to.

The requirements of this proposed AD, if adopted as a final rule, would take precedence over the provisions in the service information.

Costs of Compliance

We estimate that this proposed AD affects 55 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the fuel return line assembly for chafing and clearance.	1 work-hour × $85 per hour = $85	Not applicable	$85	$4,675

We estimate the following costs to do any necessary replacements and adjustments 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 the fuel return line assembly and adjustment of the clearance between the fuel return line assembly and both the steering tube assembly and the airplane structure.	1 work-hour × $85 per hour = $85.	$123	$208

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

(3) Will not affect intrastate aviation in Alaska and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Cessna Aircraft Company: Docket No. FAA–2012–0846; Directorate Identifier 2012–CE–021–AD.

(a) Comments Due Date

We must receive comments by October 4, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Cessna Aircraft Company (Cessna) airplanes, certificated in any category:

(1) Model 172R, serial numbers (S/N) 17280001 through 17281187, that have incorporated Cessna Aircraft Company Service Bulletin SB04–28–03, dated August 30, 2004, and Engine Fuel Return System, Modification Kit MK172–28–01, dated August 30, 2004; and

(2) Model 172S, S/N 172S8001 through 172S9490, that have incorporated Cessna Aircraft Company Service Bulletin SB04–28–03, dated August 30, 2004, and Engine Fuel Return System, Modification Kit MK172–28–01; dated August 30, 2004.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2820, Aircraft Fuel Distribution System.

(e) Unsafe Condition

This AD was prompted by reports of chafed fuel return line assemblies caused by the fuel return line assembly rubbing against the right steering tube assembly during full rudder pedal actuation. 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) Inspect the Fuel Return Line Assembly

At whichever of the following that occurs later, inspect the fuel return line assembly (Cessna part number (P/N) 0500118–49) for chafing following Cessna Service Bulletin SB07–28–01, Revision 1, dated September 22, 2011.

(1) At the next annual inspection after the effective date of this AD; or

(2) Within the next 100 hours time-in-service (TIS) after the effective date of this AD; or

(3) Within the next 12 calendar months after the effective date of this AD.

(h) Replace the Fuel Line Assembly

If you find evidence of chafing of the fuel return line assembly (Cessna P/N 0500118–49) as a result of the inspection required by paragraph (g) of this AD, then before further flight, replace the fuel return line assembly (Cessna P/N 0500118–49) following Cessna Service Bulletin SB07–28–01, Revision 1, dated September 22, 2011.

(i) Inspect for a Minimum Clearance Between Certain Parts

After any inspection required by paragraph (g) of this AD and no chafing of the fuel return line assembly (Cessna P/N 0500118–49) is found or after replacement of the fuel return line assembly (Cessna P/N 0500118–49) required by paragraph (h) of this AD, before further flight, inspect for a minimum clearance between the following parts throughout the range of copilot pedal travel:

(1) A minimum clearance of 0.5 inch between the fuel return line assembly (Cessna P/N 0500118–49) and the right steering tube assembly (Cessna P/N MC0543022–2C); and

(2) Visible positive clearance between the fuel return line assembly (Cessna P/N 0500118–49) and the airplane structure.

(j) Adjust Clearance for Fuel Return Line Assembly

If the clearance between the fuel return line assembly and the right steering tube assembly and the clearance between the fuel return line assembly and the aircraft structure do not meet the minimums as specified in paragraphs (i)(l) and (i)(2) of this AD, before further flight, adjust the clearances to meet the required minimums following the Instructions paragraph of Cessna Service Bulletin SB07–28–01, Revision 1, dated September 22, 2011.

(k) Engine Fuel Return System Modification

Do not install Cessna Aircraft Company Service Bulletin SB 04–28–03 and Engine Fuel Return System Modification Kit MK 172–28–01, both dated August 30, 2004, without performing the actions in this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita 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.

(m) Related Information

(1) For more information about this AD, contact Jeff Janusz, Aerospace Engineer, Wichita ACO, FAA, 1801 S. Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4148; fax: (316) 946–4107; email: *jeff.janusz@faa.gov.*

(2) For service information identified in this AD, contact Cessna Aircraft Company, Customer Service, P.O. Box 7706, Wichita, KS 67277; telephone: (316) 517–5800; fax: (316) 517–7271; Internet: *http://www.cessnasupport.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on August 14, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–20371 Filed 8–17–12; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR PART 23

Guides for the Jewelry, Precious Metals, and Pewter Industries

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice of extension of deadline for submission of public comments.

SUMMARY: The FTC is extending the deadline for filing public comments on the Guides for the Jewelry, Precious Metals, and Pewter Industries.

DATES: Comments must be received on or before September 28, 2012.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions at the end of the **SUPPLEMENTARY INFORMATION** section below. Write ''Jewelry Guides, 16 CFR Part 23, Project No. G711001'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/jewelryguidesreview* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex O), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Reenah L. Kim, Attorney, (202) 326–2272, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On July 2, 2012, as part of the Commission's systematic review of its rules and guides, the FTC published a notice in the **Federal Register** (''FRN'') requesting public comments on the Guides for the Jewelry, Precious Metals, and Pewter Industries (''Jewelry Guides'' or ''Guides).[1] The FRN solicits comments on the Guides' costs and benefits, and on whether the Commission should repeal, amend, or retain the Guides in their current form. The FRN also solicits comments on several specific issues concerning composite gemstones, pearls, diamonds, and precious metal alloys, as well as comments regarding

[1] 77 FR 39201 (July 2, 2012).

any other issues or concerns relating to the Guides. The FRN sets August 27, 2012 as the deadline for filing comments.

A trade association representing jewelry industry members, Jewelers Vigilance Committee (''JVC''), requests a 32-day extension of the comment deadline. JVC explains that the market research companies retained to obtain consumer perception data need additional time to complete their tasks. JVC further notes the FRN contains 24 separate questions, many with subparts, covering a wide array of topics and raising complicated issues that call for technical submissions by metallurgical and gemological experts, in addition to targeted market research data. JVC states the current deadline does not provide sufficient time to develop comments and supporting evidence that would fully address the issues.

The Commission has decided to extend the comment period to September 28, 2012. Given the complexity and range of issues raised in the FRN, including the request for consumer perception evidence, the Commission believes that allowing additional time for filing comments may help facilitate the creation of a more complete record. Moreover, this brief extension would not harm consumers, as the current Guides remain in effect during the review process.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 28, 2012. Write ''Jewelry Guides, 16 CFR Part 23, Project No. G711001'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually-identifiable health information. In addition, do not include any ''trade secret or any commercial or financial information which is * * * privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[2] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. Accordingly, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/jewelryguidesreview* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Jewelry Guides, 16 CFR Part 23, Project No. G711001'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex O), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 28, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

[2] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–20417 Filed 8–17–12; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 801

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to the premerger notification rules (''the Rules'') to provide a framework for determining when a transaction involving the transfer of rights to a patent in the pharmaceutical, including biologics, and medicine manufacturing industry (North American Industry Classification System Industry Group 3254) (''pharmaceutical industry'') is reportable under the Hart Scott Rodino Act (''the Act'' or ''HSR''). The Act and Rules require the parties to certain mergers and acquisitions to file reports with the Federal Trade Commission (''the Commission'') and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''the Assistant Attorney General'') (collectively, ''the Agencies'') and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable these enforcement agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court to prevent consummation. This proposed rulemaking uses the concept of ''all commercially significant rights'' as the basis to determine whether there is a transfer of exclusive rights to a patent in the pharmaceutical industry resulting in an asset acquisition that may be reportable under the Act.

DATES: Comments must be received on or before October 25, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''HSR IP Rulemaking, Project No. P989316'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/hsripnprm,* by following the instructions on the web-based form. If

you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex Q), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones, Deputy Assistant Director, Premerger Notification Office, Bureau of Competition, Room 302, Federal Trade Commission, Washington, DC 20580. Telephone: (202) 326–3100.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 25, 2012. Write ''HSR IP Rulemaking, Project No. P989316'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is * * * privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/hsripnprm,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''HSR IP Rulemaking, Project No. P989316'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex Q), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 25, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Statement of Basis and Purpose

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. In addition, Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A.

In this proposed rulemaking, the Commission proposes amending § 801.1 and § 801.2 to reflect the longstanding staff position that a transaction involving the transfer of exclusive rights to a patent in the pharmaceutical industry, which typically takes the form of an exclusive license, is potentially reportable under the Act. The proposed rules define and apply the concepts of ''all commercially significant rights,'' ''limited manufacturing rights,'' and ''co-rights'' in determining whether the rights transferred with regard to a patent in the pharmaceutical industry constitute a potentially reportable asset acquisition.

Part 801—Coverage Rules

Section 801.2 Acquiring and Acquired Persons

I. Background

The Act applies to reportable acquisitions of voting securities, controlling non-corporate interests,[2] and assets. Determining whether a transaction is reportable requires applying the statute, supporting regulations, formal interpretations, and informal staff interpretations. As the Act covers asset acquisitions, and a patent is an asset,[3] it is usually a straightforward process to determine whether the acquisition of a patent triggers a reporting obligation under the Act.[4]

Determining whether the transfer of rights to a patent is an asset acquisition, and thus potentially reportable, is usually a more challenging analysis. From an early point, the Premerger Notification Office (''PNO'') analyzed these transactions by focusing on whether the exclusive rights to ''make, use and sell'' under a patent were being transferred by the license. That is, the focus was on the transfer of the bundle of rights to use a patent to exclusively manufacture a product, develop the product for all potential uses, and sell that product without restriction. The

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] Acquisitions of non-corporate interests must confer control in order to be reportable.

[3] Indeed, the Second Circuit explained in *SCM Corp.* v. *Xerox Corp.,* ''[s]ince a patent is a form of property * * * and thus an asset, there seems little reason to exempt patent acquisitions from scrutiny under [Section 7 of the Clayton Act.]'' 645 F.2d 1195, 1210 (2d Cir. 1981).

[4] This rulemaking proposes to define when the transfer of rights to a pharmaceutical patent constitutes the acquisition of an asset. It in no way delimits the much broader definition of an asset for purposes of Sections 7 and 7A of the Clayton Act in any other context.

transfer of this bundle of rights is seen as a potentially reportable asset acquisition under the Act. If the licensor retains the right to manufacture, the deal is, in most instances, non-reportable. For instance, some licensing agreements involve the exclusive use and sale of a patent, but typically allow the licensor to retain manufacturing rights for the patent. Under the current PNO approach, these exclusive licenses are not reportable since, without the right to manufacture, they are viewed as distribution agreements rather than asset acquisitions.

Although this basic approach was never codified, it became well-known throughout the HSR bar and is reflected in the letters and emails from practitioners in the PNO's informal interpretation database. While each situation in the database is factually unique, the questions from practitioners overwhelmingly focus on exclusive licenses in the pharmaceutical industry where the licensor grants some rights but retains others. In those situations, PNO staff was asked to analyze the retained rights to determine if an asset acquisition was taking place. The retained rights typically fall into two categories: manufacturing rights and co-rights.

(a) Retention of Manufacturing Rights

As mentioned above, if the licensee was not granted the right to manufacture, but only the rights to use and sell, PNO staff viewed this as a non-reportable event because the license appeared essentially to be a distribution agreement. Yet, in licensing arrangements in the pharmaceutical industry, the right to manufacture is far less important than the right to commercialize. In fact, the right to manufacture is often retained by the licensor who has the relevant manufacturing expertise and facilities. As a result, pharmaceutical companies often enter into licenses in which the licensee receives the exclusive right to use and sell under the license, but the licensor retains the right to manufacture exclusively for the licensee. As the licensor is manufacturing solely for the use of the licensee, this is substantively the same as giving the licensee the exclusive right to manufacture, use and sell the product(s) covered by the license.

The proposed rule would treat this kind of exclusive license agreement as a potentially reportable asset acquisition. This aspect of the rule is a significant change in the weight given to manufacturing rights in determining whether or not exclusive rights to a patent are being transferred. Under the proposed rules, if the licensor retains the right to manufacture exclusively for the licensee, it is a potentially reportable asset acquisition because all commercially significant rights, as discussed below, will still have passed to the licensee.

(b) Retention of Co-Rights

In the pharmaceutical industry, a licensor also often retains co-rights in granting an exclusive license. Co-rights cover the shared responsibility for seeing the licensed product through the Food and Drug Administration (''FDA'') approval process and then marketing and promoting the product. For example, the licensee is granted the exclusive right to make, use and sell a product, but the patent holder retains the right to co-develop and co-market the product along with the licensee. The licensor generally retains co-rights to assist the licensee in maximizing the licensee's sales of the licensed product so that the licensor might have a more robust royalty revenue stream or other revenue sharing arrangement.

Under current policy, the retention of these rights does not render the license non-exclusive. In the PNO's experience, when the licensor retains co-rights, typically only the licensee can use the patent rights as it strives to gain FDA approval for the pharmaceutical product, and any eventual royalty stream or other revenue sharing mechanism flows from this exclusivity. So, even though both the licensee and licensor will share any eventual profits, the profits result from a potentially reportable transfer to the licensee of the exclusive right to use the patent. This approach will not change under the proposed ''all commercially significant rights'' concept.

(c) Limitation to the Pharmaceutical Industry

PNO staff has extensive experience providing advice regarding the transfer of rights to a patent through exclusive licenses in the pharmaceutical industry. In the PNO's view, the pharmaceutical industry presents unique incentives for the use of exclusive licenses. For example, in a scenario the PNO has seen quite frequently, an innovator discovers a compound, but that innovator does not have the financial resources to shepherd the compound through the approval process required by the FDA, nor to effectively market or promote it in drug form after FDA approval. Thus, the innovator will enter into an exclusive licensing agreement with a (typically much larger) pharmaceutical company to provide the financial resources for the FDA approval process and the eventual marketing and promotion of the drug. There is a great deal of uncertainty involved, as neither party to the exclusive licensing agreement knows whether the compound will actually become an approved drug and be commercially successful. But if the drug is successful, the licensee will be able to book enormous profits, some of which will be shared with the licensor through royalties or other revenue sharing arrangements. Given its financial investment, the licensee wants the exclusive right to as much of these profits as possible to recoup its costs. The result is an exclusive license agreement that is, in the PNO's experience, unlike that seen in any other industry.

As a result of these unique incentives and because, in the PNO staff's experience, these arrangements have been limited to the pharmaceutical industry, the Commission has limited the proposed rule to analyzing the transfer of rights to a patent in the pharmaceutical industry. Thus, the proposed rule is limited to those specific NAICS codes that involve the pharmaceutical industry. Although the proposed rule is limited to the pharmaceutical industry, the transfer of exclusive rights to a patent in other industries remains a potentially reportable event under the Act. Parties dealing with exclusive rights to a patent in other industries should consult PNO staff, which will consider such questions on a case-by-case basis.

II. All Commercially Significant Rights

Although the typical mechanism used to transfer exclusive rights to a patent in the pharmaceutical industry is a license, the proposed rule does not use this term and instead focuses on the broader concept of exclusive rights to a patent in defining the key concept of ''all commercially significant rights.'' This broad language is intended to keep the focus on the substance of what is being transferred, not the form of the transfer. Thus, any transfer of exclusive rights to a patent in the pharmaceutical industry is a potentially reportable event, regardless of whether this transfer is called an exclusive license or something else.

The proposed rule focuses on the transfer of exclusive rights to a pharmaceutical patent in a particular therapeutic area. A therapeutic area covers the intended use for the patent, such as for cardiovascular use or neurological use, and includes all indications. An indication encompasses a narrower segment of a therapeutic area, such as Alzheimer's disease within

the neurological therapeutic area. As discussed above, the proposed rule emphasizes the substance of what is being transferred, not the form that this transfer takes, even though the transfer will most often occur in the form of an exclusive license. When the recipient, typically a licensee, receives the exclusive rights to the patent in a therapeutic area, it is receiving the exclusive right to use the patent in that therapeutic area.

''All commercially significant rights,'' as defined in proposed § 801.1(o), flow from the exclusive rights to a patent. As a result of these exclusive rights, only the recipient has the right to use the patent in a particular therapeutic area, or specific indications within that therapeutic area, to generate eventual profits (some of which will be shared with the licensor through royalties or other revenue sharing arrangements). The recipient alone gains all commercially significant rights to the patent through the transfer of the exclusive rights to it.

In transferring exclusive rights to a patent in the pharmaceutical industry, the patent holder will often retain ''co-rights,'' as defined by proposed § 801.1(q). As discussed above, in the PNO's experience, a licensor will often grant the licensee an exclusive license to make, use and sell a product, but retain co-rights to assist the licensee in maximizing its sales of the licensed product. All sales are booked by the licensee, but the licensor benefits as a result of a more robust royalty revenue stream or other revenue sharing arrangements. The key is that, in retaining these kinds of rights, the licensor does not retain the right to use the patent in the same therapeutic area.

Under current policy, the patent holder's retention of these rights does not render the license non-exclusive, and under the proposed rule, will not affect the transfer of all commercially significant rights to the licensee. As a result, the all commercially significant rights test reflects the PNO staff's existing position on the reportability of exclusive licenses in which the patent holder retains co-rights.

The proposed all commercially significant rights test does, however, establish a new approach to the analysis of manufacturing rights under an exclusive license. Under the proposed rule, when the licensor retains the right to manufacture exclusively for the licensee, it will retain ''limited manufacturing rights,'' as defined by proposed § 801.1(p). In retaining these rights, the licensor does not retain the right to use the patent in the same therapeutic area. As in the case of co-rights, the licensor retains limited manufacturing rights to aid the licensee's efforts to market and sell the product and generate royalties in that therapeutic area. Thus, when it retains limited manufacturing rights, the licensor is still transferring all commercially significant rights to the licensee and a potentially reportable asset acquisition is taking place.

In sum, the proposed all commercially significant rights test should greatly simplify the question of whether an asset acquisition is occurring as the result of the transfer of rights to a patent in the pharmaceutical industry. In addition, the proposed test makes clear that the retention of certain rights, such as ''limited manufacturing rights'' and ''co-rights,'' does not affect whether the transfer of all commercially significant rights has occurred. The proposed rule thus clarifies the analysis of the reportability of transfers of pharmaceutical patent rights while providing the Agencies with a better opportunity to review the transfers of exclusive rights to a patent in the pharmaceutical industry for competitive concerns. The Commission believes these benefits outweigh any additional burden on filing parties.

Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed in the public record. 16 CFR 1.26(b)(5).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small businesses, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

Because of the size of the transactions necessary to invoke an HSR filing, the premerger notification rules rarely, if ever, affect small businesses. The 2000 amendments to the Act exempted all transactions valued at $50 million or less, with subsequent automatic adjustments to take account of changes in GNP resulting in a current threshold of $68.2 million. Further, none of the proposed rule amendments expands the coverage of the premerger notification rules in a way that would affect small business. Accordingly, the Commission certifies that these proposed rules will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501–3521, requires agencies to submit ''collections of information'' to the Office of Management and Budget (''OMB'') and obtain clearance before instituting them. Such collections of information include reporting, recordkeeping, or disclosure requirements contained in regulations. The information collection requirements in the HSR rules and Form have been reviewed and approved by OMB under OMB Control No. 3084–0005. The current clearance expires on August 31, 2014. Because the rule amendments proposed in this NPR would change existing reporting requirements, the Commission is submitting a Supporting Statement for Information Collection Provisions to OMB.

To estimate the impact of this proposed rulemaking on the number of filings, PNO staff reviewed letters from outside counsel discussing non-reportable transactions that would be reportable under this proposal. The average annual number of letters over the past five years was 21. Consultations with several outside practitioners who are heavily involved in analyzing HSR reportability for patent licensing in the pharmaceutical industry indicate that there are an estimated 9 additional transactions per year that fall into this category and are not confirmed by letter with staff.

Consequently, PNO staff estimates that there will be an increase of 30 transactions per year requiring non-index HSR filings due to the proposed rule change.[5] The outside practitioners who were contacted by staff agreed that this is a reasonable estimate. Based on the FTC's projection of 1,500 total transactions per year, this represents a

[5] ''Index'' filings pertain to banking transactions, and thus would not be affected by the proposed amendments. Index filings are incorporated, however, into the FTC's currently cleared burden estimates (the FTC has jurisdiction over the administration of index filings). They are mentioned here to distinguish them from and to further explain what a ''non-index'' filing is. Clayton Act Sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies, but only if copies of the information submitted to these other agencies are also submitted to the FTC and the Assistant Attorney General. Thus, parties must submit copies of these ''index'' filings, but completing the task requires significantly less time than non-exempt transactions (which require ''non-index'' filings), as illustrated by the calculations in footnote 6 below.

2% increase due to the proposed rules, averaged from annual expected filings in FY2012–2014 (30 ÷ 1500 = .02 or 2%). As a result, staff estimates that the total burden hours under the HSR rules as revised will be 56,420 hours, an increase of 2,664 hours from the staff's estimate of 53,756 hours for the current Rules.[6] Similarly, staff estimates the labor costs under the proposed rules will be $25,953,000 (rounded to the nearest thousand), an increase of approximately $1,225,000 from the estimate of $24,728,000 for the current rules.

PNO staff believes that any incremental capital/non-labor costs presented by the proposed amendments would be marginal. Businesses subject to the HSR Rules generally have or would obtain necessary equipment for other business purposes. Staff believes that the existing requirements (and proposed extension to certain additional transactions) necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates. This should constitute a small portion of and be subsumed within the ordinary training that employees receive apart from that associated with the information collected under the HSR Rules and the corresponding Notification and Report Form.

The Commission invites comments that will enable it to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections 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 must comply.

Comments on any proposed reporting requirements that are subject to OMB review under the PRA should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–5167 because U.S. postal mail at the OMB is subject to lengthy delays due to heightened security precautions.

List of Subjects in 16 CFR Part 801

Antitrust.

For the reasons stated in the preamble, the Federal Trade Commission proposes to amend 16 CFR part 801 as set forth below:

PART 801—COVERAGE RULES

1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

2. Amend § 801.1 by adding paragraphs (o), (p) and (q) to read as follows:

§ 801.1 Definitions.

* * * * *

(o) *All commercially significant rights.* For purposes of paragraph (g) of § 801.2, the term *all commercially significant rights* means the exclusive rights to a patent that allow only the recipient of the exclusive patent rights to use the patent in a particular therapeutic area (or specific indication within a therapeutic area).

(p) *Limited manufacturing rights.* For purposes of paragraph (o) above and paragraph (g) of § 801.2, the term *limited manufacturing rights* means the rights retained by a patent holder to manufacture the product(s) covered by a patent when all other exclusive rights to the patent within a therapeutic area (or specific indication within a therapeutic area) have been transferred to the recipient of the patent rights. The retained right to manufacture is limited in that it is retained by the patent holder solely to provide the recipient of the patent rights with product(s) covered by the patent (which either the patent holder alone or both the patent holder and the recipient may manufacture).

(q) *Co-rights.* For purposes of paragraph (o) above and paragraph (g) of § 801.2, the term *co-rights* means shared rights retained by the patent holder to assist the recipient of the exclusive patent rights in developing and commercializing the product covered by the patent. These co-rights include, but are not limited to, co-development, co-promotion, co-marketing and co-commercialization.

3. Amend § 801.2 by adding paragraph (g) to read as follows:

§ 801.2 Acquiring and acquired persons.

* * * * *

(g) Transfers of patent rights within NAICS Industry Group 3254.

(1) This paragraph applies only to patents covering products whose manufacture and sale would generate revenues in NAICS Industry Group 3254, including:

325411 Medical and Botanical Manufacturing
325412 Pharmaceutical Preparation Manufacturing
325413 In-Vitro Diagnostic Substance Manufacturing
325414 Biological Product (except Diagnostic) Manufacturing

(2) The transfer of patent rights covered by this paragraph constitutes an asset acquisition; and

(3) Patent rights are transferred if and only if all commercially significant rights to a patent, as defined in § 801.1(o), for any therapeutic area (or specific indication within a therapeutic area) are transferred to another entity. All commercially significant rights are transferred even if the patent holder retains limited manufacturing rights, as defined in § 801.1(p), or co-rights, as defined in § 801.1(q).

Examples

Although these examples refer to licenses, which are typically used to effect the transfer of pharmaceutical patent rights to a recipient of those rights, other methods of transferring patent rights, by assignment or grant, among others, are similarly covered by these rules and examples.

1. B holds a patent relating to an active pharmaceutical ingredient for cardiovascular use. A will obtain a license from B that grants A the exclusive right to all of B's patent rights except that both A and B can manufacture the active pharmaceutical ingredient to be sold by A under the exclusive license agreement. B retains limited manufacturing rights as defined in § 801.1(p) because it retains the right to manufacture the product covered by the patent for cardiovascular use solely to provide the product to A. A is still receiving all commercially significant rights to the patent, and the transfer of these rights via the license constitutes an asset acquisition. Further, even if B retained all rights to manufacture (so that A could not manufacture), B would still retain limited manufacturing rights, and A would still receive all commercially significant rights to the patent. Thus, the transfer of these rights via the license would constitute an asset acquisition.

2. B holds a patent for an in-vitro diagnostic substance relating to arthritis.

[6] The currently cleared estimate was calculated as follows: [(1428 non-index filings × 37 hours) + (22 transactions requiring more precise valuation × 40 hours) + (20 index filings × 2 hours) = 53,756 hours]. *See* 76 FR 42471, 42479 (July 19, 2011). Staff estimates that the proposed rules will increase by 30 the number of transactions that require non-index filings, resulting in an estimate of 1,500 filings per year, averaged from FY2012 to FY2014, coinciding closely with the current clearance duration. Accordingly, staff estimates the hours burden for the proposed rule as follows: [(1,500 non-index filings × 37 hours) + (22 transactions requiring more precise valuation × 40 hours) + (20 index filings × 2 hours) = 56,420 hours.]. Associated labor costs: 56,420 hours × $460/hour for executives and attorneys' wages = $25,953,000.

B will grant A an exclusive license to all of B's patent rights for all veterinary indications. B retains all patent rights for all human indications. The exclusive license to all commercially significant rights for all veterinary indications is an asset acquisition because A is receiving all rights to the patent for a therapeutic area.

3. B holds a patent relating to a biological product. B will grant A an exclusive license to all of B's patent rights in all therapeutic areas. A and B are also entering into a co-development and co-commercialization agreement under which B will assist A in developing, marketing and promoting the product to physicians. B cannot separately use the patent in the same therapeutic area as A under the co-development and co-commercialization agreement. A will book all sales of the product and will pay B a portion of the profits resulting from those sales. Despite B's retention of these co-rights, A is still receiving all commercially significant rights. The licensing agreement is an asset acquisition. This would be an asset acquisition even if B also retained limited manufacturing rights.

4. B holds a patent relating to an active pharmaceutical ingredient and a bulk compound that contains that active pharmaceutical ingredient. B will grant A an exclusive license to use the bulk compound to manufacture and sell a finished product in the neurological therapeutic area. B cannot manufacture the active pharmaceutical ingredient or bulk compound for any other finished products in the neurological area, but it can manufacture either for use by another party in a different therapeutic area. Despite B's retention of manufacturing rights of the active pharmaceutical ingredient and bulk compound for therapeutic areas other than neurology, A is still receiving all commercially significant rights in a therapeutic area and the licensing agreement is the acquisition of an asset.

5. B holds a patent related to a pharmaceutical product that has been approved by the FDA. B will enter into an exclusive distribution agreement with A that will give A the right to distribute the product in the U.S. B will manufacture the product for A and will receive a portion of all revenues from the sale of the product. A receives no exclusive patent rights under the distribution agreement. A has not obtained all commercially significant rights to the patent because it is only handling the logistics of selling and distributing the product on B's behalf. Therefore, the distribution agreement is not an asset acquisition.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–20192 Filed 8–17–12; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0653]

RIN 1625–AA00

Safety Zone; Embry-Riddle Wings and Waves, Atlantic Ocean; Daytona Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the Atlantic Ocean east of Daytona Beach, Florida during the Embry-Riddle Wings and Waves air show. The event is scheduled to take place from Thursday, October 11, 2012, through Sunday, October 14, 2012. This temporary safety zone is necessary for the safety of air show participants, participant vessels, spectators, and the general public during the event. Persons and vessels that are not participating in the air show will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Jacksonville or their designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before August 27, 2012. Requests for public meetings must be received by the Coast Guard on or before August 24, 2012.

ADDRESSES: You may submit comments identified by docket number (USCG–2012–0653) 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 proposed rule, call or email Lieutenant Commander Robert Butts, Sector Jacksonville Office of Waterways Management, Coast Guard; telephone 904–564–7563, email *Robert.S.Butts@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–2012–0653 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–2012–0653 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 on or before August 22, 2012, 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. 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; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the rule is to protect the public from the hazards associated with airborne acrobatic maneuvers over the navigable waters of the United States.

C. Discussion of Proposed Rule

On October 11, 2012, through October 14, 2012, the city of Daytona Beach will host an air show event over the Atlantic Ocean in Daytona Beach, FL. In recent years, there have been unfortunate instances of jets and planes crashing during performances at air shows. Along with a jet or plane crash, there is typically a wide area of scattered debris that can damage property and could cause significant injury or death to mariners observing the air shows.

The proposed rule would establish a safety zone that will encompass certain waters of the Atlantic Ocean near Daytona Beach, Florida. The safety zone is necessary to protect the general public from hazards associated with the air show. The safety zone would be enforced from 9:30 a.m. to 5:30 p.m. daily on October 11, 2012, through October 14, 2012. All persons and vessels, are prohibited from entering, transiting though, anchoring in, or remaining within the safety zone, unless authorized by the Captain of the Port Jacksonville or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port Jacksonville by telephone at 904–564–7511, 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 event area is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville 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.

The final rule may not be published 30 days before the event and the effective date of this proposed rule as is generally required by 5 U.S.C. 553(d)(3). The Coast Guard will accept comments on this shortened period and address them in the final rule.

D. 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 proposed rule is not significant for the following reasons: (1) The safety zone will be enforced for only eight hours on each of the four days of the event; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area without authorization from the Captain of the Port Jacksonville 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 event area during the enforcement period if authorized by the Captain of the Port Jacksonville 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.

The Coast Guard certifies under section 5 U.S.C. 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Ocean encompassed within the safety zone from 9:30 a.m. to 5:30 p.m. daily on October 11, 2012 through October 14, 2012. 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 **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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 establishing a temporary safety zone that will be enforced during the specified operating hours of the event. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 165.T07–0653 to read as follows:

§ 165.T07–0653 Safety Zone; Embry Riddle Wings and Waves, Atlantic Ocean, Daytona Beach, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the Atlantic Ocean located east of Daytona Beach, Florida encompassed within an imaginary line connecting the following points: starting at Point 1 in position 29°14′25.79″ N, 081°00′42.75″ W, then east to 29°14′37.53″ N, 081°00′11.64″ W, then south to 29°13′24.78″ N, 080°59′35.95″ W, then west to 29°13′13.04″ N,

081°00′07.05″ W, then North back to the original point.

(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 Jacksonville 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 Jacksonville 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 Jacksonville by telephone at 904–564–7511, 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 Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville 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 and Enforcement Periods.* This rule is effective from 9:30 a.m. on October 11, 2012, through 5:30 p.m. on October 14, 2012. This rule will be enforced daily from 9:30 a.m. to 5:30 p.m. on October 11, 2012, through October 14, 2012.

Dated: July 26, 2012.

R.E. Holmes,

Commander, U.S. Coast Guard, Acting Captain of the Port Jacksonville.

[FR Doc. 2012–20348 Filed 8–17–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0660]

RIN 1625–AA00

Safety Zone; Jacksonville Sea and Sky Spectacular, Atlantic Ocean; Jacksonville Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the Atlantic Ocean east of Jacksonville Beach, Florida during the Jacksonville Sea and Sky Spectacular air show. The event is scheduled to take place from Friday, October 19, 2012, through Sunday, October 21, 2012. This temporary safety zone is necessary for the safety of air show participants, participant vessels, spectators, and the general public during the event. Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Jacksonville or their designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before September 7, 2012. Requests for public meetings must be received by the Coast Guard on or before August 24, 2012.

ADDRESSES: You may submit comments identified by docket number USCG–2012–0660 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 proposed rule, call or email Lieutenant Commander Robert Butts, Sector Jacksonville Office of Waterways Management, Coast Guard; telephone 904–564–7563, email *Robert.S.Butts@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–2012–0660) 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–2012–0660) 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 on or before August 10, 2012, 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. 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 protect the public from the hazards associated with airborne acrobatic maneuvers over the navigable waters of the United States.

C. Discussion of Proposed Rule

On October 19, 2012, through October 21, 2012, the city of Jacksonville will host an air show event over the Atlantic Ocean in Jacksonville Beach, FL. In recent years, there have been unfortunate instances of jets and planes crashing during performances at air shows. Along with a jet or plane crash, there is typically a wide area of scattered debris that can damage property and could cause significant injury or death to mariners observing the air shows.

The proposed rule would establish a safety zone that will encompass certain waters of the Atlantic Ocean near Jacksonville Beach, Florida. The safety zone is necessary to protect the general public from hazards associated with the air show. The safety zone would be enforced from 10 a.m. to 4 p.m. daily on October 19, 2012, through October 21, 2012. All persons and vessels, except those persons and vessels participating in the event, are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone, unless authorized by the Captain of the Port Jacksonville or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port Jacksonville by telephone at 904–564–7511, 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 event area is granted by the Captain of the Port Jacksonville or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Jacksonville 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 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 proposed rule is not significant for the following reasons: (1) The special safety zone will be enforced for only six hours on each of the three days; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the event area without authorization from the Captain of the Port Jacksonville 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 event area during the enforcement period if authorized by the Captain of the Port Jacksonville 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.

The Coast Guard certifies under section 5 U.S.C. 605(b) that this rule will not have a significant economic impact upon a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Ocean encompassed within the safety zone from 10 a.m. to 4 p.m. daily on October 19, 2012, through October 21, 2012. 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 **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such 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 because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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 establishing a temporary safety zone that will be enforced during the specified operating hours of the event. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.T07–0660 to read as follows:

§ 165.T07–0660 Safety Zone; Jacksonville Sea and Sky Spectacular, Atlantic Ocean, Jacksonville Beach, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the Atlantic Ocean located east of Jacksonville Beach, Florida encompassed within an imaginary line connecting the following points: starting at Point 1 in position 30°15′52.3″ N, 081°23′0.18″ W; thence East to Point 2 in position 30°15′57.91″ N, 081°22′24.22″ W; thence North to Point 3 in position 30°18′40.81″ N, 081°22′57.97″ W; thence West to Point 4 in position 30°18′35.19″ N, 081°23′33.93″; thence South back to 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 Jacksonville 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 Jacksonville 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 Jacksonville by telephone at 904–564–7511, 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 Jacksonville or a designated representative, all persons and vessels receiving such authorization

must comply with the instructions of the Captain of the Port Jacksonville 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 and Enforcement Periods.* This rule is effective from 10 a.m. on October 19, 2012, through 4 p.m. on October 21, 2012. This rule will be enforced daily from 10 a.m. to 4 p.m. on October 19, 2012 through October 21, 2012.

Dated: July 26, 2012.

R.E. Holmes,

Commander, U.S. Coast Guard, Acting Captain of the Port Jacksonville.

[FR Doc. 2012–20355 Filed 8–17–12; 8:45 am]

BILLING CODE 9110–04–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1192

[Docket No. ATBCB 2010–0004]

RIN 3014–AA38

Americans With Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of public information meeting and reopening of comment period.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) is holding a public information meeting in Washington, DC on September 19, 2012 on the pending rulemaking to revise and update its accessibility guidelines for buses, over-the-road buses, and vans. The purpose of the meeting is to discuss issues related to the design and slope of bus ramps and the space needed at the top of ramps by individuals who use wheeled mobility devices to access the fare collection device and to turn into the main aisle. The Access Board is also reopening the comment period on the rulemaking.

DATES: The public information meeting in Washington, DC will be held from 9:30 a.m. to 1:30 p.m. on September 19, 2012. Persons planning to attend the meeting should contact Scott Windley at (202) 272–0025 (voice), (202) 272–0028 (TTY), or *windley@access-board.gov.* More information and any updates to the meeting will be posted on the Access Board's Web site at *http://www.access-board.gov/transit/.* The reopened comment period on the rulemaking will extend from August 20, 2012 through October 31, 2012.

ADDRESSES: Submit comments by any of the following methods:

- *Federal eRulemaking Portal (preferred): http://www.regulations.gov.* Follow the instructions for submitting comments. Regulations.gov ID for this docket is ATBCB–2010–0004.
- *Email: docket@access-board.gov.* Include docket number ATBCB 2010–0004 in the subject line of the message.
- *Fax:* 202–272–0081.
- *Mail or Hand Delivery/Courier:* Office of Technical and Information Services, Access Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111.

All comments will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments previously received are also available at this site.

The public information meeting location is Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Scott Windley, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone (202) 272–0025 (voice) or (202) 272–0028 (TTY). Email address *windley@access-board.gov.*

SUPPLEMENTARY INFORMATION:

On July 26, 2010, the Architectural and Transportation Barriers Compliance Board (Access Board) issued a notice of proposed rulemaking (NPRM) to revise and update its accessibility guidelines for buses, over-the-road buses, and vans. See 75 FR 43748, July 26, 2010. The NPRM revised both the substance and structure of the guidelines. In addition to a new organization and format, the NPRM included revisions to technical requirements for ramp slopes, onboard circulation routes, wheelchair spaces, and securement systems. The NPRM also included a new requirement for automated stop and route announcements in systems with 100 or more buses and requirements specific to bus rapid transit systems. The comment period on the NPRM ended on November 23, 2010.

The NPRM proposed that bus ramps have slopes not steeper than 1:6 (17 percent) when deployed to the boarding and alighting areas without station platforms and to the roadway. See T303.8.1 in the NPRM. Some bus and ramp manufacturers currently provide ramps that meet this proposed provision. To minimize the ramp extension beyond the doorway, some manufacturers provide a fixed ramp slope inside the bus creating the potential for a grade break, or change in ramp slope, within a single ramp run. These designs also can reduce the level floor space at the top of the ramp. After the comment period on the NPRM ended, the Access Board received correspondence from Lane Transit District, Santa Clara Valley Transportation Authority, and Douglas Cross Transportation Consulting that raises issues regarding the usability of these ramps. The Access Board staff met with representatives from Lane Transit District and Douglas Cross Transportation Consulting to discuss these issues. The correspondence and a report on the meeting have been placed in the docket at *http://www.regulations.gov.*

The Access Board will hold a public information meeting in Washington, DC from 9:30 a.m. to 1:30 p.m. on September 19, 2012 to discuss issues related to the design and slope of bus ramps and the space at the top of ramps needed by individuals who use wheeled mobility devices to access fare collection devices and to turn into main aisles. The Access Board plans to hold an additional public information meeting on the same issues at the annual meeting of the American Public Transportation Association (APTA) in Seattle, Washington during the first week of October 2012. A notice will be published in the **Federal Register** announcing the specific date and location of the public information meeting at the APTA annual meeting. The Access Board is interested in receiving information on the following questions at the public information meetings:

1. Can a bus ramp with a slope of 1:6 be provided without a grade break and without compromising the available level space within the bus at the top of the ramp? How might bus kneeling affect these designs?

2. If the ramp slope were required to be uniform for the length of the ramp with no grade breaks, how would such a requirement affect bus and ramp designs, manufacturers, transit operators, and transit users, including those with disabilities?

3. How much level space, measured when the bus is sitting on a level surface, can be provided beyond the top of the ramp? How can this space be configured to permit individuals who use wheeled mobility devices to access fare collection devices and to turn into

the main aisle? How does the slope of the ramp, the location of the fare collection device, and the configuration of the handrail affect the availability of this space?

4. If level space were required at the top of the ramp to permit access to fare collection devices and to facilitate turning into main aisles, how would such a requirement affect bus designs, manufacturers, transit operators, and transit users, including those with disabilities?

Bus and ramp manufacturers, transit operators, researchers, disability organizations, and interested individuals are invited to participate in the public information meetings. Transcripts of the meetings will be placed in the docket and will be available on the Access Board's Web site at *http://www.access-board.gov/transit/.*

The information meetings will be accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be provided. Persons attending the information meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants (see *www.access-board.gov/about/policies/fragrance.htm for more information*).

The Access Board is reopening the comment period to allow interested persons to respond to the recent correspondence from Lane Transit District, Santa Clara Valley Transportation Authority, and Douglas Cross Transportation Consulting and information presented at the public information meetings, or to submit other comments on the rulemaking.

David M. Capozzi,

Executive Director.

[FR Doc. 2012–20404 Filed 8–17–12; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0011; FRL–9717–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the W.R. Grace & Co., Inc./Wayne Interim Storage (USDOE) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region II is issuing a Notice of Intent to Delete the W.R. Grace & Co., Inc./Wayne Interim Storage (USDOE) Superfund Site located at 868 Black Oak Ridge Road, Wayne Township, NJ 07470, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan. The EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate response actions under CERCLA, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by September 19, 2012.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2005–0011, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: ingrisano.paul@epa.gov.*
- *Fax:* 212–637–3256.
- *Mail:* Paul G. Ingrisano, Project Manager, Federal Facilities Section, Emergency & Remedial Response Division, U.S. EPA, Region II, 290 Broadway, 18th Floor, New York, NY 10007–1866.
- *Hand Delivery:* U.S. EPA Superfund Records Center, Region II, 290 Broadway, 18th Floor, New York, NY 10007–1866. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2005–0011. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Superfund Records Center, Region II, 290 Broadway, 18th Floor, New York, NY 10007–1866. Business hours: 9 a.m. to 5 p.m., Monday through Friday. Phone 212–637–4308.

Wayne Public Library, 461 Valley Road, Wayne, NJ 07470. Business hours: 9 a.m. to 9 p.m., Monday through Thursday; 9 a.m. to 5:30 p.m., Friday; 10 a.m. to 5 p.m., Saturday; closed Sunday, June through August; 1 p.m. to 5 p.m., September through May. Phone 973–694–4272.

FOR FURTHER INFORMATION CONTACT: Paul G. Ingrisano, Project Manager, Federal Facilities Section, Emergency & Remedial Response Division, U.S. EPA, Region II, 290 Broadway, 18th Floor, New York, NY 10007–1866, 212–637–4337, email: *ingrisano.paul@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of W.R. Grace & Co., Inc./Wayne Interim Storage (USDOE) Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct

final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 2, 2012.

Judith A. Enck,

Regional Administrator, Region II.

[FR Doc. 2012–20387 Filed 8–17–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9718–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Hooker (Hyde Park) Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 2 is issuing a Notice of Intent to Delete the Hooker (Hyde Park) Superfund Site (Site) located in Niagara Falls, New York, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of New York, through the Department of Environmental Conservation, have determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by September 19, 2012.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *Web site: http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *Email: sosa.gloria@epa.gov.*
- *Fax:* To the attention of Gloria M. Sosa at 212–637–4284.
- *Mail:* Gloria M. Sosa, Remedial Project Manager, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866.
- *Hand delivery:* Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866 (telephone: 212–637–4308). (Monday to Friday from 9 a.m. to 5 p.m.). Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in the hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, Phone: 212–637–4308, Hours: Monday to Friday from 9 a.m. to 5 p.m.

U.S. EPA Western NY Public Information Office, 86 Exchange Place, Buffalo, NY 14204–2026, Telephone: (716) 551–4410, Hours: Monday to Friday from 8:30 a.m.–4 p.m.

FOR FURTHER INFORMATION CONTACT: Gloria M. Sosa, Remedial Project Manager, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th Floor, New York, NY 10007–1866, telephone: 212–637–4283, email: *sosa.gloria@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Deletion of the Hyde Park Landfill Superfund Site without prior Notice of Intent to Delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this deletion action, we will not take further action on this Notice of Intent to Delete. If we receive adverse comment(s), we will withdraw the direct final Notice of Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. We will not institute a second comment period on this Notice of Intent to Delete. Any parties

interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 9, 2012.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

[FR Doc. 2012–20266 Filed 8–17–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MB Docket No. 11–93; Report No. 2958]

Petition for Reconsideration of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding by the National Cable & Telecommunications Association (''NCTA'').

DATES: Oppositions to the Petition must be filed on or before September 4, 2012. Replies to an opposition must be filed on or before September 14, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Evan Baranoff, *Evan.Baranoff@fcc.gov,* Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of Commission's document, Report No. 2958, released August 13, 2012. The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, Report and Order, FCC 11–182, published at 77 FR 40276, July 9, 2012, in MB Docket No. 11–93, and published pursuant to 47 CFR 1.429(e). See also 47 CFR 1.4(b)(1).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–20402 Filed 8–17–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket NHTSA–2012–0122; Notice 1]

Petition for Approval of Alternate Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of initial determination.

SUMMARY: The State of Arizona has petitioned for approval of alternate requirements to certain requirements under Federal odometer law. NHTSA initially denies Arizona's petition. This notice is not a final agency action.

DATES: Comments are due no later than September 19, 2012.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number NHTSA–2012–0122] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Kerry Kolodziej, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590 (Telephone: 202–366–5263) (Fax: 202–366–3820).

SUPPLEMENTARY INFORMATION:

I. Introduction

Federal odometer law, which is largely based on the Motor Vehicle Information and Cost Savings Act (Cost Savings Act),[1] as amended by the Truth in Mileage Act of 1986 (TIMA),[2] contains a number of provisions to limit odometer fraud and ensure that the buyer of a motor vehicle knows the true mileage of the vehicle. The Cost Savings Act requires the Secretary of Transportation to promulgate regulations requiring the transferor (seller) of a motor vehicle to provide a written statement of the vehicle's mileage registered on the odometer to the transferee (buyer) in connection with the transfer of ownership. This written statement is generally referred to as the odometer disclosure statement. Further, under TIMA, vehicle titles themselves must have a space for the odometer disclosure statement and States are prohibited from licensing vehicles unless a valid odometer disclosure statement on the title is signed and dated by the transferor. Federal law also contains document retention requirements for odometer disclosure statements.

TIMA's motor vehicle mileage disclosure requirements apply in a State unless the State has alternate

[1] Sec. 401–13, Public Law 92–513, 86 Stat. 961–63.

[2] Sec. 1–3, Public Law 99–579, 100 Stat. 3309.

requirements approved by the Secretary. The Secretary has delegated administration of the odometer program to NHTSA. Therefore, a State may petition NHTSA for approval of such alternate odometer disclosure requirements. 49 CFR 580.11 governs petitions for approval of alternate disclosure requirements.

Seeking to implement an electronic odometer disclosure submittal process for licensed dealers, the State of Arizona petitions for approval of alternate odometer disclosure requirements.

As discussed below, NHTSA's initial assessment is that Arizona's petition does not satisfy the requirements for a petition for approval of alternate disclosure requirements as set forth at 49 CFR 580.11(b), and that Arizona's proposed alternate odometer disclosure requirements are not consistent with the purpose of the disclosure required by Federal odometer law. For these reasons, as explained below, NHTSA preliminarily denies Arizona's petition.

II. Statutory Background and Purposes

A. Statutory Background

NHTSA reviewed the statutory background of Federal odometer law in its consideration of petitions for approval of alternate odometer disclosure requirements by Virginia, Texas, Wisconsin, Florida, and New York. *See* 74 FR 643, Jan. 7, 2009 (granting Virginia's petition); 75 FR 20925, Apr. 22, 2010 (granting Texas' petition); 76 FR 1367, Jan. 10, 2011 (granting Wisconsin's petition in part); 77 FR 36935, June 20, 2012 (granting Florida's petition in part, and denying Florida's petition in part); *see also* 76 FR 65485, Oct. 21, 2011 (initial determination denying New York's petition). The statutory background of the Cost Savings Act and TIMA, as related to odometer disclosure requirements, other than in the transfer of leased vehicles and vehicles subject to liens where a power of attorney is used, is discussed at length in NHTSA's final determination granting Virginia's petition. 74 FR 643; *see also* 77 FR 36935; 76 FR 48101, Aug. 8, 2011 (addressing leased vehicles and powers of attorney).[3] A brief summary of the statutory background of Federal odometer law follows.

In 1972, Congress enacted the Cost Savings Act to establish safeguards for consumers which prohibited odometer tampering. Among other things, the Cost Savings Act made it unlawful to alter an odometer's mileage, and required written disclosure of odometer mileage in connection with any transfer of ownership of a motor vehicle.[4] However, the Cost Savings Act had a number of shortcomings, which are discussed below.

In 1986, Congress enacted TIMA to address the Cost Savings Act's shortcomings. Congress was specifically concerned with addressing odometer fraud in the commercial market, and noted that used car auctions, distributors, wholesalers, dealers, and used car lots of new car dealers often may be directly involved in fraud.[5] TIMA also added a provision to the Cost Savings Act, allowing States to obtain approval for alternate odometer disclosure requirements. Pursuant to Section 408(f) of the Cost Savings Act, as amended by TIMA: The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

In 1994, in the course of the recodification of various laws pertaining to the Department of Transportation, the Cost Savings Act, as amended, was repealed, reenacted, and recodified without substantive change. *See* Public Law 103–272, 108 Stat. 745, 1048–1056, 1379, 1387 (1994). The odometer statute is now codified at 49 U.S.C. 32701 *et seq.* Section 408(a) of the Cost Savings Act was recodified at 49 U.S.C. 32705(a). Sections 408(d) and (e), which were added by TIMA, with subsequent amendments, were recodified at 49 U.S.C. 32705(b) and (c). The provisions pertaining to approval of State alternate motor vehicle mileage disclosure requirements were recodified at 49 U.S.C. 32705(d).

B. Statutory Purposes

In our final determinations, after notice and comment, granting the petitions for approval of alternate odometer disclosure requirements of Virginia, Texas, and, in part, Wisconsin and Florida, we identified the statutory purposes of TIMA.[6] 74 FR 643; 75 FR 20925; 76 FR 1367; 77 FR 36935. These purposes are summarized below.

One purpose of TIMA was to ensure that the form of the odometer disclosure precluded odometer fraud. The Cost Savings Act did not require odometer disclosures to be made on a vehicle's title. This created a potential for odometer fraud, because a transferor could easily alter the odometer disclosure or provide a new statement with different mileage.[7] TIMA addressed this shortcoming of the Cost Savings Act by requiring mileage disclosures to be on a vehicle's title instead of a separate document. Titles also had to contain space for the seller's attested mileage disclosure.

A second purpose of TIMA was to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title, and a requirement for the title issued by the State.[8] This was intended to eliminate or significantly reduce abuses associated with lack of control of the titling process.[9] Prior to TIMA, odometer fraud was facilitated by the ability of transferees to apply for titles without presenting the transferor's title with the disclosure.

Third, TIMA sought to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. Prior to TIMA, titles could be printed through non-secure processes, and could be easily altered or laundered.[10] To address this shortcoming of the Cost Savings Act, TIMA required titles to be printed by means of a secure printing process or protected by other secure processes.[11]

A fourth purpose of TIMA was to create a record of the mileage on vehicles and a paper trail.[12] This would allow consumers to be better informed and provide a mechanism for tracing odometer tampering and prosecuting violators. Under the Cost Savings Act, prior to TIMA, odometer disclosures could be made on pieces of paper and did not have to be submitted with new title applications. TIMA required new applications for title to include the transferor's mileage disclosure statement on the title, creating a permanent record that could easily be

[3] Arizona's petition does not address leased vehicles or powers of attorney.

[4] In 1976, Congress amended the odometer disclosure provisions in the Cost Savings Act to provide further protections to purchasers from unscrupulous car dealers. *See* Public Law 94–364, 90 Stat. 981 (1976).

[5] S. Rep. 99–47, at 2 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621.

[6] Any statements which refer to the ''purposes of TIMA'' or a ''purpose of TIMA'' should be interpreted to refer to the purpose of the disclosure required by subsection (d) or (e), as the case may be, as stated in Section 408 of the Cost Savings Act, as amended by TIMA.

[7] *See* S. Rep. 99–47, at 2–3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621–22; H. Rep. 99–833, at 33 (1986).

[8] *See* S. Rep. 99–47, at 2–3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5621–22; H. Rep. 99–833, at 18, 32 (1986).

[9] Sec. 2, Public Law 99–579, 100 Stat. 3309.

[10] *See* S. Rep. 99–47, at 3 (1985), *reprinted in* 1986 U.S.C.C.A.N. 5620, 5622.

[11] *See* H. Rep. 99–833, at 18, 33 (1986).

[12] *See* H. Rep. 99–833, at 18, 33 (1986).

checked by subsequent owners or law enforcement officials. This record would provide critical snapshots of the vehicle's mileage at every transfer, which are fundamental links in the paper trail.

Finally, the general purpose of TIMA was to protect consumers by ensuring that they received valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures.[13] The TIMA amendments were directed at resolving shortcomings in the Cost Savings Act.

III. The Arizona Petition

Arizona seeks to implement an electronic odometer disclosure submittal process for licensed motor vehicle dealers, and petitions NHTSA for approval of alternate odometer disclosure requirements. The petition requests NHTSA to allow use of alternate odometer disclosure procedures in two situations.

As background, according to information posted on the Arizona Department of Transportation (ADOT) Web site, there are over 700 new motor vehicle dealers licensed in Arizona and over 1,400 used motor vehicle dealers licensed in Arizona.[14] The Arizona Automobile Dealers Association, which represents new car and truck franchised dealers, has over 250 members.[15] The Arizona Independent Automobile Dealers Association, which calls itself the voice of the used motor vehicle industry and represents non-franchised motor vehicle dealers in Arizona, has 215 registered dealers.[16]

A. Arizona Law Regarding Dealers

Since Arizona's petition addresses the transfer of used motor vehicles to and from licensed Arizona dealers, we briefly describe certain aspects of Arizona law relevant to such transfers. Currently, pursuant to the Arizona Revised Statutes, a dealer shall not offer for sale or sell a used motor vehicle until the dealer has obtained a certificate of title to the motor vehicle.[17] The Arizona Administrative Code further requires that the dealer's name shall be recorded on a title certificate as transferee or purchaser.[18] A certificate of title in Arizona includes space for ownership change information, including an odometer mileage disclosure statement, and dealer reassignment information.[19]

Arizona's petition does not identify any proposed changes to applicable State law.

B. Arizona's Proposed Projects

Arizona proposes that licensed dealers meeting specified technical requirements would electronically scan and upload documents to ADOT, including documents used to make odometer disclosures, rather than mailing or hand-carrying the documents to ADOT. Based on this description, it is our understanding that Arizona's proposals would only apply to vehicles acquired by licensed Arizona dealers and sold to in-state buyers.

According to the petition, dealers would scan documents using a specified format and resolution, and would encrypt the scanned images. Dealers would transmit the images to ADOT through a secure system using account codes, user/group profiles, and passwords.[20] ADOT would have the ability to sanction participating dealers, including revoking their ability to electronically submit documents to ADOT. ADOT would retain electronic files in a document management system, and dealers would be required to retain hard copies of the documents submitted in accordance with retention periods specified by Federal and Arizona law.

Both of Arizona's proposed projects would utilize odometer disclosures made on a form described in the petition as a Secure Odometer Disclosure.[21] An example of a completed Secure Odometer Disclosure form is attached to Arizona's petition. The example form includes ADOT identifying information in the upper left-hand corner and indicates that it is void if altered or erased. Arizona's petition describes the form as using a watermark displaying the word VOID when scanned. This feature is visible on the example provided; the word VOID appears repeatedly across the entire form. The form does not have any unique identifier, such as a serial number.

The top section of the proposed Secure Odometer Disclosure form includes spaces for Vehicle Identification Number (VIN), Year, Make, Body Style, Buyer Name, and Title Number. The form also appears to include a space for Sale Date; however, the example attached to Arizona's petition is completed with the sale state (AZ) in that space.

The next section of the Secure Odometer Disclosure form includes the following statement: ''Federal and State law require that the seller states the mileage in connection with the transfer of ownership. Failure to complete the odometer statement, or providing a false statement, may result in fines and/or imprisonment.'' Below that statement is a space for Odometer Reading and boxes to check to indicate whether the odometer reading is in miles or kilometers. There is also a box to check to indicate ''Mileage in excess of odometer mechanical limits,'' and a box to check to indicate ''NOT Actual Mileage, WARNING—ODOMETER DISCREPANCY.'' Below, the form states: ''I certify to the best of my knowledge that the odometer reading is the actual mileage unless one of the boxes above is checked.''

The following section of the Secure Odometer Disclosure form includes spaces for Seller/Dealership name (printed), Dealer Number, Street Address, City, State, Zip, Agent Name, and Seller/Agent Signature.

At the bottom of the Secure Odometer Disclosure form is the following statement: ''I am aware of the above odometer certification made by the seller.'' This statement is followed by spaces for Buyer Name (printed) and Buyer Signature.

The Secure Odometer Disclosure form would be completed and signed by hand. A licensed automobile dealer would scan and electronically submit the completed Secure Odometer Disclosure form, along with other documents as described below, to ADOT.

1. Project One

For purposes of the first project addressed by the petition (Project One), Arizona seeks to institute alternate odometer disclosure requirements for a trade in or sale of a used vehicle to a licensed dealer when there is no paper title[22] and the vehicle is subject to electronic lien(s).

According to the petition, the transferor would make an odometer disclosure to the dealer on a Secure Odometer Disclosure form, signed by both parties. The dealer would then

[13] *See* Sec. 1–3, Public Law 99–579, 100 Stat. 3309.

[14] *http://www.azdot.gov/mvd/MotorVehicleDealers/LicensedDealers.asp* (Arizona Licensed Motor Vehicle Dealer Listing, June 2012).

[15] *http://www.aada.com/.*

[16] *See http://www.aiada.net/.*

[17] Ariz. Rev. Stat. 28–4409(A)(2).

[18] Ariz. Admin. Code R17–5–404

[19] Ariz. Admin. Code R17–4–202(B).

[20] The petition does not describe whether employees of a dealer would share information to access the ADOT system or whether each employee of a dealer would have unique access information, so that a submission could be traced to a specific individual.

[21] We note that, based on the example form, a Secure Odometer Disclosure would be used solely for the purpose of making an odometer disclosure. It would not transfer ownership of a vehicle.

[22] It appears that there is an electronic title. The petition describes Arizona as having state laws designed to facilitate a nearly paperless vehicle title system, but does not provide copies of, cite to, or otherwise describe those laws.

apply for a title in its own name by scanning and electronically submitting a title application, Secure Odometer Disclosure form, and other supporting documents to ADOT.

The petition specifies that the dealer would make an odometer disclosure on the title at the time it resells the vehicle. Petition at p. 2. While this indicates that ADOT would send the dealer a new paper title after the transfer of the vehicle to the dealer is complete, another portion of the petition describing the process states that the selling dealer would make an odometer disclosure on a Secure Odometer Disclosure form. Petition at p. 3. According to this portion of the petition, the dealer would then scan and electronically submit the completed Secure Odometer Disclosure form and other supporting documents to ADOT.[23] The petition appears to propose that the dealer would scan and electronically submit a Secure Odometer Disclosure, but not the title, to ADOT following the dealer's sale of the vehicle.[24]

The dealer would retain the original Secure Odometer Disclosure forms for the retention periods specified by Federal and Arizona law.

2. Project Two

Arizona's petition also describes a second project (Project Two), for which it seeks alternate odometer disclosure requirements. Project Two would apply to a licensed dealer's sale of a used motor vehicle that had a paper title at the time it was transferred (traded in or sold) to a licensed dealer.

The petition states that the vehicle would be resold by a dealer using the paper title from the transferor. It appears, based on this description and the requirements of Arizona law that a dealer's name shall be recorded on a title certificate as transferee or purchaser and that a title include space for dealer reassignment information, that the dealer would make an odometer disclosure on the paper title at the time it resells the vehicle.[25] However, the petition also specifies that if the dealer applies for a new title in the name of the vehicle purchaser, the dealer and purchaser would complete a Secure Odometer Disclosure form. The dealer would then scan and electronically submit a title application, the paper title,[26] the Secure Odometer Disclosure form, and supporting documents to ADOT. The dealer would retain the original documents (including the original paper title) for the retention periods specified by Federal and Arizona law. According to the petition, a new title would be sent to the buyer if there is no lien on the vehicle. If there is a lien, both the lien and the title would be maintained as electronic records by ADOT.

C. Arizona's Position on Meeting the Statutory Purposes

Arizona's petition asserts that its proposals are consistent with the purposes of Federal odometer law and regulations.[27] Arizona identifies the purposes of Chapter 327 of Title 49 as a whole. Specifically, those purposes are to prohibit tampering with motor vehicle odometers, and to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers. 49 U.S.C. 32701(b). Arizona also identifies the purposes of Federal regulations pertaining to odometer disclosure requirements, as set forth at 49 CFR 580.2. Those purposes, other than for leased vehicles, are to provide purchasers of motor vehicles with odometer information to assist them in determining a vehicle's condition and value by making the disclosure of a vehicle's mileage a condition of title, and to preserve records that are needed for the proper investigation of possible violations of the Cost Savings Act and any subsequent prosecutorial, adjudicative, or other action.

Arizona asserts that its proposed projects support the enforcement of Federal odometer law by ensuring that a Secure Odometer Disclosure form is submitted and transmitted electronically by a dealer to a certified ADOT processor. Arizona also states that a watermark displaying the word VOID across the Secure Odometer Disclosure form when scanned will serve as a secure measure to submission of a fraudulent form. Arizona also asserts that the processes it proposes will offer greater protections against potential odometer fraud than does 49 CFR part 580.

IV. Analysis

A. Requirements for a Petition Under 49 CFR 580.11(b)

As a preliminary matter, NHTSA's initial determination is that Arizona's petition does not satisfy the requirements for a petition for approval of alternate disclosure requirements, set forth in 49 CFR 580.11(b).

First, the petition does not set forth the motor vehicle disclosure requirements in effect in the State, including a copy of the applicable State law or regulation, as required by 49 CFR 580.11(b)(3). We reviewed Arizona law and discussed relevant provisions above.[28] The petition states that Arizona is requesting to change the manner in which documents are submitted to and maintained by the State, and not the manner in which odometer disclosures are made.[29] However, we found no reference to a Secure Odometer Disclosure in the Arizona Revised Statutes or Arizona Administrative Code.

Second, Arizona's petition does not adequately demonstrate that the State motor vehicle requirements are consistent with the purposes of the Motor Vehicle Information and Cost Savings Act. See 49 CFR 580.11(b)(4). As noted above, Section 408(f) of the Cost Savings Act, as added by TIMA, states in pertinent part that the Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.[30] The petition includes a very

[23] The purpose of this submission is not clear from the petition. Unlike the submission following the initial transaction in Project One (the transfer of a vehicle to the dealer), the petition does not specify that the dealer would submit a title application along with the Secure Odometer Disclosure form.

[24] This is unlike the petition's description of the dealer's electronic submission to ADOT for purposes of Project Two, discussed below.

[25] Arizona's petition is not detailed and at points is not clear. To the extent our reading of the petition is inconsistent with Arizona's intent, we invite Arizona to clarify its proposals in comments.

[26] It appears that the dealer would be required to submit scans of both the front and back of the paper title.

[27] As discussed above, pursuant to Section 408 of the Cost Savings Act, as amended by TIMA: The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary determines that such requirements are not consistent with the purpose of the disclosure required by subsection (d) or (e), as the case may be.

[28] To the extent Arizona believes additional provisions (including any proposed new provisions) are relevant, we invite Arizona to set forth and include a copy of such provisions in comments.

[29] The petition asserts that, under both of the proposed projects, all required odometer disclosures will continue to be made in the manner required by 49 CFR part 580. We note that this assertion is illogical; if all required odometer disclosures will be made in the manner required by 49 CFR PART 580 then Arizona has no need to petition for approval of alternate disclosure requirements.

[30] We note that the statute predicates approval of alternate motor vehicle mileage disclosure requirements submitted by a State on their consistency with the purpose of the statutory disclosure requirements. Most States that have petitioned for approval of alternate odometer disclosure requirement have specifically addressed the purposes of TIMA related to the disclosure requirements, as set forth above. *See* 76 FR 1367; 76 FR 65485; 77 FR 36935. Instead of addressing the purpose of the statutory disclosure

limited discussion of how, according to Arizona, its proposals are consistent with the statutory purposes of Section 408(d).[31] The petition specifically describes the proposed method of electronically submitting a Secure Odometer Disclosure form to ADOT and the use of a watermark as supporting the purposes of the law. However, Arizona's petition does not specifically address the purposes of Section 408(d) of the Cost Savings Act, even though NHTSA had specifically addressed this in prior **Federal Register** notices. Arizona also does not explain how use of a Secure Odometer Disclosure form to make an odometer disclosure is consistent with the relevant purposes.

B. Arizona's Proposal in Light of TIMA's Purposes

In view of the initial, non-final, nature of our assessment of whether Arizona's petition meets the requirements for a petition, we now proceed to our initial assessment of whether Arizona's proposed projects satisfy TIMA's purposes. We address Arizona's two proposed projects in turn.

1. Project One

NHTSA has initially determined that Project One would not satisfy the first purpose of TIMA, to ensure that the form of the odometer disclosure precludes odometer fraud. TIMA addressed the potential for fraud by requiring mileage disclosures to be on a vehicle's title instead of a separate document. Project One is inconsistent with this purpose because it proposes using a Secure Odometer Disclosure form, separate[32] from the vehicle's title, to make an odometer disclosure. First, a transferor would use a Secure Odometer Disclosure form to make an odometer disclosure upon trading in or selling the vehicle to a dealer.[33] Second, a dealer, who had obtained title in its own name for the vehicle, would apparently make an odometer disclosure on a Secure Odometer Disclosure at the time it resells the vehicle.[34] An unscrupulous person could discard a Secure Odometer Disclosure form signed by both parties and create another Secure Odometer Disclosure form bearing an inaccurate odometer disclosure prior to submitting it to ADOT.

NHTSA has also initially determined that Project One does not satisfy the second purpose of TIMA, to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. There is no such requirement in Project One. Instead, Project One would allow a dealer to apply for and obtain a title in its own name by electronically transmitting a Secure Odometer Disclosure form, separate from the vehicle's title, to ADOT.[35]

NHTSA has also initially determined that Project One also does not satisfy the third purpose of TIMA, which is to prevent alterations of odometer disclosures on titles and to preclude counterfeit titles through secure processes. Project One would make odometer disclosures on Secure Odometer Disclosure forms, which are susceptible to substitutions, alterations, and/or forgery. Arizona's petition states that the use of a watermark on the Secure Odometer Disclosure form and security features in dealers' electronic submissions to ADOT provide sufficient levels of security. However, Arizona has not shown how the watermark would prevent submission of a fraudulent form, as the petition claims. According to the petition, the word VOID is displayed after the form is scanned. Since, in proposed Project One, a dealer is required to scan the form to submit it to ADOT, Secure Odometer Disclosure forms received by ADOT would appear as VOID. Arizona has not explained how ADOT would distinguish between an altered form that read VOID prior to being scanned, and a legitimate form that read VOID after being scanned.[36] Moreover, dealers would have access to blank forms bearing the watermark, which could be used by an unscrupulous person to create a new, fraudulent form prior to submitting it to ADOT, as discussed above.

NHTSA has initially determined that Project One also does not satisfy the fourth purpose of TIMA, to create a record of the mileage on vehicles and a paper trail. Project One would not create a scheme of records equivalent to the paper trail required by law. The mileage recorded in an odometer disclosure establishes a critical benchmark for evaluating the remaining mileage declarations that will follow. NHTSA has initially determined that Project One's proposed use of a Secure Odometer Disclosure form would not create records and a paper trail consistent with this purpose of TIMA because the form is separate from the vehicle's title and, as discussed above, a person could create and submit a fraudulent form. ADOT has no means of ensuring that the form submitted was actually signed by the seller and the buyer.[37] Thus, the benchmark for evaluating mileage declarations that follow would be lacking, and there would not be a clear record and paper trail as contemplated by TIMA.

The information disclosed in a proposed Secure Odometer Disclosure form also creates an inadequate paper trail. Based on the example provided by Arizona, as described in detail above, the Secure Odometer Disclosure form does not require disclosure of the transferee's address. Arizona offers no explanation for this omission, which could make tracing and prosecuting fraud more difficult.[38]

requirements, Arizona instead addressed the broader, overall purposes of Federal odometer law (which originate from Section 401 of the 1972 law) and the purposes of Federal odometer regulations.

[31] We do not address Section 408(e), which concerned leased motor vehicles, because Arizona's petition does not address leased motor vehicles.

[32] NHTSA has approved petitions establishing a process for an odometer disclosure to be directly linked to a vehicle's title using a secure process involving both parties. *See* 74 FR 643; 75 FR 20925; 76 FR 1367; 77 FR 36935. In such cases, the odometer disclosure is not separate from the title.

[33] We note that Project One addresses vehicles subject to liens. In amendments to TIMA pertaining to titles in the possession of a lienholder when the transferor transfers ownership of the vehicles, Congress maintained the requirement that the disclosure be on the title itself. It did provide for the use of a secure power of attorney under restrictive conditions, as an exception to the prohibition that a person may not sign an odometer disclosure statement as both the transferor and transferee.

[34] The petition also specifies that the dealer would make an odometer disclosure on the title. Arizona does not explain why the dealer also apparently would make an odometer disclosure on a separate Secure Odometer Disclosure form.

[35] Project One also proposes that a dealer would electronically submit a Secure Odometer Disclosure to ADOT following its subsequent resale of the vehicle, but it is unclear from the petition whether this submission is for the purpose of a title application.

[36] The placement of the word VOID repeatedly across the Secure Odometer Disclosure form also obscures the writing on the form, and may make the disclosure difficult to read once scanned.

[37] A further concern is that a scan could be digitally altered. This issue is discussed in further detail below, with respect to Project Two. Unlike other petitions approved by NHTSA, under Arizona's proposal, only one party involved in the vehicle transfer would transmit information regarding the odometer disclosure to the State. *See* 74 FR 643; 75 FR 20925; 76 FR 1367; 77 FR 36935.

[38] Contrary to Arizona's representation that its proposals are in compliance with Federal odometer regulations, a Secure Odometer Disclosure form would not require disclosure of a transferee's current address, as required by 49 CFR 580.5(c)(4), and vehicle model, as required by 49 CFR 580.5(c)(5). We also note that, based on the completed example form provided by Arizona, the date of transfer is not disclosed, as is required by 49 CFR 580.5(c)(2). Although the form does appear to include a space for sale date, the completed example indicates AZ (i.e. sale state) in that space. The Secure Odometer Disclosure form also does not explicitly warn a customer not to rely on the odometer reading if the odometer disclosure is marked to indicate that it does not reflect the actual mileage of the vehicle, as required by 49 CFR 580.5(e)(3). The form does include a warning notice

Continued

Arizona's proposed use of a Secure Odometer Disclosure form could also result in an inadequate paper trail when used for the initial transfer (the transfer of a vehicle to a dealer). One section of the form includes spaces for Seller/Dealership Name (printed), Dealer Number, Street Address, City, State, Zip, Agent Name, and Seller/Agent Signature. When the seller is not a dealer, it is unclear which party should complete this section. If the transferee dealer's agent fills in this section of the form, there would be no spaces on the form for the transferor to disclose his or her name and address. There also would be no space for the transferor to sign, which is of crucial importance since the transferor must certify the odometer disclosure. Even if the dealer completed only the ''Buyer'' portions of the form, the form appears inadequate. Since there are only spaces for Buyer Name and Buyer Signature, the form may lack either the dealership name or name of the dealer's agent who completed the form.

NHTSA has also initially determined that Project One does not satisfy the general purpose of TIMA, of protecting consumers by ensuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. First, Arizona's proposed Project One relies on odometer disclosures made on Secure Odometer Disclosure forms, which is problematic, as is described above, because a person can create and submit a fraudulent form, and because ADOT has no means to verify whether a submitted form is authentic. If a fraudulent Secure Odometer Disclosure form was submitted to ADOT, it would lead to subsequent owners of a vehicle receiving inaccurate representations of the vehicle's actual mileage. Second, Arizona's proposal apparently would require a dealer make two separate disclosures (one on the title, and another on a Secure Odometer Disclosure form) at the time it resells the vehicle. This creates the potential that a buyer would receive inconsistent odometer disclosures.

2. Project Two

NHTSA has initially determined that Arizona's proposed Project Two would not satisfy the first purpose of TIMA, to ensure that the form of the odometer disclosure precludes odometer fraud. As discussed above, TIMA addressed the potential for fraud by requiring mileage disclosures to be on a vehicle's title instead of a separate document. Project Two is inconsistent with this purpose because it proposes the use of a Secure Odometer Disclosure form, separate from the vehicle's title, to make an odometer disclosure. As discussed with Project One, an unscrupulous person could create and submit a fraudulent form to ADOT.

NHTSA has also initially determined that Project Two does not satisfy the second purpose of TIMA, to prevent odometer fraud by processes and mechanisms making the disclosure of an odometer's mileage on the title a condition of the application for a title and a requirement for the title issued by the State. As described above, it appears from Arizona's petition that a dealer would make an odometer disclosure both on the vehicle's title and on a Secure Odometer Disclosure form at the time it resells the vehicle.[39] The dealer would electronically submit both documents to ADOT for purposes of obtaining a new title for the vehicle's purchaser. Since it is not clear which odometer disclosure (if any) ADOT would consider valid in the event the two disclosures were inconsistent, there is the potential that an odometer disclosure on the title would not be considered the required element for the title issued by the State.[40]

It is NHTSA's initial determination that Project Two also does not satisfy the third purpose of TIMA, to prevent alterations of disclosures on titles and to preclude counterfeit titles through secure processes. Project Two proposes using Secure Odometer Disclosure forms to make odometer disclosures, but such forms are susceptible to substitutions, alterations, and/or forgery, as discussed above with respect to Project One. In addition, Project Two specifies that a dealer would submit scans of a paper title to ADOT in support of a new buyer's application for a title. The original paper title would not be sent to the State; the dealer would retain it. A sophisticated person may be able to submit to ADOT a scanned image that does not state the authentic disclosed mileage. The petition addresses some technical requirements for scanning and transmitting documents, but does not specifically address security measures that would prevent tampering or allow detection of a scanned image that contains an alteration.

NHTSA has also initially determined that Project Two does not satisfy the fourth purpose of TIMA, to create a record of the mileage on vehicles and a paper trail. As discussed above with respect to Project One, the use of a Secure Odometer Disclosure form to make an odometer disclosure would not create records and a paper trail consistent with this purpose of TIMA because it is separate from the vehicle's title, there is the potential for a person to create and submit a fraudulent form, and ADOT has no means of ensuring that a form submitted is an authentic form signed by both parties. Additionally, Project Two relies on dealers to submit scans of documents to ADOT. As discussed above, such scans are susceptible to alterations. The information disclosed in a Secure Odometer Disclosure form also creates an inadequate paper trail, as addressed by our discussion of Project One above. Specifically, the form does not include space for the transferee's address, or adequate space for disclosure of the name of a dealership and its agent's name in the case of a buyer that is a dealer.

NHTSA has initially determined that Project Two also does not satisfy the general purpose of TIMA, to protect consumers by ensuring that they receive valid representations of the vehicle's actual mileage at the time of transfer based on odometer disclosures. NHTSA's rationale regarding this general purpose is the same as discussed above with respect to Project One. Specifically, a fraudulent Secure Odometer Disclosure form may be submitted to ADOT, which has no means to verify the authenticity of the form. Additionally, Project Two involves scans of titles, which are susceptible to alterations, as described above. If a fraudulent disclosure was submitted to ADOT, subsequent owners would receive inaccurate representations of the vehicle's actual mileage. Like Project One, Project Two also creates the potential for inconsistent odometer disclosures because of the apparent requirement that a dealer make an odometer disclosure both on a paper title and a Secure Odometer Disclosure at the time it resells the vehicle.

V. NHTSA's Initial Determination

For the foregoing reasons, NHTSA preliminarily denies Arizona's petition regarding proposed alternate disclosure requirements.

to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage, as is also required by 49 CFR 580.5(e)(3).

[39] Arizona does not explain why two separate odometer disclosures would be made for the purpose of a single transaction.

[40] The petition states that a Motor Vehicle Certified Processor (which we understand to be a person, rather than an automated program) makes a visual comparison between the record for the vehicle, Secure Odometer Disclosure, and other documents submitted. The petition does not specify the process if a discrepancy in the documents is found.

This is not a final agency action. NHTSA invites comments within the scope of this notice from the public, including Arizona.

Request for Comments

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are filed correctly in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long (*see* 49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information,'' or ''Help/Info'' to obtain instructions for filing the document electronically.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR part 512).

Will the Agency consider late comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we also will consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing the final rule, we will consider that comment as an informal suggestion for future rulemaking action.

How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address given under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You also may see the comments on the Internet. To read the comments on the Internet, go to *http://www.regulations.gov*, and follow the instructions for accessing the Docket.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Issued on: August 14, 2012.

O. Kevin Vincent,

Chief Counsel.

[FR Doc. 2012–20381 Filed 8–17–12; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 77, No. 161

Monday, August 20, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 14, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Report of School Program Operations.

OMB Control Number: 0584–0002.

Summary of Collection: The Food and Nutrition Service administers the National School Lunch Program, the School Breakfast Program, and the Special Milk Program as mandated by the National School Lunch Act, as amended, and the Child Nutrition Act of 1966, as amended. Information on school program operations is collected from state agencies on a monthly basis to monitor and make adjustments to State agency funding requirements. FNS uses form FNS–10 to collect data although 100 percent of the information is collected through electronic means.

Need and Use of the Information: FNS collects quantity information from State agencies on the number of meals served under the various food programs. Information is categorized in a number of areas and States are asked to provide their estimates along with actual data. FNS uses the information collected on school operations to assess the progress of the various programs and to make monthly adjustments to State agency funding requirements. If the information was not collected, FNS would be unable to monitor the proper use of program funds.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 56.

Frequency of Responses: Reporting: Monthly.

Total Burden Hours: 4,255.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–20295 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the South Gifford Pinchot Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The South Gifford Pinchot Resource Advisory Committee will meet in Stevenson, Washington. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend fiscal year 2013 Title II project nominations to the Forest Supervisor of the Gifford Pinchot National Forest.

DATES: The meeting will be held Friday, September 21, 2012, beginning at 9 a.m.

ADDRESSES: The meeting will be held at Skamania Courthouse Annex, 170 Northwest Vancouver Avenue, Stevenson, WA 98648. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Gifford Pinchot National Forest Headquarters, 10600 NE 51st Circle, Vancouver, WA 98682. Please call ahead to 360–891–5001 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Sue Ripp, Partnership Coordinator, Gifford Pinchot National Forest, 360–891–5153, and *sripp@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Approval of agenda and minutes; public forum opportunity; election of chair and vice chair; update on prior year Title II projects, and; review and recommendations of individual fiscal year 2013 Title II project nominations. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an

oral statement should request in writing by September 20, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Gifford Pinchot National Forest ATTN: Sue Ripp, 10600 NE 51st Circle, Vancouver, WA 98682, or by email to *sripp@fs.fed.us,* or via facsimile to 360–891–5045. A summary of the meeting will be posted at *http://www.fs.usda.gov/giffordpinchot* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation for access to the meeting please request this in advance by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 9, 2012.

Janine Clayton,

Forest Supervisor.

[FR Doc. 2012–20132 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the North Gifford Pinchot Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: The North Gifford Pinchot Resource Advisory Committee will meet in Salkum, Washington. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend fiscal year 2013 Title II project nominations to the Forest Supervisor of the Gifford Pinchot National Forest.

DATES: The meeting will be held Friday, September 28, 2012, beginning at 11:30 a.m.

ADDRESSES: The meeting will be held at Salkum Timberland Library 2480 US Highway 12, Salkum, WA 98582. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Gifford Pinchot National Forest Headquarters, 10600 NE 51st Circle, Vancouver, WA 98682. Please call ahead to 360–891–5001 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Sue Ripp, Partnership Coordinator, Gifford Pinchot National Forest, 360–891–5153, and *sripp@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Approval of agenda and minutes; public forum opportunity; election of chair and vice chair; update on prior year Title II projects, and; review and recommendations of individual fiscal year 2013 Title II project nominations. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 27, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Gifford Pinchot National Forest ATTN: Sue Ripp, 10600 NE 51st Circle, Vancouver, WA 98682, or by email to *sripp@fs.fed.us,* or via facsimile to 360–891–5045. A summary of the meeting will be posted at *http://www.fs.usda.gov/giffordpinchot* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation for access to the meeting please request this in advance by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 9, 2012.

Janine Clayton,

Forest Supervisor.

[FR Doc. 2012–20133 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Superior Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Superior Resource Advisory Committee will meet in Duluth, Minnesota. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title 11 of the Act. The meeting is open to the public. The purpose of the meeting is to review, select, prioritize and recommend projects under title II of the Act.

DATES: The meeting will be held Friday, September 14, 2012, 9:30 a.m. central time.

ADDRESSES: The meeting will be held at the Jim Sanders Conference Room, First Floor, Superior National Forest Headquarters, 8901 Grand Ave Place, Duluth, MN 55808. For those unable to attend in person, one may attend by phone, 1–888–858–2144, passcode 4844512#

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Comments will be available on-line through the link to the Superior RAC page in the Secure Rural Schools section of the Superior National Forest Web site, *www.fs.usda.gov/superior.*

FOR FURTHER INFORMATION CONTACT: Lisa Radosevich-Craig, RAC Coordinator, Superior National Forest, 218–626–4336 or to the attention of Lisa Radosevich-Craig at *r9_superior_NF@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: A review, selection, prioritization and recommendation projects submitted by August 27, 2012, under Title II of the Secure Rural Schools Act. The agenda will be available on-line through the

link to the Superior RAC page in the Secure Rural Schools section of the Superior National Forest web site at *www.fs.usda.gov/superior.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 7, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Lisa Radosevich-Craig, RAC Coordinator, Superior National Forest, 8901 Grand Ave Place, Duluth, MN 55808, or by email to Attention: Lisa Radosevich-Craig, *r9_superior_NF@fs.fed.us* insert email, or via facsimile to Lisa Radosevich-Craig 218–626–4398. A summary of the meeting will be posted at *www.fs.usda.gov/superior* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 10, 2012.

Brenda Halter,

Forest Supervisor, Superior National Forest.

[FR Doc. 2012–20229 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet in Crescent City, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the meetings are to review and recommend fiscal year 2012 project proposals.

DATES: The meetings will be held September 10, 2012; September 11, 2012; September 13, 2012; and September 17th at 6 p.m.

ADDRESSES: The September 10 and September 11 meetings will be held at the Del Norte County Unified School District, Redwood Room, 301 West Washington Boulevard, Crescent City CA 95531. The September 13 and September 17 meeting will be held Del Norte Healthcare District, 550 Washington Blvd., Crescent City, CA 95531.

Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Six Rivers National Forest Supervisor's Office, 1330 Bayshore Way, Eureka, CA. 95501. Please call ahead to 707–442–1721 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lynn Wright, Committee Coordinator, 707–441–3562; email *hwright02@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: review and recommend fiscal year 2012 project proposals. Contact Committee Coordinator listed above for meeting agenda information. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting The agenda will include time for people to make oral statements of three minutes or less. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/srnf/home* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: August 13, 2012.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2012–20352 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of a Meeting of the Northeast Oregon Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forest Resource Advisory Committee (RAC) will meet on September 20, 2012 in John Day, Oregon. The purpose of the meeting is to meet as a Committee to discuss selection of Title II projects under Public Law 110–343, H.R. 1424, the Reauthorization of the Secure Rural Schools and community Self-Determination Act of 2000 (16 U.S.C. 500 note; Pub. L. 106–393), also called ''Payments to States'' Act.

DATES: The meeting will be held on September 20, 2012, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held in Grant County Regional Airport, 720 Airport Road, John Day, Oregon.

FOR FURTHER INFORMATION CONTACT: Todd Buchholz, Designated Federal Official, USDA, Umatilla National Forest, Heppner Ranger District, P.O. Box 7, Heppner, Oregon 97836; Telephone: (541) 676–2110.

SUPPLEMENTARY INFORMATION: This will be the fourth meeting of the Committee since reauthorization of Public Law 106–393. The meeting will focus on reviewing and recommending 2013 project proposals that meet the intent of the Act. The meeting is open to the public. A public input opportunity will be provided, and individuals will have the opportunity to address the committee at that time.

Dated: August 10, 2012.

Bill Gamble,

District Ranger.

[FR Doc. 2012–20365 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince of Wales Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince of Wales Resource Advisory Committee will meet in Craig, AK. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized under title II of the Act.

DATES: The meeting will be held September 4, 2012 and September 5, 2012, at 10 a.m.

ADDRESSES: The meeting will be held at the Craig Ranger District, 504 9th Street Craig, Alaska 99921. If you wish to attend via teleconference please call 907–826–3271 for instructions.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Craig Ranger District. Please call ahead to 907–826–3271 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Rebecca Sakraida RAC Coordinator at 907–826–3271 or by email at *rsakraida@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review of projects submitted for review. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by August 21, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Prince of Wales RAC c/o District Ranger P.O. Box 500 Craig, AK 99921, or by email to *rsakraida@fs.fed.us,* or via facsimile to 907–826–2972. A summary of the meeting will be posted at *https://wwwnotes.fs.fed.us/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Meeting Accommodations: If you are a person requiring resonable accomodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 9, 2012.

Francisco B. Sanchez,

District Ranger.

[FR Doc. 2012–20351 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee will meet in Winona, Missouri. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review and recommend projects authorized unter title II of the Act.

DATES: The meeting will be held Thursday, September 13, 2012 at 6:30 pm.

ADDRESSES: The meeting will be held at Twin Pines Conservation Education Center located on U.S. Highway 60, Rt 1, Box 1998, Winona, MO. Written comments may be submitted as described under Supplementary Information. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mark Twain National Forest Supervisor's Office, 401 Fairgrounds Road, Rolla, MO. Please call ahead to 573–341–7404 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Richard Hall, Eleven Point Resource Advisory Committee Coordinator, Mark Twain National Forest, 573–341–7404, *rrhall@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: The meeting will focus on reviewing potential projects that the RAC may recommend for funding. The full agenda may be viewed at *http://www.fs.usda.gov/main/pts/specialprojects/racweb.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by September 11, 2012 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Richard Hall, 401 Fairgrounds Road, Rolla, MO, or by email to *rrhall@fs.fed.us,* or via facsimile to 573–364–6844. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/pts/specialprojects/racweb* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 14, 2012.

Teresa Chase,

Acting Forest Supervisor.

[FR Doc. 2012–20367 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt County, CA Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Humboldt Resource Advisory Committee (RAC) will meet in Eureka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 112–141) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the meetings are to review and recommend fiscal year 2012 project proposals.

DATES: The meetings will be held September 18, 2012 5 p.m. and September 25, 2012 at 5 p.m.

ADDRESSES: The meetings will be held at the Six Rivers National Forest Office, 1330 Bayshore Way, Eureka, California, 95501. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Six Rivers National Forest Supervisor's Office, 1330 Bayshore Way, Eureka, CA. 95501. Please call ahead to 707–442–1721 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Lynn Wright, Committee Coordinator, 707–441–3562; email *hwright02@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review and recommend fiscal year 2012 project proposals. Contact Committee Coordinator listed above for meeting agenda information. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting The agenda will include time for people to make oral statements of three minutes or less. A summary of the meeting will be posted at *http://www.fs.usda.gov/main/srnf/home* within 21 days of the meeting.

Meeting Accommodations: If you require sign language interpreting, assistive listening devices or other reasonable accommodation please request this in advance of the meeting by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: August 13, 2012.

Tyrone Kelley,

Forest Supervisor.

[FR Doc. 2012–20353 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Opportunity To Submit Content Request for the 2013 Census of Aquaculture

AGENCY: National Agricultural Statistics Service, Department of Agriculture.

ACTION: Notice and request for stakeholder input.

SUMMARY: The National Agricultural Statistics Service (NASS is currently accepting stakeholder feedback in the form of content requests for the 2013 Census of Aquaculture. This census is required by law under the ''Census of Agriculture Act of 1997,'' Public Law 105–113 (7 U.S.C. 2204g).

DATES: Comments on this notice must be received by October 1, 2012 to be assured consideration.

ADDRESSES: Requests must address items listed in comments section below. Please submit requests online at: *http://www.agcensus.usda.gov/follow-ons* or via mail to: USDA–NASS, Census Content Team, 1400 Independence Ave. SW., Rm. 5340, MS 2021, Washington, DC 20250.

If you have any questions send an email to *aginputcounts@nass.usda.gov* or call 1–800–727–9540.

FOR FURTHER INFORMATION OR COMMENTS CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION: The results of the 2005 Census of Aquaculture were released in October 2006. For more information, visit online at: *http://www.agcensus.usda.gov/Publications/2002/Aquaculture.* The U.S. Department of Agriculture's National Agricultural Statistics Service is in the process of planning the content of the 2013 Census of Aquaculture. We are seeking input on ways to improve the Census of Aquaculture. Recommendations or any other ideas concerning the census would be greatly appreciated. The 2005 Census of Aquaculture questionnaire may be viewed on-line at: *http://www.agcensus.usda.gov/Publications/2002/Aquaculture/aquacen2005_appendixb.pdf.*

The following justification categories must be addressed when proposing a new line of questioning for the 2013 Census of Aquaculture:

1. What data are needed?
2. Why are the data needed?
3. At what geographic level are the data needed? (U.S., State, County, other)
4. Who will use these data?
5. What decisions will be influenced with these data?
6. What surveys have used the proposed question before; what testing has been done on the question; and what is known about its reliability and validity.
7. Draft of the recommended question.

All responses to this notice will become a matter of public record and be summarized and considered by NASS in preparing the 2013 Census of Aquaculture questionnaire for OMB approval.

Signed at Washington, DC, August 8, 2012.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012–20396 Filed 8–17–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

OMB Control Number: 0608–0066.

Form Number(s): BE–45.

Type of Request: Extension of a currently approved collection.

Burden: 15,440 hours.

Number of Respondents: 2,140.

Average Hours Per Response: 8 hours for mandatory response; and 1 hour for other response.

Needs and Uses: The data are needed to monitor U.S. international trade in insurance services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on insurance services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Affected Public: U.S. insurance companies that transact with foreign persons in insurance services.

Frequency: Quarterly.

Respondents Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by writing Departmental Paperwork Clearance Officer, Jennifer Jessup, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 or via the Internet at *jjessup@doc.gov*.

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via email at *pbugg@omb.eop.gov* or by fax at (202) 395–7245.

Dated: August 14, 2012.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2012–20290 Filed 8–17–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

OMB Control Number: 0608–0067.

Form Number(s): BE–125.

Type of Request: Extension of a currently approved collection.

Burden Hours: 98,000.

Number of Respondents: 2,000.

Average Hours per Response: 16 hours for mandatory response and 1 hour for other responses.

Needs and Uses: The data are needed to monitor U.S. international trade in selected services and intellectual property transactions, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on trade in selected services and intellectual property, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Affected Public: Businesses or other for-profit organizations; non-profit organizations; state, local, and tribal governments.

Frequency: Quarterly.

Respondents' Obligation: Mandatory.

Legal Authority: Title 22 U.S.C. Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by writing Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 or via the Internet at *jjessup@doc.gov.*

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via email at *pbugg@omb.eop.gov* or by fax at (202) 395–7245.

Dated: August 15, 2012.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2012–20380 Filed 8–17–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

OMB Control Number: 0608–0065.

Form Number(s): BE–185.

Type of Request: Extension of a currently approved collection.

Burden Hours: 22,500.

Number of Respondents: 2,700.

Average Hours per Response: 10 hours for mandatory response and 1 hour for other responses.

Needs and Uses: The data are needed to monitor U.S. international trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on trade in financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

Affected Public: Businesses or other for-profit organizations; non-profit organizations; and state, local, and tribal governments.

Frequency: Quarterly.

Respondents' Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended and Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by writing Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 or via the Internet at *jjessup@doc.gov.*

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, via email at *pbugg@omb.eop.gov* or by fax at (202) 395–7245.

Dated: August 15, 2012.

Glenna Mickelson,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 2012–20382 Filed 8–17–12; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance of the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Manufacturing Extension Partnership (MEP) Management Information Reporting.

OMB Control Number: 0693–0032.

Form Number(s): None.

Type of Request: Regular submission (revision of a currently approved information collection).

Number of Respondents: 60.

Average Hours per Response: 160.

Burden Hours: 9,600.

Needs and Uses: NIST MEP offers technical and business assistance to small- and medium-sized manufacturers. This is a major program which links all 50 states and Puerto Rico and the manufacturers through more than 400 affiliated MEP Centers and Field Offices. NIST MEP has a number of legislative and contractual requirements for collecting data and information from the MEP Centers. This information is used for the following purposes: (1) Program accountability, (2) reports to stakeholders, (3) continuous improvement; and (4) identification of distinctive practices.

Revision: In order to reflect new NIST MEP initiatives and new data needs, NIST MEP has identified a need to revise its existing reporting processes by adding additional elements that will enable NIST MEP to better monitor and assess the extent to which the Centers are meeting program goals and milestones.

Affected Public: Business or other for-profit organizations.

Frequency: Quarterly, Bi-annually, Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov.*

Dated: August 15, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–20356 Filed 8–17–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* August 20, 2012.

SUMMARY: The Department of Commerce (''Department'') hereby publishes a list of scope rulings completed between January 1, 2012, and March 31, 2012. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Jennifer Moats, AD/CVD Operations, China/NME Group, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–5047.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis.[1] Our most recent notification of scope rulings was published on June 29, 2012.[2] This current notice covers all scope rulings and anticircumvention determinations completed by Import Administration between January 1, 2012, and March 31, 2012, inclusive. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between January 1, 2012, and March 31, 2012

People's Republic of China

A–570–967; C–570–968: Aluminum Extrusions from the People's Republic of China

Requestor: The Rowley Company; drapery rail kits consisting of an extruded aluminum rail, decorative steel brackets and decorative steel finials are within the scope of the antidumping and countervailing duty orders; February 3, 2012.

A–570–967; C–570–968: Aluminum Extrusions from the People's Republic of China

Requestor: IDEX Health and Science LLC; Precision machine parts produced using extruded aluminum feedstock which is further fabricated into aluminum housings for vacuum pump assemblies, aluminum bodies for high pressure valves, and light guided flowcell holders are within the scope of the antidumping and countervailing duty orders; March 28, 2012.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Lifetime Products, Inc.; its 48-inch round fold-in-half tables are not within the scope of the antidumping duty order; March 30, 2012.

A–570–933: Frontseating Service Valves from the People's Republic of China

Requestor: Water Operating Group; 6-position water filtration valve is not within the scope of the antidumping duty order; January 11, 2012.

A–570–920/C–570–921: Lightweight Thermal Paper from the People's Republic of China

Requestor: Paper Resources, LLC.; certain lightweight thermal paper (''LWTP'') converted into smaller LWTP rolls in the PRC, from jumbo LWTP rolls produced in certain third countries, is not within the scope of the antidumping duty and countervailing duty orders; March 23, 2012.

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: Hobby Lobby; scrapbook paper is not within the scope of the antidumping duty order; January 6, 2012.

A–570–860: Steel Concrete Reinforcing Bars from the People's Republic of China

Requestor: New Orleans Shoring, LLC.; steel pins (also known as fasteners) made of concrete reinforcing bar are within the scope of the antidumping duty order; January 19, 2012.

A–570–918: Steel Wire Garment Hangers from the People's Republic of China

Requestor: Great American Hanger Company; four wooden hangers; three steel wire, swivel looped-neck hangers; and one vinyl-coated flattened steel hanger are not within the scope of the antidumping duty order; February 17, 2012.

Multiple Countries

A–560–823/C–560–824/A–570–958/C–570–959: Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia and the People's Republic of China

Requestor: Gold East Paper (Jiangsu) Co. Ltd. (including its subsidiaries Ningbo Zhonghua Paper Co., Ltd. and Ningbo Asia Pulp and Paper Co., Ltd.), Global Paper Solutions, Inc., Pindo Deli Pulp and Paper Mills, PT. Indah Kiat Pulp & Paper Tbk, and Paper Max, Ltd. (collectively ''APP''); (1) APP's Ningbo Fold packaging paperboard, APP's Savvi Coat packaging paperboard, APP's Zenith packaging paperboard with a basis weight of 215 grams per square meter (''gsm''), APP's Sinar Vanda packaging paperboard with a basis weight of 210 gsm, and APP's blue-

[1] *See* 19 CFR 351.225(o).

[2] *See Notice of Scope Rulings,* 77 FR 38767 (June 29, 2012).

center playing card board which APP exports are within the scope of the antidumping duty and countervailing duty orders; (2) APP's Zenith packaging paperboard (except with a basis weight of 215 gsm), APP's Sinar Vanda packaging paperboard (except with a basis weight of 210 gsm), and APP's grey-center playing card board and black-center playing card board which APP exports are not within the scope of the antidumping duty and countervailing duty orders; preliminary ruling February 2, 2012.

A–201–837/A–570–954/C–570–955: Magnesia Carbon Bricks from Mexico and the People's Republic of China

Requestor: Fedmet Resources Corporation; its magnesia alumina carbon bricks are within the scope of the antidumping and countervailing duty orders; March 30, 2012.

Anti-Circumvention Determinations Completed Between January 1, 2012, and March 31, 2012

None.

Interested parties are invited to comment on the completeness of this list of completed scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue NW., APO/Dockets Unit, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: August 9. 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–20066 Filed 8–17–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Rookery Bay, FL and Kachemak Bay, AK National Estuarine Research Reserve Management Plan Revisions

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Public Comment Period for the Rookery Bay, Florida and Kachemak Bay, Alaska National Estuarine Research Reserve Management Plan Revisions.

SUMMARY: Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce is announcing a thirty day public comment period for the Rookery Bay, Florida and the Kachemak Bay, Alaska National Estuarine Research Reserve Management Plan Revisions. Pursuant to 15 CFR section 921.33(c), these revisions will bring these plans into compliance. The Rookery Bay, Florida Reserve is updating their last plan approved in 2003; and the Kachemak Bay, Alaska Reserve is updating their last plan approved in 2006. The revised management plans outline the administrative structure; the research, education, training, and stewardship goals of the reserve; and the plans for future land acquisition and facility development to support reserve operations.

The Rookery Bay Reserve takes an integrated approach to management, linking research, education, training and stewardship functions to address high priority issues including land use changes affecting freshwater inflow, loss of native biodiversity, lack of public awareness and community involvement in stewardship, incompatible use by visitors, and ecological impacts of catastrophic change events. Since the last management plan, the reserve has constructed additional exhibits and a pedestrian bridge that connects the Environmental Learning Center to a boardwalk and interpretive trails describing several ecosystems and functions. The revised management plan will serve as the guiding document for the 110,000 acre Rookery Bay Reserve for the next five years.

The Kachemak Bay Reserve takes an integrated approach to management, linking research, education, and training functions to address high priority issues including climate change and harvested species, such as salmon and shellfish. The reserve will continue research on coastal dynamics and their impact to coastal communities, and will be enhancing monitoring programs on invasive species and harmful algal blooms to transfer information to coastal decision makers. Since the last management plan, the reserve has constructed additional exhibits, completed habitat maps of the benthic and shoreline habitats of the bay, and contributed to the body of knowledge on the ecological value of headwater streams to juvenile salmon. The revised management plan will serve as the guiding document for the 372,000 acre Kachemak Bay Reserve for the next five years. No additional lands have been added to the reserve boundary; the discrepancy in designated and current acreage is due to improved mapping accuracy.

View the Rookery Bay, Florida Reserve Management Plan revision at *www.floridadep.org/rookery/management/plan.htm* and provide comments to *Penny.Isom@dep.state.fl.us.*

View the Kachemak Bay, Alaska Reserve Management Plan at *www.adfg.alaska.gov/index.cfm?adfg=kbrr_resources.management* and provide comments to *dfg.kbrr.managementplan@alaska.gov.*

FOR FURTHER INFORMATION CONTACT: Erica Seiden at (301) 563–1172 or Laurie McGilvray at (301) 563–1158 of NOAA's National Ocean Service, Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, 10th floor, Silver Spring, MD 20910.

Dated: August 8, 2012.

Margaret Davidson,

Acting Director, Office of Ocean and Coastal Resource Management, National Oceanic and Atmospheric, Administration.

[FR Doc. 2012–20228 Filed 8–17–12; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA626

Marine Mammals; File No. 16160

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 16160 has been issued to The Whale Museum (Responsible Party: Jenny Atkinson), PO Box 945, Friday Harbor, WA 98250.

ADDRESSES: The permit amendment 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

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426.

FOR FURTHER INFORMATION CONTACT: Joselyd Garcia-Reyes or Kristy Beard, (301)427–8401.

SUPPLEMENTARY INFORMATION: On June 20, 2012, notice was published in the **Federal Register** (77 FR 36999) that a request for an amendment to Permit No. 16160 to conduct research on marine mammals had been submitted by the above-named organization. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit has been amended to increase Southern Resident killer whale takes to 200 per year. The amended permit is valid through the expiration date of the original permit, June 6, 2017.

An environmental assessment (EA) analyzing the effects of the permitted activities on the human environment was prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit amendment would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on June 4, 2012.

As required by the ESA, issuance of this permit amendment was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 13, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–20405 Filed 8–17–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA602

Marine Mammals; File No. 16109

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that a major amendment to Permit No. 16109 has been issued to GeoMarine, Inc. (Responsible Party: Suzanne Bates), 2201 K Avenue, Suite A2, Plano, TX 75074.

ADDRESSES: The permit amendment 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;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Joselyd Garcia-Reyes or Carrie Hubard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On June 5, 2012, notice was published in the **Federal Register** (77 FR 33198) that a request for an amendment to Permit No. 16109 to conduct research on marine mammals and sea turtles had been submitted by the above-named organization. The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit has been amended to increase sei whale takes to 50 per year. The amended permit is valid through the expiration date of the original permit, May 15, 2017.

An environmental assessment (EA) analyzing the effects of the permitted activities on the human environment was prepared in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit amendment would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on May 1, 2012.

As required by the ESA, issuance of this permit amendment was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 13, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–20403 Filed 8–17–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC122

Taking and Importing of Marine Mammals

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

ACTION: Notice; affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of Spain under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Spain and obtained from the Inter-American Tropical Tuna Commission (IATTC).

DATES: The affirmative finding annual renewal is effective from April 1, 2012, through March 31, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah Wilkin, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980–3230; fax 562–980–4027.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.,* allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS reviews the affirmative finding and determines whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Spain and obtained from the IATTC and has determined that Spain has met the MMPA's requirements to receive an affirmative finding annual renewal.

After consultation with the Department of State, the Assistant Administrator issued an affirmative finding annual renewal to Spain, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction through March 31, 2013. Spain's five-year affirmative finding will remain valid through March 31, 2015, subject to subsequent annual reviews by NMFS.

Dated: August 15, 2012.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, performing the functions and duties of the Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–20406 Filed 8–17–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB); Notice of Meeting

AGENCY: Reserve Forces Policy Board, Office of the Secretary of Defense, Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Reserve Forces Policy Board (RFPB) will take place.

DATES: Wednesday, September 5, 2012, from 8 a.m. to 4:10 p.m.

ADDRESSES: The address for the open session of the meeting is the Fort Myer Officers' Club, Arlington, VA 22211. The closed session address is the Pentagon, Room 3E863, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: CDR Steven Knight, Designated Federal Officer, (703) 681–0608 (Voice), (703) 681–0002 (Facsimile), *RFPB@osd.mil.* Mailing address is Reserve Forces Policy Board, 5113 Leesburg Pike, Suite 601, Falls Church, VA 22041. Web site: *http://ra.defense.gov/rfpb/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is obtain, review and evaluate information related to strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the reserve components.

Agenda: The Reserve Forces Policy Board will hold a meeting from 8 a.m. until 4:10 p.m. The portion of the meeting from 3:15 p.m. until 4:10 p.m. will be closed and is not open to the public. The open portion of the meeting will consist of administrative details, remarks from the Under Secretary of Defense (Personnel & Readiness) on her role as the RFPB's sponsor and the future role of the Reserve Components (RC) within the Department of Defense (DoD); from the Director, Cost Assessment and Program Evaluation on today's fiscal challenges facing DoD and future implications for the out year Future Year Defense Program; from the Adjutant Generals of California and Wisconsin on their views of AC/RC mix considerations, and roles and missions; an update on the RFPB's Cost Methodology Project; and RFPB subcommittee briefs. The closed session of the meeting will consist of the Secretary of Defense discussing RC readiness, capability shortfalls, roles and missions and future composition of the Active and Reserve Component.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, the open portion of the meeting is open to the public. To request a seat for the open portion of the meeting, interested persons must email or phone the Designated Federal Officer not later than August 30, 2012 as listed in **FOR FURTHER INFORMATION CONTACT**. In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the portion of this meeting from 3:15 p.m. until 4:10 p.m. will be closed to the public. Specifically, the Under Secretary of Defense (Personnel and Readiness), with the coordination of the DoD FACA Attorney, has determined in writing that this portion of the meeting will be closed to the public because it will discuss matters covered by 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, interested persons may submit written statements to the Reserve Forces Policy Board at any time. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer at the address or facsimile number listed in **FOR FURTHER INFORMATION CONTACT**. If statements pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five (5) business days prior to the meeting in question. Written statements received after this date may not be provided to or considered by the

Reserve Forces Policy Board until its next meeting. The Designated Federal Officer will review all timely submitted written statements and provide copies to all the committee members before the meeting that is the subject of this notice.

Dated: August 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–20416 Filed 8–17–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee; Notice of Federal Advisory Committee Meeting

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).

ACTION: Federal advisory committee meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense announces the following Federal advisory committee meeting of the Threat Reduction Advisory Committee (hereafter referred to as ''the Committee'').

DATES: Thursday, September 6, 2012, from 8:30 a.m. to 5 p.m. and Friday, September 7, 2012, from 8:30 a.m. to 3 p.m.

ADDRESSES: Conference Room 3A912A, The Pentagon.

FOR FURTHER INFORMATION CONTACT: Mr. William Hostyn, GS–15, DoD, Defense Threat Reduction Agency/J2/5/8R, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate classified information related to the Committee's mission to advise on technology security, combating weapons of mass destruction (C–WMD), counter terrorism and counter proliferation.

Agenda: Beginning at 8:30 a.m. on September 6, and through the end of the meeting on September 7, the committee will receive classified Combating Weapons of Mass Destruction (C–WMD) briefings from the Department of Defense and the Intelligence Community. The committee will also hold classified discussions on Middle East WMD concerns, the Cost Assessment and Program Evaluation Study, and Advance Smart Nuclear Awareness, Control and Accountability.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Under Secretary of Defense for Acquisition, Technology and Logistics, in consultation with the DoD FACA Attorney, has determined in writing that the public interest requires all sessions of this meeting be closed to the public because the discussions will be concerned with classified information and matters covered by 5 U.S.C. 552b(c)(1) and are inextricably intertwined with the unclassified material which cannot reasonably be segregated into separate discussions without disclosing secret material.

Committee's Designated Federal Officer or Point of Contact: Mr. William Hostyn, GS–15, DoD, Defense Threat Reduction Agency/J/2/5/8R, 8725 John J. Kingman Road, MS 6201, Fort Belvoir, VA 22060–6201. Email: *william.hostyn@dtra.mil.* Phone: (703) 767–4453. Fax: (703) 767–4206.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the membership of the Committee at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Committee's Designated Federal Officer. The Designated Federal Officer's contact information is listed in **FOR FURTHER INFORMATION CONTACT** or it can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Committee may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all committee members.

Dated: August 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–20415 Filed 8–17–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Assistant Secretary of Defense (Health Affairs), DoD.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (Title 5, United States Code (U.S.C.), Appendix, as amended) and the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) the Department of Defense (DoD) announces the following Federal Advisory Committee Meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: September 27, 2012, from 9 a.m. to 1 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: CDR Joseph Lawrence, DFO, Uniform Formulary Beneficiary Advisory Panel, 4130 Stanley Road, Suite 208, Building 1000 San Antonio, TX 78234–6012, Telephone: (210) 295–1271, Fax: (210) 295–2789, Email Address: *Baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director of TRICARE Management Activity, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Meeting Agenda:

1. Sign-In.
2. Welcome and Opening Remarks.
3. Public Citizen Comments.
4. Scheduled Therapeutic Class Reviews (Comments will follow each agenda item).
   a. Androgens-Anabolic Steroids.
   b. Anticoagulants.
   c. Designated Newly Approved Drugs in Already-Reviewed Classes.
   d. Pertinent Utilization Management Issues.
5. Panel Discussions and Vote.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing-in. All persons must sign-in legibly.

Administrative Work Meeting: Prior to the public meeting, the Panel will conduct an Administrative Work

Meeting from 7:30 a.m. to 9 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center, 701 Pennsylvania Avenue, NW., Washington, DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer (DFO). The DFO's contact information can be obtained from the General Services Administration's Federal Advisory Committee Act Database at *https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than 5 business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside 1 hour for individuals or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice; but if they still want to address the Panel, then they will be afforded the opportunity to register to address the Panel. The Panel's DFO will have a ''Sign-Up Roster'' available at the Panel meeting for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than 5 minutes to present their comments, and at the end of the 1 hour time period, no further public comments will be accepted. Anyone who signs-up to address the Panel, but is unable to do so due to the time limitation, may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation.

To ensure timeliness of comments for the official record, the Panel encourages that individuals and interested groups consider submitting written statements instead of addressing the Panel.

Dated: August 15, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–20413 Filed 8–17–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Grant Exclusive License of the United States Patent No. 7,837,654 B2, Issued November 23, 2010 Entitled: Precision Sensing and Treatment Delivery Device for Promoting Healing in Living Tissue

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of the following U.S. Patent #7,837,654 B2, issued November 23, 2010, to OPTS, Inc., a Huntsville, Alabama company.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: United States Army Aviation & Missile Research Development & Engineering Center, Attn: RDMR–CST (Dr. J.R. Alexander), 5400 Fowler Road, Redstone Arsenal, Alabama 35898–5000.

FOR FURTHER INFORMATION CONTACT: Dr. Russ Alexander, Chief, Office of Research and Technology Applications, (256) 876–8743, email: *russ.alexander@us.army.mil*

SUPPLEMENTARY INFORMATION: This patent abstract claims a microneedle insertable in a target cell tissue, including a manipulative end maintained exterior of cell tissue and an insertion end positionable in or adjacent of target cell tissue. A plurality of microtubes are bundled to pass through the needle body and extend to respective distal ends grouped proximally interior of the insertion end. A sensing fiber is extendable from means for sensing for passage through the needle body to a distal end capable of sensing cell tissue parameters. The insertion end and the bundled microtube and sensing fiber distal ends are positionable in or adjacent of cell tissue thereby providing rapid evaluation of cell parameters by optic fiber sensing, fiber sampling of cell parameters, and precise delivery of therapeutic fluids or additional treatment measures. A method is also disclosed of precisely positioning a microneedle having a plurality of microtubes and sensing fibers therein for evaluating and treating cell tissue.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–20354 Filed 8–17–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Education Advisory Committee Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160, the Department of the Army announces the following committee meeting:

Name of Committee: Army Education Advisory Committee (AEAC).

Date of Meeting: September 4–5, 2012.

Time of Meeting: 0800–1600.

Place of Meeting: TRADOC HQ, 950 Jefferson Ave, Building 950, Conference Room 2047, 2rd Floor, Ft Eustis, VA.

Proposed Agenda: Purpose of the meeting is to gather and review information, discuss, and deliberate issues related to shifting Army training from an instructor-centric to a learner-centric paradigm required by the Army 2020 learning environment. The agenda will include topics relating to Army Learning Model 2015 and support to essential proficiencies and professional development plan for facilitators. Additionally, recommendations submitted by subcommittees will be discussed and deliberated.

FOR FURTHER INFORMATION CONTACT: For information please contact Mr. Wayne Joyner, Designated Federal Officer, at *albert.w.joyner.civ@mail.mil,* (757) 501–5810, or to the following address: Army Education Advisory Committee, Designated Federal Officer, ATTN: ATTG–OPS–EO (Joyner), 950 Jefferson Ave, Building 950, Ft Eustis, Virginia 23604.

SUPPLEMENTARY INFORMATION: Meeting of the Advisory Committee is open to the public and any member of the public wishing to attend this meeting should contact the Designated Federal Officer previously listed at least ten calendar days prior to the meeting for information on base entry. Individuals without a DoD Government Common Access Card require an escort at the

meeting location. Attendance will be limited to those persons who have notified the Committee Management Office of their intention to attend.

Filing Written Statement: Pursuant to 41 CFR 102–3.140d, the Committee is not obligated to allow the public to speak, however, any member of the public wishing to provide input to the Committee should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address listed (see **FOR FURTHER INFORMATION CONTACT**). Statements being submitted in response to the agenda mentioned in this notice must be received at least ten calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Advisory Committee until its next meeting. The Designated Federal Officer will review all timely submissions with the Advisory Committee Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. After reviewing written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during open portion of this meeting or at a future meeting.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–20350 Filed 8–17–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Update to the 26 September 2011 Military Freight Traffic Unified Rules Publication (MFTURP) NO. 1

AGENCY: Department of the Army, DoD.

SUMMARY: The Military Surface Deployment and Distribution Command (SDDC) is providing notice that it is releasing an updated MFTURP No. 1. The update will be effective 20 August 2012.

ADDRESSES: Submit comments to Publication and Rules Manager, Strategic Business Directorate, Business Services, 1 Soldier Way, Building 1900W, ATTN: SDDC–OPM, Scott AFB 62225. Request for additional information may be sent by email to: *chad.t.privett@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Chad Privett, (618) 220–6901.

SUPPLEMENTARY INFORMATION: *Reference:* Military Freight Traffic Unified Rules Publications (MFTURP) No. 1.

Background: The MFTURP No. 1 governs the purchase of surface freight transportation in the Continental United States (CONUS) by DoD using Federal Acquisition Regulation (FAR) exempt transportation service contracts.

Miscellaneous: This publication, as well as the other SDDC publications, can be accessed via the SDDC Web site at: *http://www.sddc.army.mil/GCD/default.aspx.*

C.E. Radford, III,

Division Chief, SDDC–G9, Business Improvements.

[FR Doc. 2012–20357 Filed 8–17–12; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11 a.m. to 12 p.m. on September 10, 2012, will include discussions of disciplinary matters, law enforcement investigations into allegations of criminal activity, and personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on September 10, 2012, from 8:30 a.m. to 11 a.m. The closed session of this meeting will be the executive session held from 11 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the Library of Congress in Washington, DC. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Travis Haire, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11 a.m. to 12 p.m. on September 10, 2012, will consist of discussions of law enforcement investigations into allegations of criminal activity, new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade, and personnel issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. Accordingly, the Under Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11 a.m. to 12 p.m. will be concerned with matters coming under sections 552b(c)(5), (6), and (7) of title 5, United States Code.

Dated: August 13, 2012.

C. K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–20362 Filed 8–17–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests; State Plan for Independent Living (SPIL)

AGENCY: Office of Special Education and Rehabilitative Services, ED.

ACTION: Notice.

SUMMARY: States wishing to receive funding under the State Independent Living Services and Centers for Independent Living programs must submit an approvable three-year State Plan for Independent Living (SPIL) to the Rehabilitation Services Administration. The purpose of these programs is to promote the independent living philosophy—based on consumer control, peer support, self-help, self-determination, equal access and individual and systems advocacy—to maximize the leadership, empowerment, independence and productivity of individuals with significant disabilities and to promote and maximize the integration and full inclusion of individuals with significant

disabilities into the mainstream of American society. The SPIL encompasses the activities planned by the State to achieve its specified independent living objectives and reflects the State's commitment to comply with all applicable statutory and regulatory requirements during the three years covered by the plan.

DATES: Interested persons are invited to submit comments on or before October 19, 2012.

ADDRESSES: Written comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04919. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: State Plan for Independent Living (SPIL).

OMB Control Number: 1820–0527.

Type of Review: Extension.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 3,360.

Abstract: States wishing to receive funding under the State Independent Living Services and Centers for Independent Living programs must submit an approvable three-year State Plan for Independent Living (SPIL) to the Rehabilitation Services Administration. The purpose of these programs is to promote the independent living philosophy—based on consumer control, peer support, self-help, self-determination, equal access and individual and systems advocacy—to maximize the leadership, empowerment, independence and productivity of individuals with significant disabilities and to promote and maximize the integration and full inclusion of individuals with significant disabilities into the mainstream of American society. The SPIL encompasses the activities planned by the State to achieve its specified independent living objectives and reflects the State's commitment to comply with all applicable statutory and regulatory requirements during the three years covered by the plan.

Dated: August 14, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–20392 Filed 8–17–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of Inspector General, U.S. Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice to revise the system of records notice for the Investigative Files of the Inspector General (18–10–01), 64 FR 30151–30153 (June 4, 1999), as corrected by 67 FR 4415–4417 (January 30, 2002), as amended by 68 FR 38153–38158 (June 26, 2003), as amended by 75 FR 33608–33610 (June 14, 2010), as corrected by 75 FR 36374–36375 (June 25, 2010). The Department amends this system of records notice by: proposing to revise routine use (14), ''Disclosure to the Recovery Accountability and Transparency Board (RATB),'' to allow disclosure to any successor entity of the RATB, to the Government Accountability and Transparency Board (GATB) or any successor entity, or to any other Federal, State, local, or foreign agency or other entity responsible for coordinating and conducting oversight of Federal funds, in order to prevent fraud, waste, and abuse related to Federal funds, or for assisting in the enforcement, investigation, prosecution, or oversight of violations of administrative, civil, or criminal law or regulation. This system of records provides essential support for investigative activities of the Office of Inspector General (OIG) relating to the Department's programs and operations, enabling the OIG to secure and maintain the necessary information and to coordinate with other law enforcement agencies as appropriate.

DATES: The Department seeks comments on the altered routine use of the information in the system of records described in this notice, in accordance with the requirements of the Privacy Act. We must receive your comments on or before September 19, 2012.

The Department filed a report describing the altered system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 15, 2012. This altered system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on September 24, 2012, unless OMB waives 10 days of its 40-day review period for compelling reasons shown by the Department, in which case on September 14, 2012, or (2) September 19, 2012, unless the system of records needs to be changed as a result of public comment or OMB review. The Department will publish any changes to the revised routine use that results from public comment or OMB review of this notice.

ADDRESSES: Address all comments about the proposed altered routine use to this system of records to William Hamel,

Assistant Inspector General for Investigation Services, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue SW., Room 8166, PCP Building, Washington, DC 20202–1510. If you prefer to send your comments by email, use the following address: *comments@ed.gov.*

You must include the term ''OIG Investigative Files'' in the subject line of your electronic message.

During and after the comment period, you may inspect all public comments about this notice at the U.S. Department of Education, Room 8166, PCP Building, 500 12th Street, SW., Washington, DC 20202–0028, between the hours of 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request we will supply an appropriate accommodation or auxiliary aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Benjamin Shapiro, Assistant Counsel to the Inspector General, 400 Maryland Avenue SW., PCP Building, Room 8166, Washington, DC 20202–1510. Telephone: (202) 245–7601.

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:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of an altered system of records (5 U.S.C. 552a(e)(4) and (11)). The Department's regulations implementing the Privacy Act are contained in part 5b of title 34 of the Code of Federal Regulations (CFR).

The Privacy Act applies to a record about an individual that contains individually identifying information that is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a ''record,'' and the system, whether manual or computer-based, is called a ''system of records.''

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and prepare a report to OMB, whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. The report is intended to permit an evaluation of the probable or potential effect of the proposal on the privacy rights of individuals.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: August 15, 2012.

Kathleen S. Tighe,

Inspector General.

For the reasons discussed in the preamble, the Inspector General of the U.S. Department of Education publishes a notice of an altered system of records. The following amendments are made to the Notice of an Altered System of Records for the system of records entitled ''Investigative Files of the Inspector General'' (18–10–01), as published in the **Federal Register** on June 4, 1999 (64 FR 30151–30153 (June 4, 1999)), as corrected by 67 FR 4415–4417 (January 30, 2002), as amended by 68 FR 38153–38158 (June 26, 2003), as amended by 75 FR 33608–33610 (June 14, 2010), as corrected by 75 FR 36374–36375 (June 25, 2010):

1. On 68 FR 38157, 1st column, as amended by 75 FR 33610 (June 14, 2010), the paragraph labeled ''(14) Disclosure to the Recovery Accountability and Transparency Board (RATB),'' is revised to read as follows:

(14) *Disclosure to Entities Responsible for Oversight of Federal Funds.* The OIG may disclose records as a routine use to the Recovery Accountability and Transparency Board (RATB) or any successor entity, to the Government Accountability and Transparency Board (GATB) or any successor entity, or to any other Federal, State, local, or foreign agency or other entity responsible for coordinating and conducting oversight of Federal funds, in order to prevent fraud, waste, and abuse related to Federal funds, or for assisting in the enforcement, investigation, prosecution, or oversight of violations of administrative, civil, or criminal law or regulation, if that information is relevant to any enforcement, regulatory, investigative, prosecutorial, or oversight responsibility of the Department or of the receiving entity.

[FR Doc. 2012–20407 Filed 8–17–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–591]

Duke Energy Carolinas, LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 2232–591.

c. *Date Filed:* April 9, 2012.

d. *Applicant:* Duke Energy Carolinas, LLC.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* Lake Norman in Iredell County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Dennis Whitaker, Duke Energy—Lake Services, P.O. Box 1006,1 Charlotte, NC 28201.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* September 8, 2012.

All documents may be filed electronically via the Internet. See, 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2232–591) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Duke Energy Carolinas, LLC requests after-the-fact Commission approval to amend the layout of Stutts Marina on Lake Norman. The Commission originally approved this commercial marina in 1983. In 2006, Duke Energy Carolinas, LLC authorized modifications to the marina, which now consists of two multi-slip docks, one accommodating 12 watercraft and the other accommodating 19 watercraft (including one houseboat), as well as a gasoline service dock, customer service dock, and boat ramp. The modified marina layout is mostly similar to the originally-approved design except that the docks have shifted location slightly and the multi-slip docks are longer and skinnier than approved, but with shorter access ramps.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–2232) to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: August 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20314 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–893–000.
Applicants: Questar Overthrust Pipeline Company.
Description: Questar Overthrust Pipeline Company submits Annual Fuel Gas Reimbursement Report.
Filed Date: 7/30/12.
Accession Number: 20120730–5070.
Comments Due: 5 p.m. ET 8/13/12.

Docket Numbers: RP12–895–000.
Applicants: Great Lakes Gas Transmission Limited Par.
Description: Great Lakes Gas Transmission Semi Annual Transporter's Use Report.
Filed Date: 7/31/12.
Accession Number: 20120731–5096.
Comments Due: 5 p.m. ET 8/13/12.

Docket Numbers: RP12–896–000.
Applicants: Midcontinent Express Pipeline LLC.
Description: Cost and Revenue Study of Midcontinent Express Pipeline LLC.
Filed Date: 7/31/12.
Accession Number: 20120731–5105.
Comments Due: 5 p.m. ET 8/13/12.

Docket Numbers: RP12–935–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: 2012–08–09 NCs 6 K's to be effective 8/10/2012.
Filed Date: 8/9/12.
Accession Number: 20120809–5097.
Comments Due: 5 p.m. ET 8/21/12.

Docket Numbers: RP12–937–000.
Applicants: Dominion Cove Point LNG, LP.
Description: DCP–RP11–2136 and RP11–2137 Settlement Compliance to be effective 4/1/2012.
Filed Date: 8/10/12.
Accession Number: 20120810–5075.
Comments Due: 5 p.m. ET 8/22/12.

Docket Numbers: RP12–938–000.
Applicants: Northern Natural Gas Company.
Description: 20120810 Carlton Flow Obligations to be effective 11/1/2012.
Filed Date: 8/10/12.
Accession Number: 20120810–5079.
Comments Due: 5 p.m. ET 8/22/12.

Docket Numbers: RP12–939–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: 2012–08–10 NCs 3Ks to be effective 8/11/2012.

Filed Date: 8/10/12.
Accession Number: 20120810–5151.
Comments Due: 5 p.m. ET 8/22/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated August 13, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–20373 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Filings Instituting Proceedings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP12–932–000.
Applicants: Transcontinental Gas Pipe Line Company,
Description: August 2012 Clean-Up Filing to be effective 9/8/2012.
Filed Date: 8/8/12.
Accession Number: 20120808–5106.
Comments Due: 5 p.m. ET 8/20/12.

Docket Numbers: RP12–933–000.
Applicants: Equitrans, L.P.
Description: Exhibit B Addition to AGS Form of Service Agreement to be effective 9/11/2012.
Filed Date: 8/8/12.
Accession Number: 20120808–5110.
Comments Due: 5 p.m. ET 8/20/12.

Docket Numbers: RP12–934–000.
Applicants: Columbia Gas Transmission, LLC.
Description: Negotiate Rate Service Agreement—WGL Removal to be effective 4/1/2012.
Filed Date: 8/8/12.
Accession Number: 20120808–5123.
Comments Due: 5 p.m. ET 8/20/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary

[FR Doc. 2012–20335 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1950–002.
Applicants: Entergy Texas, Inc.
Description: ETEC Partial Req Agrmt Compliance Filing to be effective 8/1/2012.
Filed Date: 8/13/12.
Accession Number: 20120813–5076.
Comments Due: 5 p.m. ET 9/4/12.

Docket Numbers: ER12–1952–002.
Applicants: Entergy Texas, Inc.
Description: ETEC Coordination Agrmt Compliance Filing to be effective 8/1/2012.
Filed Date: 8/13/12.
Accession Number: 20120813–5077.
Comments Due: 5 p.m. ET 9/4/12.

Docket Numbers: ER12–2441–000.
Applicants: ISO New England Inc.
Description: ISO New England's Capital Budget Quarterly Filing for Second Quarter of 2012.
Filed Date: 8/13/12.
Accession Number: 20120813–5090.
Comments Due: 5 p.m. ET 9/4/12.

Docket Numbers: ER12–2442–000.
Applicants: PJM Interconnection, L.L.C.
Description: Original Service Agreement No. 3381; PJM Queue Position No. U4–033 to be effective 7/10/2012.
Filed Date: 8/13/12.
Accession Number: 20120813–5094.
Comments Due: 5 p.m. ET 9/4/12.

Docket Numbers: ER12–2443–000.
Applicants: New York Independent System Operator, Inc.
Description: NYISO Tariff Revisions Related to ICAP Credit Requirements to be effective 10/17/2012.
Filed Date: 8/13/12.
Accession Number: 20120813–5099.
Comments Due: 5 p.m. ET 9/4/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: http://www.ferc.gov/docs-filing/efiling/filing-req.pdf. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 13, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–20334 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–2432–000.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Termination of Energy 2001 SGIA, WD Tariff Service Agreement No. 61 to be effective 8/3/2012.
Filed Date: 8/10/12.
Accession Number: 20120810–5004.
Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–2434–000.
Applicants: PacifiCorp.
Description: Informational Filing to be effective 10/5/2012.
Filed Date: 8/9/12.
Accession Number: 20120809–5131.

Comments Due: 5 p.m. ET 8/30/12.

Docket Numbers: ER12–2438–000.

Applicants: PJM Interconnection, L.L.C.

Description: RTEP Clean Up Filing to be effective 7/31/2012.

Filed Date: 8/10/12.

Accession Number: 20120810–5122.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–2440–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to Schedule 12—Appendix to be effective 11/8/2012.

Filed Date: 8/10/12.

Accession Number: 20120810–5152.

Comments Due: 5 p.m. ET 9/10/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 13, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–20333 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–134–000.

Applicants: NRG Energy, Inc, GenOn Energy, Inc.

Description: Joint Application for Authorization of Disposition of Jurisdictional Assets and Merger Under Sections 203(a)(1) and 203(a)(2) of the Federal Power Act of NRG Energy, Inc. and GenOn Energy, Inc.

Filed Date: 8/10/12.

Accession Number: 20120810–5135.

Comments Due: 5 p.m. ET 8/31/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2488–004.

Applicants: Oasis Power Partners, LLC, Crescent Ridge LLC, Eurus Combine Hills I LLC, Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Eurus Combine Hills II LLC.

Description: Notice of Non-Material Change in Status of Avenal Park LLC, *et al.*

Filed Date: 8/10/12.

Accession Number: 20120810–5116.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER10–2532–002.

Applicants: Oasis Power Partners, LLC, Crescent Ridge LLC, Eurus Combine Hills I LLC, Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Eurus Combine Hills II LLC.

Description: Notice of Non-Material Change in Status of Avenal Park LLC, *et al.*

Filed Date: 8/10/12.

Accession Number: 20120810–5116.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER10–2722–002.

Applicants: Oasis Power Partners, LLC, Crescent Ridge LLC, Eurus Combine Hills I LLC, Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Eurus Combine Hills II LLC.

Description: Notice of Non-Material Change in Status of Avenal Park LLC, *et al.*

Filed Date: 8/10/12.

Accession Number: 20120810–5116.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER10–2787–002.

Applicants: Oasis Power Partners, LLC, Crescent Ridge LLC, Eurus Combine Hills I LLC, Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Eurus Combine Hills II LLC.

Description: Notice of Non-Material Change in Status of Avenal Park LLC, *et al.*

Filed Date: 8/10/12.

Accession Number: 20120810–5116.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER11–2855–003.

Applicants: Oasis Power Partners, LLC, Crescent Ridge LLC, Eurus Combine Hills I LLC, Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Eurus Combine Hills II LLC.

Description: Notice of Non-Material Change in Status of Avenal Park LLC, *et al.*

Filed Date: 8/10/12.

Accession Number: 20120810–5116.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER11–2856–003.

Applicants: Oasis Power Partners, LLC, Crescent Ridge LLC, Eurus Combine Hills I LLC, Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Eurus Combine Hills II LLC.

Description: Notice of Non-Material Change in Status of Avenal Park LLC, *et al.*

Filed Date: 8/10/12.

Accession Number: 20120810–5116.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER11–2857–003.

Applicants: Oasis Power Partners, LLC, Crescent Ridge LLC, Eurus Combine Hills I LLC, Avenal Park LLC, Sand Drag LLC, Sun City Project LLC, Eurus Combine Hills II LLC.

Description: Notice of Non-Material Change in Status of Avenal Park LLC, *et al.*

Filed Date: 8/10/12.

Accession Number: 20120810–5116.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–1801–001.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Attachment C Compliance Filing to be effective 7/16/2012.

Filed Date: 8/10/12.

Accession Number: 20120810–5069.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–2435–000.

Applicants: Entergy Mississippi, Inc.

Description: EMI–SMEPA 2nd Rev IA RS 251 to be effective 8/18/2011.

Filed Date: 8/10/12.

Accession Number: 20120810–5067.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–2436–000.

Applicants: Arizona Public Service Company.

Description: LGIA for the Foothills Solar Project, Service Agreement No. 324 to be effective 8/31/2012.

Filed Date: 8/10/12.

Accession Number: 20120810–5070.

Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–2437–000.

Applicants: Granite State Electric Company.

Description: 2012 Borderline Sales Tariff Rate Update to be effective 11/1/2011.

Filed Date: 8/10/12.

Accession Number: 20120810–5091.

Comments Due: 5 p.m. ET 8/31/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–20332 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–133–000.
Applicants: Michigan Power Limited Partnership.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of Michigan Power Limited Partnership.
Filed Date: 8/10/12.
Accession Number: 20120810–5081.
Comments Due: 5 p.m. ET 8/31/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–97–000.
Applicants: Energy Alternatives Wholesale, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Energy Alternatives Wholesale LLC.
Filed Date: 8/9/12.
Accession Number: 20120809–5122.
Comments Due: 5 p.m. ET 8/30/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–686–001.
Applicants: Citizens Sunrise Transmission LLC.
Description: Compliance Filing of Citizens Sunrise Transmission LLC to be effective 7/3/2012.
Filed Date: 8/10/12.
Accession Number: 20120810–5003.
Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–2312–001.
Applicants: Perigee Energy, LLC.
Description: Perigee Energy, LLC Rate Schedule FERC No. 1 Revision to be effective 8/10/2012.
Filed Date: 8/10/12.
Accession Number: 20120810–5008.
Comments Due: 5 p.m. ET 8/31/12.

Docket Numbers: ER12–2430–000.
Applicants: AP&G Holdings LLC.
Description: Baseline New to be effective 8/10/2012.
Filed Date: 8/9/12.
Accession Number: 20120809–5098.
Comments Due: 5 p.m. ET 8/30/12.

Docket Numbers: ER12–2431–000.
Applicants: Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy Services, Inc.
Description: EMI–SMEPA 2nd Rev IA RS 251 to be effective 8/18/2011.
Filed Date: 8/9/12.
Accession Number: 20120809–5107.
Comments Due: 5 p.m. ET 8/30/12.

Docket Numbers: ER12–2433–000.
Applicants: NorthWestern Corporation.
Description: Service Agreement No. 644—Carter Grain Terminal Project to be effective 8/13/2012.
Filed Date: 8/10/12.
Accession Number: 20120810–5045.
Comments Due: 5 p.m. ET 8/31/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–20331 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–132–000.
Applicants: Sandy Ridge Wind, LLC.
Description: Application for Authorization for Disposition of Jurisdictional facilities and Request for Expedited Action of Sandy Ridge Wind, LLC.
Filed Date: 8/9/12.
Accession Number: 20120809–5079.
Comments Due: 5 p.m. ET 8/30/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1873–002.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: SA 1926 DTIA Consumers—METC Amended Compliance to be effective 6/1/2012.
Filed Date: 8/9/12.
Accession Number: 20120809–5061.
Comments Due: 5 p.m. ET 8/30/12.

Docket Numbers: ER12–2424–000.
Applicants: Public Service Company of New Mexico.
Description: PNM OATT Service Agreement No. 392 Tres Amigas, LLC to be effective 10/7/2012.
Filed Date: 8/8/12.
Accession Number: 20120808–5122.
Comments Due: 5 p.m. ET 8/29/12.

Docket Numbers: ER12–2425–000.
Applicants: Southern California Edison Company.
Description: Notices of Cancellation to GIA and DSA SPVP47 Roof Top Solar Project to be effective 8/8/2012.
Filed Date: 8/9/12.
Accession Number: 20120809–5003.
Comments Due: 5 p.m. ET 8/30/12.

Docket Numbers: ER12–2426–000.
Applicants: Michigan Electric Transmission Company, LLC.
Description: METC Certificate of Concurrence to be effective 8/9/2012.
Filed Date: 8/9/12.
Accession Number: 20120809–5029.
Comments Due: 5 p.m. ET 8/30/12.

Docket Numbers: ER12–2427–000.
Applicants: Lakefield Wind Project, LLC.
Description: Lakefield Wind Project FERC Electric Tariff Cancellation to be effective 9/30/2012.
Filed Date: 8/9/12.
Accession Number: 20120809–5033.
Comments Due: 5 p.m. ET 8/30/12.

Docket Numbers: ER12–2428–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: SA 2467 MDU–MDU GIA J200 to be effective 8/10/2012.
Filed Date: 8/9/12.
Accession Number: 20120809–5054.
Comments Due: 5 p.m. ET 8/30/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings

must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–20330 Filed 8–17–12; 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 hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

PJM Regional Transmission Planning Task Force Conference Call
August 17, 2012, 1 p.m.–4 p.m., Local Time

Markets and Reliability Committee
August 23, 2012, 9 a.m.–3:30 p.m., Local Time

Transmission Owner Cost Allocation Conference Call
September 5, 2012, 10 a.m.–12 p.m., Local Time

Combined Markets and Reliability Committee/Members Committee
September 27, 2012, 9 a.m.–5 p.m., Local Time

The above-referenced meetings will be held over conference call or at:

The Chase Center on the Riverfront, Wilmington, DE

The PJM Conference & Training Center, Norristown, PA

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. ER10–253 and EL10–14, *Primary Power, L.L.C.*

Docket No. EL10–52, *Central Transmission, LLC v. PJM Interconnection, L.L.C.*

Docket No. ER11–4070, *RITELine Indiana et. al.*

Docket No. ER11–2875 and EL11–20, *PJM Interconnection, L.L.C.*

Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*

Docket No. ER09–1589, *FirstEnergy Service Company*

Docket No. ER10–549, *PJM Interconnection, L.L.C.*

Docket No. EL11–56, *FirstEnergy Service Company*

Docket No. EL12–38, *New York Independent System Operator, Inc.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER11–2140, *PJM Interconnection, L.L.C.*

Docket No. ER11–2622, *PJM Interconnection, L.L.C.*

Docket No. ER11–3106, *PJM Interconnection, L.L.C.*

Docket No. ER11–4379, *PJM Interconnection, L.L.C.*

Docket No. ER12–445, *PJM Interconnection, L.L.C.*

Docket No. ER12–773, *PJM Interconnection, L.L.C.*

Docket No. ER12–718, *New York Independent System Operator, Inc.*

Docket No. ER12–1177, *PJM Interconnection, L.L.C.*

Docket No. ER12–1178, *PJM Interconnection, L.L.C.*

Docket No. ER12–1693, *PJM Interconnection, L.L.C.*

Docket No. EL12–69, *Primary Power LLC v. PJM Interconnection, L.L.C.*

Docket No. ER12–1700, *PJM Interconnection, L.L.C.*

Docket No. ER12–1901, *GenOn Power Midwest, LP*

Docket No. ER12–2080, *GenOn Power Midwest, LP*

Docket No. ER12–2085, *PJM Interconnection, L.L.C.*

Docket No. ER12–2260, *New York Independent System Operator, Inc*

Docket No. ER12–2288, *PJM Interconnection, L.L.C.*

For more information, contact Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov.*

Dated: August 14, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20427 Filed 8–17–12; 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 hereby gives notice that members of the Commission's staff may attend the following meetings and/or teleconferences related to the transmission planning activities of the Southwest Power Pool, Inc. (SPP):

Regional Tariff Working Group—August 15–16, 2012.

Regional Tariff Working Group—August 22–23, 2012.

Regional Tariff Working Group—August 29–30, 2012.

The above-referenced Regional Tariff Working Group meeting will be held at: AEP Office, 8th Floor Conference Room, 1015 Elm St., Dallas, Texas 75201.

The above-referenced meetings and teleconferences are open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER09–35–001, *Tallgrass Transmission, LLC.*

Docket No. ER09–36–001, *Prairie Wind Transmission, LLC.*

Docket No. ER09–548–001, *ITC Great Plains, LLC.*

Docket No. ER09–659–002, *Southwest Power Pool, Inc.*

Docket No. ER11–4105–000, *Southwest Power Pool, Inc.*

Docket No. EL11–34–001, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–1179–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1401–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1401–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1415–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1460–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1610–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1772–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1779–000, *Southwest Power Pool, Inc.*

Docket No. ER12–2366–000, *Southwest Power Pool, Inc.*

Docket No. EL12–2–000, *Southwest Power Pool, Inc.*

Docket No. EL12–60–000, *Southwest Power Pool, Inc., et al.*

For more information, contact Luciano Lima, Office of Energy Markets

Regulation, Federal Energy Regulatory Commission at (202) 502–6210 or *luciano.lima@ferc.gov.*

Dated: August 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20312 Filed 8–17–12; 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 hereby gives notice that members of the Commission's staff may attend the following meetings and/or teleconferences related to the transmission planning activities of the Southwest Power Pool, Inc. (SPP):

Seams FERC Order No. 1000 Task Force—August 17, 2012.

Seams FERC Order No. 1000 Task Force—August 24, 2012.

Seams FERC Order No. 1000 Task Force—August 31, 2012.

The above-referenced teleconferences are open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER09–35–001, *Tallgrass Transmission, LLC.*

Docket No. ER09–36–001, *Prairie Wind Transmission, LLC.*

Docket No. ER09–548–001, *ITC Great Plains, LLC.*

Docket No. ER09–659–002, *Southwest Power Pool, Inc.*

Docket No. ER11–4105–000, *Southwest Power Pool, Inc.*

Docket No. EL11–34–001, *Midwest Independent Transmission System Operator, Inc.*

Docket No. ER12–1179–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1401–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1401–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1415–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1460–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1586–001, *Southwest Power Pool, Inc.*

Docket No. ER12–1610–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1772–000, *Southwest Power Pool, Inc.*

Docket No. ER12–1779–000, *Southwest Power Pool, Inc.*

Docket No. ER12–2366–000, *Southwest Power Pool, Inc.*

Docket No. EL12–2–000, *Southwest Power Pool, Inc.*

Docket No. EL12–60–000, *Southwest Power Pool, Inc., et al.*

For more information, contact Luciano Lima, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6210 or *luciano.lima@ferc.gov*.

Dated: August 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20313 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF12–6–000]

Columbia Gas Transmission, LLC; Supplemental Notice of Intent To Prepare an Environmental Assessment for the Planned Line MB Loop Extension Project and Request for Comments on Environmental Issues

On August 1, 2012, Columbia Gas Transmission, LLC (Columbia) filed its intent to modify the Line MB Loop Extension Project (project) in Baltimore and Harford Counties, Maryland, by incorporating the Alternative Route 16.55A into it's proposed route and dropping the BGE Route Alternative from further consideration. On April 16, 2012, a Notice of Intent to Prepare an Environmental Assessment (original NOI) was issued for the project as originally planned. This Supplemental Notice of Intent (supplemental NOI) addresses these changes. The original NOI is attached to this document, so certain information included in it will not be repeated in the supplemental NOI including the original project description, information about becoming an intervenor, and how to find additional information about the project.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the project involving construction and operation of the facilities planned by Columbia, including the supplemental facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are receiving this supplemental NOI, you may be affected by Alternate Route 16.55A. This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on these supplemental facilities for the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on September 10, 2012.

This supplemental NOI is being sent to the affected landowners along the Alternative Route 16.55A facilities proposed by Columbia for the project on August 1, 2012. State and local government representatives are asked to notify their constituents of this modification to the planned project and encourage them to comment on their areas of concern. We invite you to file comments; but, we request that you file comments only pertinent to Alternative Route 16.55A.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

Columbia plans to construct about 21.4 miles of 26-inch-diameter pipeline in Baltimore and Harford Counties, Maryland. The new pipeline would primarily in installed within or adjacent to it's existing rights-of-way.

The planned supplemental facilities would include the Alternative Route 16.55A which would be about 4.1 miles of 26-inch-diameter pipeline departing from the existing Line MA near milepost (MP) 16.55 and ending at MP 21. It would begin where the existing Line MA corridor crosses Dunstan Lane and would parallel Stansbury Mill Road eastward to Allison Road. From this point it would parallel Allison Road

northward, and then cross this road extending to the northeast to cross Little Gunpowder Falls. It would continue north northeastward through agricultural land and then turn east southeastward parallel to Hess Road behind the residences along Hess Road. It would then cross Fallston Road and Kings Arms Drive, and turn southeastward to tie back to the Line MA corridor. Because Columbia intends to incorporate this route alternative into the Line MB Loop Extension Project, it longer considers the BGE Route Alternative as part of the proposed route.

The general location of the project facilities is shown in appendix 1.[1]

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species; and
- Public safety.

We will also continue to evaluate possible alternatives to the planned project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before an application is filed with the FERC. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

Our independent analysis of the issues will be presented in the EA. The EA will be placed in the public record and, depending on the comments received during the scoping process, may be published and distributed to the public. A comment period will be allotted if the EA is published for review. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the Public Participation section below.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office, and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project is further developed. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC, on or before September 10, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF10–15–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project.

(2) You can file your comments electronically by using the eFiling featured on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

You have been added to the current environmental mailing list which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local newspapers. This list also includes all the affected landowners (as defined in the Commission's regulations) for the project as originally planned who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of above ground facilities, and anyone who submits comments on the project. We will update the environmental mailing

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If the EA is published for distribution, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 2).

Dated: August 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20310 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–2430–000]

AP&G 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 AP&G 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 August 30, 2012.

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: August 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–20328 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–12–000]

Coordination Between Natural Gas and Electricity Markets; Supplemental Notice of Technical Conference

As announced in the Notices issued on July 5, 2012 [1] and July 17, 2012,[2] the Federal Energy Regulatory Commission (Commission) staff will hold a technical conference on Monday, August 20, 2012, from 9 a.m. to approximately 5:30 p.m. to discuss gas-electric coordination issues in the Northeast region. The agenda and list of roundtable participants for this conference is attached. This conference is free of charge and open to the public.

Commission members may participate in the conference.

The Northeast region technical conference will be held at the following venue: Hyatt Harborside at Boston's Logan International Airport, 101 Harborside Drive, Boston, MA 02128, USA, Tel: 1–617–568–1234, 1–888–421–1442 (toll free).

If you have not already done so, those who plan to attend the Northeast region technical conference are strongly encouraged to complete the registration form located at: *www.ferc.gov/whats-new/registration/nat-gas-elec-mkts-form.asp*. There is no deadline to register to attend the conference. The dress code for the conference will be business casual. The agenda and roundtable participants for the remaining technical conferences will be issued in supplemental notices at later dates.

The Northeast region technical conference will not be transcribed. However, there will be a free audiocast of the conference. The audiocast will allow persons to listen to the Northeast region technical conference, but not participate. Anyone with Internet access who desires to listen to the Northeast region conference can do so by navigating to *www.ferc.gov's* Calendar of Events and locating the Northeast region technical conference in the Calendar. The Northeast region technical conference will contain a link to its audiocast. The Capitol Connection provides technical support for audiocasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.[3]

Information on this and the other regional technical conferences will also be posted on the Web site *www.ferc.gov/industries/electric/indus-act/electric-coord.asp,* as well as the Calendar of Events on the Commission's Web site *www.ferc.gov*. Changes to the agenda or list of roundtable participants for the Northeast region technical conference, if any, will be posted on the Web site *www.ferc.gov/industries/electric/indus-act/electric-coord.asp* prior to the conference.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice)

[1] Coordination between Natural Gas and Electricity Markets, Docket No. AD12–12–000 (July 5, 2012) (Notice of Technical Conferences) (*http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13023450*); 77 Fed. Reg. 41184 (July 12, 2012) (*http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16997.pdf*).

[2] Coordination between Natural Gas and Electricity Markets, Docket No. AD12–12–000 (July 17, 2012) (Supplemental Notice of Technical Conferences) (*http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13029403*).

[3] The audiocast will continue to be available on the Calendar of Events on the Commission's Web site *www.ferc.gov* for three months after the conference.

or 202–502–8659 (TTY), or send a Fax to 202–208–2106 with the required accommodations.

For more information about this and the other regional technical conferences, please contact:

Pamela Silberstein, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8938, *Pamela.Silberstein@ferc.gov*.

Sarah McKinley, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8004, *Sarah.McKinley@ferc.gov*.

Dated: August 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–20329 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14415–000]

Natural Currents Energy Services, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 22, 2012, Natural Currents Energy Services, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Alexandria Bay Hydroelectric Project, which would be located on the St. Lawrence River in Jefferson County, New York. The proposed project would not use a dam or impoundment. 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: (1) Installation of 50 NC Sea Dragon tidal turbines at a rated capacity of 100 kilowatts, (2) an estimated 2.5 kilometers in length of additional transmission infrastructure, and (3) appurtenant facilities. Initial estimated production would be a minimum of 17,520 megawatt hours per year with the installation of 50 units.

Applicant Contact: Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, New York 12561, (845) 691–4009.

FERC Contact: Woohee Choi (202) 502–6336.

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 the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14415) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: August 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20309 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–493–000]

Cadeville Gas Storage LLC; Notice of Request Under Blanket Authorization

On July 27, 2012, Cadeville Gas Storage LLC (Cadeville) filed with the Federal Energy Regulatory Commission (Commission) an application under section 157.213(b) of the Commission's Regulations for authority to construct an additional natural gas storage and injection well at Cadeville's natural gas storage facility in Ouachita Parish, Louisiana. The storage facility was originally approved by FERC in Docket No. CP10–16–000 on August 10, 2010, as more fully detailed in the Application.

Questions concerning this application may be directed to Paul T. Lanham, Sr. Vice President Engineering and Operations, Cadeville Gas Storage Company, LLC, Three Riverway, Suite 1350, Houston, Texas 77056, or by calling 713–350–2500 or by emailing *Paul.Lanham@cardinalgs.com*.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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 seven 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.

Dated: August 9, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–20311 Filed 8–17–12; 8:45 am]

BILLING CODE 6717–01–P

EXPORT–IMPORT BANK

[Public Notice 2012–0444]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of $100 million.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter).

Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

DATES: Comments must be received on or before September 14, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through *www.regulations.gov.*

SUPPLEMENTARY INFORMATION:

Reference: AP085466XX.

Purpose and Use

Brief description of the purpose of the transaction:

To support the export of U.S. services and equipment to Saudi Arabia.

Brief non-proprietary description of the anticipated use of the items being exported:

The U.S. exports will be used for the design and construction of a petrochemical complex.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties

Principal Suppliers: Kellogg Brown & Root Incorporated; Jacobs Engineering Group Incorporated; Foster Wheeler AG; Fluor Corporation.

Obligor: The obligor is a special purpose vehicle anticipated to be named ''Sadara Chemical Company.''

Guarantor(s): The Dow Chemical Company, Dow Europe Holding B.V., and Saudi Arabian Oil Company.

Description of Items Being Exported

The items being exported are design work, construction services, technology licenses, chemicals, and steam generation equipment.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute*.

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–20368 Filed 8–17–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

DATE & TIME: Thursday, August 23, 2012 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC (Ninth Floor)

STATUS: This hearing will be open to the public.

Item To Be Discussed

Audit Hearing: McCain-Palin 2008, Inc. and McCain-Palin Compliance Fund, Inc.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shelley E. Garr, Deputy Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–20532 Filed 8–16–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Thursday, August 23, 2012 at conclusion of the audit hearing (approximately 11:30 a.m.)

PLACE: 999 E Street NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

Items To Be Discussed

Correction and Approval of the Minutes for the Meeting of August 2, 2012.

Draft Advisory Opinion 2012–27: National Defense Committee.

Draft Advisory Opinion 2012–29: Hawaiian Airlines, Inc.

Draft Advisory Opinion 2012–30: Revolution Messaging, LLC.

Audit Division Recommendation Memorandum on the National Campaign Fund (A09–26).

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Shelley E. Garr, Deputy Secretary, at (202) 694–1040, at least 72 hours prior to the meeting date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shawn Woodhead Werth,

Secretary and Clerk of the Commission.

[FR Doc. 2012–20534 Filed 8–16–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB)

delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before October 19, 2012.

ADDRESSES: You may submit comments, identified by FR 2004 or FR Y–15, by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report

Report title: The Government Securities Dealers Reports: Weekly Report of Dealer Positions (FR 2004A), Weekly Report of Cumulative Dealer Transactions (FR 2004B), Weekly Report of Dealer Financing and Fails (FR 2004C), Weekly Report of Specific Issues (FR 2004SI), Daily Report of Specific Issues (FR 2004SD), Supplement to the Daily Report of Specific Issues (FR 2004SD ad hoc), and Daily Report of Dealer Activity in Treasury Financing (FR 2004WI).

Agency form number: FR 2004.

OMB control number: 7100–0003.

Frequency: Weekly, daily.

Reporters: Dealers in the U.S. government securities market.

Estimated annual reporting hours: FR 2004A, 3,058 hours; FR 2004B, 3,822 hours; FR 2004C, 3,276 hours; FR 2004SI, 2,293 hours; FR 2004SD, 1,103 hours; FR 2004SD ad hoc, 1,092 hours; FR 2004WI, 3,360 hours.

Estimated average hours per response: FR 2004A, 2.8 hours; FR 2004B, 3.5 hours; FR 2004C, 3.0 hours; FR 2004SI, 2.1 hours; FR 2004SD, 2.1 hours; FR 2004SD ad hoc, 2.0 hours; FR 2004WI, 1.0 hour.

Number of respondents: 21.

General description of report: This information collection is authorized by sections 2A, 12A(c), 14, and 15 of the Federal Reserve Act (12 U.S.C. 225a, 263c, 353–359, and 391) and is required to obtain or retain the benefit of dealer status. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR 2004A collects weekly data on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects cumulative weekly data on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects weekly data on the amounts of dealer financing and fails. The FR 2004SI collects weekly data on position, transaction, financing, and fails for the most recently issued on-the-run Treasury securities (the most recently issued Treasury securities for each maturity class). When unusual trading practices occur for a specific security, this information can be collected on a daily basis on the FR 2004SD for either on-the-run Treasury securities or off-the-run Treasury securities. The FR 2004SD ad hoc collects up to 10 ad hoc data items

when critical information is required for additional market surveillance. The FR 2004WI collects daily data on positions in to-be-issued Treasury coupon securities, mainly the trading on a when-issued delivery basis.

Current Actions: Provided below is a list of the proposed revisions to each reporting form followed by a more detailed discussion of the justification for each of the proposed revisions, effective March 31, 2013.

FR 2004A and B

1. Include new maturity breakdowns for Treasury coupon securities and Treasury inflation-protected securities (TIPS).
2. Consolidate maturity breakdowns for agency and government sponsored enterprise (GSE) debentures.
3. Expand MBS reporting to include separate reporting of agency and non agency mortgage-backed securities (MBS) as well as separate reporting of residential pass-through, non pass-through, and commercial mortgage-backed securities (CMBS).
4. Expand reporting of corporate securities data with separate reporting of commercial paper and investment grade/non-investment grade debt securities.
5. Include new asset classes for state and municipal government obligations and asset-backed securities.

FR 2004C

1. Split securities financing data into repurchase agreements/reverse repurchase agreements and other financing activity-securities lent/borrowed.
2. Expand the asset classes for securities financing into U.S. Treasury coupons, TIPS, agency and GSE debentures, agency MBS, corporate debt, equities, and other.
3. Expand financing terms to overnight/continuing, less than 30 days, and 30 days or greater.
4. Expand securities settlement fails granularity to U.S. Treasury coupons, TIPS, agency and GSE debentures, agency and GSE MBS, other MBS, and corporate debt securities.

FR 2004SI and FR 2004SD

Split outright transactions for Treasury securities into two counterparty types, with interdealer brokers and with others.

Expanded Granularity on MBS Products

Expanding the granularity of MBS data reported on the FR 2004A, B, and C is proposed. Non federal agency and GSE-issued MBS would be collected as a distinct asset class on the FR 2004A and B reporting forms instead of in the corporate securities category. In addition, residential MBS and commercial MBS would be collected as distinct categories. Transactions in agency pass through securities would be separately classified as ''cash'' or as part of a ''dollar roll,'' providing information on the critical role of primary dealers in intermediating dollar roll transactions and agency MBS financing to market participants. The significant expansion of data collected would allow for a greater understanding of critical markets that directly affect the System Open Market Account, where agency MBS holdings currently account for over 30% of total securities holdings. It would also allow for a greater understanding of the non-agency MBS market by itself as well as the interplay between the non-agency and agency MBS markets. In addition, the increased transparency in these important markets would benefit both the Federal Reserve in its role in financial stability as well as the public through the expansion of publically available aggregate statistics.

Additional Information on Treasury Coupon and TIPS

Expanding the maturity groupings from four to six categories for Treasury coupon securities on the FR 2004A and B is proposed to better align with Treasury issuance patterns. The new maturity splits are constructed so that each one includes a benchmark on-the-run security. To improve the interpretive power of TIPS data on the FR 2004A and B, four new data items for TIPS are proposed. The four new data items would collect TIPS by maturity buckets split so that each has one on-the-run TIPS plus an additional division for short-term TIPS, which tend to trade separately. Adding a column to collect interdealer transactions on the FR 2004SI is proposed to align it with counterparty reporting on the FR 2004B reporting form, which would improve the usefulness of both forms.

Consolidation of Agency and GSE Debenture Reporting

Reflective of current issuance patterns toward shorter maturities, consolidation of agency debenture reporting is proposed on the FR 2004A and B reporting form. All coupon securities would be reported in aggregate, eliminating the current reporting that splits positions and transactions into four separate maturity categories.

Expansion of Securities Financing Data

An expansion of securities financing data is proposed on the FR 2004C including the broadening of collateral asset classes as well as separate reporting of repurchase/reverse repurchase agreements from other types of collateralized financing and additional granularity of contract terms. The changes in financing reporting, when used in conjunction with existing tri-party and general collateral financing (GCF) repurchase agreement data, would allow for a clearer understanding of activity in the repurchase agreement markets. Separate capture of financing of U.S. equities is proposed, as is a separate residual category ''Other,'' primarily for financing of asset-backed securities (ABS), municipals, and non-agency issued MBS and collateralized mortgage obligations (CMO). Contract terms for securities financing would expand from two to three categories with over/under 30 day terms collected separately. The new split of contract terms would make the data series more analytically useful as it more closely aligns with common industry practices and market segments.

Expanded Settlement Fails Data

Separate collection of non agency or GSE issued MBS is proposed on the FR 2004C reporting form. This change would provide consistent treatment of non agency or GSE-issued MBS across all of the FR 2004 reporting forms and would simultaneously enhance the usefulness of the corporate settlement fails data by narrowing the definition of corporate securities with the removal of this asset class.

Publication of Aggregate Data

Publication of aggregate data of all new items from the FR 2004A, B, and C is proposed. Publication of aggregate Treasury on-the-run data with an 8-day lag from the FR 2004SI form is also proposed. The expansion of published aggregate statistics would improve market transparency across the affected markets.

Clarifications to the Instructions

The instructions would be revised to (1) cover all proposed data items including asset classes that have been added since the last reports review (e.g., ABS, municipal bonds) and (2) restructure the format and layout with extensive clarifications and structural changes.

Proposal To Approve Under OMB Delegated Authority the Implementation of the Following Report

Report title: The Banking Organization Systemic Risk Report.

Agency form number: FR Y–15.

OMB control number: 7100-to-be-assigned.

Frequency: Annual.

Reporters: U.S. bank holding companies (BHCs) and savings and loan holding companies (SLHCs) with $50 billion or more of total consolidated assets and foreign banking organizations (FBOs) with $50 billion or more of assets in their combined U.S. operations (including branches).

Estimated annual reporting hours: 11,340 hours.

Estimated average hours per response: 180 hours.

Number of respondents: 63.

General description of report: This information collection is authorized by sections 163, 165, and 604 of the Dodd-Frank Act and the International Banking Act (12 U.S.C. 1462, 1467, and 3106). The obligation to respond to the FR Y–15 is mandatory. The Federal Reserve proposes that all report data from the FR Y–15 be made available publicly through the FFIEC Web site.

Abstract: The FR Y–15 would collect consolidated systemic risk data from large U.S. BHCs and U.S. SLHCs, and aggregated systemic risk data on the U.S. operations of certain FBOs. Data collected from this report would be derived directly from a data collection developed by the Basel Committee on Banking Supervision (Basel Committee). The Federal Reserve would submit the BHC data to the Basel Committee for use in determining whether an institution is a global systemically important bank (G–SIB) and, if so, what additional capital requirement would be applied. The full data set, which includes large SLHCs and the domestic activities of FBOs, would be used by the Federal Reserve to assess the systemic risk implications of proposed mergers and acquisitions and may be used to determine whether an institution is a domestic systemically important bank.

Current Actions: The Federal Reserve proposes to implement the FR Y–15. The data items collected in this report would mirror those that were developed by the Basel Committee to assess the global systemic importance of banks. The report would consist of the following schedules:

- Schedule A—Size Indicators;
- Schedule B—Interconnectedness Indicators;
- Schedule C—Substitutability Indicators;
- Schedule D—Complexity Indicators;
- Schedule E—Cross-Jurisdictional Activity Indicators; and
- Schedule F—Ancillary Indicators.

Schedule A—Size Indicators

The larger a firm is in terms of total assets, the larger the potential impact to the global financial system should that firm default. The size metric is identical to the total exposures value used in the leverage ratio and would be calculated using both on- and off-balance sheet data. On-balance sheet items would include total on-balance sheet assets, netted and unnetted securities financing transactions, securities received as collateral in securities lending, cash collateral received in conduit securities lending transactions, derivative exposures with a net positive fair value, and cash collateral netted against net positive derivative exposures. Off balance sheet items would include potential future exposure of derivatives, total notional amount of credit derivatives sold, credit derivatives sold net of related credit protection bought, off-balance sheet items with a 0% credit conversion factor (CCF), unconditionally cancellable credit card commitments, other unconditionally cancellable commitments, off-balance sheet items with a 20% CCF, off-balance sheet items with a 50% CCF, and off-balance sheet items with a 100% CCF. Certain regulatory adjustments to Tier 1 capital would also be collected.

Schedule B—Interconnectedness Indicators

The Interconnectedness Indicators Schedule is comprised of three subcategories: intra-financial system assets, intra-financial system liabilities, and securities issued. Intra-financial system assets would be comprised of all funds deposited with or lent to other financial institutions, undrawn committed lines extended to other financial institutions, holdings of secured debt securities, holdings of senior unsecured debt securities, holdings of subordinated debt securities, holdings of commercial paper, holdings of certificates of deposit, holdings of stock (including par and surplus of common and preferred shares), offsetting short positions in relation to stock holdings, net positive current exposure of securities financing transactions, net positive fair value of over-the-counter (OTC) derivatives (including collateral held if it is within the master netting agreement), potential future exposure of OTC derivatives, and fair value of collateral that is held outside of the master netting agreements.

Intra-financial system liabilities would include all funds deposited by banks, all funds deposited by non-bank financial institutions, undrawn committed lines obtained from other financial institutions, net negative current exposure of securities financing transactions, net negative fair value of OTC derivatives (include collateral provided if it is within the master netting agreement), potential future exposure of OTC derivatives, and fair value of collateral that is provided outside of the master netting agreements.

Securities issued by the bank would include secured debt securities, senior unsecured debt securities, subordinated debt securities, commercial paper, certificates of deposit, and stock (including par and surplus of common and preferred shares).

Schedule C—Substitutability Indicators

The Substitutability Indicators Schedule would include the total value of all payments sent by the bank (and the total value of all payments sent on behalf of other institutions), for the reporting year, in Australian dollars, Brazilian real, Canadian dollars, Swiss francs, Chinese yuan, Euros, Pound sterling, Hong Kong dollars, Indian rupee, Japanese yen, Swedish krona, and United States dollars. All outgoing payments would be included regardless of whether the payments were initiated directly via a payment system or indirectly via an agent bank. The reported payment totals would reflect gross payment activity (i.e., they would not be netted against any incoming payments). It also would include the value of assets the bank holds as a custodian on behalf of customers, equity underwriting activity, and debt underwriting activity.

Schedule D—Complexity Indicators

The Complexity Indicators Schedule would include OTC derivatives cleared through a central counterparty, OTC derivatives cleared bilaterally, held-for-trading securities (HFT), available-for-sale securities (AFS), securities for which the fair value option is elected (FVO), total stock of Level 1 assets, total stock of Level 1 assets under HFT, AFS or FVO accounting treatment, total stock of Level 2 assets, total stock of Level 2 assets under HFT, AFS or FVO accounting treatment, adjustment to stock of high quality liquid assets due to cap on Level 2 assets, held-to-maturity securities, and assets valued using Level 3 measurement inputs.

Schedule E—Cross-Jurisdictional Activity Indicators

The Cross-jurisdictional Activity Indicators Schedule would include total foreign claims on an ultimate risk basis, foreign liabilities (excluding local

liabilities in local currency), foreign liabilities to related offices, and local liabilities in a local currency.

Schedule F—Ancillary Indicators

The Ancillary Indicators Schedule would include total liabilities, retail funding, non-domestic net revenue, total net revenue, total gross revenue, equity market capitalization, gross value of all cash and gross fair value of securities lent in securities financing transactions, gross value of all cash and gross fair value of securities borrowed in securities financing transactions, gross positive fair value of OTC derivatives transactions, gross negative fair value of OTC derivatives transactions, unsecured settlement/clearing lines provided, and number of jurisdictions.

The Federal Reserve proposes to implement the collection of the new systemic risk report as of December 31, 2012, so that it may be used in the next G–SIB data collection exercise, which is scheduled to begin in February 2013.

Board of Governors of the Federal Reserve System, August 15, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–20325 Filed 8–17–12; 8:45 am]

BILLING CODE 6210–01–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 September 14, 2012.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Fulton Financial Corporation,* Lancaster, Pennsylvania; to acquire up to 7.3 percent of the voting shares of Bryn Mawr Bank Corporation, and thereby indirectly acquire voting shares of The Bryn Mawr Trust Company, both in Bryn Mawr, Pennsylvania.

Board of Governors of the Federal Reserve System, August 15, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–20375 Filed 8–17–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 2012.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. *Customers Bancorp, Inc.,* Wyomissing, Pennsylvania; to acquire 100 percent of the voting shares of Acacia Federal Savings Bank, Falls Church, Virginia, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii).

Board of Governors of the Federal Reserve System, August 15, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–20374 Filed 8–17–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend through November 30, 2015, the current Paperwork Reduction Act (''PRA'') clearance for the FTC's shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the information collection requirements in subpart N of Regulation V. That clearance expires on November 30, 2012.

DATES: Comments must be filed by October 19, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Subpart N of Regulation V, PRA Comment, P125403,'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/SubpartNRegulationVPRA* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Tiffany George, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–3040, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Title X of the Dodd-Frank Wall Street Reform and

Consumer Protection Act [1] transferred rulemaking authority for several consumer financial protection laws to the CFPB. Accordingly, the Commission rescinded several rules under the Fair Credit Reporting Act, including the FTC's Free Annual File Disclosures Rule that appeared under 16 CFR parts 610 and 698.

On December 21, 2011, the CFPB issued an interim final rule, Regulation V (Fair Credit Reporting), 12 CFR part 1022, which incorporated within its subpart N (Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers), with only minor changes (non-substantive, technical, formatting, and stylistic), the former Free Annual File Disclosures Rule, and in Appendix L to Part 1022, the associated model notice.[2] Subpart N of Regulation V continues the disclosure requirements that had existed under the Free Annual File Disclosures Rule. Because the FTC shares enforcement authority with the CFPB for subpart N, the two agencies have split between them the related estimate of PRA burden for firms under their co-enforcement jurisdiction.

Subpart N requires nationwide consumer reporting agencies and nationwide consumer specialty reporting agencies to provide to consumers, upon request, one free file disclosure within any 12-month period. Generally, it requires the nationwide consumer reporting agencies, as defined in Section 603(p) of the FCRA, 15 U.S.C. 1681a(p), to create and operate a centralized source that provides consumers with the ability to request their free annual file disclosures from each of the nationwide consumer reporting agencies through a centralized Internet Web site, toll-free telephone number, and postal address. Subpart N also requires the nationwide consumer reporting agencies to establish a standardized form for Internet and mail requests for annual file disclosures, and provides a model standardized form that may be used to comply with that requirement. It additionally requires nationwide specialty consumer reporting agencies, as defined in Section 603(w) of the FCRA, 15 U.S.C. 1681a(w), to establish a streamlined process for consumers to request annual file disclosures. This streamlined process must include a toll-free telephone number for consumers to make such requests.

Under the PRA, 44 U.S.C. 3501–3521, Federal agencies must get OMB approval for each collection of information they conduct or sponsor. ''Collection of information'' includes agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). The FTC is seeking clearance for its assumed share of the estimated PRA burden regarding the disclosure requirements under subpart N of Regulation V.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before October 19, 2012.

Burden statement: On February 3, 2012, OMB cleared the FTC's adjusting entries to split PRA burden with the CFPB regarding the formerly designated Free Annual File Disclosures Rule. The FTC's currently cleared burden totals are 155,512 hours and $4,195,000 in non-labor/capital costs.[3] Associated labor costs are $2,595,710. These figures represent a halving of the FTC's prior burden estimates, including the incremental effects of the FTC's 2010 final amendments [4] to the Free Annual File Disclosures Rule.

The FTC's updated estimates, excluding the halving (to be shown at the conclusion of this analysis), are as follows:

A. Requests Per Year From Consumers for Free Annual File Disclosures

The Consumer Data Industry Association has stated that between December 2004 and December 2006, the nationwide consumer reporting agencies provided over 52 million free annual file disclosures through the centralized Internet Web site, toll-free telephone number, and postal address required to be established by the FACT Act and the Rule,[5] an annual rate of about 26 million requests per year. Because the prospective clearance renewal would run through November 30, 2015, by that time, nine years will have passed since the Commission received the data informing its past estimate of the yearly volume of requests for free credit reports. We expect that the number of requests for free annual credit reports has increased since 2006, both because of increases in the population and because consumers will have become more aware that they are entitled to a free annual report. As a proxy, we will use an estimate of 30 million requests per year as a representative average year to estimate PRA burden for purposes of the instant analysis.

The Commission, however, seeks more recent estimates of the number of requests consumers are making for free annual credit reports. In addition to data on the number of requests, data on how the number of requests has changed over time, and how these requests are being received—by Internet, phone, or by mail—would be most helpful.

B. Annual File Disclosures Provided Through the Internet

Both nationwide and nationwide specialty consumer reporting agencies will likely handle the overwhelming majority of consumer requests through Internet Web sites. The annual file disclosure requests processed through the Internet will not impose any hours burden per request on the nationwide and nationwide specialty consumer reporting agencies, even though consumer reporting agencies periodically will be required to adjust the Internet capacity needed to handle the changing request volume. Consumer reporting agencies likely will make such adjustments by negotiating or renegotiating outsourcing service contracts annually or as conditions change. Trained personnel will need to spend time negotiating and renegotiating such contracts. Commission staff estimates that negotiating such contracts will require a cumulative total of 8,320 hours and $502,611 in setup and/or maintenance costs.[6] Such activity is treated as an

[1] Public Law 111–203, 124 Stat. 1376 (2010). Title X comprises sections 1001–1100H (collectively, the ''Consumer Financial Protection Act of 2010'').

[2] 76 FR 79830, 79309 (Dec. 21, 2011).

[3] OMB Control No. 3084–0128.

[4] 77 FR 9726 (Mar. 3, 2010). These amendments have been incorporated into Regulation V subpart N. As explained below, however, there is no longer any incremental PRA burden presented by those amendments.

[5] Letter from Stuart K. Pratt, President & CEO, Consumer Data Industry Association, to Rep. Barney Frank, Committee on Financial Services, U.S. House of Representatives (Dec. 1, 2006).

[6] Based on the time necessary for similar activity in the federal government (including at the FTC), staff estimates that such contracting and administration will require approximately 4 full-time equivalent employees (''FTE'') for the web service contracts. Thus, staff estimates that administering the contract will require 4 FTE, which is 8,320 hours per year (4 FTE × 2,080 hours/year). The cost is based on the reported May 2011 Bureau of Labor Statistics (BLS) rate ($60.41) for computer and information systems managers. *See National Occupational and Wages—May 2011,* Table 1, *available at http://www.bls.gov/*

Continued

annual burden of maintaining and adjusting the changing Internet capacity requirements.

C. Annual File Disclosures Requested Over the Telephone

Most of the telephone requests for annual file disclosures will also be handled in an automated fashion, without any additional personnel needed to process the requests. As with the Internet, consumer reporting agencies will require additional time and investment to increase and administer the automated telephone capacity for the expected increase in request volume. The nationwide and nationwide specialty consumer reporting agencies will likely make such adjustments by negotiating or renegotiating outsourcing service contracts annually or as conditions change. Staff estimates that this will require a total of 6,240 hours at a cost of $376,958 in setup and/or maintenance costs.[7] This activity also is treated as an annual recurring burden necessary to obtain, maintain, and adjust automated call center capacity.

D. Annual File Disclosures Requiring Processing by Mail

Based on their knowledge of the industry, staff believes that no more than 1% of consumers (1% × 30 million, or 300,000) will request an annual file disclosure through U.S. postal service mail. Staff estimates that clerical personnel will require 10 minutes per request to handle these requests, thereby totaling 50,000 hours of time. [(300,000 × 10 minutes)/60 minutes = 50,000 hours]

In addition, whenever the requesting consumer cannot be identified using an automated method (a Web site or automated telephone service), it will be necessary to redirect that consumer to send identifying material along with the request by mail. Staff estimates that this will occur in about 5% of the new requests (or 1,485,000)[8] that were originally placed over the Internet or telephone. Staff estimates that clerical personnel will require approximately 10 minutes per request to input and process those redirected requests for a cumulative total of 247,500 clerical hours. [(1,485,000 × 10 minutes)/60 minutes = 247,500 hours]

E. Instructions to Consumers

The Rule also requires that certain instructions be provided to consumers. See Rule sections 1022.136(b)(2)(iv)(A, B), 1022.137(a)(2)(iii)(A, B). Minimal associated time or cost is involved, however. Internet instructions to consumers are embedded in the centralized source Web site and do not require additional time or cost for the nationwide consumer reporting agencies. Similarly, for telephone requests, the automated phone systems provide the requisite instructions when consumers select certain options. Some consumers who request their credit reports by mail might additionally request printed instructions from the nationwide and nationwide specialty consumer reporting agencies. Staff estimates that there will be a total of 1,785,000 requests each year for free annual file disclosures by mail.[9] Based on their knowledge of the industry, staff estimates that, of the predicted 1,785,000 mail requests, 10% (or 178,500) will request instructions by mail. If printed instructions are sent to each of these consumers by mail, requiring 10 minutes of clerical time per consumer, this will total 29,750 hours. [(178,500 instructions × 10 minutes)/60 minutes per hour].

F. 2010 FTC Final Amendments [10]

There is no further incremental PRA burden tied to the 2010 amendments. Previously FTC staff had estimated that administrative amendments to former section 610.2 (designed to prevent interference with consumers' ability to obtain their free annual file disclosures through the centralized source) would impose no more than a minimal, one-time burden for the nationwide consumer reporting agency to reconfigure the centralized source and their own proprietary Web sites. Those amendments, however, became effective April 2, 2010, so the implementation should now be complete. Moreover, the other amendments, which were to former section 610.4, did not constitute a PRA ''collection of information'' as defined by OMB's regulations that implement the PRA. The section 610.4 amendment required that all advertisements for ''free credit reports'' contain certain prescribed disclosures tailored to the medium used. OMB excludes from the definition of ''collection of information'' the ''public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public.'' 5 CFR 1320.3(c)(2).

G. Labor Costs

Labor costs are derived by applying hourly cost figures to the burden hours described above. Accordingly, staff estimates that processing of requests for annual file disclosures and instructions will be performed by clerical personnel, which will require 327,250 hours at a cost of $5,258,908. [(50,000 hours for handling initial mail request + 247,500 hours for handling requests redirected to mail + 29,750 hours for handling instructions mailed to consumers) × $16.07 per hour.[11]

H. Capital/Non-Labor Costs

As in the previous PRA clearance analysis, FTC staff believes it is likely that consumer reporting agencies will use third-party contractors (instead of their own employees) to increase the capacity of their systems. Because of the way these contracts are typically established, these costs will likely be incurred on a continuing basis, and will be calculated based on the number of requests handled by the systems. Staff estimates that the total annual amount to be paid for services delivered under these contracts is $12.22 million.[12]

I. Net Burden for FTC, After 50:50 Split

After halving the updated estimates to split the PRA burden with the CFPB regarding the formerly designated Free Annual File Disclosures Rule, the FTC's burden totals are 170,905 hours and $6,111,000 in non-labor/capital costs. Associated labor costs are $3,069,239.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 19, 2012. Write ''Subpart N of Regulation V, PRA Comment, P125403''

news.release/archives/ocwage_03272012.pdf. Thus, the estimated setup and maintenance cost for an Internet system is $502,611 per year (8,320 hours × $60.41/hour).

[7] Staff estimates that recurring contracting for automated telephone capacity will require approximately 3 FTE, a total of 6,240 hours (3 × 2,080 hours). Applying an hourly wage rate of $60.41 based on May 2011 BLS data for computer and information systems managers, the estimate for setup and maintenance cost is $376,958 (6,240 × $60.41) per year. *See http://www.bls.gov/news.release/archives/ocwage_03272012.pdf.*

[8] This figure reflects 5 percent of all requests, net of the estimated 1 percent of all requests that might initially be made by mail. That is, .05 × (30,000,000 − 300,000) = 1,485,000.

[9] This figure includes both the estimated 1% of 30 million requests that will be made by mail each year (300,000), and the estimated 1,485,000 requests initially made over the Internet or telephone that will be redirected to the mail process (see *supra* note 8).

[10] As noted above, the 2010 FTC amendments have been incorporated into what is now Regulation V, subpart N.

[11] *See National Occupational and Wages—May 2011,* Table 1, *available at http://www.bls.gov/news.release/archives/ocwage_03272012.pdf* (Office and administrative support workers, general).

[12] This consists of an estimated $8.19 million for automated telephone cost ($1.82 per request × 4.5 million requests) and an estimated $4.03 million ($0.16 per request × 25.2 million requests) for Internet web service cost. Per unit cost estimates are based on staff's knowledge of the industry.

on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is * * * privileged or confidential'' as provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c).[13] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/SubpartNRegulationVPRA,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Subpart N of Regulation V, PRA Comment, P125403'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J) 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 19, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Willard K. Tom,

General Counsel.

[FR Doc. 2012–20389 Filed 8–17–12; 8:45 am]

BILLING CODE 6750–01–P

[13] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2385–CN]

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals (QIs) for FY 2012

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

ACTION: Notice; correction.

SUMMARY: This document corrects a technical error that appeared in the notice published in the July 24, 2012 **Federal Register** (77 FR 43329) entitled ''State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals (QIs) for FY 2012.''

DATES: *Effective Dates:* The final QI allotments for payment of Medicare Part B premiums for FY 2011 are effective October 1, 2010. The preliminary QI allotments for FY 2012 are effective October 1, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2012–17952 of July 24, 2012 (77 FR 43329), there was a technical error that is identified and corrected in the Correction of Error section below. The provision in this correction document is effective as if it had been included in the document published in the July 24, 2012 **Federal Register**.

II. Summary of Errors

In the ''Background'' section of the notice that was published in the July 24, 2012 **Federal Register**, we inadvertently omitted Chart 1 titled ''Final Qualifying Individuals Allotments for October 1, 2010 through September 30, 2011.'' This notice is being issued to correct that error.

III. Correction of Errors

In the notice that was published in the July 24, 2012 **Federal Register**, make the following correction:

In the ''Background'' section, include Chart 1 ''State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals (QIs) for FY 2012.''

CHART 1—FINAL QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011

State	Initial QI allotments for FY 2011			FY 2011 Estimated QI expenditures/1	Need (difference) If E>D, E − D	Percentage of total need states F/(Tot. of F)	Reduction pool for non-need States If D>=E, D − E	Percentage of total non-need States H/(Tot. of H)	Reduction adjustment for non-need States Col. 1 × $35,415,135	Increase adjustment for need States Col. G × $35,415,135	Final FY 2011 QI allotment/2
	Number of individuals/3 (000s)	Percentage of total Col B/Tot. Col B	Initial QI allotment Col × $885,000,000								
A	B	C	D	E	F	G	H	I	J	K	L
Alabama	40	2.75	$24,363,386	$20,880,831	NA	NA	$3,482,555	1.4562	$515,727	NA	$23,847,659
Alaska	2	0.14	1,218,169	219,365	NA	NA	998,804	0.4177	147,912	NA	1,070,258
Arizona	21	1.45	12,790,778	17,342,127	4,551,349	12.8514	Need	Need	Need	4,551,349	17,342,127
Arkansas	23	1.58	14,008,947	13,221,431	NA	NA	787,516	0.3293	116,622	NA	13,892,325

CHART 1—FINAL QUALIFYING INDIVIDUALS ALLOTMENTS FOR OCTOBER 1, 2010 THROUGH SEPTEMBER 30, 2011—Continued

State	Initial QI allotments for FY 2011			FY 2011 Estimated QI expenditures/1	Need (difference) If E>D, E − D	Percentage of total need states F/(Tot. of F)	Reduction pool for non-need States If D>=E, D − E	Percentage of total non-need States H/(Tot. of H)	Reduction adjustment for non-need States Col. 1 × $35,415,135	Increase adjustment for need States Col. G × $35,415,135	Final FY 2011 QI allotment/2
	Number of individuals/3 (000s)	Percentage of total Col B/Tot. Col B	Initial QI allotment Col × $885,000,000								
A	B	C	D	E	F	G	H	I	J	K	L
California	103	7.09	62,735,719	28,587,784	NA	NA	34,147,935	14.2790	5,056,924	NA	57,678,794
Colorado	18	1.24	10,963,524	5,295,566	NA	NA	5,667,958	2.3701	839,361	NA	10,124,163
Connecticut	19	1.31	11,572,608	4,486,600	NA	NA	7,086,008	2.9630	1,049,358	NA	10,523,250
Delaware	6	0.41	3,654,508	3,146,625	NA	NA	507,883	0.2124	75,212	NA	3,579,296
District of Columbia	3	0.21	1,827,254	0	NA	NA	1,827,254	0.7641	270,596	NA	1,556,658
Florida	106	7.30	64,562,973	66,436,364	1,873,391	5.2898	Need	Need	Need	1,873,391	66,436,364
Georgia	41	2.82	24,972,471	26,906,212	1,933,741	5.4602	Need	Need	Need	1,933,741	26,906,212
Hawaii	4	0.28	2,436,339	1,291,051	NA	NA	1,145,288	0.4789	169,604	NA	2,266,734
Idaho	6	0.41	3,654,508	2,343,040	NA	NA	1,311,468	0.5484	194,214	NA	3,460,294
Illinois	65	4.47	39,590,502	24,682,083	NA	NA	14,908,419	6.2340	2,207,769	NA	37,382,734
Indiana	37	2.55	22,536,132	7,442,661	NA	NA	15,093,471	6.3113	2,235,173	NA	20,300,959
Iowa	21	1.45	12,790,778	4,271,524	NA	NA	8,519,254	3.5623	1,261,605	NA	11,529,172
Kansas	17	1.17	10,354,439	4,610,144	NA	NA	5,744,295	2.4020	850,665	NA	9,503,774
Kentucky	27	1.86	16,445,286	15,690,958	NA	NA	754,328	0.3154	111,707	NA	16,333,578
Louisiana	30	2.06	18,272,540	20,326,470	2,053,930	5.7996	Need	Need	Need	2,053,930	20,326,470
Maine	5	0.34	3,045,423	5,682,148	2,636,725	7.4452	Need	Need	Need	2,636,725	5,682,148
Maryland	17	1.17	10,354,439	7,088,750	NA	NA	3,265,689	1.3656	483,612	NA	9,870,827
Massachusetts	35	2.41	21,317,963	10,537,185	NA	NA	10,780,778	4.5080	1,596,512	NA	19,721,451
Michigan	47	3.23	28,626,979	15,085,628	NA	NA	13,541,351	5.6623	2,005,321	NA	26,621,657
Minnesota	22	1.51	13,399,862	6,222,133	NA	NA	7,177,729	3.0014	1,062,941	NA	12,336,922
Mississippi	17	1.17	10,354,439	15,159,850	4,805,411	13.5688	Need	Need	Need	4,805,411	15,159,850
Missouri	34	2.34	20,708,878	5,920,121	NA	NA	14,788,757	6.1839	2,190,048	NA	18,518,830
Montana	6	0.41	3,654,508	1,621,995	NA	NA	2,032,513	0.8499	300,992	NA	3,353,516
Nebraska	7	0.48	4,263,593	2,506,235	NA	NA	1,757,358	0.7348	260,245	NA	4,003,348
Nevada	9	0.62	5,481,762	4,524,038	NA	NA	957,724	0.4005	141,828	NA	5,339,934
New Hampshire	6	0.41	3,654,508	2,135,209	NA	NA	1,519,299	0.6353	224,991	NA	3,429,517
New Jersey	29	2.00	17,663,455	10,947,452	NA	NA	6,716,003	2.8083	994,564	NA	16,668,891
New Mexico	12	0.83	7,309,016	4,380,182	NA	NA	2,928,834	1.2247	433,727	NA	6,875,289
New York	88	6.06	53,599,449	46,599,154	NA	NA	7,000,295	2.9272	1,036,665	NA	52,562,785
North Carolina	51	3.51	31,063,317	29,879,017	NA	NA	1,184,300	0.4952	175,382	NA	30,887,936
North Dakota	3	0.21	1,827,254	732,156	NA	NA	1,095,098	0.4579	162,172	NA	1,665,082
Ohio	69	4.75	42,026,841	23,482,476	NA	NA	18,544,365	7.7543	2,746,211	NA	39,280,629
Oklahoma	17	1.17	10,354,439	10,487,929	133,490	0.3769	Need	Need	Need	133,490	10,487,929
Oregon	19	1.31	11,572,608	13,141,294	1,568,686	4.4294	Need	Need	Need	1,568,686	13,141,294
Pennsylvania	72	4.96	43,854,095	33,758,390	NA	NA	10,095,705	4.2215	1,495,060	NA	42,359,035
Rhode Island	6	0.41	3,654,508	2,322,853	NA	NA	1,331,655	0.5568	197,203	NA	3,457,305
South Carolina	24	1.65	14,618,032	15,020,561	402,529	1.1366	Need	Need	Need	402,529	15,020,561
South Dakota	4	0.28	2,436,339	1,720,053	NA	NA	716,286	0.2995	106,074	NA	2,330,265
Tennessee	34	2.34	20,708,878	26,632,392	5,923,514	16.7259	Need	Need	Need	5,923,514	26,632,392
Texas	117	8.05	71,262,904	78,314,925	7,052,021	19.9124	Need	Need	Need	7,052,021	78,314,925
Utah	9	0.62	5,481,762	2,259,983	NA	NA	3,221,779	1.3472	477,109	NA	5,004,653
Vermont	2	0.14	1,218,169	3,698,518	2,480,349	7.0036	Need	Need	Need	2,480,349	3,698,518
Virginia	33	2.27	20,099,794	12,026,439	NA	NA	8,073,355	3.3759	1,195,573	NA	18,904,221
Washington	21	1.45	12,790,778	9,678,240	NA	NA	3,112,538	1.3015	460,932	NA	12,329,846
West Virginia	15	1.03	9,136,270	6,570,617	NA	NA	2,565,653	1.0728	379,944	NA	8,756,326
Wisconsin	32	2.20	19,490,709	5,065,273	NA	NA	14,425,436	6.0320	2,136,244	NA	17,354,465
Wyoming	2	0.14	1,218,169	885,008	NA	NA	333,161	0.1393	49,337	NA	1,168,832
Total	1,453	100.00	885,000,000	681,267,040	35,415,135	100.0000	239,148,095	100.0000	35,415,135	35,415,135	885,000,000

Footnotes:
[1] FY 2011 Estimates from July 2011 CMS Survey of States.
[2] For Need States, Final FY 2011 QI Allotment is equal to Initial QI Allotment in Column D increased by amount in Column K. For Non-Need States, Final FY 2011 QI Allotment is equal to Initial QI Allotment in Column D reduced by amount in Column J.
[3] Three-year average (2007–2009) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of Federal poverty level. Source: Census Bureau Annual Social and Economic Supplement (ASEC) to the 2010 Current Population Survey (CPS).

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program).

Dated: August 14, 2012.

Jennifer Cannistra,

Executive Secretary to the Department.

[FR Doc. 2012–20296 Filed 8–17–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3273–N]

Medicare Program; Request for Nominations for Members for the Medicare Evidence Development & Coverage Advisory Committee

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: This notice announces the request for nominations for membership on the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC). Among other duties, the MEDCAC provides advice and guidance to the Secretary of the Department of Health and Human Services (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) concerning the adequacy of scientific evidence available to CMS for ''reasonable and necessary'' determinations under Medicare.

We are requesting nominations for both voting and nonvoting members to serve on the MEDCAC. Nominees are selected based upon their individual qualifications and not as representatives of professional associations or societies. We wish to ensure adequate representation of the interests of both

women and men, members of all ethnic groups and physically challenged individuals. Therefore, we encourage nominations of qualified candidates who can represent these interests.

The MEDCAC reviews and evaluates medical literature, technology assessments, and hears public testimony on the evidence available to address the impact of medical items and services on health outcomes of Medicare beneficiaries.

DATES: Nominations must be received by Monday, September 24, 2012.

ADDRESSES: You may mail nominations for membership to the following address: Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Attention: Maria Ellis, 7500 Security Boulevard, Mail Stop: South Building 3–02–01, Baltimore, MD 21244.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for the MEDCAC, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Coverage and Analysis Group, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via email at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary signed the initial charter for the Medicare Coverage Advisory Committee (MCAC) on November 24, 1998. A notice in the **Federal Register** (63 FR 68780) announcing establishment of the MCAC was published on December 14, 1998. The MCAC name was updated to more accurately reflect the purpose of the committee and on January 26, 2007, the Secretary published a notice in the **Federal Register** (72 FR 3853), announcing that the Committee's name changed to the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC). The charter for the committee was renewed by the Secretary on November 24, 2010. The current charter is effective for 2 years.

The MEDCAC is governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. 2), which sets forth standards for the formulation and use of advisory committees, and is authorized by section 222 of the Public Health Service Act as amended (42 U.S.C. 217A).

The MEDCAC consists of a pool of 100 appointed members including: 94 voting members of whom 6 are designated patient advocates, and 6 nonvoting representatives of industry interests. Members generally are recognized authorities in clinical medicine including subspecialties, administrative medicine, public health, biological and physical sciences, epidemiology and biostatistics, clinical trial design, health care data management and analysis, patient advocacy, health care economics, medical ethics or other relevant professions.

The MEDCAC works from an agenda provided by the Designated Federal Official. The MEDCAC reviews and evaluates medical literature, technology assessments, and hears public testimony on the evidence available to address the impact of medical items and services on health outcomes of Medicare beneficiaries. The MEDCAC may also advise CMS as part of Medicare's ''coverage with evidence development'' initiative.

II. Provisions of the Notice

As of January 2013, there will be 42 membership terms expiring. Of the 42 memberships expiring, 3 are nonvoting industry representative and the remaining 39 membership openings are for the general MEDCAC voting membership.

Accordingly, we are requesting nominations for both voting and nonvoting members to serve on the MEDCAC. Nominees are selected based upon their individual qualifications and not as representatives of professional associations or societies. We wish to ensure adequate representation of the interests of both women and men, members of all ethnic groups and physically challenged individuals. Therefore, we encourage nominations of qualified candidates from these groups.

All nominations must be accompanied by curricula vitae. Nomination packages must be sent to Maria Ellis at the address listed in the **ADDRESSES** section of this notice. Nominees for voting membership must also have expertise and experience in one or more of the following fields:

- Clinical medicine including subspecialties
- Administrative medicine
- Public health
- Biological and physical sciences
- Epidemiology and biostatistics
- Clinical trial design
- Health care data management and analysis
- Patient advocacy
- Health care economics
- Medical ethics
- Other relevant professions

We are looking for experts in a number of fields. Our most critical needs are for experts in hematology; genomics; Bayesian statistics; clinical epidemiology; clinical trial methodology; knee, hip, and other joint replacement surgery; ophthalmology; psychopharmacology; rheumatology; screening and diagnostic testing analysis; and vascular surgery. We also need experts in biostatistics in clinical settings, cardiovascular epidemiology, dementia, endocrinology, geriatrics, gynecology, minority health, observational research design, stroke epidemiology, and women's health.

The nomination letter must include a statement that the nominee is willing to serve as a member of the MEDCAC and appears to have no conflict of interest that would preclude membership. We are requesting that all curricula vitae include the following:

- Date of birth
- Place of birth
- Social security number
- Title and current position
- Professional affiliation
- Home and business address
- Telephone and fax numbers
- Email address
- List of areas of expertise

In the nomination letter, we are requesting that the nominee specify whether they are applying for a voting patient advocate position, for another voting position or a nonvoting industry representative. Potential candidates will be asked to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts in order to permit evaluation of possible sources of conflict of interest.

Members are invited to serve for overlapping 2-year terms. A member may serve after the expiration of the member's term until a successor is named. Any interested person may nominate one or more qualified persons. Self-nominations are also accepted.

The current Secretary's Charter for the MEDCAC is available on the CMS Web site at: *http://www.cms.hhs.gov/FACA/Downloads/medcaccharter.pdf,* or you may obtain a copy of the charter by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Authority: 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: August 8, 2012.

Patrick Conway,

CMS Chief Medical Officer and Director, Center for Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–20298 Filed 8–17–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Uniform Project Description (UPD) Program Narrative Format for Discretionary Grant Application Forms.

OMB No.: 0970–0139.

Description: The proposed information collection would renew the Administration for Children and Families (ACF) Uniform Project Description (UPD). The UPD provides a uniform grant application format for applicants to submit project information in response to ACF discretionary funding opportunity announcements. ACF uses this information, along with other OMB-approved information collections (Standard Forms), to evaluate and rank applications. Use of the UPD helps to protect the integrity of ACF's award selection process. All ACF discretionary grant programs are required to use this application format. The application consists of general information and instructions; the Standard Form 424 series, which requests basic information, budget information, and assurances; the Project Description that requests the applicant to describe how program objectives will be achieved; and other assurances and certifications. Guidance for the content of information requested in the Project Description is found in OMB Circular A–102; 2 CFR, Part 215; 2 CFR, Part 225; 2 CFR, Part 230; 45 CFR, Part 74; and 45 CFR, Part 92.

Respondents: Applicants to ACF Discretionary Funding Opportunity Announcements.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF Uniform Project Description (UPD)	5,205	1	60	312,300

Estimated Total Annual Burden Hours: 312,300.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–20326 Filed 8–17–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Developmental Disabilities Protection and Advocacy Program Statement of Goals and Priorities

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration Intellectual and Developmental Disabilities (AIDD), Administration for Community Living (ACL) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 19, 2012.

ADDRESSES: Submit written comments on the collection of information by fax 202.395.6974 to the OMB Desk Officer for ACL, Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Brianne Burger, 202.618.5525.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. Federal statute and regulation require each State Protection and Advocacy (P&A) System to prepare and solicit public comment on a Statement of Goals and Priorities (SGP) for the P&A for Developmental Disabilities (PADD) program for each coming fiscal year. While the P&A is mandated to protect and advocate under a range of different federally authorized disabilities programs, only the PADD program requires an SGP. Following the required public input for the coming fiscal year, the P&As submit the final version of this SGP to the Administration on Intellectual and Developmental Disabilities (AIDD). AIDD will aggregate the information in the SGPs into a national profile of programmatic emphasis for P&A Systems in the coming year. This aggregation will provide AIDD with a tool for monitoring of the public input requirement. Furthermore, it will provide an overview of program direction, and permit AIDD to track accomplishments against goals/targets, permitting the formulation of technical assistance and compliance with the Government Performance and Results Act of 1993. ACL estimates the burden of this collection of information as follows:

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
P&A SGP	57	1	44	2,508

Estimated Total Annual Burden Hours: 2,508.

Dated: August 15, 2012.

Kathy Greenlee,

Administrator & Assistant Secretary for Aging.

[FR Doc. 2012–20418 Filed 8–17–12; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0841]

ASTM International-Food and Drug Administration Workshop on Absorbable Medical Devices: Lessons Learned From Correlations of Bench Testing and Clinical Performance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public workshop entitled ''ASTM International-FDA Workshop on Absorbable Medical Devices: Lessons Learned From Correlations of Bench Testing and Clinical Performance.'' FDA is co-sponsoring the workshop together with ASTM International, an organization responsible for the development and delivery of international voluntary consensus standards for engineered products, including medical devices. The purpose of this public workshop is to provide a forum for highlighting and discussing the use of absorbable materials in medical devices across a broad range of indications with the aim of defining successful and unsuccessful methods to predict clinical performance. The main topics to be discussed include identification of test methods for establishing correlations between in vitro and in vivo degradation of absorbable implant devices, and the interaction of mechanical loading and mechanical performance with degradation. While there will be an emphasis on cardiovascular indications as part of a panel session, characterization techniques and experiences from both cardiovascular as well as non-cardiovascular devices will be discussed and are encouraged.

Date and Time: The public workshop will be held on November 28, 2012, from 8:30 a.m. to 5 p.m. EST.

Location: The public workshop will be held at the FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD, 20993–0002. Entrance for the public workshop participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Contact Person: Maureen Dreher, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, Bldg. 62, rm. 2110, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–2505, Fax: 301–796–9932, email: *Maureen.dreher@fda.hhs.gov;* or Erica Takai, CDRH, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–6353, Fax: 301–796–9959, email: *erica.takai@fda.hhs.gov.*

Registration: Registration is free and available on a first-come, first-served basis. Persons interested in attending this public workshop must register online by November 13, 2012. Early registration is recommended because facilities are limited and, therefore, FDA may limit the number of participants from each organization. If time and space permits, onsite registration on the day of the workshop will be provided beginning at 8 a.m.

If you need special accommodations due to a disability, please contact Cindy Garris, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4321, Silver Spring, MD, 20993–0002, 301–796–5861, email: *cynthia.garris@fda.hhs.gov,* at least 7 days in advance of the workshop.

To register for the public workshop, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public workshop from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Those without Internet access should contact Maureen Dreher or Erica Takai to register (see *Contact Person*). Registrants will receive confirmation after they have been accepted. You will be notified if you are on a waiting list.

Streaming Webcast of the Public Workshop: This public workshop will also be Webcast. Persons interested in viewing the Webcast must register online by November 13, 2012, 5 p.m. EST. Early registration is recommended because Webcast connections are limited. Organizations are requested to register all participants, but to view using one connection per location. Webcast participants will be sent technical system requirements after registration and will be sent connection access information after November 23, 2012. If you have never attended a Connect Pro event before, test your connection at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* To get a quick overview of the Connect Pro program, visit *http://www.adobe.com/go/connectpro_overview.* (FDA has verified the Web site addresses in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Requests for Oral Presentations: This public workshop includes presentations in topic-focused sessions. If you wish to present at the workshop, please submit an abstract at: *http://www.astm.org/f04wkshp1112.htm.*

FDA has included general topics in this document. Following the close of the call for abstracts, FDA and ASTM International members of the workshop organizing committee will determine the amount of time allotted to each presenter, the approximate time each oral presentation is to begin, and will select and notify participants by October 1, 2012. All requests to make oral presentations must be received by the close of the call for abstracts on September 1, 2012. If selected for presentation, any presentation materials must be emailed to Maureen Dreher (see *Contact Person*) no later than November

23, 2012. No commercial or promotional material will be permitted to be presented or distributed at the public workshop.

Comments: FDA is holding this public workshop through co-sponsorship with ASTM International to obtain information on test methods for establishing correlations between in vitro and in vivo degradation of absorbable devices. In order to permit the widest possible opportunity to obtain public comment, FDA is soliciting either electronic or written comments on all aspects of the public workshop topics. The deadline for submitting comments related to this public workshop is December 28, 2012.

Regardless of attendance at the public workshop, interested persons may submit either written comments regarding this document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Please 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.*

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (see *Comments*). A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857. A link to the transcripts will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm*. (Select this public workshop from the posted events list).

SUPPLEMENTARY INFORMATION:

I. Background

Recent studies have identified promising results for the use of absorbable materials in implantable devices for endovascular therapies such as fully absorbable cardiovascular stents where the stent platform degrades, in addition to absorbable coatings. The use of these materials for cardiovascular indications, however, poses new risks due to the critical fatigue and mechanical loading demands that the implant must withstand and perform. Moreover, the optimal preclinical/bench testing paradigm to predict clinical performance of fully absorbable cardiovascular devices is not yet defined.

This public workshop will discuss the use of absorbable materials (including synthetic polymers as well as erodible metals) in medical devices across a broad range of indications with the aim of defining successful and unsuccessful methods to predict clinical performance, and will subsequently apply lessons learned to unique challenges for cardiovascular indications. Therefore, we invite presenters to share their experience with respect to cardiovascular and non-cardiovascular medical devices, both those that are fully absorbable and those with only a component or coating that is absorbable.

This public workshop will bring together the expertise of academia and industry professionals to define test methods as well as to educate and inform industry, academia, and device regulators on the performance and predictability of absorbable medical device degradation. Workshop participants will seek to define the critical factors for preclinical/bench testing and clinical predictability. They will then apply lessons learned from marketed devices for non-cardiovascular indications to the emerging uses of absorbable devices to treat cardiovascular disease.

II. Topics for Discussion at the Public Workshop

Topics to be discussed at the public workshop include, but are not limited to:

- Correlations of in vitro and in vivo absorption
- Quantitative characterization of absorption kinetics
- Test methods to identify interactions of absorption with mechanical loading
- Test methods to assess mechanical performance of the absorbable product

The lessons learned from both early cardiovascular and well-established non-cardiovascular device experiences will be presented. These lessons will be discussed in the context of emerging cardiovascular uses of absorbable materials as part of a panel session at the end of the workshop.

Dated: August 14, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20322 Filed 8–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–N–0451]

Food and Drug Administration Modernization Act of 1997: Modifications to the List of Recognized Standards, Recognition List Number: 029

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a publication containing modifications the Agency is making to the list of standards FDA recognizes for use in premarket reviews (FDA recognized consensus standards). This publication, entitled ''Modifications to the List of Recognized Standards, Recognition List Number: 029'' (Recognition List Number: 029), will assist manufacturers who elect to declare conformity with consensus standards to meet certain requirements for medical devices.

DATES: Submit written or electronic comments concerning this document at any time. See section VII of this document for the effective date of the recognition of standards announced in this document.

ADDRESSES: Submit written requests for single copies of ''Modifications to the List of Recognized Standards, Recognition List Number: 029'' to the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Silver Spring, MD 20993. Send two self-addressed adhesive labels to assist that office in processing your requests, or fax your request to 301–847–8149. Submit written comments concerning this document, or recommendations for additional standards for recognition, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). Submit electronic comments by email: *standards@cdrh.fda.gov*. This document may also be accessed on FDA's Internet site at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm*. See section

VI of this document for electronic access to the searchable database for the current list of FDA recognized consensus standards, including Recognition List Number: 029 modifications and other standards related information.

FOR FURTHER INFORMATION CONTACT: Scott A. Colburn, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3628, Silver Spring, MD 20993, 301–796–6574.

I. Background

Section 204 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amended section 514 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360d). Amended section 514 allows FDA to recognize consensus standards developed by international and national organizations for use in satisfying portions of device premarket review submissions or other requirements.

In a notice published in the **Federal Register** of February 25, 1998 (63 FR 9561), FDA announced the availability of a guidance entitled ''Recognition and Use of Consensus Standards.'' The notice described how FDA would implement its standard recognition program and provided the initial list of recognized standards.

Modifications to the initial list of recognized standards, as published in the **Federal Register**, are identified in table 1 of this document.

TABLE 1—PREVIOUS PUBLICATION OF STANDARD RECOGNITION LISTS

February 25, 1998 (63 FR 9561).
October 16, 1998 (63 FR 55617).
July 12, 1999 (64 FR 37546).
November 15, 2000 (65 FR 69022).
May 7, 2001 (66 FR 23032).
January 14, 2002 (67 FR 1774).
October 2, 2002 (67 FR 61893).
April 28, 2003 (68 FR 22391).
March 8, 2004 (69 FR 10712).
June 18, 2004 (69 FR 34176).
October 4, 2004 (69 FR 59240).
May 27, 2005 (70 FR 30756).
November 8, 2005 (70 FR 67713).
March 31, 2006 (71 FR 16313).
June 23, 2006 (71 FR 36121).
November 3, 2006 (71 FR 64718).
May 21, 2007 (72 FR 28500).
September 12, 2007 (72 FR 52142).
December 19, 2007 (72 FR 71924).
September 9, 2008 (73 FR 52358).
March, 18, 2009 (74 FR 11586).
September 8, 2009 (74 FR 46203).
May 5, 2010 (75 FR 24711).
June 10, 2010 (75 FR 32943).
October 4, 2010 (75 FR 61148).
March 14, 2011 (76 FR 13631).
August 2, 2011 (76 FR 46300).
March 16, 2012 (77 FR 15765).

These notices describe the addition, withdrawal, and revision of certain standards recognized by FDA. The Agency maintains ''hypertext markup language (HTML)'' and ''portable document format (PDF)'' versions of the list of ''FDA Recognized Consensus Standards.'' Both versions are publicly accessible at the Agency's Internet site. See section VI of this document for electronic access information. Interested persons should review the supplementary information sheet for the standard to understand fully the extent to which FDA recognizes the standard.

II. Modifications to the List of Recognized Standards, Recognition List Number: 029

FDA is announcing the addition, withdrawal, correction, and revision of certain consensus standards the Agency will recognize for use in satisfying premarket reviews and other requirements for devices. FDA will incorporate these modifications in the list of FDA Recognized Consensus Standards in the Agency's searchable database. FDA will use the term ''Recognition List Number: 029'' to identify these current modifications.

In table 2 of this document, FDA describes the following modifications: (1) The withdrawal of standards and their replacement by others, (2) the correction of errors made by FDA in listing previously recognized standards, and (3) the changes to the supplementary information sheets of recognized standards that describe revisions to the applicability of the standards.

In section III of this document, FDA lists modifications the Agency is making that involve the initial addition of standards not previously recognized by FDA.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
A. Biocompatibility			
2–115	2–189	ASTM F895–11 Standard Test Method for Agar Diffusion Cell Culture Screening for Cytotoxicity.	Withdrawn and replaced with newer version.
2–164	2–190	ANSI/AAMI/ISO 10993–13:2010 Biological evaluation of medical devices—Part 13: Identification and quantification of degradation products from polymeric medical devices.	Withdrawn and replaced with newer version.
2–165		ANSI/AAMI/ISO 10993–14:2001/(R)2011 Biological evaluation of medical devices—Part 14: Identification and quantification of degradation products from ceramics.	Reaffirmation.
B. Cardiovascular			
3–37	1–87	IEC 60601–2–23(1999–12) Medical electrical equipment—Part 2–23: Particular requirements for the safety, including essential performance, of transcutaneous partial pressure monitoring equipment.	Transferred to Anesthesia.
3–44		ANSI/AAMI BP22:1994/(R)2011 Blood pressure transducers	Reaffirmation.
3–55		ASTM F1830–97 (Reapproved 2005) Standard Practice for Selection of Blood for in vitro Evaluation of Blood Pumps.	Extent of recognition.
3–56		ASTM F1841–97 (Reapproved 2005) Standard Practice for Assessment of Hemolysis in Continuous Flow Blood Pumps.	Extent of recognition.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
3–62	3–102	IEC 60601–2–31 Edition 2.1 2011–09 Medical electrical equipment—Part 2–31: Particular requirements for the basic safety and essential performance of external cardiac pacemakers with internal power source.	Withdrawn and replaced with newer version.
		C. General	
5–28		IEC 60601–1–2, (Second Edition, 2001), Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests.	Withdrawn.
5–30		ANSI/AAMI/IEC 60601–1–2:2001, Medical Electrical Equipment—Part 1–2: General Requirements for Safety—Collateral Standard: Electromagnetic Compatibility—Requirements and Tests.	Withdrawn.
5–40		ISO 14971 Second edition 2007–03–01, Medical devices—Application of risk management to medical devices.	Extent of recognition.
5–52	5–71	ANSI/AAMI ES60601–1:2005/(R)2012 and C1:2009/(R)2012 and A2:2010/(R)2012 (Consolidated Text), Medical electrical equipment—Part 1: General requirements for basic safety and essential performance (IEC 60601–1:2005, MOD).	Withdrawn and replaced with new version.
5–56		ISO 15223–2 First edition 2010–01–15, Medical devices—Symbols to be used with medical devices labels, labeling, and information to be supplied—Part 2: Symbol development, selection and validation.	Contact person.
5–59	5–72	ISO/FDIS 15223–1 2012 Medical devices—Symbols to be used with medical device labels, labeling and information to be supplied—Part 1: General requirements.	Withdrawn and replaced with new version.
5–61		ANSI/AAMI/ISO 15223–1:2007, Medical devices—Symbols to be used with medical device labels, labeling, and information to be supplied—Part 1: General requirements.	Withdrawn.
		D. General Hospital/General Plastic Surgery	
6–110		ASTM F 882–84 (Reapproved 2002), Standard Performance and Safety Specification for Cryosurgical Medical Instruments.	Withdrawn.
6–114	6–274	ISO 11608–1 Second edition 2012–04–01 Needle-based injection systems for medical use—Requirements and test methods—Part 1: Needle-based injection systems.	Withdrawn and replaced with newer version.
6–115	6–275	ISO 11608–2 Second edition 2012–04–01 Needle-based injection systems for medical use—Requirements and test methods—Part 2: Needles.	Withdrawn and replaced with newer version.
6–117		ASTM F2172–02 (Reapproved 2011), Standard Specification for Blood/Intravenous Fluid/Irrigation Fluid Warmers.	Contact person.
6–118		ASTM F2196–02, Standard Specification for Circulating Liquid and Forced Air Patient Temperature Management Devices.	Withdrawn. See 6–238.
6–119		ANSI/AAMI BF7:1989/(R)2011 Blood transfusion microfilters	Reaffirmation.
6–132		ISO 11810–1 First edition 2005–02–15, Lasers and laser-related equipment—Test method and classification for the laser-resistance of surgical drapes and/or patient-protective covers—Part 1: Primary ignition and penetration.	Contact person.
6–172	6–276	ISO 8536–1 Fourth edition 2011–09–01 Infusion equipment for medical use—Part 1: Infusion glass bottles.	Withdrawn and replaced with newer version.
6–175		ASTM D5151–06 (Reapproved 2011) Standard Test Method for Detection of Holes in Medical Gloves.	Reaffirmation.
6–178		ASTM D6124–06 (Reapproved 2011) Standard Test Method for Residual Powder on Medical Gloves.	Reaffirmation and Contact person.
6–183		ASTM D5250–06 (Reapproved 2011) Standard Specification for Poly(vinyl chloride) Gloves for Medical Application.	Reaffirmation and contact person.
6–202		ISO 11810–2:2007, Lasers and laser-related equipment—Test method and classification for the laser-resistance of surgical drapes and/or patient-protective covers—Part 2: Secondary ignition.	Title and contact person.
6–236		IEC 80601–2–59 Edition 1.0 2008–10 Medical electrical equipment—Part 2–59: Particular requirements for the basic safety and essential performance of screening thermographs for human febrile temperature screening.	Title and contact person.
6–237		IEC 80601–2–59 (First edition—2008) Medical electrical equipment—Part 2–59: Particular requirements for the basic safety and essential performance of screening thermographs for human febrile temperature screening CORRIGENDUM1.	Title and contact person.
6–238		IEC 80601–2–35 Edition 2.0 2009–10, Medical electrical equipment—Part 2–35: Particular requirements for the basic safety and essential performance of heating devices using blankets, pads or mattresses and intended for heating in medical use.	Contact person.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
6–241		ISO 1135–4 Fourth edition 2010–04–15, Transfusion equipment for medical use—Part 4: Transfusion sets for single use.	Contact person.
6–242		ISO 8536–2 Third edition 2010–03–15, Infusion equipment for medical use—Part 2: Closures for infusion bottles.	Contact person.
6–245		ISO 8536–4 Fifth edition 2010–10–01, Infusion equipment for medical use—Part 4: Infusion sets for single use, gravity feed.	Contact person.
6–273		ISO 23908 First edition 2011–06–11, Sharps injury protection—Requirements and test methods—Sharps protection features for single-use hypodermic needles, introducers for catheters and needles used for blood sampling.	Contact person.
E. In Vitro Diagnostics			
7–54		CLSI D12–A2, Immunoprecipitin Analyses: Procedures for Evaluating the Performance of Materials—Second Edition; Approved Guideline.	Withdrawn.
7–76		NCCLS M15–A, Laboratory Diagnosis of Blood-borne Parasitic Diseases; Approved Guideline.	Contact person and type of standard.
7–146		CLSI M6–A2, Protocols for Evaluating Dehydrated Mueller-Hinton Agar; Approved Standard—Second Edition.	Contact person and title.
7–148		CLSI M28–A2, Procedures for the Recovery and Identification of Parasites From the Intestinal Tract; Approved Guideline—Second Edition.	Contact person and title.
7–157	7–228	CLSI M11–A8, Methods for Antimicrobial Susceptibility Testing of Anaerobic Bacteria; Approved Standard-Eighth Edition.	Withdrawn and replaced with newer version.
7–171		CLSI M38–A2, Reference Method for Broth Dilution Antifungal Susceptibility Testing of Filamentous Fungi; Approved Standard—Second Edition.	Contact person and title.
7–179		CLSI M27–S3, Reference Method for Broth Dilution Antifungal Susceptibility Testing of Yeasts; Third Informational Supplement.	Contact person and title.
7–184		CLSI M40–A, Quality Control of Microbiological Transport Systems; Approved Standard.	Contact person and title.
7–195	7–229	CLSI M02–A11, Performance Standards for Antimicrobial Disk Susceptibility Tests; Approved Standard—Eleventh Edition.	Withdrawn and replaced with newer version.
7–196	7–230	CLSI M07–A9, Methods for Dilution Antimicrobial Susceptibility Tests for Bacteria That Grow Aerobically; Approved Standard—Ninth Edition.	Withdrawn and replaced with newer version.
7–197		CLSI M35–A2, Abbreviated Identification of Bacteria and Yeast; Approved Guideline—Second Edition.	Contact person and title.
7–198		CLSI M23–A3, Development of In Vitro Susceptibility Testing Criteria and Quality Control Parameters; Approved Guideline—Third Edition.	Contact person and title.
7–200		CLSI M48–A, Laboratory Detection and Identification of Mycobacteria; Approved Guideline.	Contact person and title.
7–215		CLSI M44–A2, Method for Antifungal Disk Diffusion Susceptibility Testing of Yeast; Approved Guideline-Second Edition.	Contact person.
7–216	7–231	CLSI M100–S22, Performance Standards for Antimicrobial Susceptibility Testing; Twenty-Second Informational Supplement.	Withdrawn and replaced with newer version.
7–217		CLSI M44–S3, Zone Diameter Interpretive Standards, Corresponding Minimal Inhibitory Concentration (MIC) Interpretive Breakpoints, and Quality Control Limits for Antifungal Disk Diffusion Susceptibility Testing of Yeasts; Third Informational Supplement.	Contact person.
7–218		CLSI M45–A2, Methods for Antimicrobial Dilution and Disk Susceptibility Testing of Infrequently Isolated or Fastidious Bacteria; Approved Guideline—Second Edition.	Contact person.
F. Materials			
8–108	8–216	ASTM F1295–11 Standard Specification for Wrought Titanium-6Aluminum-7Niobium Alloy for Surgical Implant Applications (UNS R56700).	Withdrawn and replaced with newer version.
8–111		ASTM F1160–05 (Reapproved 2011) Standard Test Method for Shear and Bending Fatigue Testing of Calcium Phosphate and Metallic Medical and Composite Calcium Phosphate/Metallic Coatings.	Reaffirmation.
8–112		ASTM F1044–05 (Reapproved 2011) Standard Test Method for Shear Testing of Calcium Phosphate Coatings and Metallic Coatings.	Reaffirmation.
8–113		ASTM F1147–05 (Reapproved 2011) Standard Test Method for Tension Testing of Calcium Phosphate and Metallic Coatings.	Reaffirmation.
8–127		ISO 5834–2:2006, Implants for surgery—Ultra-high-molecular-weight polyethylene—Part 2: Moulded forms.	Withdrawn. See 8–208.
8–128		ASTM F2213–06 (Reapproved 2011) Standard Test Method for Measurement of Magnetically Induced Torque on Medical Devices in the Magnetic Resonance Environment.	Reaffirmation and relevant guidance.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
8–130	8–217	ASTM F620–11 Standard Specification for Titanium Alloy Forgings for Surgical Implants in the Alpha Plus Beta Condition.	Withdrawn and replaced with newer version.
8–131	8–218	ASTM F799–11 Standard Specification for Cobalt-28Chromium-6Molybdenum Alloy Forgings for Surgical Implants (UNS R31537, R31538, R31539).	Withdrawn and replaced with newer version.
8–164	8–219	ASTM F136–11 Standard Specification for Wrought Titanium-6Aluminum-4Vanadium ELI (Extra Low Interstitial) Alloy for Surgical Implant Applications (UNS R56401).	Withdrawn and replaced with newer version.
8–174	8–220	ASTM F629–11 Standard Practice for Radiography of Cast Metallic Surgical Implants.	Withdrawn and replaced with newer version.
8–180	8–221	ASTM F2066–11 Standard Specification for Wrought Titanium-15 Molybdenum Alloy for Surgical Implant Applications (UNS R58150).	Withdrawn and replaced with newer version.
8–182	8–222	ASTM F1537–11 Standard Specification for Wrought Cobalt-28Chromium-6Molybdenum Alloys for Surgical Implants (UNS R31537, UNS R31538, and UNS R31539).	Withdrawn and replaced with newer version.
8–186	8–223	ASTM F2759–11 Standard Guide for Assessment of the Ultra High Molecular Weight Polyethylene (UHMWPE) Used in Orthopedic and Spinal Devices.	Withdrawn and replaced with newer version.
8–210	8–227	ASTM F2182–11a Standard Test Method for Measurement of Radio Frequency Induced Heating On or Near Passive Implants During Magnetic Resonance Imaging.	Withdrawn and replaced with newer version.
G. Orthopedics			
11–175		ASTM F1582–98 (Reapproved 2011) Standard Terminology Relating to Spinal Implants.	Reaffirmation.
11–185		ASTM F2267–04 (Reapproved 2011) Standard Test Method for Measuring Load Induced Subsidence of Intervertebral Body Fusion Device Under Static Axial Compression.	Reaffirmation.
11–186	11–235	ASTM F2077–11 Test Methods For Intervertebral Body Fusion Devices	Withdrawn and replaced with newer version.
11–195		ASTM F1612–95 (2005), Standard Practice for Cyclic Fatigue Testing of Metallic Stemmed Hip Arthroplasty Femoral Components with Torsion.	Withdrawn. See 11–225.
11–203		ASTM F1541–02 (Reapproved 2011) Standard Specification and Test Methods for External Skeletal Fixation Devices.	Reaffirmation and contact person.
11–220		ASTM F2068–09, Standard Specification for Femoral Prostheses—Metallic Implants.	Extent of recognition and CFR citations.
11–230	11–236	ASTM F1717–11a Standard Test Methods for Spinal Implant Constructs in a Vertebrectomy Model.	Withdrawn and replaced with newer version.
H. Physical Medicine			
16–172		ANSI/RESNA WC/Volume 1—1998, Section 5: Determination of Overall Dimensions, Mass, and Turning Space—Wheelchair.	Duplicate. See 16–188.
16–186	16–189	ASME A18.1–2011 (Revision of ASME A18.1–2008) Safety Standard for Platform Lifts and Stairway Chairlifts.	Withdrawn and replaced with newer version.
I. Radiology			
12–102		ANSI/IESNA RP–27.2–00 Recommended Practice for Photobiological Safety for Lamps & Lamp Systems—Measurement Techniques.	CFR citation and product codes, devices affected, processes impacted, and contact person.
12–153		ANSI/IESNA RP–27.1–05 Recommended Practice for Photobiological Safety for Lamps and Lamp Systems—General Requirements.	CFR citation and product codes, devices affected, processes impacted, and contact person.
12–179		ANSI/IESNA RP–27.3–07 Recommended Practice for Photobiological Safety for Lamps—Risk Group Classification and Labeling.	Extent of recognition, CFR citation and product codes, devices affected, processes impacted, type of standard, contact person, and relevant guidance.
J. Software/Informatics			
13–8		IEC 62304 First edition 2006–05 Medical device software—Software life cycle processes.	Extent of recognition.

TABLE 2—MODIFICATIONS TO THE LIST OF RECOGNIZED STANDARDS—Continued

Old recognition No.	Replacement recognition No.	Title of standard [1]	Change
K. Sterility			
14–55	14–358	ANSI/AAMI/ISO 14160:2011 Sterilization of health care products—Liquid chemical sterilizing agents for single-use medical devices utilizing animal tissues and their derivatives—Requirements for characterization, development, validation and routine control of a sterilization process for medical devices.	Withdrawn and replaced with newer version.
14–123	14–359	ASTM F2096–11 Standard Test Method for Detecting Gross Leaks in Packaging by Internal Pressurization (Bubble Test).	Withdrawn and replaced with newer version.
14–227		ANSI/AAMI/ISO 11737–1:2006 (R) 2011, Sterilization of health care products—Microbiological methods—Part 1: Determination of the population of microorganisms on product.	Reaffirmation and contact person.
14–229		ASTM F1980–07 (Reapproved 2011) Standard Guide for Accelerated Aging of Sterile Barrier Systems for Medical Devices.	Reaffirmation.
14–264		AAMI/ANSI ST8:2008, Hospital steam sterilizers	Contact person.
14–277		ISO TS 17665–2:2009, Sterilization of health care products—Moist heat—Part 2: Guidance on the application of ISO 17665–1.	Extent of recognition and contact person.
14–292	14–360	ANSI/AAMI ST72:2011 Bacterial endotoxins—Test methods, routine monitoring, and alternatives to batch testing.	Withdrawn and replaced with newer version.
14–311		AAMI/ANSI ST55:2010, Table-top steam sterilizers	Contact person.

[1] All standard titles in this table conform to the style requirements of the respective organizations.

Listing of New Entries

In table 3 of this document, FDA provides the listing of new entries and consensus standards added as modifications to the list of recognized standards under Recognition List Number: 029.

TABLE 3—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS

Recognition No.	Title of standard [1]	Reference No. and date
A. Anesthesia		
1–86	Respiratory tract humidifiers for medical use—Particular requirements for respiratory humidification systems.	ISO 8185 Third edition 2007–07–01.
1–87	Medical electrical equipment—Part 2–23: Particular requirements for the basic safety and essential performance of transcutaneous partial pressure monitoring equipment.	60601–2–23 Edition 3.0 2011–02.
1–88	Medical electrical equipment—Part 2–12: Particular requirements for basic safety and essential performance of critical care ventilators.	ISO 80601–2–12 First edition 2011–04–15.
1–89	Medical electrical equipment—Part 2–12: Particular requirements for basic safety and essential performance of critical care ventilators.	ISO 80601–2–12:2011 TECHNICAL CORRIGENDUM 1.
B. Cardiovascular		
3–101	Medical electrical equipment—Part 2–27: Particular requirements for the basic safety and essential performance of electrocardiographic monitoring equipment.	ANSI/AAMI/IEC 60601–2–27:2011.
3–103	Cardiovascular implants—Endovascular devices—Part 3: Vena cava filters	ISO 25539–3 First edition 2011–12–01.
3–104	Standard Guide for Identification of Shelf-life Test Attributes for Endovascular Devices.	ASTM F2914–12.
C. General Hospital/General Plastic Surgery		
6–277	Prefilled syringes—Part 4: Glass barrels for injectables	ISO 11040–4 Second edition 2007–02–01.
6–278	Prefilled syringes—Part 5: Plunger stoppers for injectables	ISO 11040–5 Third edition 2012–01–15.
6–279	Medical electrical equipment—Part 2–19: Particular requirements for the basic safety and essential performance of infant incubators CORRIGENDUM 1.	IEC 60601–2–19 (Second edition—2009).
6–280	Medical electrical equipment—Part 2–20: Particular requirements for the basic safety and essential performance of infant transport incubators CORRIGENDUM 1.	IEC 60601–2–20 (Second edition—2009).
6–281	Medical electrical equipment—Part 2–35: Particular requirements for the basic safety and essential performance of heating devices using blankets, pads or mattresses and intended for heating in medical use CORRIGENDUM 1.	IEC 80601–2–35 (Second edition—2009).
D. Materials		
8–224	Standard Guide for Evaluating the Extent of Oxidation in Ultra-High-Molecular-Weight Polyethylene Fabricated Forms Intended for Surgical Implants.	ASTM F2102—06 €[1].

TABLE 3—NEW ENTRIES TO THE LIST OF RECOGNIZED STANDARDS—Continued

Recognition No.	Title of standard [1]	Reference No. and date
8–225	Standard Practice for Accelerated Aging of Ultra-High Molecular Weight Polyethylene after Gamma Irradiation in Air.	ASTM F2003—02 (Reapproved 2008).
8–226	Standard Specification for High-Purity Dense Aluminum Oxide for Medical Application.	ASTM F603—12.
E. OB–GYN/Gastroenterology		
9–75	Optics and Optical instruments—Medical endoscopes and endoscopic accessories—Part 3: Determination of field of view and direction of view of endoscopes with optics.	ISO 8600–3 First edition 1997–07–01.
9–76	Water for haemodialysis and related therapies	ISO 13959 Second edition 2009–04–15.
9–77	Guidance for the preparation and quality management of fluids for haemodialysis and related therapies.	ISO 23500 First edition 2011–05–15.
9–78	Quality of dialysis fluid for haemodialysis and related therapies	ISO 11663 First edition 2009–04–15.
F. Ophthalmic		
10–73	American National Standard for Ophthalmics—Instruments—General-Purpose Clinical Visual Acuity Charts.	ANSI Z80.21–2010.
10–74	Ophthalmic instruments—Fundus cameras	ISO 10940 Second edition 2009–08–01.
G. Orthopedic		
11–237	Implants for surgery—Partial and total hip joint prostheses—Part 6: Determination of endurance properties of head and neck region of stemmed femoral components.	ISO 7206–6 First edition 1992–03–l5.
11–238	Standard Specification for Total Hip Joint Prosthesis and Hip Endoprosthesis Bearing Surfaces Made of Metallic, Ceramic, and Polymeric Materials.	ASTM F 2033–12.
11–239	Standard Test Methods for Determination of Static and Cyclic Fatigue Strength of Ceramic Modular Femoral Heads.	ASTM F2345–03 (Reapproved 2008).
11–240	Standard Specification and Test Method for Metallic Bone Plates	ASTM F382–99 (Reapproved 2008).
11–241	Standard Specification and Test Methods for Metallic Medical Bone Screws	ASTM F543–07 €[1].
11–242	Standard Specification for Rigid Polyurethane Foam for Use as a Standard Material for Testing Orthopaedic Devices and Instruments.	ASTM F1839–08 €[2].
11–243	Standard Test Methods for Static and Dynamic Characterization of Spinal Artificial Discs.	ASTM F2346–05 (Reapproved 2011).
H. Radiology		
12–249	Photobiological safety of lamps and lamp systems	IEC 62471 First edition 2006–07.
I. Software/Informatics		
13–31	Specimen Labels: Content and Location, Fonts, and Label Orientation; Approved Standard.	CLSI AUTO12–A.
13–32	Medical device software—Software life cycle processes	ANSI/AAMI/IEC 62304:2006.
J. Sterility		
14–361	Sterilization of health care products—Liquid chemical sterilizing agents for single-use medical devices utilizing animal tissues and their derivatives—Requirements for characterization, development, validation and routine control of a sterilization process for medical devices.	ISO 14160 Second edition 2011–07–01.

All standard titles in this table conform to the style requirements of the respective organizations.

IV. List of Recognized Standards

FDA maintains the Agency's current list of FDA recognized consensus standards in a searchable database that may be accessed directly at FDA's Internet site at *http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfStandards/search.cfm.* FDA will incorporate the modifications and minor revisions described in this notice into the database and, upon publication in the **Federal Register**, this recognition of consensus standards will be effective. FDA will announce additional modifications and minor revisions to the list of recognized consensus standards, as needed, in the **Federal Register** once a year, or more often, if necessary.

V. Recommendation of Standards for Recognition by FDA

Any person may recommend consensus standards as candidates for recognition under the new provision of section 514 of the FD&C Act by submitting such recommendations, with reasons for the recommendation, to the contact person (see **FOR FURTHER INFORMATION CONTACT**). To be properly considered, such recommendations should contain, at a minimum, the following information: (1) Title of the standard; (2) any reference number and date; (3) name and address of the national or international standards development organization; (4) a proposed list of devices for which a declaration of conformity to this standard should routinely apply; and (5) a brief identification of the testing or performance or other characteristics of

the device(s) that would be addressed by a declaration of conformity.

VI. Electronic Access

You may obtain a copy of ''Guidance on the Recognition and Use of Consensus Standards'' by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that you may download to a personal computer with access to the Internet. Updated on a regular basis, the CDRH home page includes the guidance as well as the current list of recognized standards and other standards-related documents. After publication in the **Federal Register**, this notice announcing ''Modification to the List of Recognized Standards, Recognition List Number: 029'' will be available on the CDRH home page. You may access the CDRH home page at *http://www.fda.gov/MedicalDevices.*

You may access ''Guidance on the Recognition and Use of Consensus Standards,'' and the searchable database for ''FDA Recognized Consensus Standards'' at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards.*

This **Federal Register** document on modifications in FDA's recognition of consensus standards is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/Standards/ucm123792.htm*

VII. Submission of Comments and Effective Date

Interested persons may submit to the contact person (see **FOR FURTHER INFORMATION CONTACT**) either electronic or written comments regarding this document. It is no longer necessary to send two copies of mailed comments. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider any comments received in determining whether to amend the current listing of modifications to the list of recognized standards, Recognition List Number: 029. These modifications to the list of recognized standards are effective upon publication of this notice in the **Federal Register**.

Dated: August 14, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–20323 Filed 8–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0840]

Hospira, Inc.; Withdrawal of Approval of a New Drug Application for DEXTRAN 70

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) for DEXTRAN 70 (6% Dextran 70 and 0.9% NaCl or/5% Dextrose 500 mL Glass Bottle) held by Hospira, Inc., 275 North Field Dr., Lake Forest, IL 60045. Hospira, Inc., has notified the Agency in writing that this product is no longer marketed and has requested that approval of the application be withdrawn.

DATES: Effective August 20, 2012.

FOR FURTHER INFORMATION CONTACT: Jonathan McKnight, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION: Hospira, Inc., has requested that FDA withdraw approval of NDA 080–819, DEXTRAN 70 (6% Dextran 70 and 0.9% NaCl or/5% Dextrose 500 mL Glass Bottle) under the process in § 314.150(c)(21 CFR 314.150(c)), stating that the product is no longer marketed. By its own request, Hospira, Inc., has also waived its opportunity for a hearing provided under § 314.150(a).

Withdrawal of approval of an application under § 314.150(c) is without prejudice to refiling.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Biologics Evaluation and Research, by the Commissioner of Food and Drugs, approval of NDA 080–819, DEXTRAN 70 [6% Dextran 70 and 0.9% NaCl or/5% Dextrose 500 mL Glass Bottle], and all amendments and supplements thereto, is hereby withdrawn, effective August 20, 2012. Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the FD&C Act (21 U.S.C. 355(a) and 331(d)).

Dated: August 9, 2012.

Karen Midthun,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 2012–20280 Filed 8–17–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Direct Service and Contracting Tribes National Indian Health Outreach and Education Program Funding Opportunity

Announcement Type: New Limited Competition.

Funding Announcement Number: HHS–2012–IHS–NIHOE–0003.

Catalog of Federal Domestic Assistance Number: 93.933.

Key Dates

Application Deadline Date: September 10, 2012.

Review Date: September 12, 2012.

Earliest Anticipated Start Date: September 30, 2012.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting competitive cooperative agreement applications for the Office of Direct Service and Contracting Tribes on the National Indian Health Outreach and Education (NIHOE–III) program funding opportunity that includes outreach and education activities on the following: The Patient Protection and Affordable Care Act, Public Law 111–148 (PPACA), as amended by the Health Care and Education Reconciliation Act of 2010, Public Law 111–152, collectively known as the Affordable Care Act (ACA) and the Indian Health Care Improvement Act (IHCIA), as amended. This national outreach and educational program is authorized under the Snyder Act, codified at 25 U.S.C. 13, and the Transfer Act, codified at 42 U.S.C. 2001(a). This program is described in the Catalog of Federal Domestic Assistance under CFDA number 93.933.

Background

The NIHOE–III programs carry out health program objectives in the American Indian/Alaska Native (AI/AN) community in the interest of improving Indian health care for all 566 Federally-recognized Tribes including Tribal governments operating their own health care delivery systems through self-determination contracts and compacts

with the IHS and Tribes that continue to receive health care directly from the IHS. This program addresses health policy and health program issues and disseminates educational information to all AI/AN Tribes and villages. These awards require that public forums be held at Tribal educational consumer conferences to disseminate changes and updates in the latest health care information. These awards also require that regional and national meetings be coordinated for information dissemination as well as for the inclusion of planning and technical assistance and health care recommendations on behalf of participating Tribes to ultimately inform IHS and the Department of Health and Human Services (HHS) based on Tribal input through a broad based consumer network.

The IHS also provides health and related services through grants and contracts with urban Indian organizations to reach AI/AN residing in urban communities.

Purpose

The purpose of this IHS cooperative agreement is to encourage national Indian organizations and IHS, Tribal, and Urban (I/T/U) partners to work together to implement three distinct program activities throughout Indian Country: (1) Health Reform and How to Maximize Provisions for the IHS, Tribes, and Urban Health Clinics, (2) Medicaid Expansion for AI/ANs under the ACA, and (3) Conduct ACA/IHCIA Education and Outreach Training and Technical Assistance under the Limited Competition NIHOE Cooperative Agreement program to further health program objectives in the AI/AN community with outreach and education efforts in the interest of improving Indian health care and to ensure that all AI/AN are prepared to take advantage of the health reform opportunities, improve the quality of and access to health care services, and increase resources for AI/AN health care. The goal of this program announcement is to coordinate and conduct consumer centered outreach and education, training and technical assistance on a national scale for the 566 Federally-recognized Tribes and Tribal organizations on the changes, improvements and authorities of the ACA and IHCIA in anticipation of implementation of the health care reform date of January 1, 2014 regarding Medicaid expansion revenue opportunities and individual health insurance coverage and choices. This collaborative effort will benefit I/T/U as well as the AI/AN communities (Tribal and urban).

II. Award Information

Type of Award

Cooperative Agreement

The IHS will accept applications for either one of the following:

A. Two entities collaborating and applying as one entity.

B. Two entities applying separately to accomplish appropriately divided program activities.

Estimated Funds Available

The total amount of funding identified for the current fiscal year, FY 2012, is approximately $600,000. Individual award amounts are anticipated to be $300,000 each if awarded to two entities applying separately; $600,000 if awarded to two entities applying as one entity. Competing awards issued under this announcement are subject to the availability of funds. In the absence of funding, the IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

One or two awards will be issued under this program announcement.

Project Period

The project period will be for one year and will run consecutively from September 30, 2012 to September 29, 2013.

Cooperative Agreement

In the HHS, a cooperative agreement is administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

- IHS will have final approval of the selection of any consultants.
- IHS will approve the training and education curriculum content, facts, delivery mode, pre- and post-assessments, and evaluation before any materials are printed and the training is conducted.
- IHS will review and approve the final draft products before they are published and distributed.

B. Grantee Cooperative Agreement Award Activities

- Facilitate an open exchange of ideas and foster an atmosphere of open communication regarding outreach, educational training and technical assistance about these Acts.
- Provide the outreach and educational training and technical assistance about these Acts and their changes and requirements that will affect AI/AN whether doing so independently or jointly via a partnership as described previously. FY 2012 funding for ACA/IHCIA NIHOE and Implementation will focus on all national Indian organizations and I/T/U partners working together to implement three distinct program activities throughout Indian Country: (1) Health Reform and How to Maximize Provisions for the IHS, Tribes, and Urban Indian Health Clinics, (2) Medicaid Expansion for A IANs under the ACA, and (3) Conduct ACA/IHCIA Education and Outreach Training and Technical Assistance. The project goals are two-fold for the IHS and the selected entities:

1. Communicate IHS approved communication about the content and meaning of the ACA and the IHCIA.
2. Strengthen and unify partnerships to strategically identify and conduct activities that will be implemented throughout the I/T/U community by no later than December 31, 2013 to take full advantage of the January 1, 2014 implementation date for health care reform regarding Medicaid expansion revenue opportunities and individual health insurance coverage and choices.

III. Eligibility Information

1. Eligibility

Eligible applicants include 501(c)(3) non-profit entities who meet the following criteria.

Eligible applicants that can apply for this funding opportunity are national Indian organizations.

The national Indian organization must have the infrastructure in place to accomplish the work under the proposed program.

Eligible entities must have demonstrated expertise in the following areas:

- Representing all Tribal governments and providing a variety of services to Tribes, Area health boards, Tribal organizations, and Federal agencies, and playing a major role in focusing attention on Indian health care needs,

resulting in improved health outcomes for AI/ANs.

- Promoting and supporting Indian education, and coordinating efforts to inform AI/AN of Federal decisions that affect Tribal government interests including the improvement of Indian health care.
- Administering national health policy and health programs.
- Maintaining a national AI/AN constituency and clearly supporting critical services and activities within the IHS mission of improving the quality of health care for AI/AN people.
- Supporting improved health care in Indian Country.
- Providing education and outreach on a national scale (the applicant must provide evidence of at least ten years of experience in this area).
- Qualified national Indian organizations/entities must have experience and expertise on the variety of issues related to the provision of health care to Indian people.
- Qualified national American Indian organizations/entities much have at least two years of experience and expertise in addressing urban communities. *Note: At least one of the partnering applicant organizations must have the required time in providing health education and outreach to urban communities.

Note: Please refer to Section IV.2 (Application and Submission Information/ Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the ''Estimated Funds Available'' section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. IHS will not return the application. The applicant will be notified by email or certified mail by the Division of Grants Management (DGM) of this decision.

The funding level noted includes both direct and indirect costs. Administrative costs are capped.

Proof of Non-Profit Status

A copy of the 501(c)(3) Certificate must be received with your application submission by the deadline due date of September 10, 2012.

Letters of Intent will not be required under this funding opportunity announcement.

Applicants submitting any of the above additional documentation after the initial application submission due date are required to ensure the information was received by the IHS by obtaining documentation confirming delivery (i.e. FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/NonMedical Programs/gogp/index.cfm?module= gogp_funding*.

Questions regarding the electronic application process may be directed to Paul Gettys at (301) 443–2114.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed five pages).
- Project Narrative (must not exceed ten pages).
  - Background information on the national Indian organizations.
  - Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Letter of Support from Organization's Board of Directors.
- 501(c)(3) Certificate.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational Chart (optional).
- Documentation of current OMB A–133 required Financial Audit (if applicable).

Acceptable forms of documentation include:

- Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
- Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/ dissem/accessoptions.html?submit= Go+To+Database*.

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than ten pages and must: be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½″ x 11″ paper.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they will not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming more familiar with the grantee's activities and accomplishments prior to this possible grant award. If the narrative exceeds the page limit, only the first ten pages will be reviewed. The 10-page limit for the narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (4 Page Limitation)

Section 1: Needs

Describe how each national Indian organization has the experience to provide outreach and education efforts regarding the pertinent changes and updates in health care listed herein.

Part B: Program Planning and Evaluation (4 Page Limitation)

Section 1: Program Plans

Describe fully and clearly the direction the national Indian organization plans to address the

NIHOE III requirements, including how the national Indian organization plans to demonstrate improved health education and outreach services to all 566 Federally-recognized Tribes, as well as collaborative efforts regarding the urban organizations as described herein. Include proposed timelines as appropriate and applicable.

Section 2: Program Evaluation

Describe fully and clearly how the outreach and education efforts will impact changes in knowledge and awareness in Tribal and urban communities to encourage appropriate changes by increasing knowledge and awareness resulting in informed choices. Identify anticipated or expected benefits for the Tribal constituency and urban communities.

Part C: Program Report (2 Page Limitation)

Section 1: Describe major accomplishments over the last 24 months. Identify and describe significant program achievements associated with the delivery of quality health outreach and education. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 24 months. Identify and summarize recent major health related outreach and education project activities of the work performed during the last project period.

B. *Budget Narrative:* This narrative must describe the budget requested and match the scope of work described the project narrative. The budget narrative should not exceed five pages.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 12 a.m., midnight Eastern Daylight Time (EDT) on September 10, 2012. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. The applicant will be notified by the DGM via email or certified mail of this decision.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, DGM (*Paul.Gettys@ihs.gov*) at (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained (see Section IV.6 below for additional information). The waiver must be documented in writing (emails are acceptable), before submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGM. Once the waiver request has been approved, the applicant will receive a confirmation of approval and the mailing address to submit the application. Paper applications that are submitted without a waiver from the Acting Director of DGM will not be reviewed or considered further for funding. The applicant will be notified via email or certified mail of this decision by the Grants Management Officer of DGM. Paper applications must be received by the DGM no later than 5 p.m., EDT, on the application deadline date. Late applications will not be accepted for processing or considered for funding.

Other Important Due Dates

Proof of Non-Profit Status 501(c)(3) Certificate: Due date September 10, 2012.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant/cooperative agreement will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the ''Find Grant Opportunities'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

- Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting the application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.
- If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.
- If the waiver is approved, the application should be sent directly to the DGM by the deadline date of September 10, 2012.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM.
- All applicants must comply with any page limitation requirements described in this Funding Announcement.
- After electronically submitting the application, the applicant will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download the application from

Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the ODSCT will notify applicants that the application has been received.

- Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the CCR database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access it through *http://fedgov.dnb.com/webform*, or to expedite the process, call (866) 705–5711.

Effective October 1, 2010, all HHS recipients were asked to start reporting information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act'').

Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Central Contractor Registry (CCR)

Organizations that have not registered with CCR will need to obtain a DUNS number first and then access the CCR online registration through the CCR home page at *https://www.bpn.gov/ccr/default.aspx* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and your CCR registration will take 3–5 business days to process. Registration with the CCR is free of charge. Applicants may register online at *https://www.bpn.gov/ccrupdate/NewRegistration.aspx.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and CCR, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The narrative is limited to ten pages. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

1. Criteria

Criteria—Program Requirements

Project Objectives, Activities, Work Plan, Evaluation and Budget

A. Health Reform and How To Maximize Provisions for the IHS, Tribes and Urban Indian Health Clinics

(1) Identify health care economist or expert to develop models or tools that can be used by Tribes and Tribal organizations to identify revenue opportunities in the ACA and Health Insurance Exchanges.

(2) Develop a small, medium and large health care system model that Tribes and Tribal organizations can use to maximize Health Insurance Exchanges.

(3) Develop an electronic template that Tribes and Tribal organizations can use to populate data fields and generate Tribal specific analysis for informed decision making regarding health insurance coverage and choices to meet the January 1, 2014 ACA implementation date.

B. Maximize Medicaid Expansion for AI/ANs Under the ACA

(1) Identify health care economist or expert to develop models or tools that can be uses by Tribes and Tribal organizations to maximize revenue opportunities in the ACA Medicaid Expansion.

2. Develop a small, medium and large health care system model that Tribes and Tribal organizations can use to maximize Medicaid Expansion opportunities.

3. Develop an electronic template that Tribes and Tribal organizations can use to populate data fields and generate Tribal specific analysis for informed decision making regarding the Medicaid Expansion revenue opportunities and health care access and coverage to meet the January 1, 2014 ACA implementation date.

C. Conduct ACA/IHCIA Education and Outreach Training and Technical Assistance

(1) Evaluate all available ACA/IHCIA training material available for AI/AN and create additional materials as needed that are related to ACA/IHCIA.

(2) Describe how to ensure the training curriculum content addresses all new regulations implementing the ACA or IHCIA requirements.

(3) Describe the review and approval of the training course evaluation instrument.

(4) Record training sessions and describe how they will be made available to the I/T/U and AI/AN community on the Web sites of the national Indian organizations and partners.

D. Work Plan

Describe the activities or steps that will be used to achieve each of the activities proposed during the 12-month budget period.

(1) Provide a Work Plan that describes the sequence of specific activities and steps that will be used to carry out each of the three objectives.

(2) Include a detailed timeline that links activities to project objectives for the 12-month budget period.

(3) Identify challenges, both opportunities and barriers, that are likely to be encountered in designing and implementing the activities and approaches that will be used to address such challenges.

(4) Describe communication methods with partners.

E. Evaluation

(1) Provide a well-conceived logical plan for assessing the achievement of the project's process and outcome objectives and for evaluating changes in the specific problems and contributing factors.

(2) Identify performance measures by which the project will track its progress over time. A performance measure is a quantifiable indicator of progress and achievement that includes outcome, output, input, efficiency, and explanatory indicators.

F. Budget

Provide a functional categorically itemized budget and program narrative justification that supports accomplishing the program objectives, activities, and outcomes within the timeframes specified.

A. Introduction and Need for Assistance (15 Points)

1. Describe the individual entity's and/or partnering entities' (as applicable) current health, education and technical assistance operations as related to the broad spectrum of health needs of the AI/AN community. Include what programs and services are currently provided (i.e., Federally funded, State funded, etc.), any memorandums of agreement with other National, Area or local Indian health board organizations, HHS' agencies that rely on the applicant as the primary gateway organization that is capable of providing the dissemination of health information, information regarding technologies currently used (i.e., hardware, software, services, etc.), and identify the source(s) of technical support for those technologies (i.e., in-house staff, contractors, vendors, etc.). Include information regarding how long the applicant has been operating and its length of association/partnerships with Area health boards, etc. [historical collaboration].

2. Describe the organization's current technical assistance ability. Include what programs and services are currently provided, programs and services projected to be provided, etc.

3. Describe the population to be served by the proposed project. Include a description of the number of Tribes and Tribal members who currently benefit from the technical assistance provided by the applicant.

4. State how previous cooperative agreement funds facilitated education, training and technical assistance nation-wide for AI/ANs and relate the progression of health care information delivery and development relative to the current proposed project. (Copies of reports will not be accepted.)

5. Describe collaborative and supportive efforts with national, area and local Indian health boards.

6. Describe how the project relates to the purpose of the cooperative agreement by addressing the following: Identify how the proposed project will address the changes and requirements of the Acts.

B. Project Objective(s), Work-Plan and Approach (45 Points)

1. Proposed project objectives must be:

a. Measurable and (if applicable) quantifiable.

b. Results oriented.

c. Time-limited.

2. Submit a work-plan in the appendix which includes the following information:

a. Provide the action steps on a timeline for accomplishing the proposed project objective(s).

b. Identify who will perform the action steps.

c. Identify who will supervise the action steps taken.

d. Identify what tangible products will be produced during and at the end of the proposed project objective(s).

e. Identify who will accept and/or approve work products during the duration of the proposed project and at the end of the proposed project.

f. Include any training that will take place during the proposed project and who will be attending the training.

g. Include evaluation activities planned.

3. If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used):

a. Educational requirements.

b. Desired qualifications and work experience.

c. Expected work products to be delivered on a timeline.

d. If a potential consultant/contractor has already been identified, please include a resume in the Appendix.

C. Program Evaluation (15 Points)

Each proposed objective requires an evaluation component to assess its progression and ensure its completion. Also, include the evaluation activities in the work-plan. Describe the proposed plan to evaluate both outcomes and process. Outcome evaluation relates to the results identified in the objectives, and process evaluation relates to the work-plan and activities of the project.

1. For outcome evaluation, describe:

a. What the criteria will be for determining success of each objective.

b. What data will be collected to determine whether the objective was met.

c. At what intervals will data be collected.

d. Who will collect the data and their qualifications.

e. How the data will be analyzed.

f. How the results will be used.

2. For process evaluation, describe:

a. How the project will be monitored and assessed for potential problems and needed quality improvements.

b. Who will be responsible for monitoring and managing project improvements based on results of ongoing process improvements and their qualifications.

c. How ongoing monitoring will be used to improve the project.

d. Any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.

3. How the project will document what is learned throughout the project period. Describe any evaluation efforts that are planned to occur after the grant periods.

4. Describe the ultimate benefit for the AI/ANs that will be derived from this project.

D. Organizational Capabilities, Key Personnel and Qualifications (15 Points)

1. Describe the organizational structure of the organization.

2. Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other cooperative agreements/grants and projects successfully completed.

3. Describe what equipment (i.e., fax machine, phone, computer, etc.) and facility space (i.e., office space) will be available for use during the proposed project.

4. List key personnel who will work on the project. Include title used in the work-plan. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed project. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities. If a position is to be filled, indicate that information on the proposed position description.

E. Categorical Budget and Budget Justification (10 Points)

1. Provide a categorical budget for 12-month budget period requested.

2. If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

3. Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (i.e., equipment specifications, etc.).

Appendix Items

- Work-plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).

• Current Indirect Cost Agreement.

• Organizational chart(s) highlighting proposed project staff and their supervisors as well as other key contacts within the organization and key community contacts.

• Additional documents to support narrative (i.e. data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. Applicants will be notified by DGM, via email or letter, to outline minor missing components (i.e., signature on the SF–424, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the Objective Review Committee (ORC), applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be considered to be ''Disapproved'' and will be informed via email or regular mail by the IHS Program Office of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative (AOR) that is identified on the face page (SF–424), of the application within 60 days of the completion of the Objective Review.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The (NoA) will be initiated by the DGM and will be mailed via postal mail or emailed to each entity that is approved for funding under this announcement. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval, 60, and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS Program Office within 30 days of the conclusion of the ORC outlining the weaknesses and strengths of their application submitted. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be ''Approved,'' but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2012, the approved application maybe re-considered by the awarding program office for possible funding. You will also receive an Executive Summary Statement from the IHS Program Office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS Grants Management Official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and Office of Management and Budget (OMB) cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

• 45 CFR Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.

• 45 CFR Part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. Grants Policy:

• HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

• Title 2: Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).

• Title 2: Grant and Agreements, Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

• OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.aqd.nbc.gov/services/ICS.aspx.* If your organization has questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

4. Reporting Requirements

Grantees must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. These reports must include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other

pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Division of Payment Management, HHS at: *http://www.dpm.psc.gov.* It is recommended that you also send a copy of your FFR (SF–425) report to your Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: The Progress Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

Effective October 1, 2010 IHS implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding this requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after and (2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting period will be required to conduct address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the Grants Management Grants Policy Web site at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Ms. Roselyn Tso, Acting Director, ODSCT, 801 Thompson Avenue, Suite 220, Rockville, Maryland 20852, Telephone: (301) 443–1104, Fax: (301) 443–4666, EMail: *Roselyn.Tso@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Mr. Andrew Diggs, Grants Management Specialist, 801 Thompson Avenue, TMP 360, Rockville, Maryland 20852, Telephone: (301) 443–5204, Fax: (301) 443–9602, EMail: *Andrew.Diggs@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: August 12, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–20291 Filed 8–17–12; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Announcement Number: HHS–2012–IHS–NIHOE–0001]

Office of Direct Service and Contracting Tribes; National Indian Health Outreach and Education Cooperative Agreement

Announcement Type: Limited Competition

Catalog of Federal Domestic Assistance Number: 93.933

DATES: Key Dates:

Application Deadline Date: September 10, 2012.

Review Date: September 12, 2012.

Earliest Anticipated Start Date: September 30, 2012.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for the Office of Direct Service and Contracting Tribes on the National Indian Health Outreach and Education (NIHOE) I cooperative agreement. This award includes the following four components, as described in this announcement: ''Line Item 128 Health Education and Outreach funds,'' ''Health Care Policy Analysis and Review,'' ''Budget Formulation'' and ''Tribal Leaders Diabetes Committee'' (TLDC). This program is authorized under the Snyder Act, codified at 25 U.S.C. 13. This program is described in the Catalog of Federal Domestic Assistance under CFDA 93.933.

Limited Competition Announcement

This is a Limited Competition announcement. The funding levels noted include both direct and indirect costs. Limited competition refers to a funding opportunity that limits the eligibility to compete to more than one entity but less than all entities.

Limited Competition Justification

Competition for the award included in this announcement is limited to national Indian health care organizations with at least ten years of experience providing education and outreach on a national scale. This limitation ensures that the awardee will have (1) A national information-sharing infrastructure which will facilitate the timely exchange of information between the Department of Health and Human Services (HHS) and Tribes and Tribal organizations on a broad scale; (2) a national perspective on the needs of American Indian/Alaska Native (AI/AN) communities that will ensure that the information developed and disseminated through the projects is appropriate, useful and addresses the most pressing needs of AI/AN communities; and (3) established relationships with Tribes and Tribal organizations that will foster open and honest participation by AI/AN communities. Regional or local organizations will not have the mechanisms in place to conduct communication on a national level, nor will they have an accurate picture of the health care needs facing AI/ANs nationwide. Organizations with less experience will lack the established relationships with Tribes and Tribal organizations throughout the country that will facilitate participation and the open and honest exchange of information between Tribes and HHS. With the limited funds available for

these projects, HHS must ensure that the education and outreach efforts described in this announcement reach the widest audience possible in a timely fashion, are appropriately tailored to the needs of AI/AN communities throughout the country, and come from a source that AI/ANs recognize and trust. For these reasons, this is a limited competition announcement.

Background

The NIHOE program carries out health program objectives in the AI/AN community in the interest of improving Indian health care for all 566 Federally-recognized Tribes, including Tribal governments operating their own health care delivery systems through self-determination contracts with the IHS and Tribes that continue to receive health care directly from the IHS. This program addresses health policy and health program issues and disseminates educational information to all AI/AN Tribes and villages. This program requires that public forums be held at Tribal educational consumer conferences to disseminate changes and updates in the latest health care information. This program also requires that regional and national meetings be coordinated for information dissemination as well as the inclusion of planning and technical assistance and health care recommendations on behalf of participating Tribes to ultimately inform IHS based on Tribal input through a broad based consumer network.

Purpose

The purpose of this IHS cooperative agreement is to further IHS's mission and goals related to providing quality health care to the AI/AN community through outreach and education efforts with the sole outcome of improving Indian health care. This award includes the following four health services components: Retained Tribal Shares for outreach and health education for Tribes, Health Care Policy Analysis and Review, Budget Formulation and Tribal Leaders Diabetes Committee (TLDC).

II. Award Information

Type of Award

Cooperative Agreement.

Estimated Funds Available

The total amount of funding identified for the current fiscal year, FY 2012, is approximately $966,000 to fund the cooperative agreement for one year. $300,000 is estimated for outreach, education, and support to Tribes who have elected to leave their Tribal Shares with the IHS (this amount could vary based on Tribal Shares assumptions; Line Item 128 Health Education and Outreach will be awarded in partial increments based on availability and amount of funding); $400,000 for the Health Care Policy Analysis and Review; $16,000 for the Budget Formulation; and $250,000 associated with providing legislative education, outreach and communications support to the IHS TLDC and to facilitate Tribal consultation on the Special Diabetes Program for Indians (SDPI). The awards under this announcement are subject to the availability of funds. Award(s) issued under this announcement are subject to the availability of funds. In the absence of funding, the IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

One IHS award comprised of the following four components is anticipated: Line Item 128 Health Education and Outreach; Health Care Policy Analysis and Review, Budget Formulation and TLDC.

Project Period

The project period will run for one year from September 30, 2012 through September 29, 2013.

Cooperative Agreement

In HHS, a cooperative agreement is administered under the same policies as a grant. The funding agency (IHS) is required to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for both IHS and the grantee. IHS will be responsible for activities listed under section A and the grantee will be responsible for activities listed under section B as stated:

Substantial Involvement Description for Cooperative Agreement

A. IHS Programmatic Involvement

(1) The IHS assigned program official will work in partnership with the awardee in all decisions involving strategy, hiring of personnel, deployment of resources, release of public information materials, quality assurance, coordination of activities, any training, reports, budget and evaluation. Collaboration includes data analysis, interpretation of findings and reporting.

(2) The IHS assigned program official will monitor the overall progress of the awardee's execution of the requirements of the award noted below, as well as their adherence to the terms and conditions of the cooperative agreement. This includes providing guidance for required reports, development of tools, and other products, interpreting program findings and assistance with evaluation and overcoming any slippages encountered.

(3) The IHS assigned program official will coordinate review and provide final approval of any deliverables, including printed materials, reports, testimony, and PowerPoint slides, prior to their distribution or dissemination to HHS, Tribes, or the public.

(4) The IHS assigned program official will also coordinate the following:

- Discussion and release of any and all special grant conditions upon fulfillment.
- Monthly scheduled conference calls.
- Appropriate dissemination of required reports to each participating IHS program.

(5) IHS will jointly, with the awardee, plan and set an agenda for an annual conference that:

- Shares the outcomes of the outreach and health education training provided.
- Fosters collaboration amongst the participating IHS program offices.
- Increases visibility for the partnership between the awardee and IHS.

(6) IHS will provide guidance in preparing articles for publication and/or presentations of program successes, lessons learned and new findings.

(7) IHS staff will review articles concerning the HHS for accuracy and may, if requested by the awardee, provide relevant articles.

(8) IHS will communicate via monthly conference calls, individual or collective (all participating programs) site visits to the awardee, and via monthly meetings.

(9) IHS will provide technical assistance to the awardee as requested.

(10) IHS staff may, at the request of the entity's board, participate on study groups, attend board meetings, and recommend topics for analysis and discussion.

B. Grantee Cooperative Agreement Award Activities

The awardee must obtain written IHS approval of all deliverables produced with award funds, including printed materials, reports, testimony, and PowerPoint slides, prior to their distribution or dissemination to HHS, Tribes, or the public.

The awardee must comply with relevant Office of Management and Budget (OMB) Circular provisions regarding lobbying, any applicable lobbying restrictions provided under

other law, and any applicable restriction on the use of appropriated funds for lobbying activities.

1. Line Item 128 Health Education and Outreach Funding Is Utilized for Outreach, Health Education, and Support to Tribes

The awardee is expected to:

a. Host an annual conference to disseminate changes and updates on health care information relative to AI/AN.

b. Host a mid-year consumer conference(s) as appropriate to disseminate changes and updates on health care information relative to AI/AN.

c. Conduct regional and national meeting coordination as appropriate.

d. Conduct health care information dissemination as appropriate.

e. Coordinate planning and technical assistance needs on behalf of Tribes/Tribal Organizations (T/TO) to IHS.

f. Convey health care recommendations on behalf of T/TO to IHS.

2. Health Care Policy Analysis and Review

This funding component requires the awardee to provide IHS with research and analysis of the impact of Centers for Medicare and Medicaid Services (CMS) programs on AI/AN beneficiaries and the health care delivery system that serves these beneficiaries. The awardee will perform in-depth analysis and review of issues related to CMS rules and regulations and the impact on IHS beneficiaries. This is to include, but not limited to, a special emphasis and focus on the health care policy issues related to the special provisions for Indians in the Patient Protection and Affordable Care Act (ACA).

$100,000 Funding for Analysis of CMS Programs on AI/AN Beneficiaries

The awardee will produce measurable outcomes to include:

a. Analytical reports, policy review and recommendation documents—The products will be in the form of written (hard copy and/or electronic files) documents that contain analysis of relevant health care issues to be reported on a monthly or quarterly basis during the IHS and CMS ''All Tribes Calls'' and face-to-face meetings with hard copies submitted to the Director, Office of Resource, Access and Partnerships, IHS.

b. Educational and informational materials to be disseminated by the awardee and communicated to IHS and Tribal health program staff during monthly and quarterly conferences, the annual consumer conference, meetings and training sessions. This can be in the form of PowerPoint presentations, informational brochures, and/or handout materials.

$300,000 Funding for Implementation of the Affordable Care Act (ACA)—Preparation for Medicaid Expansion and Exchange Decision Making

This funding requires the awardee to manage and provide technical, research and analytical support nationally to Tribes in coordination and communication with the IHS Office of Resource Access and Partnerships (ORAP) regarding implementation of the Affordable Care Act (ACA). The awardee will develop decision tools (e.g. written policy recommendations, updates and analyses, drafting of correspondence, developing action items, etc.) and disseminate to Tribes in preparation for Medicaid Expansion and Exchange participation, roles and responsibilities, and potential areas of collaboration. The awardee agrees to the following outcomes and deliverables to perform in depth analyses and reviews of the implications for coverage and access to care, and to make recommendations on issues such as:

1. Best Practices in State-Tribal Consultation on Health Insurance Exchanges

a. Create briefing documents and assist in drafting, editing, and reviewing policy analysis, correspondence, and letters for tribal educational purposes.

b. Create a portfolio of examples of State tribal consultation documents.

2. Working With Federally Facilitated Exchanges (FFE)

a. Development of enrollment and analysis tools for tribes that are in states that will be served wholly or in part by the FFE.

3. Medicaid Expansion Preparations at National, Area, and Local Levels

a. Create briefing documents and assist in drafting, editing, and reviewing policy analysis, correspondence, and letters for tribal educational and outreach.

4. The Use of IHS Data for the Federal Data Services Hub Verification Process

a. Create briefing documents and assist in drafting, editing, and reviewing policy analysis, correspondence, and letters for tribal educational purposes.

b. Provide comparison analysis of how IHS Resource and Patient Management System data matches Affordable Care Act Indian definitions for eligibility with recommendations on how to make the match, identification of any needed changes to RPMS for data verification.

c. Provide an analysis of how tribes that do not use RPMS can provide data for verification purposes in the federal hub.

5. Best Practices in Working With States Applying for Medicaid Section 1115 Waivers

a. Provide analysis of waiver applications

b. Create briefing documents and assist in drafting, editing, and reviewing policy analysis, correspondence, and letters for tribal educational purposes

c. Provide analysis report of State Tribal consultation efforts.

The awardee will produce measurable outcomes to include:

a. Analytical reports, policy reviews and recommended documents—The products will be in the form of written (hard copy and/or electronic files) documents that contain analyses of the listed ACA implementation health care issues to be reported at the Quarterly Direct Service Tribes Advisory Meetings. A hard copy of all information will be submitted to the Director, Attn: Office of Resource, Access and Partnerships, IHS.

b. Educational and informational materials to be disseminated by the awardee and communicated to IHS and Tribal health program staff through venues such as National and Regional Health conferences with a Tribal focus, consumer conferences, meetings and training sessions. This can be in the form of PowerPoint presentations, informational brochures, and/or handout materials.

The IHS will provide guidance and assistance as needed. Copies of all deliverables shall be submitted to the IHS Office of Direct Service and Contracting Tribes; IHS ORAP; and IHS Senior Advisor to the Director.

3. Tribal Budget Consultation—Budget Formulation

The Awardee will provide assistance to IHS, Tribes, the Budget Formulation Workgroup, and to the technical team, by performing the following activities in coordination and support of the IHS Tribal Budget Consultation. Budget consultation is required by the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 450j–1(i).

National Budget Work Session—January 2013 Meeting Responsibilities (Required)

Estimated Costs: The estimated costs for this activity shall not exceed

$6,500.00. The awardee shall work with IHS/Office of Finance and Accounting (OFA)/Division of Budget Formulation (DBF) closely on this item.

Recordation of Meeting—The Awardee Shall Take Minutes During the Work Session

- Minutes should be recorded in a clear and concise manner and identify all speakers including presenters and any individuals contributing comments or motions.
- Minutes will be recorded in an objective manner.
- Minutes shall include a record of any comments, votes, or recommendations made, as well as notation of any handouts and other materials referenced by speakers, documented by the speaker's name and affiliation.
- Minutes shall document any written materials that were distributed at the meeting. These materials will be included with the submission of the transcription and the summary page outlining all key topics.
- Minutes will include information regarding the next meeting, including the date, time and location and a list of topics to be addressed.
- The minutes must be submitted to IHS/OFA for review and approval within five working days.

Further Instructions

The awardee shall:

a. Package and distribute results of work session to OFA within five working days, which includes minutes and the final set of agreed upon national budget and health priorities; and

b. Provide final documents needed for IHS budget formulation Web site.

HHS Tribal Consultation—March 2013 Preparation and Meeting Responsibilities

Estimated Costs: The estimated costs for this activity shall not exceed $3,000.00. The awardee shall work with IHS/OFA/DBF closely on this item.

The tribal testimony is a combined effort that is written and presented by the National Tribal Budget Formulation Workgroup. The testimony is presented to the Secretary of HHS and related staff as part of the Annual National U.S. Department of Health and Human Services Tribal Budget and Policy Consultation.

Assist the selected Tribal Budget Formulation Workgroup to prepare for the HHS Consultation meeting to:

a. Arrange a workgroup meeting;

b. Prepare testimony, and PowerPoint presentation with talking points, with the content of both based on input from the workgroup and technical team and with the awardee responsible for formatting and design of the products;

c. Submit testimony and draft PowerPoint presentation to IHS for review and approval;

d. Package and distribute final materials, once approval from IHS is obtained; and

e. Deliver final testimony to IHS Budget Formulation prior to the presentation for final printing.

Assist Tribal presenters as needed with rehearsal of the presentation.

Arrange working space for the workgroup to provide final input to the presentation and finalize presentation, if needed—NTE 2 days.

Budget Formulation Evaluation/ Planning Meeting—May 2013 Meeting Responsibilities (Required)

Estimated Costs: The estimated costs for this activity shall not exceed $6,500.00. The awardee shall work with IHS/OFA/DBF closely on this item.

Recordation of Meeting—The Awardee Shall Take Minutes During the Work Session

- Minutes should be recorded in a clear and concise manner and identify all speakers including presenters and any individuals contributing comments or motions.
- Minutes will be recorded in an objective manner.
- Minutes shall include a record of any comments, votes, or recommendations made, as well as notation of any handouts and other materials referenced by speakers, documented by the speaker's name and affiliation.
- Minutes shall document any written materials that were distributed at the meeting. These materials will be included with the submission of the transcription and the summary page outlining all key topics.
- Minutes will include information regarding the next meeting, including the date, time and location and a list of topics to be addressed.
- The minutes must be submitted to IHS/OFA for review and approval within five working days.

Further Instructions:

Package and distribute results of work session:

(a) To OFA within five working days, and

(b) Provide final documents needed for IHS budget formulation Web site.

Additionally:

- All expenses will be itemized.
- If costs exceed the estimated cost for any part of this Scope of Work, approval from OFA must be granted before any release of funds.
- Preapproval from IHS is required before any subcontract may be awarded at a price above the estimated cost.

4. TLDC and Related Support Activities

A. Coordination of travel and travel/ per diem reimbursement of 12 TLDC members (or their assigned alternate) and five Technical Advisors to attend four quarterly TLDC meetings in accordance with the approved TLDC charter. Amount: $150,000.

Activities to be performed by the awardee include:

- Communicate directly with TLDC members (and alternates, as necessary) to arrange travel to TLDC meetings in accordance with the approved charter.
- Address and track all inquiries regarding travel arrangements and reimbursements for TLDC members and advisors (and alternates, as necessary) to attend planned TLDC meetings.
- Coordinate sharing of logistical information to TLDC members and advisors for meeting location and lodging with the IHS Division of Diabetes Treatment and Prevention (DDTP) contractor(s).
- Prepare and distribute reimbursement forms with clear instructions in advance of the meeting and serve as the point of contact for communicating any additional travel information that is required.
- Establish a process to collect reimbursement forms from TLDC members and communicate this process to them.
- Establish and maintain a database on travel reimbursements and related meeting costs.
- Track and report all related travel and per diem costs.
- Coordinate and effect the timely reimbursement of approved participants' expenses within 30 days of the receipt of the claim forms.
- Maintain an active TLDC email directory in order to assist the DDTP and the TLDC with broadcasting related meeting, travel and reimbursement information and soliciting related feedback.
- Include identified DDTP staff on all electronic correspondence to TLDC members.

B. Provide support for education and outreach efforts in support of communicating with Tribal leaders and Indian organizations about the activities of the (1) TLDC and (2) the SDPI grant program. Amount: $70,000.

The awardee is expected to:

- Provide DDTP with factual information, review and analysis of legislative and policy issues that are relevant to diabetes, obesity and related conditions in AI/ANs and on related

health care disparities for the purpose of keeping TLDC membership up-to-date on such information.

• Provide analytical reports and summaries in the form of written (hard copy and electronic files) documents that contain the analysis or summary of the factual information for the purpose of assisting the TLDC with communication to Tribes, Tribal leaders, Indian organizations, and others about relevant issues pertinent to addressing diabetes in AIAN communities.

• Coordinate sharing TLDC-approved information with national non-profit organizations such as the Juvenile Diabetes Research Foundation and the American Diabetes Association for strengthening outreach to Tribes and Tribal communities as well as education and outreach to non-Indian communities in the United States about AI/ANs living with diabetes.

• Participate with the DDTP and the TLDC in the development of the agendas for the quarterly TLDC face-to-face meetings and scheduled conference calls. The awardee will provide the draft agenda to the TLDC Tribal Chairman and the DDTP Director or assignee.

• In consultation with the DDTP, the awardee will be responsible for payment of costs associated with presenter fees, registration fees and exhibit fees for DDTP staff and assignees at the National Indian Health Board's (NIHB) Public Health Summit and the annual consumer conference, to include a plenary presentation on diabetes treatment and prevention and up to four diabetes and SDPI related workshops.

• The awardee will be responsible for payment of presenter costs associated with no more than three other separate presentations that address diabetes and related chronic disease issues among AI/ANs at national Tribal health care conferences.

C. Support DDTP's collaborative efforts that are aimed at addressing the epidemic of diabetes and obesity in AI/AN youth. Annual Amount: $30,000.

The awardee is expected to:

• Provide the DDP with current factual information on the epidemic of diabetes and obesity in AIAN youth and review and analyze legislative and policy issues that are relevant to this topic.

• Address and update the findings in the report generated at the NIHB/IHS Obesity Prevention and Strategies in Native Youth Meeting held December 1, 2009. The awardee can access this report by contacting the DDTP.

• Provide analytical reports and summaries in the form of written (hard copy and electronic files) documents that contain the analysis or summary of the factual information for the purpose of assisting the DDTP and the TLDC with communication to Tribes, Tribal leaders, Indian organizations, and others about relevant issues pertinent to addressing this epidemic of diabetes and obesity in AI/AN youth.

• In consultation with the DDTP, the awardee will arrange the logistics for an obesity and AI/AN youth workgroup meeting to take place. The intent of the workgroup is to provide a summary of the current factual information on obesity and AIAN youth including reference articles and public reports.

This summary report will not provide recommendations. The available members who are identified in the report cited above (IHS Obesity Prevention and Strategies in Native Youth) as well as other subject matter experts will be invited to attend. The awardee will provide a proceedings and executive summary of this workgroup meeting to DDTP. (Payment for travel and per diem will not be the responsibility of the awardee).

III. Eligibility Information

1. Eligibility

Eligible applicants are 501(c)(3) national Indian organizations that meet the following criteria: Eligible entities must have demonstrated expertise in:

• Representing all Tribal governments and providing a variety of services to Tribes, Area Health Boards, Tribal organizations, and Federal agencies, and playing a major role in focusing attention on Indian health care needs, resulting in improved health outcomes for Tribes.

• Promoting and supporting Indian education, and coordinating efforts to inform AI/AN of Federal decisions that affect Tribal government interests including the improvement of Indian health care.

• Administering national health policy and health programs.

• Maintaining a national AI/AN constituency and clearly supporting critical services and activities within the IHS mission of improving the quality of health care for AI/AN people.

• Supporting improved healthcare in Indian Country.

The national Indian organization must have the infrastructure in place to accomplish the work under the proposed program.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

If application budgets exceed the highest dollar amount outlined under the ''Estimated Funds Available'' section within this funding announcement, the application will be considered ineligible and will not be reviewed for further consideration. IHS will not return the application to the applicant. The applicant will be notified by email or certified mail by the Division of Grants Management (DGM) of this decision.

Proof of Non-Profit Status

Organizations claiming non-profit status must submit proof. A copy of the 501(c)(3) Certificate must be received with your application submission by the deadline due date of September 10, 2012.

Letters of Intent will not be required under this funding opportunity announcement.

Applicants submitting any of the above additional documentation after the initial application submission due date are required to ensure the information was received by the IHS by obtaining documentation confirming delivery (i.e. FedEx tracking, postal return receipt, etc.).

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement can be found at *http://www.Grants.gov* or *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding.*

Questions regarding the electronic application process may be directed to Paul Gettys at (301) 443–2114.

2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Table of contents.
- Abstract (one page) summarizing the project.
- Application forms:
  - SF–424, Application for Federal Assistance.
  - SF–424A, Budget Information—Non-Construction Programs.
  - SF–424B, Assurances—Non-Construction Programs.
- Budget Justification and Narrative (must be single spaced and not exceed 5 pages per each of the four components).
- Project Narrative (must not exceed ten pages for each of the four components).

- Background information on the organization.
- Proposed scope of work, objectives, and activities that provide a description of what will be accomplished, including a one-page Timeframe Chart.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL).
- Certification Regarding Lobbying (GG–Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required) in order to receive IDC.
- Organizational Chart (optional).
- Documentation of current OMB A–133 required Financial Audit (if applicable).

Acceptable forms of documentation include:

○ Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

○ Face sheets from audit reports. These can be found on the FAC Web site: *http://harvester.census.gov/sac/dissem/accessoptions.html?submit=Go+To+Database.*

Public Policy Requirements

All Federal-wide public policies apply to IHS grants with exception of the Discrimination policy.

Requirements for Project and Budget Narratives

A. *Project Narrative:* This narrative should be a separate Word document that is no longer than ten pages per each component and must: Be single-spaced, be type written, have consecutively numbered pages, use black type not smaller than 12 characters per one inch, and be printed on one side only of standard size 8½'' × 11'' paper.

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation criteria in this announcement) and place all responses and required information in the correct section (noted below), or they will not be considered or scored. These narratives will assist the Objective Review Committee (ORC) in becoming more familiar with the grantee's activities and accomplishments prior to this possible grant award. If the narrative exceeds the page limit, only the first ten pages of each of the four components pages will be reviewed. The ten pages per component page limit for the narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

There are three parts to the narrative: Part A—Program Information; Part B—Program Planning and Evaluation; and Part C—Program Report. See below for additional details about what must be included in the narrative.

Part A: Program Information (2 Page Limitation)

Section 1: Needs

Describe how the national Indian organization has the expertise to provide outreach and education efforts on a continuing basis regarding the pertinent changes and updates in health care for each of the four components listed herein.

Part B: Program Planning and Evaluation (6 Page Limitation)

Section 1: Program Plans

Describe fully and clearly the direction the national Indian organization plans to address the NIHOE requirements, including how the national Indian organization plans to demonstrate improved health education and outreach services to all 566 Federally-recognized Tribes for each of the four components described herein. Include proposed timelines as appropriate and applicable.

Section 2: Program Evaluation

Describe fully and clearly how the outreach and education efforts will impact changes in knowledge and awareness in Tribal communities. Identify anticipated or expected benefits for the Tribal constituency.

Part C: Program Report (2 Page Limitation)

Section 1: Describe major accomplishments over the last 24 months. Identify and describe significant program achievements associated with the delivery of quality health outreach and education. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress.

Section 2: Describe major activities over the last 24 months. Identify and summarize recent major health related outreach and education project activities conducted over the last 24 months.

B. *Budget Narrative:* This narrative must describe the budget requested and match the scope of work described in the project narrative. The budget narrative should not exceed five pages per each of the four components.

3. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by 12 a.m., midnight Eastern Daylight Time (EDT) on September 10, 2012. Any application received after the application deadline will not be accepted for processing, nor will it be given further consideration for funding. The applicant will be notified by the DGM via email or certified mail of this decision.

If technical challenges arise and assistance is required with the electronic application process, contact Grants.gov Customer Support via email to *support@grants.gov* or at (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays). If problems persist, contact Paul Gettys, DGM (*Paul.Gettys@ihs.gov*) at (301) 443–5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a Grants.gov tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

If an applicant needs to submit a paper application instead of submitting electronically via Grants.gov, prior approval must be requested and obtained (see Section IV.6 below for additional information). The waiver must be documented in writing (emails are acceptable), before submitting a paper application. A copy of the written approval must be submitted along with the hardcopy that is mailed to the DGM. Once the waiver request has been approved, the applicant will receive a confirmation of approval and the mailing address to submit the application. Paper applications that are submitted without a waiver from the Acting Director of DGM will not be reviewed or considered further for funding. The applicant will be notified via email or certified mail of this decision by the Grants Management Officer of DGM. Paper applications must be received by the DGM no later than 5 p.m., EDT, on the application deadline date. Late applications will not be accepted for processing or considered for funding.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are not allowable.
- The available funds are inclusive of direct and appropriate indirect costs.

• Only one grant/cooperative agreement will be awarded per applicant.

• IHS will not acknowledge receipt of applications.

6. Electronic Submission Requirements

All applications must be submitted electronically. Please use the *http://www.Grants.gov* Web site to submit an application electronically and select the ''Find Grant Opportunities'' link on the homepage. Download a copy of the application package, complete it offline, and then upload and submit the completed application via the *http://www.Grants.gov* Web site. Electronic copies of the application may not be submitted as attachments to email messages addressed to IHS employees or offices.

Applicants that receive a waiver to submit paper application documents must follow the rules and timelines that are noted below. The applicant must seek assistance at least ten days prior to the application deadline.

Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or *http://www.Grants.gov* registration or that fail to request timely assistance with technical issues will not be considered for a waiver to submit a paper application.

Please be aware of the following:

• Please search for the application package in *http://www.Grants.gov* by entering the CFDA number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

• If you experience technical challenges while submitting your application electronically, please contact Grants.gov Support directly at: *support@grants.gov* or (800) 518–4726. Customer Support is available to address questions 24 hours a day, 7 days a week (except on Federal holidays).

• Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and waiver from the agency must be obtained.

• If it is determined that a waiver is needed, the applicant must submit a request in writing (emails are acceptable) to *GrantsPolicy@ihs.gov* with a copy to *Tammy.Bagley@ihs.gov.* Please include a clear justification for the need to deviate from our standard electronic submission process.

• If the waiver is approved, the application should be sent directly to the DGM by the deadline date of September 10, 2012.

• Applicants are strongly encouraged not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

• Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by the DGM.

• All applicants must comply with any page limitation requirements described in this Funding Announcement.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGM will download the application from Grants.gov and provide necessary copies to the appropriate agency officials. Neither the DGM nor the ODSCT will notify applicants that the application has been received.

• Email applications will not be accepted under this announcement.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

All IHS applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the CCR database. The DUNS number is a unique 9-digit identification number provided by D&B which uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access it through *http://fedgov.dnb.com/webform,* or to expedite the process, call (866) 705–5711.

Effective October 1, 2010, all HHS recipients were asked to start reporting information on subawards, as required by the Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''). Accordingly, all IHS grantees must notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

Central Contractor Registry (CCR)

Organizations that have not registered with CCR will need to obtain a DUNS number first and then access the CCR online registration through the CCR homepage at *https://www.bpn.gov/ccr/default.aspx* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Completing and submitting the registration takes approximately one hour to complete and your CCR registration will take 3–5 business days to process. Registration with the CCR is free of charge. Applicants may register online at *https://www.bpn.gov/ccrupdate/NewRegistration.aspx.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and CCR, can be found on the IHS Grants Management, Grants Policy Web site: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The ten page narrative allowed per each of the four components should include only the first year of activities. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 points. A minimum score of 60 points is required for funding. Points are assigned as follows:

1. Criteria

A. Introduction and Need for Assistance (15 Points)

(1) Describe the organization's current health, education and technical assistance operations as related to the broad spectrum of health needs of the AI/AN community. Include what programs and services are currently provided (i.e., Federally-funded, State-funded, etc.), any memorandums of agreement with other National, Area or local Indian health board organizations. This could also include HHS' agencies that rely on the applicant as the primary gateway organization that is capable of providing the dissemination of health information. Include information regarding technologies currently used (i.e., hardware, software, services, Web sites, etc.), and identify the source(s) of technical support for those technologies (i.e., in-house staff, contractors, vendors, etc.). Include information regarding how long the applicant has been operating and its length of association/

partnerships with Area health boards, etc. [historical collaboration].

(2) Describe the organization's current technical assistance ability. Include what programs and services are currently provided, programs and services projected to be provided, memorandums of agreement with other national Indian organizations that deem the applicant as the primary source of health policy information for AI/AN, memorandums of agreement with other Area Indian health boards, etc.

(3) Describe the population to be served by the proposed projects. Are they hard to reach? Are there barriers?

(4) Describe the geographic location of the proposed projects including any geographic barriers experienced by the recipients of the technical assistance to the health care information provided.

(5) Identify all previous IHS cooperative agreement awards received, dates of funding and summaries of the projects' accomplishments. State how previous cooperative agreement funds facilitated education, training and technical assistance nationwide for AI/ANs and relate the progression of health care information delivery and development relative to the current proposed projects. (Copies of reports will not be accepted.)

(6) Describe collaborative and supportive efforts with national, Area and local Indian health boards.

(7) Explain the need/reason for your proposed projects by identifying specific gaps or weaknesses in services or infrastructure that will be addressed by the proposed projects. Explain how these gaps/weaknesses were discovered. If the proposed projects include information technology (i.e., hardware, software, etc.), provide further information regarding measures taken or to be taken that ensure the proposed projects will not create other gaps in services or infrastructure (i.e., IHS interface capability, Government Performance Results Act reporting requirements, contract reporting requirements, Information Technology (IT) compatibility, etc.), if applicable.

(8) Describe the effect of the proposed projects on current programs (i.e., Federally-funded, State-funded, etc.) and, if applicable, on current equipment (i.e., hardware, software, services, etc.). Include the effect of the proposed projects on planned/anticipated programs and/or equipment.

(9) Describe how the projects relate to the purpose of the cooperative agreement by addressing the following: Identify how the proposed projects will address outreach and education regarding various health data listed, e.g., Line Item 128 Health Education and Outreach funds, Health Care Policy Analysis and Review, Tribal Budget Consultation—Budget Formulation, and TLDC, etc., dissemination, training, and technical assistance.

B. Project Objective(s), Workplan and Consultants (40 Points)

(1) Identify the proposed objective(s) for each of the four projects, as applicable. Objectives should be:

- Measurable and (if applicable) quantifiable.
- Results oriented.
- Time-limited.

Example: Issue four quarterly newsletters, provide alerts and quantify number of contacts with Tribes. Goals must be clear and concise. Objectives must be measurable, feasible and attainable for each of the selected projects.

(2) Address how the proposed projects will result in change or improvement in program operations or processes for each proposed project objective for all of the projects. Also address what tangible products, if any, are expected from the projects, (i.e., legislative analysis, policy analysis, annual conference, mid-year conferences, summits, etc.).

(3) Address the extent to which the proposed projects will provide, improve, or expand services that address the need(s) of the target population. Include a current strategic plan and business plan that includes the expanded services. Include the plan(s) with the application submission.

(4) Submit a work plan in the appendix which includes the following information:

- Provide the action steps on a timeline for accomplishing each of the projects' proposed objective(s).
- Identify who will perform the action steps.
- Identify who will supervise the action steps.
- Identify what tangible products will be produced during and at the end of the proposed projects' objective(s).
- Identify who will accept and/or approve work products during the duration of the proposed projects and at the end of the proposed projects.
- Include any training that will take place during the proposed projects and who will be attending the training.
- Include evaluation activities planned in the work plans.

(5) If consultants or contractors will be used during the proposed project, please include the following information in their scope of work (or note if consultants/contractors will not be used):

- Educational requirements.
- Desired qualifications and work experience.
- Expected work products to be delivered on a timeline.

If a potential consultant/contractor has already been identified, please include a resume in the Appendix.

(6) Describe what updates will be required for the continued success of the proposed projects. Include when these updates are anticipated and where funds will come from to conduct the update and/or maintenance.

C. Program Evaluation (20 Points)

Each proposed objective requires an evaluation component to assess its progression and ensure its completion. Also, include the evaluation activities in the work plan.

Describe the proposed plan to evaluate both outcomes and process. Outcome evaluation relates to the results identified in the objectives, and process evaluation relates to the work plan and activities of the project.

(1) For outcome evaluation, describe:

- What will the criteria be for determining success of each objective?
- What data will be collected to determine whether the objective was met?
- At what intervals will data be collected?
- Who will collect the data and their qualifications?
- How will the data be analyzed?
- How will the results be used?

(2) For process evaluation, describe:

- How will each project be monitored and assessed for potential problems and needed quality improvements?
- Who will be responsible for monitoring and managing each project's improvements based on results of ongoing process improvements and their qualifications?
- How will ongoing monitoring be used to improve the projects?
- Describe any products, such as manuals or policies, that might be developed and how they might lend themselves to replication by others.
- How will the organization document what is learned throughout each of the projects' periods?

(3) Describe any evaluation efforts planned after the grant period has ended.

(4) Describe the ultimate benefit to the AI/AN population that the applicant organization serves that will be derived from these projects.

(D) Organizational Capabilities, Key Personnel and Qualifications (15 Points)

This section outlines the broader capacity of the organization to complete the project outlined in the work plan. It includes the identification of personnel responsible for completing tasks and the

chain of responsibility for successful completion of the projects outlined in the work plan.

(1) Describe the organizational structure of the organization beyond health care activities, if applicable.

(2) Describe the ability of the organization to manage the proposed projects. Include information regarding similarly sized projects in scope and financial assistance, as well as other cooperative agreements/grants and projects successfully completed.

(3) Describe what equipment (i.e., fax machine, phone, computer, etc.) and facility space (i.e., office space) will be available for use during the proposed projects. Include information about any equipment not currently available that will be purchased through the cooperative agreement/grant.

(4) List key personnel who will work on the projects. Include title used in the work plans. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications and experience requirements related to the proposed projects. Resumes must indicate that the proposed staff member is qualified to carry out the proposed projects' activities. If a position is to be filled, indicate that information on the proposed position description.

(5) If personnel are to be only partially funded by this cooperative agreement, indicate the percentage of time to be allocated to the projects and identify the resources used to fund the remainder of the individual's salary.

(E) Categorical Budget and Budget Justification (10 Points)

This section should provide a clear estimate of the projects' program costs and justification for expenses for the entire cooperative agreement period. The budgets and budget justifications should be consistent with the tasks identified in the work plans.

(1) Provide a categorical budget for each of the 12-month budget periods requested for each of the four projects.

(2) If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.

(3) Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (i.e., equipment specifications, etc.).

Appendix Items

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart(s) highlighting proposed project staff and their supervisors as well as other key contacts within the organization and key community contacts. (Inclusion is optional.)
- Additional documents to support narrative (i.e. data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened by the DGM staff for eligibility and completeness as outlined in the funding announcement. Incomplete applications and applications that are non-responsive to the eligibility criteria will not be referred to the ORC. Applicants will be notified by DGM, via email or letter, to outline minor missing components (i.e., signature on the SF–424, audit documentation, key contact form) needed for an otherwise complete application. All missing documents must be sent to DGM on or before the due date listed in the email of notification of missing documents required.

To obtain a minimum score for funding by the ORC, applicants must address all program requirements and provide all required documentation. Applicants that receive less than a minimum score will be considered to be ''Disapproved'' and will be informed via email or regular mail by the IHS Program Office of their application's deficiencies. A summary statement outlining the strengths and weaknesses of the application will be provided to each disapproved applicant. The summary statement will be sent to the Authorized Organizational Representative that is identified on the face page (SF–424), of the application within 60 days of the completion of the Objective Review.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) is a legally binding document signed by the Grants Management Officer and serves as the official notification of the grant award. The NoA will be initiated by the DGM and will be mailed via postal mail or emailed to each entity that is approved for funding under this announcement. The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period.

Disapproved Applicants

Applicants who received a score less than the recommended funding level for approval (60 points) and were deemed to be disapproved by the ORC, will receive an Executive Summary Statement from the IHS Program Office within 30 days of the conclusion of the ORC outlining the weaknesses and strengths of their application. The IHS program office will also provide additional contact information as needed to address questions and concerns as well as provide technical assistance if desired.

Approved But Unfunded Applicants

Approved but unfunded applicants that met the minimum scoring range and were deemed by the ORC to be ''Approved,'' but were not funded due to lack of funding, will have their applications held by DGM for a period of one year. If additional funding becomes available during the course of FY 2012, the approved application may be re-considered by the awarding program office for possible funding. The applicant will also receive an Executive Summary Statement from the IHS Program Office within 30 days of the conclusion of the ORC.

Note: Any correspondence other than the official NoA signed by an IHS Grants Management Official announcing to the Project Director that an award has been made to their organization is not an authorization to implement their program on behalf of IHS.

2. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations, policies, and OMB cost principles:

A. The criteria as outlined in this Program Announcement.

B. Administrative Regulations for Grants:

- 45 CFR, Part 92, Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments.
- 45 CFR, Part 74, Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, and other Non-profit Organizations.

C. Grants Policy:

• HHS Grants Policy Statement, Revised 01/07.

D. Cost Principles:

• Title 2: Grant and Agreements, Part 225—Cost Principles for State, Local, and Indian Tribal Governments (OMB Circular A–87).

• Title 2: Grant and Agreements, Part 230—Cost Principles for Non-Profit Organizations (OMB Circular A–122).

E. Audit Requirements:

• OMB Circular A–133, Audits of States, Local Governments, and Non-profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs (IDC) in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to obtain a current IDC rate agreement prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate is provided to the DGM.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and the Department of Interior (National Business Center) *http://www.aqd.nbc.gov/services/ICS.aspx.* If your organization has questions regarding the indirect cost policy, please call (301) 443–5204 to request assistance.

4. Reporting Requirements

Grantees must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi annually. These reports must include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. Final reports must be submitted within 90 days of expiration of the budget/project period.

B. Financial Reports

Federal Financial Report FFR (SF–425), Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Division of Payment Management, HHS at: *http://www.dpm.psc.gov.* It is recommended that you also send a copy of your FFR (SF–425) report to your Grants Management Specialist. Failure to submit timely reports may cause a disruption in timely payments to your organization.

Grantees are responsible and accountable for accurate information being reported on all required reports: the Progress Reports and Federal Financial Report.

C. Federal Subaward Reporting System (FSRS)

This award may be subject to the Transparency Act subaward and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier subawards and executive compensation under Federal assistance awards.

Effective October 1, 2010, IHS implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs and funding announcements regarding this requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 subaward obligation dollar threshold met for any specific reporting period. Additionally, all new (discretionary) IHS awards (where the project period is made up of more than one budget period) and where: (1) The project period start date was October 1, 2010 or after; and (2) the primary awardee will have a $25,000 subaward obligation dollar threshold during any specific reporting period and will be required to conduct address the FSRS reporting. For the full IHS award term implementing this requirement and additional award applicability information, visit the Grants Management Grants Policy Web site at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_policy_topics.*

Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Ms. Roselyn Tso, Acting Director, ODSCT, 801 Thompson Avenue, Suite 220, Rockville, MD 20852, Telephone: (301) 443–1104, Fax: (301) 443–4666, EMail: *Roselyn.Tso@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Mr. Andrew Diggs, DGM, Grants Management Specialist, 801 Thompson Avenue, TMP Suite 360, Rockville, MD 20852, Telephone: (301) 443–5204, Fax: (301) 443–9602, E-Mail: *Andrew.Diggs@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Dated: August 12, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–20285 Filed 8–17–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information From the National Cancer Institute's Cancer Information Service (CIS) Clients (NCI)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on May 24, 2012 (77 FR 31028) and allowed 60-days for public comment. One public comment was received on May 24 wondering why that taxpayers' dollars are being spent on research. An email response was sent on May 25, 2012 that stated the comments will be taken into consideration. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information from the National Cancer Institute's Cancer Information Service (CIS) Clients (NCI). *Type of Information Collection Request:* Revision of currently approved collection 0925–0208. *Need and Use of Information Collection:* The National Cancer Institute's Cancer Information Service (CIS) provides the latest information on cancer, clinical trials, and tobacco cessation in English and Spanish. Clients are served by calling 1–800–4–CANCER for cancer information; 1–877–44U–QUIT for smoking cessations services; using the NCI's LiveHelp, a Web-based chat service; using NCI's Contact Us page on *www.cancer.gov*; and using NCI's Facebook page. CIS currently conducts a brief survey of a sample of telephone and LiveHelp clients at the end of usual service—a survey that includes three customer service and twelve demographic questions (age, sex, race, ethnicity, education, household income, number in household, and five questions about health care/coverage). Characterizing clients and how they found out about the CIS is essential to customer service, program planning, and promotion. The NCI also conducts a survey of individuals using the CIS's smoking cessation services—a survey that includes 20 smoking/tobacco use ''intake'' questions that serve as a needs assessment that addresses smoking history, previous quit attempts, and motivations to quit smoking. An additional question is used with callers who want to receive proactive call-back services. Responses to these questions enable Information Specialists to provide effective individualized counseling. The NCI's CIS also responds to cancer-related inquiries to its Facebook page and its Contact Us form on *www.cancer.gov* but does not collect customer service or demographic questions on these access channels. *Frequency of Response:* Once. *Affected Public:* Individuals or households. *Type of Respondents:* People with cancer; their relatives and friends; and general public, including smokers/tobacco users. Annualized estimates for numbers of respondents and respondent burden are presented in Table 1.

TABLE 1—ESTIMATE OF ANNUAL BURDEN HOURS

Type of respondents	Survey instrument	Number of respondents	Frequency of responses	Average time per response (minutes/hour)	Annual burden hours
Telephone Clients:					
	Customer Service	67,400	1	1/60	1,123
	Demographic Questions	24,300	1	2/60	810
Smoking Cessation ''Quitline'' Clients:					
Reactive Service Clients	Smoking Cessation ''Intake'' Questions	4,200	1	5/60	350
	Demographic Questions	1,300	1	2/60	43
Proactive Callback Service Clients [3].	Follow-Up	1,000	4	1/60	67
LiveHelp Clients:					
	Demographic questions	7,800	1	2/60	260
Email:					
	Email Intake Form	1,000	1	2/60	34
Total					2,687

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information may have practical utility; (2) The accuracy of the estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans, contact Mary Anne Bright, Associate Director, Office of Public Information and Resource Management, Office of Communications and Education, National Cancer Institute, 6116 Executive Blvd., Room 3023, MSC 8322, Bethesda, MD 20892–8322 or call

301–594–9048 or email your request, including your address, to: *brightma@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 10, 2012.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2012–20269 Filed 8–17–12; 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 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 Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Application (P01).

Date: September 12, 2012.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Lakshmi Ramachandra, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3264, Bethesda, MD 20892–7616, 301–402–5658, *ramachandral@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Biodefense—Diagnostics 1.

Date: September 13, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, DHHS/NIH/NIAID/DEA, 6700B Rockledge Drive, Room 3127, Bethesda, MD 20892, 301–443–8115, *gaol2@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Asthma and Allergic Diseases Cooperative Research Centers.

Date: October 1–2, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@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: August 15, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20412 Filed 8–17–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Skeletal Integrity and Environment.

Date: September 6, 2012.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: CMIP and MEDI.

Date: September 7, 2012.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

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; Member Conflicts: Urology.

Date: September 17, 2012.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@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: August 15, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20411 Filed 8–17–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; 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 a meeting of the National Advisory Council on Minority Health and Health Disparities.

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 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 Advisory Council on Minority Health and Health Disparities.

Date: September 17, 2012.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Donna Brooks, Executive Officer, National Institute on Minority Health and Heath Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 435–2135.

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.

Dated: August 15, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20410 Filed 8–17–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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: Center for Inherited Disease Research Access Committee.

Date: September 14, 2012.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Room 9112/9116, Bethesda, MD 20892.

Contact Person: Camilla E. Day, Ph.D., Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 13, 2012.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20274 Filed 8–17–12; 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 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: NIDCR Special Grants Review Committee, NIDCR Special Grants Review Committee (DSR).

Date: October 18–19, 2012.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Fishers Lane, 5635 Fishers Lane, 508/509, Rockville, MD 20851.

Contact Person: Rebecca Wagenaar Miller, Ph.D., Scientific Review Officer, 6701 Democracy Blvd., Room 666, Bethesda, MD 20892, 301–594–0652, *rwagenaa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 13, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–20270 Filed 8–17–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Adult Treatment Court Collaborative Program Evaluation—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services (CMHS) and Center for Substance Abuse Treatment (CSAT) have jointly implemented the Adult Treatment Court Collaborative (ATCC) Program. SAMHSA launched the ATCC program in 2011 form new collaborations between specialty courts and treatment systems to effect community-level systems transformation and establish networks that expand access to treatment among those involved in the criminal justice system. CMHS and CSAT are requesting approval from the Office of Management and Budget (OMB) to implement data collection activities to determine the degree to which grantees individually and collectively meet the goals of the program, including the impact of program activities on systems and clients. The current proposal requests the implementation of new data collection efforts to support the

Evaluation of the ATCC Program. Three sets of data collection activities are proposed, for a total of six instruments. Specifically it requests:

1. Adding ''Supplemental Client'' measures to gather client level data on program participants at baseline and six-month follow-up to assess client outcomes and better compare and contrast programs based on characteristics. The annual baseline data are collected on new individuals admitted to the program. The proposed measures include:

a. Questions about housing stability, one about recentcy of homelessness and the number of days homeless in the past 6 months. Administered at baseline only.

b. Questions about lifetime incidence of arrests and incarceration, including total time spent in jail/prison and prior experience with specialty courts. Administered at baseline only.

c. Treatment History for mental health and substance use disorders. Administered at baseline only.

d. Questions on trauma events to document adult, childhood, and recent trauma. Lifetime questions administered at baseline only and recent at six month.

e. Questions on trauma symptoms using the Post-Traumatic Disorder Checklist—Civilian (PCL–C) to document trauma diagnosis and change over time. Administered at baseline and six month.

f. Questions on mental health symptoms using the Brief Symptom Inventory–18 (BSI–18) to document mental health diagnosis and change over time. Administered at baseline and six month.

g. Questions on procedural justice and perceptions of fairness by program clients. Administered at six month only.

h. Questions about behavioral health treatment services to document service receipt. Administered at six month only.

2. Adding three instruments to collect record review data from Grantees.

a. Screening/Eligibility—Information on individuals referred to the program for screening/eligibility determination, client diagnosis, and the outcome of the screen (eligible/not eligible), to determine the scope of individuals considered for the program.

b. Program Participation/Service Referral—Information on the treatment/service referrals made to clients enrolled in the programs, to determine the range and scope of services provided in the program network, as well discharge data to determine the conditions under which clients complete the programs.

c. Information on the arrests in the 12-months pre- and post-program entry, including the nature of the arrest, to document recidivism.

3. Adding the Collaborative Survey to gather information on collaboration and program implementation from key project stakeholders. This instrument will be administered once annually, to five to eight stakeholders in each project site. This tool has sections of the questions tailored to address the respondents' specific roles in the grant program (e.g. project directors, judges, clinicians) and includes an assessment of the activities of the collaborative.

The following tables summarize the burden for data collection.

CY 2013 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Supplemental Client Interviews					
Baseline (at enrollment)	624	1	624	0.25	156
6 months	499	1	499	0.25	125
Sub Total	*624*	.....	*1,123*	.....	*281*
Collaborative Survey	77	1	77	1	77
Record Management					
Secondary Data—(Screening/admission) [3]	11	489	5,382	0.25	1,346
Secondary Data—(Arrest data) [3]	11	40	440	0.25	110
Secondary Data—(Participation/service use)	11	57	627	0.25	157
Sub Total	*11*	*586*	*6,449*	.....	*1,613*
Overall Total	*712*	.....	*7,649*	.....	*1,971*

CY 2014 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Supplemental Client Interviews					
Baseline (at enrollment)	682	1	682	0.25	171
6 months	546	1	546	0.25	137
Sub Total	*682*	.....	*1,228*	.....	*308*
Collaborative Survey	77	1	77	1	77
Record Management					
Secondary Data—(Screening/admission)	11	489	5,379	0.25	1,345

CY 2014 ANNUAL REPORTING BURDEN—Continued

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Secondary Data—(Arrest data)	11	45	495	0.25	124
Secondary Data—(Participation/service use)	11	57	627	0.25	157
Sub Total	*11*	*586*	*6,501*		*1,625*
Overall Total	*770*		*7,806*		*2,011*

CY 2015 ANNUAL REPORTING BURDEN

Data collection activity	Number of respondents	Responses per respondent	Total responses	Average hours per response	Total hour burden
Supplemental Client Interviews					
Baseline (at enrollment)	682	1	682	0.25	171
6 months	546	1	546	0.25	137
Sub Total	*682*		*1,228*		*308*
Collaborative Survey	77	1	77	1	77
Record Management					
Secondary Data—(Screening/admission)	11	489	5379	0.25	1,345
Secondary Data—(Arrest data)	11	45	495	0.25	124
Secondary Data—(Participation/service use)	11	57	627	0.25	157
Sub Total	*11*	*586*	*6,501*		*1,625*
Overall Total	*770*		*7,806*		*2,011*

TOTAL ANNUALIZED BURDEN

Data collection activity	Annualized number of respondents	Annualized total responses	Annualized total hour burden
Supplemental Client Interviews			
Baseline	662	662	166
6 month	530	530	133
Sub-total	*662*	*1192*	*299*
Collaborative Survey	77	77	77
Record Management			
Screening Data	11	5,382	1,346
Arrests	11	477	119
Program Participation	11	627	157
Sub-total	*11*	*6,486*	*1,622*
Total Annualized	*750*	*7,755*	*1,998*

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *or* email her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Summer King,

Statistician.

[FR Doc. 2012–20287 Filed 8–17–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Survey of Substance Abuse Treatment Services (N–SSATS) (OMB No. 0930–0106)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting a revision of the Drug and Alcohol Services Information System (DASIS) data collection (OMB No. 0930–0106), which expires on December 31, 2012. The request includes a name change for this OMB No. from ''DASIS'' to the ''National Survey of Substance Abuse Treatment Services (N–SSATS),'' since N–SSATS is the main survey component from the prior collection included in this request. N–SSATS provides both national and state-level data on the numbers and types of patients treated and the characteristics of facilities providing substance abuse treatment services. It is conducted under the authority of Section 505 of the Public Health Service Act (42 U.S.C. 290aa–4) to meet the specific mandates for annual information about public and private substance abuse treatment providers and the clients they serve.

This request includes:

- Collection of N–SSATS, which is an annual survey of substance abuse treatment facilities; and
- Updating of the associated substance abuse facility universe, now named the Inventory of Behavioral Health Services (I–BHS) (previously the Inventory of Substance Abuse Treatment Services (I–SATS)). The I–BHS includes all substance abuse treatment facilities known to SAMHSA. In addition, the inventory is being expanded to include mental health treatment facilities, making it a ''behavioral health'' inventory.

The information in I–BHS and N–SSATS is needed to assess the nature and extent of these resources, to identify gaps in services, and to provide a database for treatment referrals. Both I–BHS and N–SSATS are components of the Behavioral Health Services Information System (BHSIS) (previously DASIS), a system name change reflecting SAMHSA's emphasis on a more integrated behavioral health treatment system.

The request for OMB approval will include a request to update the I–BHS facility listing on a continuous basis and to conduct the N–SSATS and the between cycle N–SSATS (N–SSATS BC) in 2013, 2014, and 2015. The N–SSATS BC is a procedure for collecting services data from newly identified facilities between main cycles of the survey and will be used to improve the listing of treatment facilities in the online Substance Abuse Treatment Locator.

Planned Changes

I–BHS: As described above, the I–BHS database has been expanded to include mental health treatment facilities. The I–BHS Online forms, the I–BHS facility application form, and the augmentation screener questionnaire include a new question to determine if the facility provides mental health treatment services.

N–SSATS: The full N–SSATS will be conducted in alternate years, rather than every year as in the past, with an abbreviated N–SSATS questionnaire to update the Treatment Locator conducted in the interim years. Approval is requested for the following changes from 2012 to 2013 in the N–SSATS questionnaire:

A new question has been added to determine if the facility provides mental health treatment services. This question will help identify facilities that provide both substance abuse and mental health treatment services.

A question on the primary focus of the facility was dropped because it was found to be too subjective and less useful than asking directly about the services the facility provides. The new question will identify facilities that provide mental health treatment services.

New items have been added to determine if the facility offers treatment for gambling disorders, internet use disorders or other non-substance abuse disorders.

A question on special programs was reformatted to reduce burden. The question previously had two parts, one to determine if particular kinds of clients were accepted at the facility and another to determine if the facility had special groups or programs for particular kinds of clients. The first part has been dropped. Adolescents, adult women and adult men have been broken out of the list of kinds of clients in order to ask if the facility services only clients in these groups. Two new categories have been added to determine if the facility has special programs for persons who have experienced intimate partner violence/physical abuse and persons who have experienced sexual abuse.

A new question has been added to ascertain the extent to which the facility has adopted health information technology in its operations.

Estimated annual burden for the DASIS activities is shown below:

Type of respondent and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours	Wage rate	Total hour cost
STATES:							
I–BHS Online [1]	56	140	7,840	.08	627	$22	$13,794
State Subtotal	56		7,840		627		13,794
FACILITIES:							
I–BHS application [2]	600	1	600	.08	48	16	768
Augmentation screener	2,000	1	2,000	.08	160	16	2,560
N-SSATS questionnaire	17,000	1	17,000	.58	9,860	37	364,820

Type of respondent and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours	Wage rate	Total hour cost
N-SSATS BC	2,000	1	2,000	.42	840	37	31,080
Facility Sub-total	21,600	.....	21,600	.....	10,908	.....	399,228
Total	21,656	.....	29,440	.....	11,535	.....	413,022

[1] States use the I–BHS Online system to submit information on newly licensed/approved facilities and on changes in facility name, address, status, etc.
[2] New facilities complete and submit the online I–BHS application form in order to get listed on the Inventory.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 2–1057, One Choke Cherry Road, Rockville, MD 20857 *or* email a copy to *summer.king@samhsa.hhs.gov.* Written comments must be received before 60 days after the date of the publication in the **Federal Register**.

Summer King,

Statistician.

[FR Doc. 2012–20288 Filed 8–17–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment National Advisory Council on August 30, 2012.

A portion of the meeting is open to the public and will be held online via Live Meeting at *https://www.mymeetings.com/nc/join*. The meeting will include a discussion of the Center's current administrative, legislative, and program developments.

The meeting will also include the review, discussion and evaluation of grant applications reviewed by Initial Review Groups (IRGs). Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, § 10(d).

Individuals interested in making oral comments or obtaining the meeting number and passcode are encouraged to notify Ms. Cynthia Graham, the Council's Designated Federal Official (see contact information below), on or before August 27, 2012. Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee Web site *http://nac.samhsa.gov*, or by contacting the Designated Federal Official.

Committee Name: Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: August 30, 2012 10 a.m.–10:20 a.m. (CLOSED), 10:30 a.m.–2:15 p.m. (OPEN).

Place: Live meeting webcast.

Contact: Cynthia Graham, M.S., Designated Federal Official, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1035, Rockville, MD 20857, Telephone: (240) 276–1692, FAX: (240) 276–1690, Email: *cynthia.graham@samhsa.hhs.gov*.

Cathy J. Friedman,

Public Health Analyst, SAMHSA.

[FR Doc. 2012–20421 Filed 8–17–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services (CMHS); Amendment of Meeting Notice

Pursuant to Public Law 92–463, notice is hereby given of an amendment of meeting agenda and date change for the Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Mental Health Services National Advisory Council (CMHS NAC).

Public notice was published in the **Federal Register** on August 3, 2012, Volume 77, Number 150, page 46444 announcing that the CMHS National Advisory Council would be convening on August 24, 2012 at 1 Choke Cherry Road, Rockville, MD. The discussion and evaluation of grant applications will be added to the agenda. Therefore, a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, 10(d). For additional information, contact the CMHS National Advisory Council, Acting Designated Federal Official, Crystal C. Saunders, 1 Choke Cherry Road, Room 6–1063, Rockville, MD 20857, telephone number 240–276–1117, fax number 240–276–1395 and email *crystal.saunders@samhsa.hhs.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Summer King,

Statistician.

[FR Doc. 2012–20376 Filed 8–17–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0042]

Broad Stakeholder Survey

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; New Information Collection Request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Cybersecurity and Communications (CS&C), Office of Emergency Communications (OEC), has submitted the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning the Broad Stakeholder Survey.

DATES: Comments are encouraged and will be accepted until October 19, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/CS&C/OEC, Attn.: Richard Reed, 202–343–1666. E-mailed requests should go to Richard E. Reed, *Richard.E.Reed@dhs.gov*. Written comments should reach the contact

person listed no later than October 19, 2012. Comments must be identified by ''DHS–2012–0042'' and may be submitted by *one* of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.*

• *Email: Richard.E.Reed@dhs.gov.* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

SUPPLEMENTARY INFORMATION: OEC, formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* as amended, was established to promote, facilitate, and support the continued advancement of communications capabilities for emergency responders across the Nation. The Broad Stakeholder Survey is designed to gather stakeholder feedback on the effectiveness of OEC services and to gather input on challenges and initiatives for interoperable emergency communications. The Broad Stakeholder Survey will be conducted electronically.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Cybersecurity and Communications, Office of Emergency Communications.

Title: Broad Stakeholder Survey.

Form: DHS Form 9041.

OMB Number: 1670–NEW.

Frequency: Annual.

Affected Public: Federal, state, local, tribal, or territorial government.

Number of Respondents: 5,000.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 1,250 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $30,525.00.

Dated: August 13, 2012.

Scott Libby,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2012–20284 Filed 8–17–12; 8:45 am]

BILLING CODE 9110–09–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Approval of Saybolt LP, as a Commercial Gauger

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Saybolt LP, as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Saybolt LP, 120 West Highway 30, Gonzales, LA 70737, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/linkhandler/cgov/trade/automated/labs_scientific_svcs/commercial_gaugers/gaulist.ctt/gaulist.pdf.

DATES: The approval of Saybolt LP, as commercial gauger became effective on May 2, 2012. The next triennial inspection date will be scheduled for May 2015.

FOR FURTHER INFORMATION CONTACT: Christopher Mocella, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: August 13, 2012.

Ira S. Reese,

Executive Director, Laboratories and Scientific Services.

[FR Doc. 2012–20397 Filed 8–17–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection; I–515A; Notice to Student or Exchange Visitor; OMB Control No. 1653–0037.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 19, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Comments are encouraged and will be accepted for sixty days until October 19, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension, without change, of an existing information collection.

(2) *Title of the form/collection:* Notice to Student or Exchange Visitor.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I–515A); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. When an academic student (F–1), vocational student (M–1), exchange visitor (J–1), or dependent (F–2, M–2 or J–2) is admitted to the United States as a nonimmigrant alien under section 101(a)(15) of the Immigration and Nationality Act (Act), he or she is required to have certain documentation. If the student or exchange visitor or dependent is missing documentation, he or she is provided with the Form I–515A, Notice to Student or Exchange Visitor. The Form I–515A provides a list of the documentation the student or exchange visitor or dependent will need to provide to the Department of Homeland Security (DHS), Student and Exchange Visitor Program (SEVP) office within 30 days of admission.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,000 responses at 10 minutes (0.1667 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,333.6 annual burden hours Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Dated: July 16, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–20297 Filed 8–17–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, With Change, of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection; 10–002; Electronic Funds Transfer Waiver Request; OMB Control No. 1653–0043.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 19, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Comments are encouraged and will be accepted for sixty days until October 19, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, with change, of an existing information collection.

(2) *Title of the Form/Collection:* Electronic Funds Transfer Waiver Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form 10–002); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other nonprofit. The information collected on the Form 10–002 is necessary for U.S. Immigration and Customs Enforcement (ICE) to determine if an individual or business is exempt from the Electronic Funds Transfer requirements of the Debt Collection Improvement Act by meeting certain conditions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 650 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 annual burden hours. Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, Management and Program Analyst, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Dated: June 25, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–20300 Filed 8–17–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection; file No. I–243; Application for Removal; OMB Control No. 1615–0019.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 19, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Comments are encouraged and will be accepted for sixty days until October 19, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension, without change, of an existing information collection.

(2) *Title of the form/collection:* Application for Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I–243); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. The information provided on this form allows the USCIS to determine eligibility for an applicant's request for removal from the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 41 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20 annual burden hours Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Dated: July 11, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–20304 Filed 8–17–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection; I–395; Affidavit in Lieu of Lost Receipt of United States ICE for Collateral Accepted as Security; OMB Control No. 1653–0045.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 19, 2012

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Comments are encouraged and will be accepted for sixty days until October 19, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Affidavit in Lieu of Lost Receipt of United States for Collateral Accepted as Security.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form I–395); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households. When an individual posts an Immigration Bond in the form of cash, cashier's check, certified check or

money order, he or she is issued a Receipt of Immigration Officer—U.S. Bonds or Cash, Accepted as Security on the Immigration Bond (Form I–305). If the I–305 is lost the individual is permitted to complete the I–395 stating the reason for the loss of the original I–305.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,250 annual burden hours. Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Dated: August 8, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–20301 Filed 8–17–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 30-day notice of information collection for review; File No. G–79A, Information Relating to Beneficiary of Private Bill; OMB Control No. 1653–0026.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on June 20, 2012; Vol. 77 No. 119, 14991 allowing for a 60 day comment period. No comments were received during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Comments are encouraged and will be accepted for thirty days until September 19, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension, without change, of a currently approved information collection.

(2) *Title of the form/collection:* Information Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form G–79A) U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on the Form G–79A is necessary for U.S. Immigration and Customs Enforcement to provide reports to Congress on Private Bills when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours. Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, U.S. Immigration and Customs Enforcement, 500 12th Street, SW., STOP 5705, Washington, DC 20536–5705.

Dated: June 13, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–20308 Filed 8–17–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 60-day notice of information collection; G–146; Non-Immigrant Check Letter; OMB Control No. 1653–0020.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until October 19, 2012.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), Rich Mattison, Management and Program Analyst, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Comments are encouraged and will be accepted for sixty days until October 19, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed

collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, without change, of an existing information collection.

(2) *Title of the Form/Collection:* Non-Immigrant Check Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* (No. Form G–146); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households. When an alien (other than one who is required to depart under safeguards) is granted the privilege of voluntary departure without the issuance of an Order to Show Cause, a control card is prepared. If, after a certain period of time, a verification of departure is not received, actions are taken to locate the alien or ascertain his or her whereabouts. Form G–146 is used to inquire of persons in the United States or abroad regarding the whereabouts of the alien.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.16 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,220 annual burden hours. Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Rich Mattison, Chief, Records Management, U.S. Immigration and Customs Enforcement, 500 12th Street SW., Stop 5705, Washington, DC 20536; (202) 732–4356.

Dated: June 25, 2012.

Rich Mattison,

Chief, Records Management, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–20302 Filed 8–17–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–13]

Notice of Proposed Information Collection for Public Comment: Moving to Work Demonstration: Revision to Form HUD 50058 MTW

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Tenant data is collected to understand demographic, family profile, income, and housing information for participants in the Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificate, Section 8 Moderate Rehabilitation, and Moving to Work Demonstration programs. This data also allows HUD to monitor the performance of programs and the performance of public housing agencies that administer the programs.

DATES: *Comments Due Date:* October 19, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202.402.3400 (this is not a toll-free number) or email Ms. Pollard at *Colette.Pollard@hud.gov* for a copy of the proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 490 East L'Enfant Plaza, Room 2206, Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Revision of MTW Family Report—HUD 50058 MTW.

OMB Control Number, if applicable: 2577–00863.

Description of the need for the information and proposed use:

The Office of Public and Indian Housing of the Department of Housing and Urban Development (HUD) provides funding to Public Housing Agencies (PHAs) to administer assisted housing programs. Form HUD–50058 MTW Family Reports solicit demographic, family profile, income and housing information on the entire nationwide population of tenants residing in assisted housing. The information collected through the Form HUD–50058 MTW will be used to monitor and evaluate the Office of Public and Indian Housing, Moving to Work (MTW) Demonstration program which includes Public Housing, Section 8 Housing Choice Voucher, Section 8 Project Based Certificates and Vouchers, Section 8 Moderate Rehabilitation and Moving to Work (MTW) Demonstration programs.

Reason for PRA

• MTW Agencies are providing housing assistance through a wide variety of interesting and creative programs that fall outside of sections 8 and 9 need to be able to report households served through these programs into PIC.[1]

• The Moving to Work (MTW) PIC Module is currently unable to capture all of the households served through MTW activities because the HUD 50058 MTW Form in PIC does not have a code for reporting Local, Non-Traditional assisted families in the PIC system.

• Agencies have not been reporting these families into PIC and this makes it difficult to accurately account for the number of MTW families being served. The MTW Office is engaging in a manual collection of the number of families served each year but the PIC system needs to be revised to make this information collection easier for MTW agencies and HUD.

Background

• The MTW statute (1996 Appropriations Act, Section 204) states that an agency may combine its funding as provided under Sections 8 and 9 to provide housing assistance and services for low-income families. At the outset of the demonstration, a number of MTW agencies used this flexibility to design activities that went outside the bounds of the eligible activities of Sections 8 and 9 of the 1937 Act. Though the Standard MTW Agreement did not contain this flexibility, HUD committed to MTW agencies during negotiations that any provision permitted under an agency's original MTW agreement that was legal could be retained under the Standard Agreement.

• On October 1, 2009, the U.S. Department of Housing and Urban Development issued a letter to MTW agencies regarding the availability of the broader uses of funds authority, under the Moving to Work (MTW) program. The letter provided a brief description of the required steps that must be completed in order for agencies to access this additional MTW authorization.

Revision to HUD 50058 MTW—PIC System Change

• Create a Local, Non-Traditional Assistance ''LN'' program code categorization in Section 1.C Form 50058–MTW to track households that are provided assistance through local, non-traditional MTW programs in addition to public housing, tenant-based and project-based assistance.

• Add Local, Non-Traditional Assistance to the heading of Section 21 of Form 50058–MTW to allow detailed reporting on this type of assistance.

Agency form numbers, if applicable: HUD 50058 MTW.

Members of affected public: Public Housing Agencies, State and local governments, individuals and households.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of burden hours is 1,081,685. The number of respondents is 4,149 and the number of responses is 2,874,934. The frequency of responses is annually for recertifications and new admissions.

Status of the proposed information collection: This is a revision of an existing collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C.., Chapter 35, as amended.

Dated: August 10, 2012.

Merrie Nichols-Dixon,

Deputy Director for Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2012–20414 Filed 8–17–12; 8:45 am]

BILLING CODE 4210–67–P

[1] PIH Notice 2011–45 (HA), issued August 15, 2011, clarifies HUD policies, Federal statutes and regulations that apply to local, non-traditional activities implemented under the Moving to Work (MTW) demonstration program.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5607–N–26]

Notice of Proposed Information Collection for Public Comment: Debt Resolution Program

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 19, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Relay Information Service, 1800–877–8330.

FOR FURTHER INFORMATION CONTACT: Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12303, telephone 518–862–2806 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Debt Resolution Program.

OMB Control Number, if applicable: 2502–0483.

Description of the need for the information and proposed use: HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s). In response, debtors opt to ignore the debt, pay the debt or dispute the debt. Disputes and offers to repay the debt result in information collections. Borrowers who wish to pay less than the full amount due must submit a Personal Financial Statement and Settlement Offer. HUD uses the information to analyze debtors' financial positions and then approve settlements and repayment agreements. Borrowers who wish to dispute must provide information to support their position.

Agency form numbers, if applicable: HUD–56141, HUD 56142 and HUD–56146.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 641. The number of

respondents is 650, the number of responses is 2,101, the frequency of response is on occasion and the burden hour per response is .986 hours.

Status of the proposed information collection: This is a revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 14, 2012.

Laura M. Marin,

Acting General Deputy Assistant Secretary For Housing—Acting Deputy Federal Housing Commissioner.

[FR Doc. 2012–20431 Filed 8–17–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5609–N–08]

Notice of Proposed Information Collection for Public Comment: 2013 American Housing Survey

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 19, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: David A. Vandenbroucke at (202) 402–5890 (this is not a toll-free number), or Joe Huesman, Bureau of the Census, Demographic Surveys Division, Washington, DC 20233, (301) 763–4822 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: 2013 American Housing Survey.

OMB Control Number: 2528–0017.

Description of the need for the information and proposed use: The American Housing Survey (AHS) provides a periodic measure of the size and composition of the country's housing inventory. Title 12, United States Code, Sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandates the collection of this information.

Like the previous surveys, the 2013 AHS will collect data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, housing costs, the persons eligible for and beneficiaries of assisted housing, and the number and characteristics of vacancies. There are plans to collect additional data on people who had to temporarily move in with other households, neighborhood conditions, working from home, ability to travel via public transportation, bicycling, or walking, energy efficiency, and emergency preparedness. Questions about potential health and safety hazards and home modifications made to assist occupants living with disabilities that were added to the 2011 survey will not be included in the 2013 survey. A supplemental sample of housing units will be selected for approximately 31 metropolitan areas. The supplemental sample will be combined with existing sample in these areas in order to produce metropolitan estimates using the National data.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Members of affected public: Households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents ..	194,000.
Estimate Responses per Respondent.	1 every 2 years.
Time (minutes) per respondent.	45.
Total hours to respond	145,500.

Respondent's Obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12 U.S.C. Section 1701z–1 *et seq.*

Dated: August 14, 2012.

Erika Poethig,

Acting Assistant Secretary for Policy Development and Research.

[FR Doc. 2012–20420 Filed 8–17–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5610–N–08]

Notice of Proposed Information Collection for Public Comment; Public Housing Operating Fund Program: Operating Budget and Related Form

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection will ensure that Public Housing Agencies

(PHAs) follow sound financial practices and that federal funds are used for eligible expenditures. PHAs use the information as a financial summary and analysis of immediate and long-term operating programs and plans to provide control over operations and achieve objectives.

DATES: *Comments Due Date:* October 19, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed information collection. Comments should refer to the proposal by name or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov*. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Operating Fund Program: Operating Budget and Related Form.

OMB Control Number: 2577–0026.

Description of the need for the information and proposed use: The operating budget and related form are submitted by PHAs for the low-income housing program. The operating budget provides a summary of proposed budget receipts and expenditures by major category, as well as blocks for indicating approval of budget receipts and expenditures by the PHA and HUD. The related form provides a record of PHA Board approval of how the amounts shown on the operating budget were arrived at, as well as justification of certain specified amounts. The information is reviewed by HUD to determine if the plan of operation adopted by the PHA and amounts included therein are reasonable for the efficient and economical operation of the development(s), and the PHA is in compliance with HUD procedures to ensure that sound management practices will be followed in the operation of the development. A small number of PHAs (200) are still required to submit their operating budget packages to HUD, namely those that are troubled, those that are recently out of troubled status or at risk of becoming troubled, or those that are at risk of fiscal insolvency. PHAs are still required to prepare their operating budgets and submit them to their Board for approval prior to their operating subsidy being approved by HUD. The operating budgets must be kept on file for review, if requested.

Agency form number, if applicable: HUD–52574.

Members of affected public: PHAs, state or local government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated number of respondents is 200 troubled PHAs that prepare and submit to the Board of Commissioners operating budgets and related form annually and submit to HUD for a reporting burden of 23,500 hours. The remaining number of respondents that submit the related form to HUD is 2941 for a reporting burden of 534 hours. The total reporting burden is 24,034 hours.

Status of the proposed information collection: Extension of an existing collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 10, 2012.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Program and Legislative Initiatives.

[FR Doc. 2012–20423 Filed 8–17–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2012–N193; FXES11130100000F5–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following application for a permit to conduct activities with the purpose of enhancing the survival of endangered species. The Endangered Species Act of 1973, as amended (Act), prohibits certain activities with respect to endangered species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing such permits.

DATES: To ensure consideration, please send your written comments by September 19, 2012.

ADDRESSES: Endangered Species Program Manager, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181. Please refer to the permit number for the application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Fish and Wildlife Biologist, at the above address or by telephone (503–231–6131) or fax (503–231–6243).

SUPPLEMENTARY INFORMATION:

Background

The Act (16 U.S.C. 1531 *et seq.*) prohibits certain activities with respect to endangered and threatened species unless a Federal permit allows such activity. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for certain permits, and requires that we invite public comment before issuing these permits for endangered species.

A permit granted by us under section 10(a)(1)(A) of the Act authorizes the permittee to conduct activities (including take or interstate commerce) with respect to U.S. endangered or threatened species for scientific purposes or enhancement of propagation or survival. Our regulations implementing section 10(a)(1)(A) of the Act for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Application Available for Review and Comment

We invite local, State, and Federal agencies, and the public to comment on the following application. Please refer to the appropriate permit number for the application when submitting comments.

Documents and other information submitted with this application are available for review by request from the Endangered Species Program Manager at the address listed in the **ADDRESSES** section of this notice, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit Number: TE–80538A

Applicant: H. T. Harvey & Associates, Los Gatos, California.

The applicant requests a permit to take (capture, tissue sample, radio-tag, and release) the Hawaiian hoary bat (*Lasiurus cinereus semotus*) in conjunction with monitoring and population studies in Hawaii for the purpose of enhancing the species' survival.

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*).

Dated: August 9, 2012.

Richard R. Hannan,

Acting Regional Director, Pacific Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–20364 Filed 8–17–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–MB–2012–N167; FXMB12320100000P2–123–FF01M01000]

Special Purpose Permit Application; Hawaii-Based Shallow-Set Longline Fishery; Final Environmental Assessment and Finding of No Significant Impact

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of a final environmental assessment (FEA) and finding of no significant impact (FONSI) in our analysis of permitting actions in response to an application under the Migratory Bird Treaty Act of 1918, as amended, from the Pacific Islands Regional Office of the National Marine Fisheries Service (NMFS), Department of Commerce. NMFS applied for a permit for the incidental take of migratory birds in the operation of the Hawaii-based shallow-set longline fishery, which targets swordfish. After evaluating several alternatives in a draft environmental assessment (DEA), we have determined that issuing a permit will not result in significant impacts to the human environment.

ADDRESSES: You may download a copy of the FEA and FONSI on the Internet at *http://www.fws.gov/pacific/migratorybirds/nepa.html.* Alternatively, you may use one of the methods below to request a hard copy or a CD–ROM. Please specify the ''FEA/FONSI for the NMFS MBTA Permit'' on all correspondence.

- *Email: pacific_birds@fws.gov.* Include ''FEA/FONSI for the NMFS MBTA Permit'' in the subject line of the message.
- *U.S. Mail:* Please address requests for hard copies of the documents to Nanette Seto, Chief, Division of Migratory Birds and Habitat Programs, Pacific Region, U.S. Fish and Wildlife Service, 911 NE. 11th Ave., Portland, OR 97232.
- *Fax:* Nanette Seto, Chief, Division of Migratory Birds and Habitat Programs, 503–231–2019; Attn.: FEA/FONSI for the NMFS MBTA Permit.

FOR FURTHER INFORMATION CONTACT: Nanette Seto, Chief, Division of Migratory Birds and Habitat Programs, Pacific Region, U.S. Fish and Wildlife Service, 503–231–6164 (phone); *pacific_birds@fws.gov* (email; include ''FEA/FONSI for the NMFS MBTA Permit'' in the subject line of the message). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

After receiving the permit application from NMFS, we provided a public notice and summary background information and solicited public comments on the DEA in January 2012 (77 FR 1501). We have now considered comments, finalized our analysis, and selected an alternative that meets the purpose and need of our action (issuance of a permit under the MBTA). We have determined that issuing a permit will not result in significant impacts to the human environment.

We evaluated several alternatives for the proposed issuance of a permit under the Migratory Bird Treaty Act (MBTA) for incidental take of seabirds in the shallow-set longline fishery based in Hawaii. The analysis of alternatives is documented in a final environmental assessment (FEA), which is available to the public on our Web site or by request (see **ADDRESSES**). Our need in conducting this evaluation was to address an application received from NMFS for a permit to authorize take of migratory birds (seabirds) in the shallow-set longline fishery based in Hawaii. The purposes of our permitting action include: (1) Ensuring that any permit issued meets the criteria established in our regulations under MBTA and does not violate our statutory responsibility to conserve migratory birds; (2) ensuring the Service and NMFS meet their responsibilities under Executive Order 13186 to protect migratory birds and avoid and minimize adverse impacts of our actions to these birds; (3) identifying the mechanisms underlying the take of migratory birds in the fishery; developing, in cooperation with the Service, measures for NMFS and the fishery to implement that would reduce that take or otherwise improve conservation benefit for birds; and (4) minimizing unnecessary costs or burdens on the fishery itself, or on NMFS in its role as regulator.

We analyzed three alternatives in the FEA:

1. No action. Under the No Action alternative, we would deny the permit application and not issue a permit to NMFS. We rejected consideration of a separate alternative of literally taking no action, and not even responding to the permit application, because it is our policy to process all applications received as quickly as possible (50 CFR 13.11(c)).

2. Issue permit as requested (*selected alternative*). The permit would reflect the current operation of the fishery, including the seabird-deterrent measures currently required by NMFS regulations and the Service's Biological Opinion for the impacts of this fishery to the endangered Short-tailed Albatross (*Phoebastria albatrus*), with no changes, regulatory or otherwise, to the operation of the fishery during the permit period. No new regulations governing the operation of the fishery would be proposed. The permit would authorize the observed and reported take of specific numbers of each species, and would include conditions requiring NMFS to analyze observer data and fishery practices to elucidate how and when take is occurring now and identify measures that could reduce this take in the future. In addition, NMFS would be required to provide instruction regarding the importance of seabird-data collection to observers and include specific discussion at Protected Species Workshops for fishers of how and when seabird interactions occur during shallow-set fishing. The permit would specify requirements for reporting the progress on data analysis and identification of additional potential measures for reducing take and the extent of training and information-exchange activities. Reporting would also describe research, if any is identified, needed to help identify measures that could reduce this take in the future. Compliance with these requirements would be considered in a future permit renewal.

3. Issue permit with additional conditions to conduct research and to increase conservation benefit to seabirds. Rather than analyze existing and future observer data and elicit additional information from observers and fishers (as in Alternative 2), Alternative 3 would require research and field trials of new deterrent methods and technologies or those already in use in the industry to develop means to reduce take in the fishery during the 3-year term of the permit. Alternative 3 is otherwise the same as Alternative 2.

Internal Scoping and Public Involvement

We solicited comments on an internal draft of the EA from other programs within the Service, and provided responses in a final draft EA (DEA) that was available to the public from January 10 through February 9, 2012 (77 FR 1501). During the public comment period, we received a total of eight comment letters: One from a federal agency, one from a Fishery Management Council, one from a fishery industry organization, two from conservation organizations, and three from private citizens. The final EA incorporates minor changes to address technical comments and provides narrative responses to substantive comments. Some of these comments touch on policy and legal questions that are raised or implied by, but that do not themselves affect, our permitting action. However, none of the commenters provided additional information that (1) changed the outcome of our analysis or (2) required a finding that our action would have a significant impact.

Impact Analysis

The Impacts Analysis in the EA considered direct, indirect, and cumulative effects of the alternatives on seabirds, the fishery and economic environment, and cultural resources. We found that none of the alternatives would have significant impacts to any of these aspects of the human environment. The alternatives would not have significant adverse impacts to seabirds, because the take of seabirds in this fishery is low. Laysan and Black-footed albatrosses comprise roughly 99 percent of all take of migratory birds in the fishery. The projected take of these species in each year of the 3-year term of a permit, and the slightly greater amount of annual take that would be authorized in a permit (a total of no more than 191 Black-footed and 430 Laysan albatrosses over the 3-year permit term), would constitute less than 1 percent of the total estimated breeding population of each species each year. This level of take does not contribute substantially to the cumulative total take of these seabirds estimated to occur each year in all North Pacific longline fisheries. The other three seabird species analyzed in the FEA are the Sooty Shearwater, Northern Fulmar, and the endangered Short-tailed Albatross. The shearwater and fulmar are represented by one individual bird each in the data on observed take in the fishery. We would authorize take of no more than 10 birds annually of each of these two species. Although no Short-tailed Albatrosses have been reported taken in the fishery, impacts of the fishery to this species have been evaluated under the Endangered Species Act, and take at a rate of one bird every 5 years has been authorized in the Service's Biological Opinion.

The beneficial impacts of the action involve only seabirds. These beneficial impacts are minor. Although either Alternative 2 or 3 would result in improved information about sources of take in the fishery and means of reducing take, neither would result in an additional reduction in take in the fishery during the 3-year permit term. However, the long-term goal of this (and any subsequent) permitting action is the eventual further reduction of seabird take in this fishery.

The alternatives do not have a significant impact on the fishery or economic environment. Although the alternatives variously may result in slight changes in costs to NMFS (for example, to analyze data or conduct field trials), none of the alternatives would result in any major change in the operation of the fishery. No cultural resources as defined under the National Historic Preservation Act are significantly affected by the alternatives because the fishery operates in the 200-mile U.S. Exclusive Economic Zone and on the high seas, far from historic sites.

Determination

Alternative 2 will meet fully the purposes and needs of the proposed permitting action described above (and described in more detail in Chapter 1 of the FEA). This alternative also represents initial steps toward the long-term goal of reducing take of seabirds in this fishery. We determine that implementation of Alternative 2 does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an environmental impact statement is not required.

Authority

We provide this notice under section 668a of the Act (16 U.S.C. 668–668c) and NEPA regulations (40 CFR 1506.6).

Dated: July 20, 2012.

Jason Holm,

Acting Regional Director, Pacific Region, Portland, Oregon.

[FR Doc. 2012–20327 Filed 8–17–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2012–N201;FXFR1334088TWG0W4–123–FF08EACT00]

Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Trinity Adaptive Management Working Group (TAMWG) affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight. This notice announces a TAMWG meeting, which is open to the public.

DATES: TAMWG will meet from 9 a.m. to 5:30 p.m. on Monday, September 10, 2012.

ADDRESSES: The meeting will be held at the Trinity County Library, 351 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: *Meeting Information:* Nancy J. Finley, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521; telephone: (707) 822–7201. *Trinity River Restoration Program (TRRP) Information:* Robin Schrock, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, CA 96093; telephone: (530) 623–1800; email: *rschrock@usbr.gov.*

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), this notice announces a meeting of the TAMWG. The meeting will include discussion of the following topics:

- Designated Federal Officer (DFO) updates,
- Discussion of Charter,
- Discussion with Department of the Interior Solicitor,
- Executive Director's report,
- TMC Chair report,
- Update from TRRP Workgroups
- Update on the 2012 Water Year
- Presentation on Water Year Forecasting
- Hatchery Report (if available).

Completion of the agenda is dependent on the amount of time each item takes. The meeting could end early if the agenda has been completed.

Dated: August 14, 2012.

Nancy Finley,

Field Supervisor, Arcata Fish and Wildlife Office, Arcata, CA.

[FR Doc. 2012–20366 Filed 8–17–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2012–N119; FXRS1265030000S3–123–FF03R06000]

Neal Smith National Wildlife Refuge, Jasper County, IA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and environmental assessment (EA) for Neal Smith National Wildlife Refuge (Refuge, NWR) for public review and comment. In this draft CCP/EA we describe how we propose to manage the refuge for the next 15 years.

DATES: To ensure consideration, we must receive your written comments by September 19, 2012. We will hold an open house-style meeting during the comment period to receive comments and provide information on the draft plan. In addition, we will use special mailings, newspaper articles, internet postings, and other media announcements to inform people of opportunities for input.

ADDRESSES: Send your comments or requests for more information by any one of the following methods:

- *Email: r3planning@fws.gov.* Include ''Neal Smith Draft CCP/EA'' in the subject line of the message.
- *Fax:* Attention: Refuge Manager, 515–994–3459.
- *U.S. Mail:* Attention: Refuge Manager Christy Smith, Neal Smith National Wildlife Refuge, P.O. Box 399, 9981 Pacific Street, Prairie City, IA 50228.
- *In-Person Drop Off:* You may drop off comments during regular business hours at the above address.

You will find the draft CCP/EA, as well as information about the planning process and a summary of the CCP, on the planning Web site: *http://www.fws.gov/midwest/planning/nealsmith/index.html.*

FOR FURTHER INFORMATION CONTACT: Christy Smith, 515–994–3400.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Neal Smith National Wildlife Refuge, which we began by publishing a notice of intent in the **Federal Register** (73 FR 7667) on December 17, 2008. For more about the initial process and the history of this refuge, see that notice.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The draft CCP/EA, which includes detailed information about the planning process, refuge, issues, and management alternatives considered and proposed, may be found at *http://www.fws.gov/midwest/planning/nealsmith/index.html.* There are four alternative refuge management options considered in the EA. The Service's preferred alternative is reflected in the draft CCP.

The alternatives analyzed in detail include:

• *Alternative A:* Current Management (No Action): This no-action alternative, reflects the current management of Neal Smith NWR. It provides the baseline against which to compare other alternatives.

• *Alternative B:* Refuge Habitat Focus (Preferred Alternative): This alternative focuses upon increasing the amount and diversity of native vegetation on the Refuge, and providing the varied habitat structure needed to support wildlife, especially declining populations of migratory grassland birds. Additional effort is directed toward restoring floristic quality on prairie and savanna remnants and monitoring and learning from the results of management actions. The Refuge boundary is expanded to the east and west by 3,210 acres, to include all tributaries of Walnut Creek that flow through the Refuge.

• *Alternative C:* Watershed Focus: This alternative emphasizes restoration of hydrologic function and native vegetation to the entire Walnut Creek watershed. Refuge staff builds and leads a new public/private partnership to develop and begin implementation of a long-term restoration plan for the watershed. The Refuge land acquisition boundary is expanded by 14,600 acres to include all lands within the watershed. Restoration of the southernmost reaches of the watershed creates a contiguous habitat connection between Neal Smith NWR and Lake Red Rock.

• *Alternative D:* Corridor Focus: This alternative emphasizes creation of a permanent wildlife habitat corridor connecting Neal Smith NWR with Chichaqua Bottoms Greenbelt to the north and Lake Red Rock to the south. Refuge staff builds and leads a new public/private partnership focused on increasing the wildlife value of lands within the corridor and supporting environmentally sound development. The Refuge land acquisition boundary is expanded by 20,550 acres to include the entire corridor area. Prairie restoration and management focus on creation of large connected tracts of diverse habitat structure for wildlife, especially declining populations of grassland birds.

Public Involvement

We will give the public an opportunity to provide input at a public meeting. You can obtain the schedule from the address or web site listed in this notice (see **ADDRESSES**). You may also submit comments anytime during the comment period.

Public Availability 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.

Thomas O. Melius,

Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–20359 Filed 8–17–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Acting Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for Electrical Service Application, 25 CFR part 175, authorized by OMB Control Number 1076–0021 and Water Request, 25 CFR part 171, authorized by OMB Control Number 1076–0141. Both of these information collections expire December 31, 2012.

DATES: Submit comments on or before October 19, 2012.

ADDRESSES: You may submit comments on the information collection to Yulan Jin, Acting Chief, Division of Water and Power, Office of Trust Services, Mail Stop 4655—MIB, 1849 C Street NW., Washington, DC 20240; email: *yulan.jin@BIA.gov.*

FOR FURTHER INFORMATION CONTACT: Yulan Jin, 202–219–0941.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs (BIA) owns, operates, and maintains three electric power utilities that provide a service to the end user. The BIA also owns, operates, and maintains 15 irrigation projects that provide a service to the end user. To be able to properly bill for the services provided, the BIA must collect customer information to identify the individual responsible for repaying the government the costs of delivering the service, and billing for those costs. Additional information necessary for providing the service is the location of the service delivery. The Debt Collection Improvement Act of 1996 (DCIA) requires that certain information be collected from individuals and businesses doing business with the government. This information includes the taxpayer identification number for possible future use to recover delinquent debt. To implement the DCIA requirement to collect customer information, the BIA has included a section concerning the collection of information in its regulations governing its electrical power utilities (25 CFR part 175) and in its regulations governing its irrigation projects (25 CFR part 171).

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. 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.

III. Data

OMB Control Number: 1076–0021.

Title: Electrical Service Application, 25 CFR 175.

Brief Description of Collection: In order for electric power consumers to be served, information is needed by the BIA to operate and maintain its electric power utilities and fulfill reporting requirements.

Section 175.6 and 175.22 of 25 CFR part 175, Indian electric power utilities, specifies the information collection requirement. Power consumers must apply for electric service. The information to be collected includes: Name; electric service location; and other operational information identified in the local administrative manuals. All information is collected from each electric power consumer. Responses are required to receive or maintain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: BIA electric power consumers—individuals and businesses.

Number of Respondents: 3,000 per year.

Estimated Time per Response: ½ hour.

Frequency of Response: The information is collected once, unless the respondent requests new electrical service elsewhere or if it has been disconnected for failure to pay their electric bill.

Estimated Total Annual Hour Burden: 1,500 hours.

* * * * *

OMB Control Number: 1076–0141.

Title: Water Request, 25 CFR 171.

Brief Description of Collection: In order for irrigators to receive water deliveries, information is needed by the BIA to operate and maintain its irrigation projects and fulfill reporting requirements. Section 171.140 and other sections cited in section 171.40 of 25 CFR part 171, [Irrigation] Operation and Maintenance, specifies the information collection requirement. Water users must apply for water delivery and for a number of other associated services, such as, subsidizing a farm unit, requesting leaching service, requesting water for domestic or stock purposes, building structures or fences in BIA rights-of-way, requesting payment plans on bills, establishing a carriage agreement with a third-party, negotiating irrigation incentives leases, and requesting an assessment waiver. The information to be collected includes: Full legal name; correct mailing address; taxpayer identifying number; water delivery location; if subdividing a farm unit—a copy of the recorded plat or map of the subdivision where water will be delivered; the time and date of requested water delivery; duration of water delivery; amount of water delivered; rate of water flow; number of acres irrigated; crop statistics; any other agreements allowed under 25 CFR part 171; and any additional information required by the local project office that provides your service. The information water users submit is for the purpose of obtaining or retaining a benefit, namely irrigation water.

Type of Review: Extension without change of currently approved collection.

Respondents: Water users of BIA irrigation project—individual and businesses.

Number of Respondents: 6,539 per year.

Number of Responses: 27,075 per year.

Estimated Time per Response: A range of 18 minutes to 6 hours, depending on the specific service being requested.

Frequency of Response: On occasion through the irrigation season, averaging approximately 2 times per year.

Estimated Total Annual Hour Burden: 14,059 hours.

Dated: August 13, 2012.

Alvin Foster,

Assistant Director for Information Resources.

[FR Doc. 2012–20341 Filed 8–17–12; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORW00000 L16100000.DP0000.WBSLXSS073H0000; HAG 12–0260]

Notice of Public Meeting, Eastern Washington Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Eastern Washington Resource Advisory Council (EWRAC) will meet as indicated below.

DATES: September 17, 2012. The meeting will be open to the public. It will begin at 10 a.m. and end at 4 p.m. Members of the public will have an opportunity to address the EWRAC at 10 a.m.

ADDRESSES: The meeting will be held at the Washington State Potato Commission, 108 Interlake Road, Moses Lake, Washington 98837.

FOR FURTHER INFORMATION CONTACT: Robert St. Clair, BLM Spokane District, 1103 N. Fancher Rd., Spokane Valley, WA 99212, or call (509) 536–1200. 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: Discussion will include the Bureau of Land Management's Eastern Washington and San Juan Resource Management Plan and the U.S. Forest Service's Colville National Forest Plan Revision. 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.

Allison C. Clough,

Acting Spokane District Manager.

[FR Doc. 2012–20360 Filed 8–17–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–CR–10795; 2200–1100–665]

Agency Information Collection Activities: 30-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: We (National Park Service) have submitted to the Office of Management and Budget (OMB) the information collection request (ICR) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR which is an extension of a currently approved collection of information (OMB #1024–0144). We 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: To ensure that your comments on this ICR are considered, please submit them on or before September 19, 2012.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email to *OIRA_DOCKET@omb.eop.gov* or fax at 202–395–5806; and identify your submission as ''1024–0144, Native American Graves Protection and Repatriation Regulations.'' Please send a copy of your comments to Madonna L. Baucum, Information Collection Clearance Officer, National Park Service, 1849 C Street NW., Mailstop 2605 (Rm. 1242), Washington, DC 20240 (mail); or *madonna_baucum@nps.gov* (email).

FOR FURTHER INFORMATION CONTACT: Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street NW., 8th floor, Washington, DC 20005; or via phone at 202/354–1479; or via fax at 202/354–5179; or via email at *Sherry_Hutt@nps.gov*.

I. Abstract

The Native American Graves Protection and Repatriation Act (NAGPRA), requires museums to compile certain information (summaries, inventories, and notices) regarding Native American cultural items in their possession or control and provide that information to lineal descendants, likely interested Indian tribes and Native Hawaiian organizations, and the National NAGPRA Program (acting on behalf of the Secretary of the Interior, housed in the National Park Service), to support consultation in the process of publishing notices that establish rights to repatriation. The summaries are general descriptions of the museum's Native American collection, sent to all possibly interested tribes to disclose the collection, should the tribe desire to consult on items and present a claim. The inventories are item-by-item lists of the human remains and their funerary objects, upon which the museum consults with likely affiliated tribes to determine cultural affiliation, tribal land origination, or origination from aboriginal lands of Federal recognized tribes.

Consultation and claims for items require information exchange between museums and tribes on the collections. Notices of Inventory Completion, published in the **Federal Register** indicate the museum decisions of rights of lineal descendants and tribes to receive human remains and funerary objects; Notices of Intent to Repatriate, published in the **Federal Register**, indicate the agreements of museums and tribes to transfer control to tribes of funerary objects, sacred objects and objects of cultural patrimony. Museums identify NAGPRA protected items in the collection through examination of museum records and from consultation with tribes.

The National NAGPRA Program maintains the public databases of summary, inventory and notice information to support consultation. In the first 20 years of the administration of NAGPRA approximately 40,000 Native American human remains, of a possible collection of 180,000 individuals, have been listed in NAGPRA notices. Information collected in previous years is of lasting benefit, diminishing efforts in future years.

II. Data

OMB Control Number: 1024–0144.

Title: Native American Graves Protection and Repatriation Regulations, 43 CFR Part 10.

Form(s): None.

Type of Request: Extension of a previously approved collection of information.

Description of Respondents: Museums that receive Federal funds and have possession over Native American cultural items.

Respondent's Obligation: It is mandatory to comply with the requirements of the law.

Frequency of Collection: On occasion.

	Total annual responses	Avgerage time per response (hours)	Total annual burden hours
Summary or Inventory Completion (new)	2	100	200
Inventory or Summary Completion Updates	245	10	2,450
Notices	64	10	640
Subtotals	311	.....	3,290
Summary or Inventory (new)	1	100	100
Inventory or Summary Completion Updates	226	10	2,260
Notices	41	10	410
Subtotals	268	.....	2,770
Totals	579	.....	6,060

Estimated Annual Nonhour Burden Cost: None.

III. Request for Comments

We invite comments concerning this ICR on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Please note that the comments submitted in response to this notice are a matter of public record. 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: August 14, 2012.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2012–20361 Filed 8–17–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PCE–COR–10909; 2230–STC]

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (National Park Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to comment on this IC. We may not conduct or sponsor and a person is not required to respond to a collection unless it displays a currently valid OMB control number.

DATES: Please submit your comment on or before October 19, 2012.

ADDRESSES: Please send your comments on the proposed IC to Madonna Baucum, Information Collection Clearance Officer, National Park Service, 1201 Eye St. NW., Mailstop 2605 (Rm. 1242), Washington, DC 20005 (mail); via fax at 202/371–6741, or via email to *madonna_baucum@nps.gov.* Please reference IC ''1024-National Recreation Trails and National Water Trails System'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Helen Scully, National Trails System Program Specialist/National Recreation Trails Coordinator, Department of the Interior, 1201 Eye St. NW., Washington, DC 20005. You may send an email to *helen_scully@nps.gov* or contact her by telephone at (202/354–6910) or via fax at (202/371–5179).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this information collection is to assist the National Park Service (NPS) in submitting suitable trails or trail systems to the Secretary of the Interior for designation as National Recreation Trails (NRTs), and in recommending exemplary water trails to the Secretary of the Interior for designation as National Water Trails (NWTs) to be included in the National Water Trails System (NWTS). The information collected will be used by the NPS, U.S. Fish and Wildlife Service, U.S. Bureau of Land Management, U.S. Bureau of Reclamation, and U.S. Army Corps of Engineers to evaluate the applications for adherence to NRT requirements and criteria and for NWTs, to determine if additional best management practices have been met.

The NPS administers the NRT program by authority of section 4 of the National Trails System Act (16 U.S.C. 1243). Secretarial Order No. 3319 established National Water Trails as a class of National Recreation Trails and directed that such trails collectively be considered in a National Water Trail System.

Designation as a NRT provides national recognition to local and regional trails or trail systems, acknowledging local and state efforts to build and maintain viable trails and trail systems. This recognition function is shared by the Secretary of Agriculture (for trails on National Forest lands and waters) and the Secretary of the Interior (for all other trails). The Secretary of the Interior has delegated NRT coordination to the NPS, which also maintains the system of record for the more than 1,200 NRTs and 9 NWTs designated to date.

The NWTS is focused on building a national network of exceptional water trails that can be sustained by an ever growing and vibrant water trail community. The NWTS connects Americans to the nation's waterways and strengthens the conservation and restoration of those waterways. Best management practices provide high quality water-based outdoor recreational opportunities.

II. Data

OMB Control Number: 1024–New.

Title: National Recreation Trails.

Form(s): Online application form for NRTs, and pdf application form for NWTs.

Type of Request: Existing collection in use without approval.

Automated Data Collection: No.

Will the Information Be Collected Electronically? Yes.

Description of Respondents: Federal agency land units; private individuals; state, tribal, and local governments; businesses; educational institutions; and nonprofit organizations.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: On occasion.

Estimated Number of Responses: 80.

Estimated Annual Burden Hours: 90. We estimate the public reporting burden will average 60 minutes per response for the NRT application and 90 minutes per response for the NWTS application.

	Estimated number of responses	Estimated annual burden hours
NRT Application	*60*	*60*
NWTS Application	*20*	*30*

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'': None.

Description of Need: The purpose of this information collection is to provide sufficient data for a trail or trail system to be considered for designation as a National Recreation Trail or National Water Trail by the Secretary of the Interior.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number and current expiration date.

III. Comments

We invite comments concerning this IC on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- 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.

Please note that the comments submitted in response to this notice are a matter of public record. 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 request in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: August 13, 2012.

Madonna L. Baucum,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2012–20358 Filed 8–17–12; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–10956; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 21, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 4, 2012. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 26, 2012.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

MISSOURI

Randolph County

Moberly Commercial Historic District, Roughly bounded by W. Coates, W. Rollins, N. Clark, & Johnson Sts., Moberly, 12000592

MONTANA

Lincoln County

Coram Hotel, The, 302 California Ave., Libby, 12000593

NEW JERSEY

Essex County

Woman's Club of Upper Montclair, (Clubhouses of New Jersey Women's Clubs), 200 Cooper Ave., Montclair, 12000594

Morris County

Flanders Methodist Episcopal Church, 4 Park Place, Flanders, 12000595

NEW YORK

Columbia County

North Chatham Historic District, NY 203, Cty. Rds. 32 & 17, Depot St., Mill Ln., Bunker Hill & Dom Rds., North Chatham, 12000596

Monroe County

Holy Rosary Church Complex, 414 Lexington Ave., Rochester, 12000597

Otsego County

White House, The, 108 White House Rd., Hartwick, 12000598

Queens County

St. Matthias Roman Catholic Church Complex, (Ridgewood MRA), 58–15 Catalpa Ave., Queens, 12000599

Westchester County

Usonia Historic District, Usonia & Rocky Vale Rds., Laurel Hill & Orchard Brook Drs., Pleasantville, 12000600

NORTH CAROLINA

Anson County

Barrett—Faulkner House, 2063 Monroe-White Store Rd., Peachland, 12000601

OREGON

Multnomah County

PT–658 (motor torpedo boat), 6735 Basin Ave., Portland, 12000602

PENNSYLVANIA

Adams County

Pleasant Grove School, (Educational Resources of Pennsylvania MPS), 4084 Baltimore Pike (Mt. Joy Township), Germantown, 12000603

Allegheny County

Ursuline Young Ladies Academy, 201 S. Winebiddle St., Pittsburgh, 12000604

Carbon County

Lansford Historic District, Roughly bounded by Snyder Ave., Cortright, East, & Water Sts., Lansford, 12000605

Chester County

Wiley—Cloud House, 107 Ironstone Ln. (Kennett Township), Kennett Square, 12000606

Delaware County

Downtown Wayne Historic District, Roughly bounded by Louella Ct., West, & S. Wayne Aves. (Radnor Township), Wayne, 12000607

Lebanon County

Mt. Gretna Campmeeting Historic District, Roughly bounded by PA 117, Pinch Rd., Bell Ave., & 1st St. (West Cornwall Township), Mt. Gretna Heights, 12000608

VIRGINIA

Salem Independent city

Roanoke Veterans Administration Hospital Historic District, (United States Second Generation Veterans Hospitals MPS), 1970 Roanoke Blvd., Salem (Independent City), 12000609

WISCONSIN

Milwaukee County

Mitchell, Alexander, House, 900 W. Wisconsin Ave., Milwaukee, 86003852

WISCONSIN

Rock County

Leonard—Leota Park, 20, 30, 40, 50, ca 60, 120, 121 Antes Dr., 321, 340, 359, 360, 363, 365, 395 Burr W. Jones Cir., Leonard Park Dr., Evansville, 12000610

[FR Doc. 2012–20299 Filed 8–17–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–487 (Final) and 731–TA–1197–1198 (Final)]

Steel Wire Garment Hangers From Taiwan and Vietnam; Scheduling of the Final Phase of Countervailing Duty and Antidumping Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–487 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigation Nos. 731–TA–1197–1198 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Taiwan of steel wire garment hangers and less-than-fair-value imports from Taiwan and Vietnam of steel wire garment hangers, provided for in subheadings 7326.20.00 and 7323.99.90

of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: *Effective Date:* August 2, 2012.

FOR FURTHER INFORMATION CONTACT: Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: *Background.*—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Vietnam of steel wire garment hangers, and that such products from Vietnam and Taiwan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on December 29, 2011, by M&B Metal Products Company, Inc. (Leeds, AL); Innovation Fabrication LLC/Indy Hanger (Indianapolis, IN); and US Hanger Company, LLC (Gardena, CA).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on October 9, 2012, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on October 24, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 16, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 18, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is October 16, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 31, 2012. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before October 31, 2012. On November 9, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 13, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. Finally, on December 21, 2012, parties may submit supplemental final comments addressing only Commerce's final antidumping and countervailing duty determinations regarding imports from Vietnam. These supplemental final comments must not contain new factual information and may not exceed five (5) pages in length. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as ''Steel wire garment hangers, fabricated from carbon steel wire, whether or not galvanized or painted, whether or not coated with latex or epoxy or similar gripping materials, and whether or not fashioned with paper covers or capes (with or without printing) or nonslip features such as saddles or tubes. These products may also be referred to by a commercial designation, such as shirt, suit, strut, caped or latex (industrial) hangers. Specifically excluded from the scope of the investigation are (a) wooden, plastic, and other garment hangers that are not made of steel wire; (b) steel wire garment hangers with swivel hooks; (c) steel wire garment hangers with clips permanently affixed; and (d) chrome plated steel wire garment hangers with a diameter of 3.4 mm or greater.''

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 15, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–20372 Filed 8–17–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; SA INTL GMBH C/O., Sigma Aldrich Co., LLC

Correction

In notice document 2012–19191 appearing on pages 47106–47108 in the issue of Tuesday, August 7, 2012, make the following corrections:

1. On page 47106, in the third column, the document heading should appear as set forth above.

2. On page 4707, in the sixth paragraph following the table, in the eighth line of text, ''September 6, 2012'' should read ''September 19, 2012''.

[FR Doc. C1–2012–19191 Filed 8–17–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Clinical Supplies Management, Inc.

Correction

In notice document 2012–19197 appearing on pages 47109–47110 in the issue of Tuesday, August 7, 2012, make the following corrections:

1. On page 47109, in the third column, the document heading should appear as set forth above.

2. On page 47110, in the second column, in the first full paragraph, in the eighth line of text, ''September 6, 2012'' should read ''September 19, 2012''.

[FR Doc. C1–2012–19197 Filed 8–17–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Lipomed

Correction

In notice document 2012–19196 appearing on page 47108 in the issue of Tuesday, August 7, 2012, make the following corrections:

1. On page 47108, in the first column, the document heading should appear as set forth above.

2. On page 47108, in the second column, in the second full paragraph, in the eighth line of text, ''September 6, 2012'' should read ''September 19, 2012''.

[FR Doc. C1–2012–19196 Filed 8–17–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; R & D Systems, Inc.

Correction

In notice document 2012–19193 appearing on pages 47110–47111 in the issue of Tuesday, August 7, 2012, make the following corrections:

1. On page 47110, in the third column, the document heading should appear as set forth above.

2. On page 47110, in the fifth paragraph following the table, in the eighth line of text, ''September 6, 2012'' should read ''September 19, 2012''.

[FR Doc. C1–2012–19193 Filed 8–17–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Cerilliant Corporation

Correction

In notice document 2012–19199 appearing on pages 47108–47109 in the issue of Tuesday, August 7, 2012, make the following corrections:

1. On page 47108, in the third column, the document heading should appear as set forth above.

2. On page 47109, in the sixth paragraph following the table, in the eighth line of text, ''September 6, 2012'' should read ''September 19, 2012''.

[FR Doc. C1–2012–19199 Filed 8–17–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Almac Clinical Services, Inc.

By Notice dated April 17, 2012, and published in the **Federal Register** on April 26, 2012, 77 FR 24985, Almac Clinical Services, Inc., (ACSI), 25 Fretz Road, Souderton, Pennsylvania 18964, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Oxycodone (9143)	II
Hydromorphone (9150)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances in dosage form to conduct clinical trials.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of Almac Clinical Services, Inc. (ACSI) to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated Almac Clinical Services, Inc. (ACSI) to ensure that the company's registration is consistent with the public interest.

The investigation has included inspection and testing of the company's

physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: August 7, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–20370 Filed 8–17–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Research Triangle Institute

Correction

In notice document 2012–19208 appearing on pages 47111–47114 in the issue of Tuesday, August 7, 2012, make the following correction:

On page 47111, in the second column, the document heading should appear as set forth above.

[FR Doc. C1–2012–19208 Filed 8–17–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration; Catalent Pharma Solutions, Inc.

Correction

In notice document 2012–19202 appearing on page 47114 in the issue of Tuesday, August 7, 2012, make the following correction:

On page 47114, in the first column, the document heading should appear as set forth above.

[FR Doc. C1–2012–19202 Filed 8–17–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances, Notice of Registration, Cody Laboratories, Inc.

By Notice dated March 8, 2012, and published in the **Federal Register** on March 20, 2012, 77 FR 16263, Cody Laboratories, Inc., 601 Yellowstone Avenue, Cody, Wyoming 82414, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Thebaine (9333)	II

The company plans on manufacturing the listed controlled substances as bulk intermediates for distribution to its customers.

No comments or objections have been received.

DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cody Laboratories, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cody Laboratories, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: August 7, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–20369 Filed 8–17–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This **Federal Register** Notice notifies the public that MSHA has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web Site at *http://www.msha.gov/indexes/petition.htm.* The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Office of Standards, Regulations and Variances at 202–693–9475 (Voice), *fontaine.roslyn@dol.gov* (Email), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) an alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

- *Docket Number:* M–2009–050–C.
  FR Notice: 75 FR 3256 (1/20/2010).
  Petitioner: Wolf Run Mining Company, 300 Corporate Centre Drive, Scott Depot, West Virginia 25560.
  Mine: Sentinel Mine, MSHA I.D. No. 46–04168, located in Barbour County, West Virginia.
  Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).
- *Docket Number:* M–2009–052–C.
  FR Notice: 75 FR 3257 (1/20/2010).

Petitioner: ICG Beckley, LLC, 300 Corporate Centre Drive, Scott Depot, West Virginia 25560.

Mine: Beckley Pocahontas Mine, MSHA I.D. No. 46–05252, located in Raleigh County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2010–037–C.

FR Notice: 75 FR 81313 (12/27/2010).

Petitioner: Lone Mountain Processing, Inc., Drawer C, St. Charles, Virginia 24282.

Mine: Huff Creek No. 1 Mine, MSHA I.D. No. 15–17234, located in Harlan County, Kentucky.

Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

• *Docket Number:* M–2011–010–C.

FR Notice: 76 FR 22150 (4/20/2011).

Petitioner: Brooks Run Mining Company, LLC, 208 Business Street, Beckley, West Virginia 25801.

Mine: Still Run No. 3 Mine, MSHA I.D. No. 46–09301, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2011–012–C.

FR Notice: 76 FR 37838 (6/28/2011).

Petitioner: Patton Mining, LLC, 925 South Main Street, Hillsboro, Illinois 62049.

Mine: Deer Run Mine, MSHA I.D. No. 11–03182, located in Montgomery County, Illinois.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2011–014–C.

FR Notice: 76 FR 37841 (6/28/2011).

Petitioner: Tunnel Ridge, LLC, 2596 Battle Run Road, Triadelphia, West Virginia 26059.

Mine: Tunnel Ridge Mine, MSHA I.D. No. 46–08864, located in Ohio County, West Virginia.

Regulation Affected: 30 CFR 75.503 (Permissible electric equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable (trailing) cables and cords).

• *Docket Number:* M–2011–019–C.

FR Notice: 76 FR 37832 (6/28/2011).

Petitioner: Tunnel Ridge, LLC, 2596 Battle Run Road, Triadelphia, West Virginia 26059.

Mine: Tunnel Ridge Mine, MSHA I.D. No. 46–08864, located in Ohio County, West Virginia.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2011–022–C.

FR Notice: 76 FR 51059 (8/17/2011).

Petitioner: Peabody Sage Creek Mining, LLC, Three Gateway Centre, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Peabody Sage Creek Mine, MSHA I.D. No. 05–04952, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

• *Docket Number:* M–2011–023–C.

FR Notice: 76 FR 51059 (8/17/2011).

Petitioner: Peabody Twentymile Mining, LLC, Three Gateway Centre, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Foidel Creek Mine, MSHA I.D. No. 05–03836, located in Routt County, Colorado.

Regulation Affected: 30 CFR 75.1909(b)(6) (Nonpermissible diesel-powered equipment; design and performance requirements).

• *Docket Number:* M–2011–024–C.

FR Notice: 76 FR 54803 (9/2/2011).

Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.

Mine: Ondo Extension Mine, MSHA I.D. No. 36–09005, located in Indiana County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable (trailing) cables and cords).

• *Docket Number:* M–2011–026–C.

FR Notice: 76 FR 54803 (9/2/2011).

Petitioner: AMFIRE Mining Company, LLC, One Energy Place, Latrobe, Pennsylvania 15650.

Mine: Madison Mine, MSHA I.D. No. 36–09127, located in Cambria County, Pennsylvania.

Regulation Affected: 30 CFR 75.503 (Permissible electric equipment; maintenance) and 30 CFR 18.35(a)(5)(i) (Portable (trailing) cables and cords).

• *Docket Number:* M–2011–028–C.

FR Notice: 76 FR 59743 (9/27/2011).

Petitioner: West Virginia Mine Power, Inc., P.O. Box 574, Rupert, West Virginia 25984–0574.

Mine: Mountaineer Pocahontas Mine No. 1, MSHA I.D. No. 46–09172, located in Greenbrier County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2011–029–C.

FR Notice: 76 FR 59744 (9/27/2011).

Petitioner: West Virginia Mine Power, Inc., P.O. Box 574, Rupert, West Virginia 25984–0574.

Mine: Mountaineer Pocahontas Mine No. 3, MSHA I.D. No. 46–09210, located in Greenbrier County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2012–073–C.

FR Notice: 77 FR 27095 (5/8/2012).

Petitioner: Jim Walter Resources, Inc., 3000 Riverchase Galleria, Suite 1700, Birmingham, Alabama 35244.

Mine: No. 4 Mine, MSHA I.D. No. 01–01247, located in Tuscaloosa County, Alabama.

Regulation Affected: 30 CFR 75.507 (Power connection points).

• *Docket Number:* M–2011–007–M.

FR Notice: 76 FR 59743 (9/27/2011).

Petitioner: Riverside Cement Company, 19409 National Trails Highway, Oro Grande, California 92368.

Mine: Oro Grande Quarry, MSHA I.D. No. 04–00011, San Bernardino County, California.

Regulation Affected: 30 CFR 56.6131 (Location of explosive material storage facilities).

• *Docket Number:* M–2011–010–M

FR Notice: 76 FR 69766 (11/9/2011).

Petitioner: Specialty Granules Inc., 131 S. Dearborn Street, Suite 2400, Chicago, Illinois 60603.

Mines: Annapolis Quarry, MSHA I.D. No. 23–00288, #1 Hillcrest Drive, Annapolis, Missouri 63620, located in Iron County, Missouri; Charmian Mine, MSHA I.D. No. 36–03460, 1455 Old Waynesboro Road, Blue Ridge Summit, Pennsylvania 17214, located in Adams County, Pennsylvania; Kremlin Mine, MSHA I.D. No. 47–00148, 248 Kremlin Road, Pembine, Wisconsin 54156, located in Marinette County, Wisconsin.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

• *Docket Number:* M–2011–011–M.

FR Notice: 76 FR 69767 (11/9/2011).

Petitioner: Specialty Granules, Inc., 1101 Opal Court, Suite 315 Hagerstown, Maryland 21740.

Mine: Specialty Granules (Ione) LLC, MSHA I.D. No. 04–05533, located in Amador County, California.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

• *Docket Number:* M–2011–012–M.

FR Notice: 77 FR 4835 (1/31/2012).

Petitioner: Celite Corporation, 2500 Miguelito Canyon Road, Lompoc, California 93436.

Mine: Lompoc Plant, MSHA I.D. No 04–02848, located in Santa Barbara County, California.

Regulation Affected: 30 CFR 56.20001 (Intoxicating beverage and narcotics).

• *Docket Number:* M–2011–013–M.

FR Notice: 77 FR 4836 (1/31/2011).

Petitioner: Dicalite Minerals Corporation, 36994 Summit Lake Road, Burney, California 96103.

Mine: Dicalite Minerals Corporation, MSHA I.D. No. 04–04053, located in Shasta County, California.

Regulation Affected: 30 CFR 56.20001 (Intoxicating beverage and narcotics).

• *Docket Number:* M–2011–015–M.

FR Notice: 77 FR 14427 (3/9/2012).

Petitioner: Swenson Granite Company LLC, 369 North State Street, Concord, New Hampshire 03301.

Mine: Swenson Gray Quarry, MSHA I.D. No. 27–00083, located in Merrimack County, New Hampshire.

Regulation Affected: 30 CFR 56.19090 (Dual signaling systems).

• *Docket Number:* M–2011–016–M.

FR Notice: 77 FR 14427 (3/9/2012).

Petitioner: Swenson Granite Company LLC, 369 North State Street, Concord, New Hampshire 03301.

Mine: Swenson Gray Quarry, MSHA I.D. No. 27–00083, located in Merrimack County, New Hampshire.

Regulation Affected: 30 CFR 56.19009 (Position indicator).

• *Docket Number:* M–2012–003–M.

FR Notice: 77 FR 27091 (5/8/2012).

Petitioner: Minnesota Mining & Manufacturing Company, 144 Rosecrans Street, Wausau, Wisconsin 54401.

Mines: Graystone Plant, MSHA I.D. No. 47–00119 and Wausau Plant, MSHA I.D. No. 47–02918, located in Marathon County, Wisconsin.

Regulation Affected: 30 CFR 56.13020 (Use of compressed air).

Dated: August 14, 2012.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 2012–20306 Filed 8–17–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities and Surface Work Areas of Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration is soliciting comments concerning the extension of the information collection for 30 CFR 77.1101. OMB last approved this information collection request on January 8, 2010. The package expires on January 31, 2013.

DATES: All comments must be postmarked or received by midnight Eastern Time on October 19, 2012.

ADDRESSES: Comments concerning the information collection requirements of this notice must be clearly identified with ''OMB 1219–0051'' and sent to the Mine Safety and Health Administration (MSHA). Comments may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Facsimile:* 202–693–9441, include ''OMB 1219–0051'' in the subject line of the message.

• *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. For hand delivery, sign in at the receptionist's desk on the 21st floor.

FOR FURTHER INFORMATION CONTACT: Greg Moxness, Chief, Economic Analysis Division, Office of Standards, Regulations, and Variances, MSHA, at *moxness.greg@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

The escape and evacuation plan required by existing standard 30 CFR 77.1101 is prepared by the mine operator and is used by mines, the Mine Safety and Health Administration (MSHA), and persons involved in rescue and recovery operations. The plan is used to instruct employees in the proper methods to evacuate structures in the event of a fire. MSHA inspection personnel use the plan to determine compliance with the standard requiring a means of escape and evacuation be established and the requirement that employees be instructed in the procedures to follow should a fire occur.

II. Desired Focus of Comments

The Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to this safety standard for Escape and Evacuation Plans for surface coal mines, surface facilities and surface work areas of underground coal mines. MSHA is particularly interested in comments that:

• Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

• Evaluate the accuracy of the MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Address 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), to minimize the burden of the collection of information on those who are to respond.

The public may examine publicly available documents, including the public comment version of the supporting statement, at MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, VA 22209–3939. OMB clearance requests are available on MSHA's Web site at *http://www.msha.gov* under ''Rules & Regs'' on the right side of the screen by selecting *Information Collections Requests, Paperwork Reduction Act Supporting Statements.* The document will be available on MSHA's Web site for 60 days after the publication date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because comments will not be edited to remove any identifying or contact information, MSHA cautions the commenter against including any information in the submission that should not be publicly disclosed. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

The information obtained from mine operators is used by MSHA inspectors to determine the adequacy of the escape and evacuation plan. The plan must include an established means to escape and evacuate from structures and the requirement that employees are instructed in the procedures to follow should a fire occur. MSHA has updated the data with respect to the number of respondents and responses, as well as the total burden hours and burden costs supporting this information collection extension request.

Summary

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Escape and Evacuation Plans for Surface Coal Mines, Surface Facilities

and Surface Work Areas of Underground Coal Mines.

OMB Number: 1219–0051.

Affected Public: Business or other for-profit.

Cite/Reference/Form/etc: 30 CFR 77.1101.

Total Number of Respondents: 295.

Frequency: Infrequent.

Total Number of Responses: 295.

Total Burden Hours: 1,425 hours.

Total Annual Other Cost Burden: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: August 14, 2012.

George F. Triebsch,

Certifying Officer.

[FR Doc. 2012–20307 Filed 8–17–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

DATES: All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before September 19, 2012.

ADDRESSES: You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.

2. *Facsimile:* 202–693–9441.

3. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: George F. Triebsch, Director, Office of Standards, Regulations and Variances. Persons delivering documents are required to check in at the receptionist's desk on the 21st floor. Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

FOR FURTHER INFORMATION CONTACT: Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (Email), or 202–693–9441 (Facsimile). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

(1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

(2) That the application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

II. Petitions for Modification

Docket No: M–2012–149–C.

Petitioner: Patton Mining, LLC, 925 South Main Street, Hillsboro, Illinois 62049.

Mine: Deer Run Mine, MSHA I.D. No. 11–03182, located in Montgomery County, Illinois.

Regulation Affected: 30 CFR 75.900 (Low- and medium-voltage circuits serving three-phase alternating current equipment; circuit breakers).

Modification Request: The petitioner requests a modification of the existing standard for underground coal mines to permit the use of contactors in series with circuit breakers to provide undervoltage and ground fault protection for low-voltage power circuits serving three-phase alternating current equipment. The petitioner proposes to use a contactor in series with the circuit breaker in lieu of circuit breakers alone. The petitioner states that the circuit breaker would provide short circuit protection and the contactor would be equipped to provide undervoltage, grounded phase, and overcurrent protection and other protective functions normally provided by the circuit breaker. The petitioner proposes to provide undercurrent and ground-fault protection for three-phase alternating current low-voltage power circuits conditioned on compliance with the following special terms and conditions:

(1) The nominal voltage of the power circuit(s) will not exceed 995 volts.

(2) The nominal voltage of the control circuit(s) will not exceed 120 volts.

(3) The vacuum contactor will be rated for the maximum voltage of the circuit being protected and the continuous full load current of the utilization equipment.

(4) Vacuum contactors will be located in same enclosure as the circuit breaker.

(5) Vacuum contactors with associated protective relays will provide undervoltage protection for low- and medium-voltage circuits serving three-phase alternating current equipment.

(6) Each circuit breaker installed in conjunction with a contactor will be equipped with devices to provide short-circuit protection for each piece of equipment.

(7) When a contactor trips on a ground fault condition or when a ground-check monitor trips it will not automatically reset and must require manual reset. Undervoltage circuits will be wired so that contactors can be closed remotely only when undervoltage or loss of voltage condition no longer exists. All other conditions that cause the contactor to open will require manual reset at the contactor.

(8) The fail-safe ground check circuit will cause the contactor to open when either the ground or pilot wire is broken.

(9) Circuits providing power to portable or mobile equipment will not be capable of being remotely started or remotely closed.

(10) A monthly examination will be conducted on each circuit to assure proper operation of the contactor. The monthly examination will include activating the undervoltage, grounded-phase, and ground-monitor trip devices. The results of the contactor tests will be recorded with the required circuit breaker monthly tests.

(11) Prior to each start-up, an audible alarm at each affected vacuum contactor or affected area will be activated for at least 15 seconds.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–150–C.

Petitioner: Deane Mining, LLC, 265 Hambley Boulevard, Pikeville, Kentucky 41502.

Mine: Access Energy Mine, MSHA I.D. No. 15–19532, located in Letcher County, Kentucky.

Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

Modification Request: The petitioner requests a modification of the existing standard regarding locating oil and gas wells penetrating coalbeds or underground areas of a coal mine, and establishing and maintaining barriers around the wells, to permit plugging and mining through gas wells. The petitioner proposes an alternative method of achieving the results of § 75.1700.

The petitioner proposes to use the following techniques and procedures when plugging the wellbore:

(1) Cleaning out and preparing oil and gas wells prior to plugging.

(a) The borehole will be cleaned out to a depth that would permit the placement of at least 200 feet of expanding cement below the base of the lowest mineable coal seam except as provided in paragraph 6.

(b) Prior to removal of casing or the setting of plugs, the well bore will be filled with a gel that inhibits the flow of gas, supports the walls of the borehole, and increases the density of the cement and/or expanding cement plugs. The gel will be pumped through open-ended tubing extending to a point approximately 20 feet above the bottom of the cleaned out area.

(c) If all casing cannot be reasonably removed:

(i) Casing that remains below the base of the lowest mineable coal seam will be perforated at intervals of not less than one shot per 10 feet to permit expanding cement to infiltrate the annulus between the casing and the borehole wall for a distance of 200 feet below the base of the lowest mineable coal seam or to the bottom of the casing, whichever is less; and

(ii) Casing that remains above the base of the lowest mineable coal seam will be perforated with one shot at the elevation of each coal seam above the lowest mineable coal seam to permit cement to infiltrate the annulus between the casing and the borehole wall.

(2) A directional survey will be run in the borehole to determine the horizontal deviation of the borehole at the base of the lowest mineable coal seam and at various intervals above the elevation.

(3) A 200-foot expanding cement plug will be set below the base of the lowest mineable coal seam except as provided in paragraph 6. Prior to setting the 200-foot expanding cement plug, if the cleaned out borehole produces gas, a mechanical bridge plug will be set. This mechanical bridge plug will be set in the borehole in competent stratum or cemented casing at least 200 feet below the base of the lowest mineable coal seam, but above the top of the uppermost hydrocarbon producing stratum, except as provided in paragraph 6.

(4) The elevations of the top and bottom of the lowest mineable coal seam and the uppermost hydrocarbon-producing stratum will be determined from driller's logs of the wells, nearby boreholes, mine maps, and other reliable sources of information.

(5) If a substantial portion of the 200-foot expanding cement plug will be placed in the open hole, or if a mechanical bridge plug will be set in the open hole, a three-arm caliper survey will be run in such section of the open hole. This three-arm caliper survey will be used to determine a suitable location for the mechanical bridge plug and to verify the diameter of the open hole for purposes of calculating the volume of expanding cement to be used.

(6) If the uppermost hydrocarbon-producing stratum is within 200 feet of the base of the lowest mineable coal seam, an expanding cement plug will be set across the hydrocarbon-producing stratum. This cement plug will extend from the top of the stratum to either a point 200 feet below the top of the stratum or the bottom of the hole, whichever is less. A properly placed mechanical bridge plug will then be set in competent stratum or casing above the top of the uppermost hydrocarbon-producing stratum, and an expanding cement plug will be set from the top of the mechanical bridge plug to the bottom of the lowest mineable coal seam.

(7) The wellbore will be filled with cement from the top of the expanding cement plug at the lowest mineable coal seam to the surface. A monument will be erected at the surface consisting of a section of 4½ inches or larger casing set in cement in the borehole a minimum of 36 inches and extending a minimum of 30 inches above ground level. The monument will be filled with cement and will show the American Petroleum Institute number of the well, generated by engraving or welding.

The petitioner proposes to use the following procedures for mining through a plugged oil and gas well:

(1) The operator will notify:

(a) The District Manager five days prior to mining within 300 feet of the well.

(b) The District Manager and the representative of miners of the shift on which the mining will be done in close proximity to within 300 feet, or through a plugged well.

(c) The District Manager, representative of the miners, and the appropriate state agency in sufficient time prior to the mine-through operation to provide an opportunity to have representatives present.

(2) When using continuous or conventional mining methods, drivage sights will be installed at the last open crosscut near the place to be mined to ensure intersection of the well. The drivage sights will not be more than 50 feet from the well.

(3) Firefighting equipment, including fire extinguishers, rock dust, and sufficient fire hose to reach the working face area of the mining-through will be available when either the conventional or continuous mining method is used. The fire hose will be located in the last open crosscut of the entry or room. All fire hoses will be ready for operation during the mine-through.

(4) Sufficient supplies of roof support and ventilation materials will be available and located on the active section. In addition, an emergency plug and/or plugs will be available within the immediate area of the mine-through.

(5) During the mine-through operation, the quantity of air required by the ventilation plan, but not less than 9,000 cubic feet per minute of air, will reach each working face where coal is being cut, mined, drilled for blasting, or loaded.

(6) Prior to the shift of mining through the well, equipment will be checked for permissibility and serviced. The water line will be maintained up to the tail piece with a sufficient amount of fire hose to reach the farthest point of penetration on the section.

(7) Prior to the shift of mining through the well, the methane monitor on the continuous mining machine will be calibrated.

(8) When mining is in progress, tests for methane will be made with a hand-held methane detector at least every 10 minutes from the time that mining with the continuous mining machine is within 30 feet of the well until the well is intersected. This test for methane will also be made immediately prior to the mine-through. During the actual mine-through process, no individual will be

allowed on the return side until the mine-through has been completed and the area has been examined and declared safe.

(9) When using continuous or conventional mining methods to mine through the well, the working place will be free from accumulations of coal dust and coal spillage, and rock dust will be placed on the roof, rib, and floor within 20 feet of the face.

(10) When the well bore is intersected, all equipment will be deenergized and the working place thoroughly examined and determined safe before mining is resumed. Any well casing will be removed and no open flame will be permitted in the area until adequate ventilation has been established around the wellbore.

(11) After a well has been intersected and the working place determined safe, mining will continue inby the well at a sufficient distance to permit adequate ventilation around the area of the well bore.

(12) No person will be permitted in the area of the mine-through operation except those actually engaged in the operation, company personnel, representatives of the miners, MSHA personnel, and State personnel.

(13) The mine-through operation will be under the direct supervision of a certified individual. Instructions concerning the mine-through operation will only be issued by the certified individual in charge.

The petitioner asserts that, while plugging and mining through gas wells, the proposed methods and standards provide reasonable alternatives to the current permissible standard and will not result in a diminution of safety to the miners.

Docket Number: M–2012–151–C.

Petitioner: Chief Mining, Inc., P.O. Box 446, Glen Daniel, West Virginia 25844.

Mine: Joe Branch No. 4 Mine, MSHA I.D. No. 46–08959, located in Wyoming County, West Virginia.

Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Modification Request: The petitioner requests a modification of the existing standard for underground coal mines to eliminate the use of blow-off dust covers for the spray nozzles of a deluge-type water spray system. The petitioner proposes to conduct a weekly inspection and functional test of its complete deluge-type spray system. The petitioner states that:

(1) In view of the frequent inspections and functional testing of the system, the dust covers are not necessary because the nozzles can be maintained in an unclogged condition through weekly use.

(2) It is burdensome to recap the large number of covers weekly after each inspection and functional test. The petitioner proposes to:

(1) Continue its weekly inspection and functional testing of the complete deluge-type water spray system.

(2) Remove blow-off dust covers from the nozzles.

(3) In a book maintained on the surface, record the results of the examination and functional test and any malfunctions or clogged nozzle detected. The record will be retained at the mine for one year.

The petitioner asserts that the proposed alternative method will at all times guarantee the miners no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2012–152–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: MT–34 Underground Mine, MSHA I.D. No. 46–09424, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in or inby the last open crosscut will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as required in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air outby the last open crosscut.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms

and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee the miners no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–153–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: MT–34 Underground Mine, MSHA I.D. No. 46–09424, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements). *Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used in return airways will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in return airways.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as required in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–154–C.

Petitioner: Consol of Kentucky, Inc., Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: MT–34 Underground Mine, MSHA I.D. No. 46–09424, located in Mingo County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

(a) Nonpermissible electronic surveying equipment will be used when equivalent permissible electronic surveying equipment is not available. Such nonpermissible surveying equipment includes portable battery-operated total station surveying equipment, mine transits, distance meters, and data loggers.

(b) All nonpermissible electronic surveying equipment to be used within 150 feet of pillar workings will be examined by surveying personnel prior to use to ensure the equipment is being maintained in a safe operating condition. These examinations will include the following steps:

(i) Checking the instrument for any physical damage and the integrity of the case.

(ii) Removing the battery and inspecting for corrosion.

(iii) Inspecting the contact points to ensure a secure connection to the battery.

(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as required in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air more than 150 feet from pillar workings.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards and limitations associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket No: M–2012–155–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Shoemaker Mine, MSHA I.D. No. 46–01436, located in Marshall County, West Virginia.

Regulation Affected: 30 CFR 75.500(d) (Permissible electric equipment).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in or inby the last open crosscut, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

(2) Application of the existing standard would result in a diminution of safety to the miners. Underground mining by its nature and size, and the complexity of mine plans, requires that accurate and precise measurements be completed in a prompt and efficient manner. The petitioner proposes the following as an alternative to the existing standard:

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(iv) Reinserting the battery and powering up and shutting down to ensure proper connections.

(v) Checking the battery compartment cover to ensure that it is securely fastened.

(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment in or inby the last open crosscut.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn outby the last open crosscut.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as required in 30 CFR 75.320.

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Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–156–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Shoemaker Mine, MSHA I.D. No. 46–01436, located in Marshall County, West Virginia.

Regulation Affected: 30 CFR 75.507–1(a) (Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment in return airways, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary.

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(c) The results of such examinations will be recorded and retained for one year and made available to MSHA on request.

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(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn out of the return airways.

(f) All hand-held methane detectors will be MSHA-approved and maintained in permissible and proper operating condition as required in 30 CFR 75.320.

(g) Batteries in the surveying equipment must be changed out or charged in fresh air out of the return.

(h) Qualified personnel who use surveying equipment will be properly trained to recognize the hazards associated with the use of nonpermissible surveying equipment in areas where methane could be present.

(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Docket Number: M–2012–157–C.

Petitioner: Consolidation Coal Company, Three Gateway Center, Suite 1340, 401 Liberty Avenue, Pittsburgh, Pennsylvania 15222–1000.

Mine: Shoemaker Mine, MSHA I.D. No. 46–01436, located in Marshall County, West Virginia.

Regulation Affected: 30 CFR 75.1002(a) (Installation of electric equipment and conductors; permissibility).

Modification Request: The petitioner requests a modification of the existing standard to permit an alternative method of compliance to permit the use of battery-powered nonpermissible surveying equipment within 150 feet of pillar workings, including, but not limited to, portable battery-operated mine transits, total station surveying equipment, distance meters, and data loggers. The petitioner states that:

(1) To comply with requirements for mine ventilation maps and mine maps in 30 CFR 75.372 and 75.1200, use of the most practical and accurate surveying equipment is necessary. To ensure the safety of the miners in active mines and to protect miners in future mines that may mine in close proximity to these same active mines, it is necessary to determine the exact location and extent of the mine workings.

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(d) A qualified person as defined in 30 CFR 75.151 will continuously monitor for methane immediately before and during the use of nonpermissible surveying equipment within 150 feet of pillar workings.

(e) Nonpermissible surveying equipment will not be used if methane is detected in concentrations at or above one percent for the area being surveyed. When methane is detected at such levels while the nonpermissible surveying equipment is being used, the equipment will be deenergized immediately and the nonpermissible electronic equipment withdrawn further than 150 feet from pillar workings.

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(i) The nonpermissible surveying equipment will not be put into service until MSHA has initially inspected the equipment and determined that it is in compliance with all the terms and conditions in this petition.

Within 60 days after the Proposed Decision and Order becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. The revisions will specify initial and refresher training regarding the terms and conditions in the Proposed Decision and Order.

The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection as that afforded by the existing standard.

Dated: August 14, 2012.

George F. Triebsch,

Director, Office of Standards, Regulations and Variances

[FR Doc. 2012–20305 Filed 8–17–12; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0033]

Expert Forum on the Use of Performance-Based Regulatory Models in the U.S. Oil and Gas Industry, Offshore and Onshore

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of stakeholder meeting.

SUMMARY: The Department of Labor, Occupational Safety and Health Administration (OSHA); Department of Interior, Bureau of Safety and Environmental Enforcement (BSEE); Department of Homeland Security, United States Coast Guard (USCG); Environmental Protection Agency (EPA); and Department of Transportation, Pipeline and Hazardous Materials Safety Administration (PHMSA) invite interested parties to participate in a co-sponsored stakeholder meeting, and submit comments on the use and implementation of performance-based regulatory models for enhanced safety and environmental performance in the United States oil and gas industry. The meeting will take place at the College of the Mainland, and hosted by the Gulf Coast Safety Institute. Speakers will address the current regulatory landscape and discuss the challenges and benefits of non-prescriptive, outcome-based approaches to reduce the frequency and severity of harmful events. Public attendees will have the opportunity to make comments at the meeting, and all members of the public may submit comments in writing. The purpose of the meeting is to gather information from experts and stakeholders to help inform the consideration of future applications of performance-based regulatory approaches in the oil and gas sector. The agencies involved are soliciting input on potential concepts and options, and are not proposing specific changes to existing regulations at this time.

DATES: The stakeholder meeting will be held on September 20–21, 2012. The meeting will run from 9 a.m. to 4 p.m., CDT on September 20, and 9 a.m. to 1 p.m., CDT on September 21. The agencies will post a more detailed agenda for the meeting on the registration Web site (see Registration section).

ADDRESSES: The meeting will take place at College of the Mainland, Learning Resource Center, Room 131, 1200 Amburn Road, Texas City, Texas 77511. On-site parking will be available.

Registration: The deadline for registration to attend the meeting is September 5, 2012. Please register online at *https://primis.phmsa.dot.gov/meetings/mtghome.mtg?mtg=79*. Registrations will be available for 150 public seats. The meeting also will be webcast live for online viewing. Instructions and information for the webcast, a detailed meeting agenda, and additional information will be available on the registration Web site.

Public Comment: You are invited to submit comments that address the topics for consideration listed in Section II of this notice. The docket will remain open until October 22, 2012. You may submit comments and additional materials electronically, or by facsimile (fax) or hard copy.

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*. Follow the instructions on-line for making electronic submissions.

Fax: If your submissions, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, or messenger or courier service: You may submit comments and attachments to the OSHA Docket Office, Docket No. 2012–0033, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. The Docket Office will accept deliveries (hand, express mail, or messenger or courier service) during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., EST.

Instructions: All submissions must identify the Agency name and the OSHA docket number for this meeting (OSHA Docket No. 2012–0033). You may supplement electronic submissions by uploading document attachments and files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit a copy to the OSHA Docket Office. The additional materials must clearly identify your electronic submissions by name, date, and docket number so OSHA can attach them to your submissions.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. For information about security procedures concerning the delivery of materials by hand delivery, express mail, or messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627).

Docket: To read or download submissions or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.*, copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

FOR FURTHER INFORMATION CONTACT:

- *For press inquiries:* Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; e-mail: *meilinger.francis2@dol.gov*.
- *For general and technical information about the meeting:* Ms. Lisa Long, Director, Office of Engineering Safety, OSHA, Directorate of Standards and Guidance, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2222; e-mail: *long.lisa@dol.gov*.
- *For copies of this **Federal Register** notice:* Electronic copies of this **Federal Register** document are available at

http://www.regulations.gov. This document, as well as news releases and other relevant information, also are available at OSHA's Webpage at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Multiple agencies share Federal health, safety, and environmental regulation of the U.S. oil and gas industry, from drilling to refining, both onshore and offshore. The oil and gas industry engages in operations that include, but are not limited to, exploration, drilling, completion, servicing, production, transportation, and refining. While the technical aspects of these operations can vary greatly, many hazards to both employees and the general public are similar. However, regulatory requirements between the various agencies often differ, and the agency that has jurisdiction over an operation can vary by either type of operation or location; in some cases, jurisdiction may overlap. For instance, BSEE, USCG, and the EPA regulate drilling and production activities offshore, PHMSA regulates hazardous material transportation both onshore and offshore, and OSHA has standards regulating safety and health in workplaces that include oil and gas drilling, production, and refining. Currently, Federal agencies involved in the regulation of the oil and gas sector employ regulatory regimes that have some elements of both prescriptive and performance-based approaches; the agencies are continually evaluating how to improve the effectiveness of these regulations and standards.

On January 18, 2011, President Obama issued Executive Order 13563, which called for improvements in the nation's regulatory system to promote predictability and reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Specifically, the Executive Order requests that agencies review existing and proposed standards and regulations to ensure they effectively protect ''public health, welfare, safety, and our environment while promoting economic growth, innovation, competitiveness, and job creation.'' The Executive Order also sets forth agency requirements for promulgating regulations and standards, including provisions addressing public participation, integration and innovation, flexible approaches, and retrospective analysis of existing rules. With respect to retrospective analysis, the Executive Order states:

> To facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.

The Executive Order emphasizes that, to the extent feasible, regulations and standards should: specify performance objectives rather than specifying the behavior or manner of compliance that regulated entities must adopt; and be adopted through a process that involves public participation. Consistent with these objectives, BSEE, EPA, OSHA, PHMSA and USCG are soliciting views from the public regarding opportunities to improve the efficiency and effectiveness of safety and environmental regulations and standards in the oil and gas industry while enhancing interagency coordination. The goal of such improvements is to further the safety of oil and gas industry operations, while increasing environmental and economic benefits to society.

Types of Regulatory Models

BSEE, EPA, OSHA, PHMSA, and the USCG are particularly interested in stakeholder views regarding the most effective regulatory models to address the issues noted above. There are many regulatory models for agencies to consider, ranging from prescriptive regulations and standards to more performance-based regulations and standards. Prescriptive models, sometimes referred to as ''command and control'' regulation, generally prescribe precise requirements. Performance-based models, often referred to as ''outcome-based'' or ''market-based'' regulation, specify an outcome to be achieved without prescribing the specific requirements to reach that outcome.

One popular regulatory model in the U.S., the ''management-based'' regulation, falls somewhere on the spectrum between prescriptive and performance-based models. Regulators using this model generally require the implementation of management systems and practices that ensure a desired outcome. Regulations and standards developed under this model may specify the elements of the management system, but do not prescribe specific technical requirements.

BSEE, EPA, OSHA, PHMSA, and the USCG have a mix of regulations and standards that incorporate prescriptive and performance-based requirements, including some management-based models. In addition to these regulations and standards, there are several examples of regulatory models in the U.S. and abroad that incorporate varying degrees of performance-based approaches that include, but are not limited to:

- U.S. Nuclear Regulatory Commission (NRC) regulations;
- Contra Costa County California Industrial Safety Ordinance;
- United Kingdom, Health and Safety Executive (HSE) Offshore Installation (Safety Case) Regulations; and
- 2005 Norway, Petroleum Safety Authority (PSA), Framework HSE, Management, Technical and Operational, Facilities and Activities regulations.

II. Topics for Consideration

The Federal agencies sponsoring this stakeholder meeting are exploring a number of topics that will help inform whether and how to further incorporate performance-based regulatory approaches into their current regulatory systems. These topics include:

- The advantages and disadvantages of performance-based, prescriptive, and management-based regulatory approaches;
- Whether these models could create synergies between multiple agencies; and
- What types of models or combinations of models could result in long-term economic benefits.

To elicit specific feedback on these topics, participating agencies are requesting comment from stakeholders regarding the following questions:

1. What are some benefits of using a performance-based regulatory regime to regulate the oil and gas industry? What are some drawbacks? In making this evaluation, consider health, safety, environmental, and economic impacts, as well as implementation challenges, cost to regulatory agencies, and long-term hazard-reduction effectiveness. Refer to specific models and provide data, when appropriate.
2. Could there be a balance of performance vs. prescriptive regulations and standards in the U.S. oil and gas industry and, if so, what should it be? Does this balance vary for certain types of operations, business sizes, etc.?
3. Is there a way to advance the use of performance-based regulations and standards in the U.S. oil and gas Industry? If so, what is the best way? Consider means, cost to regulatory agencies, cost for industry, and expected changes in developing your response.
4. Could uniform implementation of performance-based regulations and standards improve efficiency and reduce duplication in a hazardous

industry regulated by multiple agencies? If so, how?

5. What are the biggest challenges to successful implementation of performance-based regulations in the U.S. oil and gas industry?

6. How can risk assessment best be used in performance-based regulations while still ensuring adequate levels of safety? If risk assessments are used in a performance-based regulation, should acceptable risk levels be established?

7. How have authorities that currently use performance-based regulatory models ensured effective oversight (*e.g.*, use of metrics, audit programs)?

8. Are there limits to the use of performance-based regulatory models? For example, do performance-based regulatory models increase or decrease challenges for small businesses in comparison to prescriptive models? Are prescriptive components needed/desirable, and if so, under what situations?

III. Meeting Format

The meeting will include opening remarks, presentations by the agencies and expert speakers, time for public comments, and closing remarks. The agencies will discuss their areas of jurisdiction, regulations and standards, and efforts in the oil and gas industry. Expert speakers will discuss the topics for consideration and issues related to performance-based regulations. In the time designated for public comments, meeting attendees will have an opportunity to make comments that provide the agencies with additional information that may assist them with their future performance-based regulatory efforts.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice.

Signed at Washington, DC, on August 10, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–20058 Filed 8–17–12; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Biological Sciences Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Biological Sciences Advisory Committee (#1110).

Date and Time: September 5, 2012, 8:30 a.m.–5 p.m.; September 6, 2012, 8:30 a.m.–12 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

All visitors must contact the Directorate for Biological Sciences [call 703–292–8400 or send an email message to *erchiang@nsf.gov*] at least 24 hours prior to the meeting to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the N. 9th and N. Stuart Streets entrance on the day of the meeting to receive a visitor's badge.

Type of Meeting: OPEN.

Contact Person: Chuck Liarakos, National Science Foundation, 4201 Wilson Boulevard, Room 605, Arlington, VA 22230 Tel No.: (703) 292–8400.

Purpose of Meeting: The Advisory Committee for the Directorate for Biological Sciences provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Agenda items will include the Division of Environmental Biology Committee of Visitors report, preliminary reports from the sub-committee on biological data and the sub-committee on broadening participation in the biological sciences, and other matters relevant to the Directorate for Biological Sciences.

Dated: August 14, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–20289 Filed 8–17–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 23, 2012, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on August 14, 2012 to:

Robert A. Garrott—Permit No. 2013–007.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–20347 Filed 8–17–12; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF PERSONNEL MANAGEMENT

Revision of Information Collection: Combined Federal Campaign; Applications

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management intends to submit to the Office of Management and Budget (OMB) a request for clearance to revise an information collection. Combined Federal Campaign Applications, OMB Control No. 3206–0131, which include OPM Forms 1647 A–E, are used to review the eligibility of national, international, and local charitable organizations that wish to participate in the Combined Federal Campaign. The proposed revisions reflect changes in eligibility guidance from the Office of Personnel Management. On May 15, 2012, we published a 60-day notice and request for comments. We received no comments.

We estimate 20,000 responses to this information collection annually. Each form takes approximately three hours to complete. The annual estimated burden is 60,000 hours.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the appropriate use of technological collection techniques or other forms of information technology.

DATES: Comments on this information collection should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—U.S. Office of Personnel Management, Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel, Management; or send via electronic mail to *oira_submission@omb.eop.gov* or fax to (202) 395–6974.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–20384 Filed 8–17–12; 8:45 am]

BILLING CODE 6325–46–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Information Collection 3206–NEW; Questionnaire for Public Trust Positions (SF 85P) and Supplemental Questionnaire for Selected Positions (SF 85P–S)

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: Federal Investigative Services (FIS), U.S. Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an information collection request (ICR), Office of Management and Budget (OMB) Control No. 3206–NEW, for Questionnaire for Public Trust Positions, Standard Form 85P (SF 85P) and Supplemental Questionnaire for Selected Positions, Standard Form SF 85P–S (SF 85P–S). As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until September 19, 2012. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Room 10235, Washington, DC 20503, Attention: Jasmeet K. Seehra, OMB Desk Officer or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974; and Federal Investigative Services, U.S. Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415, Attention: Lisa Loss or sent via electronic mail to *FISFormsComments@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Federal Investigative Services, U.S. Office of Personnel Management, 1900 E. Street NW., Washington, DC 20415, Attention: Lisa Loss or sent via electronic mail to *FISFormsComments@opm.gov.*

SUPPLEMENTARY INFORMATION: This notice announces that OPM submitted to OMB a request for review and clearance of the revised information collection of information, Questionnaire for Public Trust Positions, SF 85P and Supplemental Questionnaire for Selected Positions, SF 85P–S, which are housed in a system named e-QIP (Electronic Questionnaires for Investigative Processing) and are information collections completed by applicants for, or incumbents of, Federal Civilian Government positions, or positions in private entities performing work for the Government under contract. The collections are used as the basis of information for background investigations to establish that such persons are: Suitable for appointment to or retention in Federal employment in a public trust position; fit for employment or retention in Federal employment in the excepted service when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position; fit to perform work on behalf of the Federal Government pursuant to a Government contract, when the duties to be performed are equivalent in degree of trust reposed in the individual to a public trust position; or eligible for physical and logical access to federally controlled facilities or information systems, when the duties to be performed by the individual are equivalent to the duties performed by an employee in a public trust position. For applicants, the SF 85P and SF 85P–S are to be used only after a conditional offer of employment has been made. The SF 85P–S is supplemental to the SF 85P and is used only as approved by OPM, for certain positions such as those requiring carrying of a firearm.

It is estimated that the total number of respondents for the SF 85P is 112,894 annually. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent will vary depending upon how the information collected relates to the respondent's personal history. In an empirical study, the median of participant time spent completing the SF 85P was 155 minutes. Accordingly, OPM estimates that the annual burden is 141,118 hours. It is estimated that the total number of respondents for the SF 85P–S is 11,717 annually. Each SF 85P–S form takes an estimated 10 minutes to complete. Accordingly, the estimated annual burden is 1,953 hours. e-QIP (Electronic Questionnaires for Investigations Processing) is a web-based system application that houses the SF 85P and SF 85P–S. This internet data collection tool provides faster processing time and immediate data validation to ensure accuracy of the respondent's personal information. The e-Government initiative mandates that agencies utilize e-QIP for all investigations and reinvestigations. A variable in assessing burden hours is the nature of the electronic application. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. Because the question branches, or expands for additional details, only for those persons who have indicated, by their previous answers, that a particular topic is relevant to them, the burden on the respondent is reduced when the respondent's personal history demonstrates that he or she has no pertinent information to provide regarding that line of questioning.

Accordingly, the burden on the respondent will vary depending on whether particular segments of the information collection relate to the respondent's personal history. Additionally, once entered, a respondent's complete and certified investigative data remains secured in the e-QIP system until the next time the respondent is sponsored by an agency to complete a new investigative form. Upon initiation, the respondent's previously entered data (except ''yes/no'' questions) will populate a new investigative request. The respondent will be allowed to update his or her information, and certify the data, but will need to revise only the information that has changed. In this instance, time to complete the form is reduced significantly.

The 60-day notice of the proposed information collection was published in the **Federal Register** on December 29, 2010 (**Federal Register** Notices/Volume 75, Number 249, page 82095–82097) as required by 5 CFR 1320, affording the public an opportunity to comment on the form(s). Comments were received from the Equal Employment Opportunity Commission (EEOC), Internal Revenue Service Personnel Security (IRS–PS), the Department of Homeland Security Office of Security (DHS–OS), the Office of the Secretary of Defense, Human Resources community (OSD–HR), and commenters from the Department of Justice, Treasury, and OPM. Two employee unions, the American Federation of Government Employees (AFGE) and the National Treasury Employees Union (NTEU), submitted comments.

EEOC provided comments which, EEOC stated, were from the perspective of the federal agency enforcing the equal employment opportunity (EEO) laws for the federal and private sectors, with a particular focus, in this instance, on Section 501 of the Rehabilitation Act, as amended (Section 501), and Title VII of the Civil Rights Act, as amended (Title VII).

EEOC commented that Section 501 of the Rehabilitation Act restricts federal employers as to the circumstances under which they may make ''disability-related inquiries'' of applicants and employees. In EEOC's view, disability-related and non-disability-related inquiries are intertwined in sections 21 and 22 of the SF 85P, and therefore both sections are subject to Section 501's restrictions. EEOC commented that OPM should direct agencies to ask these questions (Section 21 ''Illegal Use of Drugs and Drug Activity,'' and Section 22 ''Use of Alcohol,'' only when Section 501 permits. EEOC recommended that OPM add language to the instructions for the SF 85P that previously existed on the SF 85P–S, stating that Federal departments and agencies may pose disability-related inquiries to applicants only after an offer has been made, and to employees only under circumstances that are job related and consistent with business necessity. EEOC further recommended that OPM insert specific instructions about Section 501 at the beginning of the SF 85P, cross-referencing sections 21 and 22. OPM did not accept EEOC's recommendation. The instructions on the SF 85P already state that, ''for applicants, the form is to be used only after a conditional offer of employment has been made.'' Therefore, Section 501 has already been properly addressed. OPM has clearly indicated the types of decision-making that the SF 85P supports, and as noted above, the information collection regarding illegal use of drugs, drug activity, and use of alcohol is necessary for the determinations the form supports.

EEOC acknowledged that federal agency employers need tools, such as the SF 85P, that allow them to collect complete information about the disposition of all arrests, charges, and other criminal proceedings in an applicant's background. EEOC stated it was unclear whether OPM intended its inquiry to encompass the disposition of all arrests, of all charges, and of all trials.

The collection of disposition information is indeed required for the arrests and charges that the form collects. The branching questions of the collection permit the respondent to provide relevant information, including circumstances and outcomes. The collection is tailored to specific timeframes, and OPM uses the information provided to obtain further information on dispositions, if necessary. Accordingly, by the time the agency has the background investigation before it, and is ready to adjudicate suitability, fitness, or eligibility, it should have disposition information before it in the record.

EEOC commented that OPM should educate federal employers about how to assess suitability for federal or contract employment when evaluating an applicant's police record. Although this comment appears to be out of the scope of commenting on the information collection, OPM responds that it agrees with the EEOC and does indeed already provide such guidance in the suitability. OPM is not responsible for establishing standards for fitness inquiries concerning employees of contractors.

EEOC recommended eliminating or significantly restricting the scope of section 24, Financial Record, due to concerns that the inquiries could result in discriminatory uses of the requested information. It recommended that if OPM retains the section, or portions thereof, it should adopt explicit, objective guidelines for using the requested information, which at a minimum should require the decision-maker to determine and consider the background circumstances that led to the reported financial problems when deciding whether to hold them against the applicant. EEOC recommended open text fields to collect the information. OPM did not accept EEOC's recommendation to eliminate or significantly restrict the scope of section 24. OPM does already provide guidance to agencies regarding the appropriate use of information about financial issues in making suitability determinations using this form and what other circumstances, such as societal factors, should be considered in the analysis. Further, the proposed collection does include free text fields for the respondent to provide the circumstances surrounding the indebtedness and actions taken in regard to it.

IRS–PS stated that IRS agrees with the changes as presented. DHS–OS stated that DHS approves of the additional questions and expanded collection of information, particularly in regards to Section 21, Illegal Use of Drugs and Drug Activity, as it will assist DHS in the goal of a drug-free workplace. A commenter from the Department of Justice provided a favorable view regarding the proposed form, stating that the additions will greatly benefit personnel security programs in their adjudications. The commenter stated that the form asks for information that is pertinent and relevant to suitability determinations and fitness evaluations for contractors.

DHS–OS made suggestions to replace references to ''eligibility'' with ''suitability'' in the instruction pages of the form. These comments were not accepted because the form supports eligibility for physical and logical access to federally controlled facilities or information systems (when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position) as well as suitability determinations. DHS–OS also suggested strengthening the advice regarding delays that occur as a result of credit freezes. This comment was accepted.

DHS–OS recommended that the questions posed in Section 13C, Employment Record, should be asked of all persons who have ever had federal

service, not merely those who have been in the federal service in the last seven years. This comment was not accepted, because OPM has concluded, based upon experience, that the questions on the form are sufficient to identify the conduct that would be relevant, in light of recency and other factors.

DHS–OS recommended that the criminal conviction questions ask if the individual has ''ever'' been convicted of any crime in civilian courts or in military courts martial, which would require a change to sections 15 and 20. DHS reasons that some convictions would warrant a negative suitability finding by a law enforcement agency irrespective of the age of the conviction. This recommendation was not accepted. OPM believes that requiring respondents to provide all criminal convictions regardless of age would result in an increased collection of information from respondents that would be unduly burdensome in light of the broad spectrum of offenses that would be reported and the diminished likelihood that offenses more than seven years old would warrant a negative suitability finding. Furthermore, the form already includes questions that would collect information necessary to determine eligibility for certain law enforcement positions in regard to the Lautenberg Amendment, and the investigation includes a check of the criminal history records on file with the Federal Bureau of Investigation and local law enforcement agencies to obtain a complete picture of the respondent's criminal history.

DHS–OS recommended that the Fair Credit Reporting Act Release specify a timeframe of five years. This recommendation was not accepted as a timeframe is not required.

A commenter from DOJ recommended that the form be modified so that ''I don't know'' is not an option regarding Selective Service Record. This recommendation was not accepted as it is possible that the SF 85P will be completed by someone without access to the internet to easily locate the information. Additionally, an explanation is required if ''I don't know'' is selected. The commenter similarly commented that ''I don't know'' should not be an acceptable answer when providing contact information for People Who Know You Well. This comment was not accepted. Although it is expected that most respondents will be able to provide contact information, it is OPM's experience that, in rare circumstances, this option is necessary. DOJ also provided a comment that other areas of the form should have an ''I don't know'' option for information that could be difficult to provide. The form was not modified in response to this comment as the electronic platform of the questionnaire will allow an explanatory remark in ''Additional Comments'' at each section.

DOJ observed that the question regarding Illegal Use of Drugs, which was moved to the SF 85P from the SF 85P–S, previously allowed an exception for use prior to the age of 16. DOJ inquired whether this exception was intentionally omitted. The exception is not incorporated because OPM believes, based upon its experience, that conduct information before the age of 16 can be relevant, depending on the respondent's age and subsequent conduct.

A commenter from OSD–HR recommended that the section ''Purpose of this Form'' include a statement that the questionnaire shall not be used for National Security Sensitive position determinations. Similarly, the American Federation of Government Employees (AFGE) commented that OPM should clarify the distinction between the forms SF 85P and SF 85P–S and the form SF 86, as well as provide greater guidance as to when the completion of a particular form should be required. OPM accepted these comments and has added the statement suggested by OSDHR to the proposed questionnaire.

OSD–HR recommended that the instructions explain that after a suitability determination is made, the respondent may also be subject to continuous evaluation, which may include periodic reinvestigations to ensure continuing suitability for employment. This comment was not accepted. OSD–HR also stated that personnel in public trust positions should be subject to continuous evaluation, and the Investigative Process block and the Authorization for Release of Information should be amended to so state. This comment also was not accepted. Pursuant to Executive Order 13467, '''[c]ontinuous evaluation' means reviewing the background of an individual who has been determined to be eligible for access to classified information (including additional or new checks of commercial databases, Government databases, and other information lawfully available to security officials) at any time during the period of eligibility to determine whether that individual continues to meet the requirements for eligibility for access to classified information.'' E.O. 13467, sec. 1.3(d). Individuals in that circumstance would be filling out an SF 86, not an SF 85P. The President dealt with incumbent public trust employees in Executive Order 13488. E.O. 13488 states that ''[i]ndividuals in positions of public trust shall be subject to reinvestigation under standards (including but not limited to the frequency of such reinvestigation) as determined by the Director of the Office of Personnel Management * * *'' Pursuant to that Order, OPM promulgated 5 CFR 731.106(d), which provides that public trust employees must be reinvestigated at least every five years. A reinvestigation of a public trust employee with no access to classified information would be similar to the investigation the employee underwent at the time of appointment to the public trust position, and would not be the same as what is meant by continuous evaluation.

OSD–HR recommended that the Personal Interview area of the instructions should include reference to garnishments, tax warrants, and foreclosures as documentation regarding these may be required. This recommendation was not accepted because ''other financial obligations'' is a broad category that implicitly includes these areas, particularly since there are direct questions about garnishments, tax liens, and foreclosures in the financial record section.

OSD–HR recommended that ''certificates'' should be added to the types of educational awards required to be listed. This comment was not accepted because, although certificates may be received in connection with educational activities, compelling the listing of all certificates in this section would likely compel irrelevant information, given the vast array of educational certificate opportunities (e.g. cake decorating).

OSD–HR recommended that Section 13C define the term misconduct and provided a suggested definition. This recommendation was not accepted because misconduct is a commonly understood term. Also in Section 13C, OSD–HR recommended adding the word ''otherwise'' between ''or'' and ''disciplined'' as written, it may appear that official reprimands, etc. are not forms of discipline. This recommendation was not accepted as it is not necessary to capture the desired information.

OSD–HR recommended that non-appropriated fund applicants/employees be excluded from completing Section 14, Selective Service. This recommendation was not accepted as it would be more confusing to compel applicants to distinguish between NAF positions and other positions. OPM will provide guidance to assist agencies in using the information properly for decision-making.

OSD–HR recommended that ''common law'' be defined or removed from the form as common law marriage is not recognized in some states. This recommendation was not accepted. ''Common law'' is included on the form because it is, in fact, recognized in other states, and we need to account for it where it occurs. Similarly, civil unions and domestic partnerships are legally recognized in an increasing number of states. Therefore, with due regard to the comment from OSD–HR, the form was revised to collect information regarding legally recognized civil unions and domestic partnerships, in addition to legally recognized civil marriages.

OSD–HR suggested including a hyperlink to 21 U.S.C. 844 or 18 U.S.C. 3607 to clarify for applicants which convictions may be omitted from the form. This recommendation was not accepted as individuals to whom this applies should be aware of the reason, and the references may easily be researched as necessary.

OSD–HR recommended that ''controlled substance'' and ''controlled substance activity'' should be clearly defined. This recommendation was not accepted as this language has been used on the forms for many years and has not appeared to require further clarification.

OSD–HR recommended that the question of being ''ordered, advised, or asked to seek counseling or treatment as a result of alcohol use'' be treated as a stand-alone question (i.e., a question everyone must answer), rather than a branching question, which would be similar to the way this information was treated on the SF 85P–S, prior to its deletion. OSD–HR stated an alternative recommendation would be to place question 4 back on the SF 85P–S to ensure this information is collected appropriately. OPM accepted this comment and has added the question back on the SF 85P–S as a stand-alone question, while retaining it as a conditional question on the SF 85P.

OSD–HR recommended that the wording of the question regarding ''negative impacts'' from alcohol on the SF 85P should mirror the wording on the SF 86, to include impact on personal relationships. This recommendation was not accepted, as the wording on the SF 85P, with its emphasis on work relationships, is appropriate for the types of decisions the form SF- 85P supports, and, based upon OPM's experience, the additional information is not necessary in this context.

OSD–HR recommended that Section 24, Financial Record, should include Chapter 12 in the list of bankruptcies. This recommendation was accepted.

OSD–HR recommended that references to tax liens should be changed to ''tax lien (warrant).'' This recommendation was not accepted because the Federal government and most (all but 7) states issue tax liens. Introducing ''warrant'' may confuse applicants unfamiliar with the term outside of its criminal application, and may result in more inaccurate responses than if it is not introduced.

OSD–HR recommended that the question regarding alimony and child support payments should be expanded beyond ''current'' to collect a history of neglecting these obligations. This comment was not accepted because, even though the question on alimony and child support asks about current delinquency, the applicant will still need to list any judgment, garnishment, or lien, as well as any delinquency over 120 days, in responding to the other questions on the form.

OSD–HR recommended adding an example of student loans in parenthesis following the question about delinquent federal debt. This recommendation was not accepted, as previous experience with this question on other forms has shown that including examples tends to lead the respondent to narrow his/her response to only the examples, even when qualifying language is included (''such as * * *'').

OSD–HR commented that Section 26 should be amended to remove the word ''tortious'' and replace it with ''intentionally or negligently wrongful conduct.'' This comment was not accepted because framing the question in another way would likely cause it to be interpreted too narrowly.

OSD–HR recommended that Section 27 be amended to remove the word ''security'' from the explanation block. This comment was accepted.

OSD–HR stated the word ''clearance'' is not appropriate in the Purpose paragraph in the Fair Credit Reporting Disclosure and Authorization. This comment was accepted and the word ''clearance'' has been changed to ''ability.''

OSD–HR recommended reinstating the prior Agency Use block for ''Compu/ADP'' that appeared on the 1995 version of the SF 85P. This comment was not accepted because this term is not relevant, standing apart from other position designation factors. The Agency Use section includes a block for position title, which will help inform the adjudicators.

A commenter from Treasury stated that there are no suitability factors in connection with which to adjudicate an affirmative answer to Section 15's question regarding service in a foreign country's military, intelligence, diplomatic, security forces, or government agency. This comment was not accepted. This question complements Section 15's questions concerning service in the U.S. military and thus affords the opportunity to establish whether there have been instances of bad conduct during service in other contexts, where obtaining relevant records may be more difficult. Conduct that occurred in these locations may be relevant to the decisions these investigations support. Further, the U.S. Government has an interest in ensuring that persons in positions of public trust have not engaged in acts or activities designed to overthrow the U.S. Government by force, and the information provided in response to these questions is designed to assist the adjudicator with that determination.

The Treasury commenter also stated that branching questions in Section 19 regarding being questioned, searched, etc. appear to be too invasive for public trust positions and these encounters and activities are not identified as suitability factors. The form was not modified in response to this comment. The question is intended to elicit potential criminal conduct while in a foreign country. The information provided, though not necessarily conclusive, will help the investigating entity identify potential issues for further inquiry in a context where it would otherwise be difficult to locate appropriate records.

The Treasury commenter recommended that Question 23, Investigation and Clearance Record, be modified to ask the applicant to provide the name of the Treasury Bureau that conducted the investigation. This comment was accepted.

A commenter from OPM recommended that additional guidance should be provided on the form to explain the process by which the respondent should list any freeze on his or her credit accounts. This comment was not accepted as OPM provides such implementation guidance to agencies to assist respondents.

The commenter from OPM recommended that Agency Use Block D be removed as the form is not to be used for sensitive positions. This comment was accepted, and Block D has been removed. Additionally, Block C has been renamed, ''Risk Level.''

The commenter from OPM suggested a link to the Department of Education's Web site should be provided in the Education section in order to assist respondents in providing a valid school address. This comment was accepted and the link will be added.

The commenter from OPM suggested that the Relatives section be expanded to collect identifying information regarding brother/sister/stepbrother/stepsister. This comment was accepted.

The commenter from OPM suggested amending the question in the Illegal Use of Drugs section regarding use of illegal drugs while in certain positions to include public trust positions. This comment was not accepted as it is overly broad.

The commenter from OPM suggested adding a question to the SF 85P regarding whether the subject is currently registered or has ever had to register as a sex offender. This comment was not accepted as the conduct information that would be sought by such a question is already collected in the section regarding Police Record.

NTEU expressed concerns regarding the sweep of the proposed changes and the breadth of the information demanded of public trust employees. NTEU commented that there was a lack of justification for the expanded scope of the SF 85P and the elimination of questions from the SF 85P–S and that OPM has not provided sufficient explanation of the government's need for the information. In particular, NTEU suggested that OPM appeared to rationalize the introduction of expanded questioning on the form simply in order to mirror the SF 86, Questionnaire for National Security Positions. NTEU suggested that the Office of Management and Budget (OMB) should disapprove the proposed information collection.

Although in its proposed information collection request of December 2010, OPM did state that questions on the SF 85P and SF 86 were designed to mirror one another for consistency, that observation related to the objective of alignment, i.e., ensuring that questions in areas of overlapping concern are asked in the same manner to the extent possible, so that, if there is a future need for a different kind of investigation (e.g., if a public trust employee subsequently requires access to classified information), the investigating entity may limit the scope of any new investigation to areas of inquiry not previously pursued. OPM's intent in adding new questions was not to duplicate the SF 86. These questions were added, on the basis of knowledge gained from experience with the adjudicative function and consultation with agencies, to better enable agencies to make sound determinations of suitability for public trust positions or fitness or eligibility for a credential in other contexts. Where questions were being added to the SF 85P that already exist on the SF 86, however, an attempt was made to use like language. In other words, OPM operates on the assumption that where the same information collection is attempted, similar wording should be used. This supports efficient electronic format development and potentially assists efficiency when persons move between positions that require different forms. The proposed SF 85P and SF 85P–S ask only the questions that OPM has concluded are necessary to ensure sufficient information to adjudicate suitability or fitness or eligibility at the public trust level.

The SF 85P and SF 85P–S are not to be used for the investigation of persons for national security positions. The proposed SF 85P and SF 85P–S support the investigations to establish that the respondents are suitable for appointment or retention in a public trust position fit for appointment or retention in the excepted service when the duties to be performed are equivalent in degree of trust reposed in the incumbent to a public trust position; fit based on character and conduct where the individual is going to perform work pursuant to a Government contract, when the duties to be performed are equivalent to the duties performed by an employee in a public trust position; or eligible for physical and logical access to federally controlled facilities or information systems, when the duties to be performed are equivalent to the duties performed by an employee in a public trust position.

These investigations seek to determine whether the conduct and character of the competitive service or career SES applicant, appointee, or employee promote the efficiency and protect the integrity of the service. Simply because information may be identified as a national security issue does not mean that it would not also be relevant to a suitability issue; in fact, many fact patterns that present national security issues may also present suitability concerns.

Additionally, OPM's credentialing standards for those being considered for physical or logical access to federal facilities and information systems require a determination of whether there is an unacceptable risk to the life, safety, or health of employees, contractors, vendors, or visitors; to the Government's physical assets or information systems; to personal property; to records, including classified, privileged, proprietary, financial, or medical records; or to the privacy of data subjects.

From a suitability or fitness perspective, an individual's abuse of alcohol may impact on his or her ability to complete the duties of the job and/or raise questions about his or her reliability and trustworthiness, thus indicating that his or her employment would not promote the efficiency of the service or protect its integrity. From a credentialing perspective, or the perspective of fitness to perform under a contract, an individual's abuse of alcohol may put people, property, or information systems at risk and the investigation must support a determination regarding whether there is a reasonable basis to believe, based on the nature or duration of the individual's alcohol abuse without evidence of substantial rehabilitation, that issuance of a PIV card or permission to perform work poses an unacceptable risk.

Inappropriate use of drugs can raise questions about an individual's reliability and trustworthiness and ability or willingness to comply with laws, rules, and regulations, thus potentially indicating that his or her employment would not promote the efficiency of the service or protect its integrity. The investigation supports a determination of whether there is illegal use of narcotics, drugs or other controlled substances, without evidence of substantial rehabilitation. From a credentialing perspective, the investigation supports a determination of whether an individual's abuse of drugs may put people, property, or information systems at risk.

Failure to live within one's means, satisfy debts, and meet financial obligations may raise questions about the individual's honesty. Evidence of such failures may also signify that issuing a credential would put people, property or information systems at risk. For example, a person's consistent failure to satisfy significant debts may indicate that granting a PIV poses an unacceptable risk to Government financial assets and information systems to which the individual will have access.

Issues related to the use of information technology may be evaluated as suitability issues when they relate to criminal or dishonest conduct and when occurring on the job, as misconduct or negligence in employment. Unauthorized access to government information or improper use of government information once access is granted may compromise the privacy of individuals, and may make public, information that is proprietary in nature, thus compromising the operations and missions of Federal entities. Information obtained during the investigation supports the deciding

agency's ability to determine whether there is a reasonable basis to believe the individual will use Federally-controlled information systems unlawfully, make unauthorized modifications to such systems, corrupt or destroy such systems, or engage in inappropriate uses of such systems.

NTEU commented regarding Timing of the Interview and requests ''as soon as possible,'' be retained, vice ''immediately.'' This comment was accepted.

NTEU objected to language in the instructions that inform the applicant that the scope of a personal interview may exceed the time covered by the form when necessary to resolve issues. OPM did not accept this comment as the language on the form is properly advising the applicant of one aspect of the investigative process. Further, information beyond the scope of the question on the form may be necessary to provide information regarding patterns of behavior as well as conduct that occurred in the past but may have ongoing implications or ramifications to current conduct. The form is not intended to limit the scope of a proper investigation—it is simply one aspect of the investigation required to support the adjudication that is necessary.

NTEU commented that Section 10 of the form is an improvement but suggested that the form be amended to include a space for an employee to indicate uncertainty regarding whether he or she currently holds citizenship in the foreign country. The form in its electronic application provides an ''additional comments'' field which allow for explanations of this sort.

NTEU commented that Section 11 is an improvement over the current form but questioned why an employee need report whether the residence was owned or leased or other. This information assists investigators in verifying residences and seeking references as needed during the investigation. NTEU also commented that the three year reference period for residences is an improvement but questioned how an employee would answer the question if he has no reference to offer. The form in its electronic application provides an ''additional comments'' field which allow for explanations of this sort.

Regarding Section 12, NTEU questioned the need for an employee to provide the name of someone who knew him at school. This information assists investigators in identifying references from the educational activity, which is an important component of the individual's personal history.

NTEU suggested that Section 13 be modified to define the term ''employment.'' This comment was not accepted as the term is commonly understood. NTEU objected to collection of the name of someone who can verify unemployment activities and means of support while unemployed. This information provides alternative reference information necessary for the investigation when there is a period of unemployment and employment references are not possible. NTEU questioned why the government needs to know an employee's means of support. OPM did not amend the form in response to NTEU's question as information regarding the respondent's activities and means of support while unemployed may produce relevant conduct information for that period.

NTEU and AFGE provided similar comments regarding Section 13c., Employment Record. AFGE commented that the collection regarding adverse incidents in the workplace is overly invasive and unreliable, and further that this type of reporting requirement often operates in direct contravention of collective bargaining agreements and Agency directives and policies that provide that certain minor disciplines will be removed or expunged from Agency files after a certain period of time. NTEU recommended that the form be modified to omit any disciplinary action that was overturned at a higher level and to describe only the ultimate penalty, if it was modified or mitigated. NTEU suggested that at a minimum, the form should be modified to include a space to note the subsequent disposition of the disciplinary action. These comments were not accepted as information regarding the underlying conduct, regardless of the penalty assigned, is necessary when adjudicating an applicant's suitability or eligibility for a public trust position since the adjudicator is evaluating whether the individual's conduct could have an adverse impact on the efficiency of the service. Further, an agency's collective bargaining agreement with its employees does not override the obligation to collect sufficient information to meet the government wide legal requirement of an adequate suitability adjudication. The form provides fields for the applicant to explain circumstances and disposition of the disciplinary action. Adjudicators are required to establish that there was a reasonable basis to conclude that the conduct occurred in order to use the conduct as basis for a decision that a person is unsuitable for a position.

AFGE objected to Section 17 regarding cohabitant and former spouse information, Section 18 regarding information about relatives and aliases of named relatives, and Section 19 regarding foreign countries visited, including any contact with any person known or suspected of being involved or associated with foreign intelligence, terrorist, security, or military organizations. AFGE commented that these questions are overreaching and constitutionally infirm, as in AFGE's view, they impinge on protected associational interests. OPM did not amend the form as a result of these comments.

Information collection regarding former spouses and cohabitants has been added to the collection as these individuals have proven to be useful sources of information when issues surface during an investigation. Further, regarding Sections 17, 18, and 19, background investigations necessarily involve inquiry into a person's personal history, including those relatives and associates with whom the person has the strongest ties. OPM inquires about these relationships not to gather information regarding beliefs but rather to develop information, as a result of these ties, that enables the adjudicator to determine whether there is relevant conduct on the part of the person being investigated. The relationships themselves are not relevant—it is the information that is developed about character and conduct that is of interest.

Regarding Section 17, NTEU commented that OPM has not provided sufficient explanation of the need for information regarding former spouses and cohabitants and suggested that it appears this information was added only because it exists on the SF 86. Information collection regarding former spouses and cohabitants has been added to the collection as these individuals have proven to be important sources of information when issues surface during an investigation. Cohabitants, as defined on the form, share a relationship that may be akin to the relationship with a spouse. Former spouses have shared such a relationship, at least in the past, and are similarly well-suited to provide information about conduct. Further, as stated above regarding AFGE's comment on this section, background investigations necessarily involve inquiry into a person's personal history, including those relatives and associates with whom the person has the strongest ties. OPM inquires about these relationships, not to gather information regarding beliefs but rather to develop information, as a result of these ties, that enables the adjudicator to determine whether there is relevant conduct on the part of the person being investigated as a result of those ties.

Regarding Section 19, Travel, NTEU suggested that the instructions indicate that frequent travel across the Mexican or Canadian borders could be described together, in the category of ''many short trips'' on ''various'' dates and that the form be revised to permit the listing of several countries in one box, when multiple countries were visited on the same trip. This comment was not accepted as delineating the information regarding specific countries is required in order to complete a thorough investigation, especially if information is developed concerning improper conduct in a particular location.

NTEU commented that completion of the travel section could be excessively onerous in this day of frequent overseas travel, and recommend that instead of requiring the employee to list all trips, it would make more sense to require the employee to list and describe only certain trips: Those where he or she was questioned/involved in an encounter with the police/contacted by persons suspected of being involved in or associated with foreign intelligence, terrorist, security, or military organizations. This comment was not accepted as the question is designed to shed light on the respondent's activities and conduct during the time period, and knowledge of the travel itself permits exploration of potentially relevant conduct.

Regarding Section 20, Police Record, NTEU commented that providing a specific instruction to report instances when the record was sealed, expunged or otherwise stricken from the record or the charge was dismissed is an improvement in terms of clarity; however, NTEU commented that employees should not be required to disclose information that a court has determined is properly expunged or otherwise stricken from the record. AFGE similarly commented that the questionnaire should not inquire about criminal matters that have been expunged or otherwise sealed or eradicated from the court records. These comments were not accepted, because information regarding the underlying conduct is important to assess, whether or not the record was expunged or otherwise sealed or eradicated from the court record. The courts expunge or seal records for purposes specific to the respective justice systems they represent (e.g., to eliminate the impact upon sentencing for subsequent offenses or to protect the individual's privacy). Those purposes are not necessarily relevant to the Federal Government's obligation to assess suitability, fitness, or eligibility in the context of performing work for the Government in a context that rises to the level of a public trust.

Regarding Section 21, Illegal Use of Drugs and Drug Activity, NTEU objected to moving the question about illegal drug use and drug activity to the SF 85P from the SF 85PS. NTEU recommended that the introduction to this section should indicate that it covers drug use or activity that is illegal under federal law, if that is the intent of the question. This recommendation was not accepted as individuals are expected to know and obey the laws of the states as well as the laws of the United States, and illegal drug use within the specified period might indicate character or conduct that would be inappropriate in an individual who would be occupying a position of public trust.

AFGE commented that the questionnaire provisions demanding information about drug use and drug activities violate employees' constitutional right to privacy and their Fifth Amendment rights against self-incrimination. OPM did not accept this comment. The government has an interest in knowing whether an individual being considered for or occupying a position of public trust is reliable, trustworthy, and willing and able to comply with laws, rules, and regulations. Drug use could also have implications for the safety of co-workers and the public, if the individual is to have access to government facilities and systems. The questionnaire provides an assurance that the respondent's truthful responses to Section 21 will not be used as evidence against the respondent in a criminal proceeding. The investigation supports a determination of whether there is illegal use of narcotics, drugs or other controlled substances, without evidence of substantial rehabilitation, which is relevant to an assessment of character and conduct. From a credentialing perspective, the investigation also supports a determination of whether an individual's abuse of drugs may put people, property, or information systems at risk.

NTEU objects to the requirement of disclosure of drug use prior to the age of 16 and commented that the current SF 85P–S requires disclosure of drug use only since the age of 16 or in the last seven years, whichever is shorter, should be preserved. The comment was not accepted as conduct information before the age of 16 may be relevant, depending on the respondent's age and subsequent conduct.

NTEU questioned the value of the question about future intent to use a drug or to engage in drug trafficking. The comment was not accepted as responses to this question often shed light on the respondent's conduct and reason for engaging in illegal drug use.

NTEU noted that there is some redundancy in the questions regarding whether the applicant has illegally used or has otherwise been involved with a drug or controlled substance in the last seven years, or while employed as a law enforcement officer, in a position affecting public safety, prosecutor, or as a courtroom official. This concern will be addressed in the electronic format; the branching nature of the questionnaire will ensure that respondents are not presented with duplicative questions.

NTEU questioned the need to ask about ''cultivation'' of any drug or controlled substance in the last seven years. This comment was not accepted as illegal cultivation is relevant information and represents conduct that is distinct from drug use.

NTEU objected to the question about intentional misuse of prescription drugs. This comment was not accepted as information regarding intentional misuse of prescription drugs may establish criminal conduct as well as possible impairment of judgment and reliability without evidence of substantial rehabilitation. Such conduct is also relevant to the question of reliability and trustworthiness, an important consideration with respect to the positions to which this form relates.

NTEU commented that it strongly opposes the required disclosure of voluntary counseling or treatment programs and stated that the disclosure, and the offering of mitigating information, should be at the employee's option. OPM did not accept these comments. As stated above, the information collection regarding illegal use of drugs is necessary for the determinations the form supports; it is not possible to assess this information properly unless a complete picture is obtained, including information about efforts at rehabilitation.

Regarding Section 22, Alcohol, NTEU objected to the transfer of alcohol inquiries from the SF 85PS to the SF 85P, and to expansion of the question to ask about ''negative impacts'' on work performance or professional relationships. As stated above, an individual's abuse of alcohol may impact on his or her ability to adequately perform the duties of the position. Such abuse may also raise questions about the individual's reliability and trustworthiness, and may suggest the individual could put people, property, or information systems at risk. Impacts of alcohol use on work performance or professional

relationships are especially relevant to these decisions, because those are precisely the concerns about alcohol abuse that have prompted the inquiry.

NTEU objected to the required disclosure of counseling or treatment that the employee voluntarily sought, and stated that the disclosure and offering of evidence of rehabilitation, should be at the employee's option. AFGE commented that Section 22's questions regarding alcohol treatment violate the permissible areas of examination under the Rehabilitation Act and ADA, as inquiries regarding a drug addiction are proscribed. AFGE further commented that there is a constitutional right to privacy in the nondisclosure of personal information. OPM did not accept these comments. As stated above, the information collection regarding the use of alcohol is necessary for the determinations the form supports; moreover, because the form is to be proffered to the individual only after an offer has been made (or employment has been commenced) OPM believes it has adequately addressed the requirements of the Rehabilitation Act and the Americans with Disabilities Act.

Regarding Section 24, Financial Record, NTEU questioned the justification for expansion of questioning in this area. AFGE commented that the questions are overbroad because they fail to establish a nexus between the information sought and any specific positions. The nexus, in the suitability and fitness contexts, is with the concept of dishonesty. As noted above, failure to live within one's means, satisfy debts, and meet financial obligations may raise questions about the individual's honesty. The nexus, in the credentialing context is with the question of whether making the person eligible for access to government facilities and systems will put people, property or information systems at risk. For example, a person's consistent failure to satisfy significant debts may indicate that granting a PIV poses an unacceptable risk to Government financial assets and information systems to which the individual will have access. The adjudicator is not looking at the individual's financial condition per se. The adjudicator is assessing whether the individual is making an honest effort to discharge its obligation. The expanded questioning of the form will assist in gathering pertinent information regarding indebtedness that the previous SF 85P did not collect so that adjudicators can make more informed decisions.

NTEU commented that is unclear how overdue taxes must be in order to be reported on the form. NTEU stated it is unclear whether the section applies to taxes that are jointly owed (by the employee and a spouse or separated spouse), and the failure is due to the spouse. OPM did not accept the comment as the question requests the respondent to provide overdue taxes for which the respondent is responsible. Taxes that are jointly owed are owed by both parties. Further, the form provides the respondent with the ability to provide explanation and mitigating information.

NTEU recommended that the question about disciplinary action for misuse of a government credit card should be modified to include a box to report any subsequent reconsideration or modification of agency-imposed disciplinary action through, for example, a union grievance. OPM did not accept this comment as the form already provides the ability to provide further explanation.

NTEU questioned the need to inquire into use of a credit counseling service and recommended that this information should be voluntary, to be provided if the employee feels it advisable to offer evidence of attempts to correct a poor credit situation. OPM did not accept the comment. As noted above, OPM is interested in the individual's honest efforts to discharge obligations, and this information is highly pertinent to that question. Moreover, the question is tailored to collect information only when there is first a response indicating that there has been an actual inability to fully meet financial obligations.

NTEU commented that the question regarding whether the employee is ''currently delinquent'' on alimony, child support, or any federal debt is ambiguous as there is no instruction regarding how far in arrears an employee must be to be ''delinquent.'' NTEU proposed a standard of 180 days for delinquency. OPM did not accept this comment as the question is designed to gather any current delinquency regarding alimony, child support, and federal debt. Based upon experience, OPM thinks that any delinquency with respect to these matters could be indicative of a character or conduct issue, and thus that information on current delinquencies of whatever duration is important in assessing character and conduct.

Regarding the question about whether the respondent is over 120 days delinquent on any debt in the past seven years, NTEU proposed a standard of 180 days as a realistic time within which to expect that an employee should be able to correct financial lapses. OPM did not accept the comment. Debts that are 120 days past due are serious enough to impact a person's creditworthiness. In deciding upon 120 days, OPM considered that such lapses are generally reported by credit grantors to credit bureaus by the time debts are 120 days past due as such debts are widely considered to establish a likelihood that the lapse will not be corrected.

AFGE also commented that the questions in Section 24 violate confidentiality provisions of the Fair Credit Reporting Disclosure and Authorization Act, and implicate other privacy issues. OPM did not accept this comment. At the time the investigation is conducted, OPM obtains the respondent's voluntary release of information covered by the Fair Credit Reporting Act. Unless the individual signs the release the investigation cannot go forward.

Regarding Section 25, Use of Information Technology Systems, NTEU commented that the section appears to have been added to mirror a 2008 addition to the SF 86. As stated, there were no questions added for the purpose of mirroring the SF 86. Rather the questions added support the determinations that are made using SF 85P-based investigations. Disclosures related to the use of information technology may turn up potentially criminal or dishonest conduct or, when the underlying conduct occurred on the job, evidence of misconduct or negligence in employment. Information obtained during the investigation supports a decision of whether the individual is sufficiently reliable to hold a public trust position or whether there is a reasonable basis to believe the individual will use Federally-controlled information systems unlawfully, make unauthorized modifications to such systems, corrupt or destroy such systems, or engage in inappropriate uses of such systems.

NTEU noted its approval of the advice regarding self-incrimination but expressed concern regarding what it viewed as a lack of clarity as to the activity intended to be covered by this section as well as its breadth. NTEU suggested that the description of activity covered by this section be tightened and more clearly defined, so as to capture only such things as true hacking and introduction of viruses or other malicious software. AFGE objected to Section 25, stating that issues of alleged compromise of Personally Identifiable Information and Privacy Act violations are often nuanced and highly technical interpretations made by those ill-equipped to make such evaluations, and are arbitrarily and capriciously applied by Agencies. OPM did not accept these

comments. The questions are designed to collect information regarding specific conduct and incidents. OPM has provided a broad enough context to explain the intent of the question and provides guidance to agencies about how to use the information properly in adjudications of suitability or credentialing.

Regarding Section 26, Non-Criminal Court Actions, NTEU proposed that the section be rephrased to inquire only about civil court actions alleging fraud or intentional tortious conduct by the employee defendant. NTEU stated its view that this change is necessary because it is not uncommon for a complaint to name a long list of defendants and many counts, with only some relevant to any given defendant. AFGE objected to Section 26, stating that merely being a named defendant in a lawsuit of this nature, no matter how frivolous or the nature of the disposition, is irrelevant to maintaining a public trust position, and should not be used to impermissibly taint an employee's record and evaluation, as it is here. OPM did not accept these comments. Information about court proceedings often provides leads concerning alleged conduct that could be relevant to suitability, fitness or credentialing concerns. For examples, such records might include allegations of physical violence, allegations of theft, conversion of property, or other dishonest conduct, or allegations of negligence of a sort that might be relevant to the individual's trustworthiness in the position in question. The question is designed to elicit whether records exist that could surface such information and to permit the investigator's training and experience regarding suitability investigations to inform the collection of information from the records as opposed to requiring the respondent to apply a filter as to what might be relevant. Further, the presence of any information collected on the form is not a taint on the respondent, as the information must be evaluated using specific criteria established for the type of decision the investigation supports.

Regarding Section 27, Association Record, NTEU suggested that this section appears to have been added to mirror the SF 86. AFGE objected to Section 27 on the basis of First Amendment association and speech interests. As previously stated, there were no questions added for the purpose of mirroring the SF 86. The questions were added because, based upon OPM's experience it is useful in developing leads that, in turn, may permit OPM to develop relevant information about character and conduct that would permit adjudicators to make more informed decisions about suitability, fitness, and credentialing.

NTEU commented that because some of the questions are aimed at conduct that is undeniably criminal, it wondered at the absence of any guarantee of use immunity against self-incrimination in a criminal proceeding. Advice concerning immunity in connection with this question appears in the first paragraph of the questionnaire.

Regarding the Authorization for Release of Medical Information, NTEU commented that it has previously complained that the permissible uses for the Authorization for Release of Medical Information were not clearly outlined in the SF 85P and stated that the proposed instructions correct that situation. However, NTEU objected to the language of the proposed form that indicates that employees will also be required to complete the Medical Release ''in the event information arises in an investigation that requires further inquiry for resolution, and only to resolve such issues.'' NTEU commented that this language is not an effective limitation and permits an investigator to require signature on the Release at will. OPM did not amend the form in response to this comment as the proper use and handling of the investigative questionnaire by investigations program personnel is governed by investigative policies appropriate to the types of decision-making the investigations support. The President, in E.O. 13488, has required that agencies re-investigate periodically the incumbents of public trust positions, and, depending upon the types of issues that might arise in such a reinvestigation, the medical information covered by the release could be highly salient to the question whether it continues to be appropriate to retain the individual in the position that he or she encumbers.

Regarding the electronic format of the form, NTEU commented that it does not oppose the e-QIP format and recognized that use of branching questions can assist a respondent in determining what follow-up questions to answer. NTEU expressed a concern, however, about the extent of an employee's ability to correct or amend answers to eliminate inadvertent errors or omissions once inputted and inquired whether a half-completed form could be saved and continued at a later date and whether a form submitted through e-QIP could be later revised. Although this concern appears to be outside of the scope of comments on the information collection, OPM advises that respondents are able to save and continue inputting information as necessary, up to the point that the respondent certifies that the information is accurate and complete. Once the collection has been certified, the applicant may contact the agency that asked him or her to complete the questionnaire should the applicant need to amend or correct the information he or she provided.

Regarding the Burden on Respondents, NTEU suggested that the estimated burden of 75 minutes to complete the SF 85P underestimated the burden imposed on those who will have to complete this form. OPM has reassessed the burden imposed on nonfederal respondents. The electronic application includes branching questions and instructions which provide for a tailored collection from the respondent based on varying factors in the respondent's personal history. The burden on the respondent will vary depending upon what branching questions are triggered by the respondent's personal history. OPM employed the Department of Defense Personnel Security Research Center to conduct a study of the estimated burden of the SF 85P based on empirical data gathered in a simulated background investigation context. A sample of 33 participants successfully completed the study. Time burden estimates ranged greatly, from 70 to 435 minutes. The average of participant time spent completing the form was 183 minutes and the median was 155 minutes. In calculating the burden estimate for the SF 85P, the median number will be used, due to the variations expected from the tailored collection.

Comments regarding the SF 85P–S were received from commenters at DOJ, OSD–HR, and from NTEU. Commenters from the DOJ and OSD–HR recommended that the SF 85P–S should be eliminated and that the questions from the SF 85P–S be incorporated into the SF 85P. These comments were not accepted because the SF 85P–S collects information necessary for adjudication only of certain positions, particularly those that require the carrying of firearms.

NTEU commented that questions about illegal drug use and alcohol should be reserved for the SF 85P–S. This comment was not accepted because OPM has concluded, on the basis of experience, that the information collected regarding these areas is relevant to all of the decision-making the SF 85P supports, and not merely the positions that traditionally used the SF 85P–S in the past.

As stated above, OSD–HR recommends that the question of being

''ordered, advised, or asked to seek counseling or treatment as a result of alcohol use'' be treated as a stand-alone question on the SF 85P or alternatively, that question 4 be placed back on the SF 85P–S to ensure this information is collected appropriately. OPM accepted this comment and has added the question back on the SF 85P–S as a standalone question, while retaining it as a conditional question on the SF 85P.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2012–20379 Filed 8–16–12; 8:45 am]

BILLING CODE 6325–53–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67660; File No. 10–207]

Miami International Securities Exchange, LLC; Notice of Filing of Application for Registration as a National Securities Exchange Under Section 6 of the Securities Exchange Act of 1934

August 15, 2012.

On April 26, 2012, Miami International Securities Exchange, LLC (''MIAX'') submitted to the Securities and Exchange Commission (''Commission'') a Form 1 application under the Securities Exchange Act of 1934 (''Exchange Act''), seeking registration as a national securities exchange under Section 6 of the Exchange Act. MIAX's Form 1 application provides detailed information on how it proposes to satisfy the requirements of the Exchange Act.

The Commission is publishing this notice to solicit comments on MIAX's Form 1 application. The Commission will take any comments it receives into consideration in making its determination about whether to grant MIAX's request to be registered as a national securities exchange. The Commission will grant the registration if it finds that the requirements of the Exchange Act and the rules and regulations thereunder with respect to MIAX are satisfied.[1]

MIAX would be wholly owned by its parent company, Miami International Holdings, Inc. (''Miami Holdings''). If approved, MIAX would commence operation of a fully automated electronic trading platform for the trading of standardized options with a continuous, automated matching function. MIAX would not have a physical trading floor. Liquidity would be derived from orders to buy and orders to sell submitted to MIAX electronically by its registered broker-dealer members, as well as from quotes submitted electronically by market makers.

A description of the manner of operation of MIAX's proposed system can be found in Exhibit E to MIAX's Form 1 application. The proposed rulebook for the proposed MIAX exchange can be found in Exhibit B to MIAX's Form 1 application, and the governing documents for both MIAX and Miami Holdings can be found in Exhibit A. A listing of the officers and directors of MIAX can be found in Exhibit J to MIAX's Form 1 application. MIAX's Form 1 application, including all of the Exhibits referenced above, is available online at *www.sec.gov/rules/other.shtml* as well as at the Commission's Public Reference Room.

With respect to MIAX's proposed trading rules, some of the notable features proposed by MIAX are highlighted below. For example, in certain circumstances where MIAX could not fully execute an incoming Priority Customer order,[2] it has proposed to use mechanisms and route timers that would expose the incoming order to the MIAX market for up to one second before routing the order to away markets or otherwise handling the order in accordance with its proposed trading rules.[3] In addition, in limited circumstances, certain orders that are eligible for routing could be routed immediately, at least in part, without being subject to a one second route timer, if they meet a number of criteria.[4]

MIAX has proposed three different classes of market makers that would operate on MIAX: Primary Lead Market Makers; Lead Market Makers; and Registered Market Makers. The different classes of market makers would be subject to varying levels of affirmative and negative market making obligations.

Notably, MIAX would allow market makers to use a variety of quote types, some of which would have a specific time in force and would be analogous to orders (MIAX refers to such order types as ''eQuotes,'' and market makers would be able to enter these orders through their quotation infrastructure).[5] Specifically, MIAX has proposed rules to allow market makers to submit any of the following ''quote'' types: Standard quote; Day eQuote; Immediate or Cancel eQuote; Fill or Kill eQuote; Intermarket Sweep eQuote; Auction or Cancel eQuote; and Opening Only eQuote.[6] While market makers could only have one Standard quote active at any one time, they would be permitted to have multiple types of eQuotes active in a single series.[7]

MIAX's proposed rules also provide for the categorization of certain market maker quotes as ''priority'' quotes and ''non-priority'' quotes.[8] Use of priority quotes, which need to meet certain bid/ask differential requirements, would entitle market makers to precedence over all other professional interest (*i.e.,* non-Priority Customer orders and market maker orders and non-priority quotes) on MIAX at the same price.[9]

Interested persons are invited to submit written data, views, and arguments concerning MIAX's Form 1, including whether the application is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number 10–207 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 10–207. 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/other.shtml*). Copies of the

[1] 15 U.S.C. 78s(a).

[2] *See* proposed MIAX Rule 100 (defining ''Priority Customer'' as a person or entity that is not a broker or 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 accounts).

[3] *See* proposed MIAX Rules 515 and 529. *See also* Exhibit E to MIAX's Form 1 submission, at 5–7.

[4] *See* proposed MIAX Rule 529. In short, an order would be eligible for immediate routing if (1) it is a customer order significantly greater in size than the size of the NBBO posted at away markets, and (2) it arrives at a time when MIAX has significant interest posted at one minimum price variation inferior to the NBBO at away markets.

[5] *See* Exhibit E to MIAX's Form 1 submission, at 3.

[6] *See* proposed MIAX Rule 517.

[7] If its application ultimately is approved by the Commission, MIAX does not expect to make Day eQuotes available for use upon first commencing operations. *See* Exhibit E to MIAX's Form 1 submission.

[8] *See* proposed MIAX Rule 517.

[9] *See id.*

submission, all subsequent amendments, all written statements with respect to MIAX's Form 1 filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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 10–207 and should be submitted on or before October 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20409 Filed 8–17–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 17 CFR 200.30–3(a)(71)(i).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30168; 812–13913]

LoCorr Fund Management, LLC and LoCorr Investment Trust; Notice of Application

August 14, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under Section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from Section 15(a) of the Act and Rule 18f–2 under the Act.

SUMMARY:

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: LoCorr Fund Management, LLC (''LFM'' or the ''Adviser'') and LoCorr Investment Trust (the ''Trust'').

DATES:

FILING DATES: The application was filed on June 14, 2011, and amended on December 12, 2011, and May 9, 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 September 10, 2012, and should be accompanied by proof of service on the 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, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: 261 School Avenue, 4th Floor, Excelsior, MN 55331.

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. The Trust, an Ohio business trust, is registered under the Act as an open-end management investment company and currently is comprised of two individually registered series, the LoCorr Managed Futures Strategy Fund and LoCorr Long/Short Commodities Strategy Fund (together, the ''LoCorr Funds''). Each of the LoCorr Funds currently employs one unaffiliated investment subadviser (''Subadviser'').[1] LFM, a Minnesota limited liability company, is, and each other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). LFM serves as the investment adviser of the LoCorr Funds, and an Adviser will serve as investment adviser to the future Funds, pursuant to an investment advisory agreement. The LoCorr Funds have entered into an investment advisory agreement with LFM (the ''Advisory Agreement''),[2] approved by the Trust's board of trustees (the ''Board''),[3] including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (the ''Independent Trustees''), and by shareholders representing a majority of each of the LoCorr Funds' shares.

2. Under the terms of the Advisory Agreement, the Adviser is responsible for the overall management of the LoCorr Funds' business affairs and selecting investments according to the LoCorr Funds' investment objectives, policies and restrictions. For the investment management services that it provides to the LoCorr Funds, the Adviser receives the fee specified in the Advisory Agreement. The Advisory Agreement also permits the Adviser to retain one or more subadvisers for the purpose of managing the investments of all or a portion of the assets of the LoCorr Funds. Pursuant to this authority, the Adviser intends to enter into investment subadvisory agreements with one or more Subadvisers to provide investment advisory services to the Funds (each, a ''Subadvisory Agreement'' and together, the ''Subadvisory Agreements''). Each Subadviser will be registered as an investment adviser under the Advisers Act. The Adviser will supervise, evaluate and allocate assets to the Subadvisers, and make

[1] Applicants also request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included within the term ''Adviser''); (b) uses the manager of managers structure (''Manager of Managers Structure'') described in the application; and (c) complies with the terms and conditions of the application (together with the LoCorr Funds, the ''Funds'' and each, individually, a ''Fund''). For the purposes of the requested order, ''successor'' is limited to any entity or entities that would result from a reorganization into another jurisdiction or a change in the type of business organization. All existing entities that currently intend to rely on the requested order are named as applicants, and the LoCorr Funds are the only Funds that currently intend to rely on the requested order. If the name of any Fund contains the name of a Subadviser, the name of the Adviser will precede the name of the Subadviser.

[2] The Adviser will enter into substantially similar investment advisory agreements to provide investment management services to future Funds (''Future Advisory Agreements''). The terms of Future Advisory Agreements will comply with section 15(a) of the Act and Future Advisory Agreements will be approved by shareholders and by the Board, including a majority of the Independent Trustees, in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. References to any Advisory Agreement or Advisory Agreements include Future Advisory Agreements as they pertain to future Funds.

[3] The term ''Board'' also includes the board of trustees or directors of a future Fund.

recommendations to the Board about their hiring, retention or release, at all times subject to the authority of the Board. The Adviser will compensate each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Adviser, other than by reason of serving as a subadviser to one or more of the Funds (an ''Affiliated Subadviser'').

4. Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Subadviser is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement; [4] and (b) the Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Subadvisory Agreements.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of securities in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, 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 policy and provisions of the Act. Applicants state that the requested relief meets this standard.

3. Applicants assert that the shareholders expect the Adviser and the Board to select the Subadvisers for the Funds that are best suited to achieve each Fund's investment objective. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by the Adviser. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreement and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirement for shareholder voting.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled

[4] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadviser; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds. A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20321 Filed 8–17–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–9352; 34–67659; File No. 265–27]

Advisory Committee on Small and Emerging Companies; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: The Securities and Exchange Commission Advisory Committee on Small and Emerging Companies is providing notice that it will hold a public meeting on Friday, September 7, 2012, in the Commission's San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, California. The meeting will begin at 9 a.m. (PDT) and will be open to the public. Pre-registration is required (see below for information on pre-registration). This meeting will not be webcast on the Commission's Web site. Members of the public may also listen to the meeting by telephone. The information for the conference call is set forth below.

- Dial: 877–732–6722 (U.S./Canada Toll-Free) or 202–551–5000
- Meeting ID: 1535

The agenda for the meeting includes discussions of market structure issues and their impact on initial public offerings and other matters relating to rules and regulations affecting small and emerging companies under the federal securities laws. The public is invited to submit written statements to the Committee.

DATES: The public meeting will be held Friday, September 7, 2012. Written statements should be received on or before September 5, 2012.

ADDRESSES: The meeting will be held in the Commission's San Francisco Regional Office, 44 Montgomery Street, Suite 2800, San Francisco, California. Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's Internet submission form (*http://www.sec.gov/info/smallbus/acsec.shtml*);

or

- Send an email message to *rule-comments@sec.gov*. Please include File Number 265–27 on the subject line; or

Paper Statements

- Send paper statements in triplicate to Elizabeth M. Murphy, Federal Advisory Committee Management Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. 265–27. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the Advisory Committee's Web site (*http://www.sec.gov./info/smallbus/acsec.shtml*).

Statements also will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Johanna V. Losert, Special Counsel, at (202) 551–3460, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: All members of the public who wish to attend must register in advance of the meeting by September 5, 2012. To register by email, send an email to *SmallBusiness@sec.gov* with ''Register for Advisory Committee Meeting'' in the subject line. Please provide your name, organization, and telephone number.

To register by phone, leave a voice message at (202) 551–3460 indicating that you are interested in attending the meeting with your name, organization, and telephone number. All attendees will be required to sign in and be processed through security at the visitors desk. Please bring photo identification and allow extra time before the start of the meeting. The meeting site is accessible to individuals with disabilities. Individuals who require special accommodation in order to attend the meeting should notify Johanna V. Losert, using the contact information provided above, no later than September 5, 2012.

In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C.—App. 1, and the regulations thereunder, Meredith B. Cross, Designated Federal Officer of the Committee, has ordered publication of this notice.

Dated: August 15, 2012.

Elizabeth M. Murphy,

Committee Management Officer.

[FR Doc. 2012–20399 Filed 8–17–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67654; File No. SR–Phlx–2012–81]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change With Respect to the Authority of the Exchange or NASDAQ Execution Services To Cancel Orders When a Technical or Systems Issue Occurs on the Exchange's NASDAQ OMX PSX Facility and To Describe the Operation of an Error Account for NES

August 14, 2012.

I. Introduction

On June 27, 2012, NASDAQ OMX PHLX LLC (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Phlx Rule 3315 by adding a new paragraph (d) that addresses the authority of the Exchange or Nasdaq Execution Services LLC (''NES'') to cancel orders when a technical or systems issue occurs on the Exchange's NASDAQ OMX PSX facility (''PSX'') and describes the operation of an error account for NES. The proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change was published for comment in the **Federal Register** on July 10, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

NES, a broker-dealer that is a facility and an affiliate of Phlx, provides outbound routing services from the Exchange to other market centers pursuant to Phlx rules.[4] In its proposal, Phlx states that a technical or systems issue may occur at Phlx, NES, or a routing destination that causes the Exchange or NES to cancel orders, if the Exchange or NES determines that such action is necessary to maintain a fair and orderly market.[5] Phlx also states that a technical or systems issue that occurs at the Exchange, NES, a routing destination, or a non-affiliate third-party Routing Broker[6] may result in NES acquiring an error position that it must resolve.[7]

New paragraph (d) to Phlx Rule 3315 provides Phlx or NES with general authority to cancel orders to maintain fair and orderly markets when a technical or systems issue occurs at the Exchange, NES, or a routing destination. It also provides authority for NES to maintain an error account for the purpose of addressing, and sets forth the procedures for resolving, error positions. Specifically, paragraph (d)(1) of Phlx Rule 3315 authorizes Phlx or NES to cancel orders as either deems necessary to maintain fair and orderly markets if a technical or systems issue occurs at Phlx, NES, or a routing destination. Phlx or NES will be required to provide notice of the cancellation to all affected members as soon as practicable.[8]

Paragraph (d)(2) of Phlx Rule 3315 will allow NES to maintain an error account for the purpose of addressing error positions that result from a technical or systems issue at Phlx, NES, a routing destination, or a non-affiliate third-party Routing Broker.

For purposes of Phlx Rule 3315(d), an error position will not include any position that results from an order submitted by a member to Phlx that is executed on the Exchange and automatically processed for clearance and settlement on a locked-in basis.[9] NES will not be permitted to (i) accept any positions in its error account from a member's account or (ii) permit any member to transfer any positions from the member's account to NES's error account.[10] In other words, NES may not accept from a member positions that are delivered to the member through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at Phlx, NES, a routing destination, or a non-affiliate third-party Routing Broker.[11] If a member receives locked-in positions in connection with a technical or systems issue and experiences a loss in unwinding those positions, that member may seek to rely on Phlx Rule 3226, which provides members with the ability to file claims against Phlx ''for losses directly resulting from the [PSX] system's actual failure to correctly process an order, message, or other data, provided PSX has acknowledged receipt of the order, message, or data.'' [12] If, however, a technical or systems issue results in the Exchange not having valid clearing instructions for a member to a trade, NES may assume that member's side of the trade so that the trade can be automatically processed for clearance and settlement on a locked-in basis.[13]

Paragraph (d)(3) of Phlx Rule 3315 permits the Exchange or NES, in connection with a particular technical or systems issue, to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated. Any determination to assign or liquidate error positions, as well as any resulting assignments, will be made in a nondiscriminatory fashion.[14]

Phlx and NES will be required to assign all error positions resulting from a particular technical or systems issue to the members affected by that technical or systems issue if Phlx or NES:

(i) Determines that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the members affected by that technical or systems issue;

(ii) Determines that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the members affected by that technical or systems issue; and

(iii) Has not determined to cancel all orders affected by that technical or systems issue in accordance with Phlx Rule 3315(d)(1).[15]

If Phlx or NES is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected members, or if Phlx or NES determines to cancel all orders affected by the technical or systems issue, then NES will be required to liquidate the error positions as soon as practicable.[16] NES will be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer, and would be prohibited from attempting to exercise any influence or control over the timing or methods of such trading.[17] Further, NES will be required to establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer, on one hand, and the Exchange and NES, on the other, associated with the liquidation of the error positions.[18]

Finally, paragraph (d)(4) of Phlx Rule 3315 requires the Exchange and NES to

[3] Securities Exchange Act Release No. 67343 (July 3, 2012), 77 FR 40684 (July 10, 2012) (SR–Phlx–2012–81) (''Notice'').

[4] *See* Notice, 77 FR at 40685 n.3 and accompanying text, and text accompanying n.4. *See also* Phlx Rule 3315.

The Exchange also has authority to receive equities orders routed inbound to PSX by NES from The NASDAQ Stock Market LLC (''NASDAQ'') and, on a pilot basis, NASDAQ OMX BX, Inc. (''BX''). *See* Notice, 77 FR at 40685 n.4. *See also* Securities Exchange Act Release No. 66178 (January 18, 2012), 77 FR 3539 (January 24, 2012) (SR–Phlx–2011–170); and 65553 (October 13, 2011) 76 FR 64987 (October 19, 2011) (SR–Phlx–2011–138).

[5] *See* Notice, 77 FR at 40685. For examples of some of the circumstances in which the Exchange or NES may decide to cancel orders, see Notice, 77 FR at 40685–86.

[6] The Exchange states that, from time to time, it also uses non-affiliate third-party broker-dealers to provide outbound routing services. In its proposal, the Exchange refers to these broker-dealers as ''third-party Routing Brokers.'' *See* Notice, 77 FR at 40685 n.3.

[7] *See* Notice, 77 FR at 40685. Specifically, Phlx Rule 3315(d)(2) defines ''error positions'' as ''positions that result from a technical or systems issue at Nasdaq Execution Services, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders.''

For examples of some of the circumstances that may lead to error positions, see Notice, 77 FR at 40685–86.

[8] *See* Phlx Rule 3315(d)(1).

[9] *See* Phlx Rule 3315(d)(2)(A).

[10] *See* Phlx Rule 3315(d)(2)(B).

[11] *See* Notice, 77 FR at 40686 n.11. This provision would not apply if NES incurred a short position to settle a member's purchase, as the member would not have had a position in its account as a result of the purchase at the time of NES's action. Similarly, if a systems issue occurs that causes one member to receive an execution for which there is not an available counterparty, action by NES would be required for the positions to settle into that member's account. *See id.*

If error positions result in connection with the Exchange's use of a third-party Routing Broker for outbound routing and those positions are delivered to NES through the clearance and settlement process, NES would be permitted to resolve those positions. If, however, such positions were not delivered to NES through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and NES would not be permitted to accept the positions. *See* Notice, 77 FR at 40685 n.3.

[12] *See* Notice, 77 FR at 40686 n.11.

[13] *See* Phlx Rule 3315(d)(2)(C).

[14] *See* Phlx Rule 3315(d)(3).

[15] *See* Phlx Rule 3315(d)(3)(A)(i)–(iii).

[16] *See* Phlx Rule 3315(d)(3)(B).

[17] *See* Phlx Rule 3315(d)(3)(B)(i).

[18] *See* Phlx Rule 3315(d)(3)(B)(ii).

make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or to liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b) of the Act [19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission believes the proposed rule change is consistent with Section 11A(a)(1)(C) of the Act [22] in that it seeks to assure economically efficient execution of securities transactions.

The Commission recognizes that technical or systems issues may occur, and believes that Phlx Rule 3315, in allowing Phlx or NES to cancel orders affected by technical or systems issues, should provide a reasonably efficient means for Phlx to handle such orders, and appears reasonably designed to permit Phlx to maintain fair and orderly markets.[23]

The Commission also believes that allowing the Exchange to resolve error positions through the use of an error account maintained by NES pursuant to the procedures set forth in the rule, and as described above, is consistent with the Act. The Commission notes that the rule establishes criteria for determining which positions are error positions,[24] and that Phlx or NES, in connection with a particular technical or systems issue, will be required to either (i) assign all resulting error positions to members or (ii) have all resulting error positions liquidated.[25] Also, Phlx or NES will assign error positions that result from a particular technical or systems issue to members only if all such error positions can be assigned to all of the members affected by that technical or systems issue.[26] If Phlx or NES cannot assign all error positions to all members, NES will liquidate all of those error positions.[27] In this regard, the Commission believes that the new rule appears reasonably designed to further just and equitable principles of trade and the protection of investors and the public interest, and to help prevent unfair discrimination, in that it should help assure the handling of error positions will be based on clear and objective criteria, and that the resolution of those positions will occur promptly through a transparent process.

Additionally, the Commission notes that it has previously expressed concern about the potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members.[28] The Commission is also concerned about the potential for misuse of confidential and proprietary information. The Commission believes that the requirement that NES provide complete time and price discretion for the liquidation of error positions to a third-party broker-dealer, including that NES not attempt to exercise any influence or control over the timing or methods of such trading, combined with the requirement that Phlx establish and enforce policies and procedures that are reasonably designed to restrict the flow of confidential and proprietary information to the third-party broker-dealer liquidating such positions, should help mitigate the Commission's concerns. In particular, the Commission believes that these requirements should help assure that none of Phlx, NES, or the third-party broker-dealer is able to misuse confidential or proprietary information obtained in connection with the liquidation of error positions for its own benefit. The Commission also notes that Phlx and NES would be required to make and keep records to document all determinations to treat positions as error positions; all determinations to assign error positions to members or liquidate error positions; and the liquidation of error positions through the third-party broker-dealer.[29]

Finally, the Commission notes that the proposed procedures for canceling orders and the handling of error positions are consistent with procedures the Commission has approved for other exchanges.[30]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR-Phlx–2012–81) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20317 Filed 8–17–12; 8:45 am]

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[19] 15 U.S.C. 78f(b).

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C).

[23] The Commission notes that Phlx states that the proposed amendments to Phlx Rule 3315 are designed to maintain fair and orderly markets, ensure full trade certainty for market participants, and avoid disrupting the clearance and settlement process. *See* Notice, 77 FR at 40687. The Commission also notes that Phlx states that a decision to cancel orders due to a technical or systems issue is not equivalent to the Exchange declaring self-help against a routing destination pursuant to Rule 611 of Regulation NMS. *See* 17 CFR 242.611(b). *See also* Notice, 77 FR at 40686 n.10.

[24] *See* Phlx Rule 3315(d)(2).

[25] *See* Phlx Rule 3315(d)(3).

[26] *See* Phlx Rule 3315(d)(3)(A).

[27] *See* Phlx Rule 3315(d)(3)(B).

[28] *See, e.g.,* Securities Exchange Act Release No. 65455 (September 30, 2011), 76 FR 62119 (October 6, 2011) (SR–NYSEArca–2011–61) at 62120 n.16 and accompanying text.

[29] *See* Phlx Rule 3315(d)(4).

[30] *See, e.g.,* Securities Exchange Act Release Nos. 67281 (June 27, 2012), 77 FR 39543 (July 3, 2012) (SR–NASDAQ–2012–057); 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22); 67010 (May 17, 2012), 77 FR 30564 (May 23, 2012) (SR–EDGX–2012–08); and 67011 (May 17, 2012), 77 FR 30562 (May 23, 2012) (SR–EDGA–2012–09).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67652; File No. SR–NYSEArca–2012–83]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.31 To Specify How MPL Orders With ALO Order Instructions May Interact

August 14, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

notice is hereby given that, on August 6, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.31 to specify how MPL Orders with ALO Order instructions may interact. 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 7.31 to specify how MPL Orders with ALO Order instructions may interact.

Background

An MPL Order is a type of Working Order that has conditional or undisplayed price and/or size. As set forth in NYSE Arca Equities Rule 7.31(h)(5), an MPL Order is a Passive Liquidity Order that is priced at the midpoint of the PBBO and does not trade through a Protected Quotation. An MPL Order has a minimum order entry size of one share and Users may specify a minimum executable size for an MPL Order, which must be no less than one share. If an MPL Order has a specified minimum executable size, it will execute against an incoming order that meets the minimum executable size and is priced at or better than the midpoint of the PBBO. If the leaves quantity becomes less than the minimum size, the minimum executable size restriction will no longer be enforced on executions.

If the market is locked or crossed, the MPL Order will wait for the market to unlock or uncross before becoming eligible to trade again. MPL Orders are ranked in time priority for the purposes of execution as long as the midpoint is within the limit range of the order. MPL Orders always execute at the midpoint and do not receive price improvement. MPL Orders are valid for any session, but do not participate in auctions. Users that choose not to trade with MPL Orders may mark incoming limit orders with a ''No Midpoint Execution'' designator and such limit orders will ignore MPL Orders. MPL Orders do not route out of the Exchange to other market centers.

An ALO Order is a limit order that Exchange systems will accept and place in the NYSE Arca book only when the order adds liquidity. As set forth in NYSE Arca Equities Rule 7.31(nn), ALO Orders will not route to an away market, shall be day only, and may not be designated as GTC. In addition, the rule specifies when Exchange systems will reject incoming ALO orders at the time of entry, including when the ALO Order is marketable or if the ALO Order will lock or cross the market. The rule also specifies that an ALO Order will be rejected if it would interact with undisplayed orders on NYSE Arca. However, the rule further specifies that the system will not reject an incoming ALO Order if it would interact with an MPL Order. Rather, the incoming ALO order will ignore the MPL Order and proceed to post to the NYSE Arca book.

Currently, Users may designate an MPL Order to also be an ALO Order (''MPL–ALO Order''). If an MPL Order (or MPL–ALO Order) is resting on the NYSE Arca book and an incoming contra-side MPL–ALO Order is marketable against the resting MPL Order, pursuant to current rules, the incoming MPL–ALO Order will ignore the resting MPL Order and be placed in the NYSE Arca Book. As a result, there may be a buy and sell MPL Order resting on the NYSE Arca Book at the same price that cannot interact.

Proposed Rule Change

The Exchange proposes to amend both NYSE Arca Equities Rules 7.31(h)(5) and (nn) to specify how MPL Orders with ALO Order instructions may interact. First, the Exchange proposes to amend Rule 7.31(h)(5) to specify that User may designate an MPL Order as an ALO Order and to name such orders as an ''MPL–ALO Order''.

The Exchange also proposes to amend Rule 7.31(nn) to provide that a User may specify that a resting MPL Order or MPL–ALO Order may execute against an arriving marketable MPL–ALO Order. By providing Users with the choice for an MPL Order to interact with an incoming MPL–ALO Order, the Exchange believes that it will reduce the potential for two orders that are marketable against one another to be placed in the NYSE Arca book.

The Exchange recognizes that if a User designates an MPL or MPL–ALO Order to execute against an incoming marketable MPL–ALO Order, the incoming order would technically not be a liquidity providing order, since it would be executing against a resting order, and proposes to amend Rule 7.31(nn) accordingly. However, for purposes of determining which order is a ''liquidity taker'' and which order is a ''liquidity provider'', the Exchange will designate the User who chooses for a marketable MPL–ALO Order to execute to be the liquidity taker. Accordingly, if the resting interest chooses to interact, but the arriving MPL–ALO Order does not, the two orders will execute, but the arriving MPL–ALO Order will be considered the liquidity provider. If both the resting interest and the arriving MPL–ALO Order are designated to interact, the Exchange will consider the arriving interest as the liquidity taker interest.

The Exchange further proposes to make technical, non-substantive changes to Rule 7.31(nn). The Exchange proposes to use consistent terminology for orders that are placed in the NYSE Arca book and replace the term ''post to'' with ''placed in.'' The Exchange notes that orders ''placed in'' the NYSE Arca book are not necessary [sic] displayed orders. The Exchange also proposes to amend Rule 7.31(nn)(1) to clarify that ALO Orders that are marketable will be rejected, except as provided for in Rule 7.31(nn)(3), which, as noted above, concerns the proposed new rule text enabling User-directed MPL or MPL–ALO Orders to interact with incoming marketable MPL–ALO Orders.

The Exchange will announce the implementation date of the proposed rule change in a Trader Update to be published no later than 90 days following Commission approval. The implementation date will be no later than 90 days following publication of the Trader Update announcing Commission approval.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[4] which requires the rules of an exchange 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 proposed rule change removes impediments to and perfects the mechanism of a free and open market by reducing the potential for two orders that are marketable against one another from resting on the NYSE Arca book and not executing. The proposed rule change will also provide transparency in the Exchange rules of how MPL Orders with ALO Order instructions would interact.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] 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.[7]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–2012–83 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–2012–83. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEArca–2012–83 and should be submitted on or before September 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20316 Filed 8–17–12; 8:45 am]

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67655; File No. SR–NASDAQ–2012–059]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change To Establish ''Benchmark Orders'' Under NASDAQ Rule 4751(f)

August 14, 2012.

I. Introduction

On May 1, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish various ''Benchmark Orders'' under NASDAQ Rule 4751(f). The proposed rule change was published for comment in the **Federal Register** on May 17, 2012.[3] The Commission received no comments on the proposal. On June 26, 2012, the Commission extended to August 15, 2012, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66972 (May 11, 2012), 77 FR 29435 (May 17, 2012) (''Notice'').

[4] *See* Securities Exchange Act Release No. 67258 (June 26, 2012), 77 FR 39314 (July 2, 2012).

II. Description of the Proposal

As set forth in more detail in the Notice, the Exchange has proposed to offer Benchmark Orders that would seek to achieve the performance of a specified benchmark—Volume Weighted Average Price (''VWAP''), Time Weighted Average Price (''TWAP''), or Percent of Volume (''POV'')—over a specified period of time for a specified security.[5] The entering party would specify the benchmark, period of time, and security, as well as the other order information common to all order types, such as buy/sell side, shares and price.[6]

Benchmark Orders would be received by NASDAQ but by their terms would not be executable by the NASDAQ matching engine upon entry.[7] Rather, NASDAQ would direct them to a system application (''Application'') that is licensed from a third-party provider and dedicated to processing Benchmark Orders.[8] The Application would process Benchmark Orders by generating ''Child Orders'' in a manner designed to achieve the desired benchmark performance, *i.e.,* VWAP, TWAP or POV, in accordance with the member's instructions.[9] Child Orders would be executed within the NASDAQ system under NASDAQ's existing rules, or made available for routing under NASDAQ's current routing rules.[10] The Application would not be capable of executing Child Orders, but instead would send Child Orders, using the proper system protocol, to the NADAQ matching engine or to the NASDAQ router as needed to complete the Benchmark Order.[11] NASDAQ represents that it considers the Application to be a functional offering of the NASDAQ Stock Market, and that it would be integrated closely with the NASDAQ system and provided to members subject to NASDAQ's obligations and responsibilities as a self-regulatory organization.[12]

NASDAQ also represents that it would test the Application rigorously and regularly, monitor the Application performance on a real-time and continuous basis, and have access to the technology, employees, books and records of the third-party provider that are related to the Application and its interaction with NASDAQ.[13] In addition, NASDAQ represents that it would maintain control of and responsibility for the Application.[14]

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2012–059 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of these proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

As discussed above, the Benchmark Order would allow NASDAQ members to enter a single order in a single security that seeks to match the performance of one of three selected benchmarks—VWAP, TWAP or POV—over a pre-determined period of time. Benchmark Orders would not be executed by the NASDAQ matching engine, but would be directed to the Application that is dedicated to processing Benchmark Orders. The Application would generate and send Child Orders to the NASDAQ matching engine or to the NASDAQ router, pursuant to current NASDAQ order handling and routing rules, in a manner designed to achieve the desired benchmark selected by the entering firm.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. The sections of the Act applicable to the proposed rule change that provide the grounds for approval or disapproval under consideration are Section 6(b)(5) [15] and Section 6(b)(8).[16] Section 6(b)(5) of the Act [17] requires, among other things, that the rules of a national securities exchange be 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Act [18] requires that the rules of the exchange do not impose any burden on competition not necessary or appropriate in furtherance of the Act.

NASDAQ's proposal raises concerns under the Act regarding whether Benchmark Orders and Child Orders would be subject to appropriate controls to manage risk. In particular, the Commission is concerned that NASDAQ has not adequately addressed how or whether Child Orders, which would be generated solely by the Application and presumably outside the control and supervision of the broker-dealer firm that entered the initial Benchmark Order, would be subject to adequate pre-trade risk checks. NASDAQ's proposal makes reference to the Market Access Rule, Rule 15c3–5 under the Act,[19] which requires pre-trade controls to be applied by brokers entering orders onto an exchange but NASDAQ's proposal does not indicate how or whether pre-trade controls would be applied to Child Orders generated by the Application.[20] The application of appropriate risk controls under Rule 15c3–5 is critically important to maintaining a robust market infrastructure supporting the protection of investors, investor confidence, and fair, orderly, and efficient markets for all participants.

Another concern stems from the requirements in Sections 6(b)(5) and 6(b)(8) of the Act that exchange rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to impose an unnecessary burden on competition. NASDAQ's Benchmark Order functionality would compete with the algorithms that member firms and other market participants currently use to achieve VWAP, TWAP or POV performance. The Commission is concerned whether NASDAQ's proposal

[5] *See* proposed NASDAQ Rule 4751(f)(15).

[6] *Id.; see also* Notice, 77 FR at 29436.

[7] *See* proposed NASDAQ Rule 4751(f)(15); *see also* Notice, 77 FR at 29435–36.

[8] *See* Notice, 77 FR at 29436.

[9] *See* proposed NASDAQ Rule 4751(f)(15); *see also* Notice, 77 FR at 29435–36.

[10] *See* Notice, 77 FR at 29435. Child Orders that require routing would be routed by NASDAQ Execution Services (''NES''), NASDAQ's wholly-owned routing broker-dealer. *See* Notice, 77 FR at 29436 n.8. In addition, fees applicable to existing orders and trades would apply to Child Orders. *See* Notice, 77 FR at 29436.

[11] *See* Notice, 77 FR at 29435–36.

[12] *See* Notice, 77 FR at 29436.

[13] *Id.*

[14] *See* Notice, 77 FR at 29437.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78f(b)(8).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(8).

[19] 17 CFR 240.15c3–5. Rule 15c3–5 is designed to ensure that broker-dealers appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, or the stability of the financial system. *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 at 69794 (November 15, 2010).

[20] *See* Notice, 77 FR at 29436.

would enable Benchmark Orders and Child Orders generated by the Application to receive unfair or unreasonable preferential treatment by NASDAQ (such as through more effective access to the matching engine) as compared to orders generated by market participants that may choose to use a competing algorithm.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any others they may have identified with the Exchange's proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5) and 6(b)(8) under the Act, or any other provision of the Act or rule or regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.[21]

The Commission is asking that commenters address the merit of NASDAQ's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Specifically, the Commission is requesting comment on the following:

- What are commenters' views as to whether NASDAQ has adequately addressed the potential risks to the market related to the handling of Child Orders by NASDAQ's Application? How could such risks be addressed and mitigated by NASDAQ?
- What are commenters' views with regard to whether NASDAQ's proposal to offer trading algorithms that would compete with other market participants would impose an undue burden on competition or result in unfair discrimination? In this regard, has NASDAQ provided adequate assurances and information regarding whether or not it would offer preferential treatment to its service as compared to similar competing services offered by other market participants? For example, what are commenters' views regarding whether NASDAQ's proposal could allow for more effective access to the matching engine that could confer advantages related to timing, priority, or otherwise?

Interested persons are invited to submit written data, views and arguments regarding whether the proposal should be approved or disapproved by October 4, 2012. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 19, 2012. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NASDAQ. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–059 and should be submitted on or before October 4, 2012. Rebuttal comments should be submitted by October 19, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20318 Filed 8–17–12; 8:45 am]

BILLING CODE 8011–01–P

[21] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[22] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67656; File No. SR–BYX–2012–018]

Self-Regulatory Organizations; BATS Y–Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Y–Exchange, Inc. To Amend BYX Rules Related to Price Sliding Functionality

August 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2012, BATS Y–Exchange, Inc. (the ''Exchange'' or ''BYX'') 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 proposes to amend Rule 11.9, entitled ''Orders and Modifiers'' to modify the operation of the Exchange's price sliding functionality described in Rule 11.9. The Exchange also proposes other minor changes, including changes to the terms used to describe price sliding and a cross-reference contained in Rule 11.13.

[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).

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

Background

The Exchange currently offers various forms of sliding which, in all cases, result in the re-pricing of an order to, or ranking and/or display of an order at, a price other than an order's limit price in order to comply with applicable securities laws and/or Exchange rules. Specifically, the Exchange currently offers price sliding to ensure compliance with Regulation NMS and Regulation SHO. Price sliding currently offered by the Exchange re-prices and displays an order upon entry and in certain cases again re-prices and re-displays an order at a more aggressive price one time if and when permissible, but does not continually re-price an order based on changes in the national best bid (''NBB'') or national best offer (''NBO'', and together with the NBB, the ''NBBO''). The Exchange proposes to modify both forms of price sliding in order to create an optional order handling behavior functionality that will continue to re-price, re-rank and/or re-display an order based on changes to the NBBO (''multiple price sliding''), as further described below. Multiple price sliding in the contexts for which it is being proposed will have to be elected by a User [5] in order to be applied by the Exchange. If a User elects to apply multiple price sliding to an order submitted to the Exchange, multiple price sliding will apply with respect to both display-price sliding and short sale price sliding in connection with the handling of the order by the Exchange. The Exchange also proposes to add language to make clear that display-price sliding is based on Protected Quotations [6] at equities exchanges other than the Exchange. If the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such order either executes against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order is executed in accordance with Rules 11.9(c)(6) and (c)(7), respectively, or cancelled back to the entering User, as described in further detail below.

Display-Price Sliding

With respect to price sliding offered to ensure compliance with Regulation NMS (''display-price sliding''),[7] under the Exchange's current rules, if, at the time of entry, a non-routable order would cross a Protected Quotation displayed by another trading center the Exchange re-prices and ranks such order at the locking price, and displays such order at one minimum price variation below the NBO for bids and above the NBB for offers. Similarly, in the event a non-routable order that, at the time of entry, would lock a Protected Quotation displayed by another trading center, the Exchange displays such order at one minimum price variation below the NBO for bids and above the NBB for offers.

As an example of display-price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable bid to buy 100 shares at $10.12 per share the Exchange will rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.12 would lock an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy and display it at its ranked price (and limit price) of $10.12.

The Exchange proposes to modify the description of price sliding to make clear that price sliding is generally applied to orders that are eligible for display, as such orders would violate Rule 610(d) of Regulation NMS if they were displayed by the Exchange at a price that locked or crossed a Protected Quotation. As described in further detail below, certain price sliding is also applied to Non-Displayed Orders, and the Exchange has proposed certain changes intended to clarify the application of such price sliding.

The Exchange currently permits Users to instruct the Exchange not to apply price sliding functionality to their orders. As one variation of this instruction, the Exchange currently allows Users to elect to apply display-price sliding only to the extent a display-eligible order at the time of entry would create a violation of Rule 610(d) of Regulation NMS by *locking* a Protected Quotation of an external market (''lock-only display-price sliding''). For Users that select this order handling, price sliding is not applied and any display-eligible order is instead cancelled if, upon entry, such order would create a violation of Rule 610(d) of Regulation NMS by *crossing* a Protected Quotation of an external market. The lock-only display-price sliding option is a variation of display-price sliding that is intended to allow Users to re-evaluate their orders and/or strategies in the event they are submitting orders to the Exchange that are crossing the market. Consistent with the goal of increasing the clarity of its price sliding rule, the Exchange proposes to modify its description of display-price sliding to clearly define the lock-only display-price sliding option.

As an example of lock-only display-price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.14 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable bid to buy 100 shares at $10.13 per share and the User has elected lock-only display-price sliding, the Exchange will cancel the order back to the User. To reiterate a basic example of display-price sliding, if instead the User applied display-price sliding (and not lock-only display-price sliding), the Exchange would rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.13 would cross an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy and display it at $10.12.

The Exchange proposes to modify the description of display-price sliding so that any order subject to display-price sliding will retain its original limit price irrespective of the prices at which such

[5] As defined in BYX Rule 1.5(cc), a User is ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.''

[6] As defined in BYX Rule 1.5(t), a ''Protected Quotation'' is ''a quotation that is a Protected Bid or Protected Offer.'' In turn, the term ''Protected Bid'' or ''Protected Offer'' means ''a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.''

[7] The Exchange's Rules currently describe this functionality as ''NMS price sliding'' but the Exchange proposes to rename such functionality ''display-price sliding.''

order is ranked and displayed. Accordingly, the Exchange also proposes to clarify language throughout its descriptions of display-price sliding to refer to the ranking and display of an order rather than using the term re-price. In order to ensure compliance with Regulation NMS, as it does today, the Exchange will rank orders subject to display-price sliding at the locking price and will display such orders at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers).

The Exchange also proposes to amend its existing description of display-price sliding to state that when an order is displayed by the Exchange through the display-price sliding process the Exchange will display such order at the most aggressive permissible price. The Exchange's current description of display-price sliding states that orders that are re-displayed by the Exchange receive new timestamps when this new display price is established. The Exchange proposes to retain this language but also to make clear that all orders that are re-ranked and re-displayed pursuant to display-price sliding will retain their priority as compared to other orders subject to display-price sliding based upon the time such orders were initially received by the Exchange. Finally, the proposed description of price sliding also states that following the initial ranking and display of an order subject to display-price sliding, an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price.

In order to offer multiple price sliding to Exchange Users, the Exchange proposes to make clear that the ranked and displayed prices of an order subject to display-price sliding may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO. As noted above, multiple price sliding is optional and must be explicitly selected by a User before it will be applied. The Exchange proposes to make clear that the default display-price sliding process will only adjust the ranked and displayed prices of an order upon entry and then the displayed price one time following a change to the prevailing NBBO. As explained throughout this filing, orders subject to multiple price sliding will be permitted to move all the way back to their most aggressive price, whereas orders subject to the current handling may not be adjusted to their most aggressive price, depending upon market conditions.

As an example of multiple price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.14 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable bid to buy 100 shares at $10.13 per share, the Exchange would rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.13 would cross an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy, rank it at $10.13 and display it at $10.12. Under current price sliding functionality, the Exchange would not further adjust the ranked or displayed price following this un-slide. However, under multiple price sliding, if the NBO then moved to $10.14, the Exchange would un-slide the bid to buy and display it at its full limit price of $10.13.

The Exchange offers display-price sliding functionality to avoid locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book (''BATS Book'').[8] Specifically, when the Exchange receives an incoming order that could execute against resting displayed liquidity but an execution does not occur because such incoming order is designated as an order that will not remove liquidity (i.e., a BATS Post Only Order),[9] then the Exchange will cancel the incoming order. The Exchange proposes to make clear in the description of display-price sliding that any display-eligible BATS Post Only Order that locks or crosses a Protected Quotation displayed by the Exchange upon entry will not be price slid upon entry but will be executed as set forth in Rule 11.9(c)(6) or cancelled. Similarly, the Exchange proposes to make clear that any display-eligible Partial Post Only at Limit Order that locks or crosses a Protected Quotation displayed by the Exchange upon entry will be executed as set forth in Rule 11.9(c)(7) or cancelled. The Exchange also proposes to make clear that any display-eligible BATS Post Only Order or Partial Post Only at Limit Order that locks or crosses a Protected Quotation displayed by an external market upon entry will be subject to the display-price sliding process. Consistent with the principal of not price sliding to avoid executions, in the event the NBBO changes such that a BATS Post Only Order subject to display-price sliding would un-slide and would be ranked at a price at which it could remove displayed liquidity from the BATS Book (i.e., when the Exchange is at the NBB or NBO) the Exchange proposes to execute[10] or cancel such order.

The Exchange previously proposed changes to its existing order handling procedures to permit BATS Post Only Orders to be posted to the BATS Book to join the NBB or NBO, as applicable, even when such orders would be posted at prices equal to opposite-side orders ranked at the same price.[11] Consistent with this previously adopted change, the Exchange proposes to add language stating that BATS Post Only Orders will be permitted to post and be displayed opposite the ranked price of orders subject to display-price sliding. As is the case today, in the event an order subject to display-price sliding is ranked on the BATS Book with a price equal to an opposite side order displayed by the Exchange, it will be subject to processing as set forth in Rule 11.13(a)(1).

As an example of the Exchange's handling of BATS Post Only Orders in the context of price sliding, assume the Exchange has a posted and displayed

[8] The Exchange notes that it inadvertently constructed an example in a previous rule filing that contradicts this statement. Specifically, in Example 5 of SR–BYX–2011–009, in order to establish the possibility of an order that has been price slid and has a working price ranked at the same price as an order displayed by the Exchange on the opposite side of the market, the Exchange explained that an incoming BATS Post Only bid at $10.11 would price slide if it locked an offer displayed by the Exchange at $10.11. *See* Securities Exchange Act Release No. 64476 (May 12, 2011), 76 FR 28826, 28828 (May 18, 2011) (SR–BYX–2011–009) (the ''Order Handling Filing''). However, at the time of the Order Handling Filing, under the current behavior, and as proposed, the Exchange would not price slide a BATS Post Only order to avoid an execution against an order displayed by the Exchange. The Exchange notes that Example 5 from the Order Handling Filing would be accurate if instead the incoming bid at $10.11 locked a protected offer *displayed by an external market and not also displayed by the Exchange,* was price slid and displayed at $10.10, ranked at $10.11, and BATS subsequently received a BATS Post Only offer at $10.11. In other words, the outcome would be the same as set forth in Example 5, insofar as the price slid order could ultimately have a ranked price that locks the contra-side, however the sequence leading up to that outcome neither is nor was possible as described because the Exchange does not price slide to avoid executions against the BATS Book.

[9] The Exchange notes that it recently proposed and implemented a change to Rule 11.9(c)(6) regarding the Exchange's handling of BATS Post Only Orders to permit such orders to remove liquidity from the BATS Book if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. *See* Securities Exchange Act Release No. 67092 (June 1, 2012), 77 FR 33800 (June 7, 2012) (SR–BYX–2012–009).

[10] As noted above, the Exchange will execute a BATS Post Only Order in certain circumstances where it would receive price improvement. *See id.*

[11] *See* Order Handling Filing, *supra* note 8.

bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.12 per share. Assume the NBBO (including Protected Quotations of other external markets) is also $10.10 by $10.12. If the Exchange receives a BATS Post Only Order bid to buy 100 shares at $10.12 per share, unless executed pursuant to Rule 11.9(c)(6),[12] the Exchange would cancel the order back to the User because absent the BATS Post Only designation the $10.12 bid would be able to remove the $10.12 offer, and, as explained above, the Exchange does not offer price sliding to avoid executions against orders displayed by the Exchange.

If the Exchange did not have a displayed offer to sell at $10.12 in the example above, but instead the best offer on the Exchange's book was $10.13, the Exchange would apply price sliding to the incoming bid by ranking such order at $10.12 and displaying the order at $10.11. The Exchange's order book would now be displayed as $10.11 by $10.13. Assume, however, that after price sliding the incoming bid from $10.12 to a display price of $10.11, the Exchange received a BATS Post Only offer to sell for $10.12, thus joining the NBO. As noted above, pursuant to previously adopted changes, BATS Post Only Orders are permitted to post and be displayed opposite the ranked price of orders subject to display-price sliding. Accordingly, the Exchange would allow such the incoming BATS Post Only offer at $10.12 to post and display on the Exchange's order book, as described above, with an opposite side price slid order ranked at $10.12 but displayed at $10.11. Assume that next the Protected Offers displayed by all external markets other than the Exchange moved to $10.13. In this situation the Exchange would un-slide but then cancel the bid at $10.12 because, as proposed, in the event the NBBO changes such that a BATS Post Only Order subject to display-price sliding would un-slide and would be ranked at a price at which it could remove displayed liquidity from the BATS Book (i.e., when the Exchange is at the NBB or NBO) the Exchange proposes to execute [13] or cancel such order.

The Exchange currently applies display-price sliding to Non-Displayed Orders that cross Protected Quotations of external markets as well. The Exchange proposes language that makes clear that this functionality is offered both upon entry and once an order has been posted to the Exchange's order book in order to avoid potentially trading through Protected Quotations of external markets. The proposed rule states that Non-Displayed Orders that are subject to display-price sliding are ranked at the locking price on entry. The proposed description also makes clear that display-price sliding for Non-Displayed Orders is functionally equivalent to the handling of displayable orders except that such orders will not have a displayed price and will not be re-priced again unless such orders cross a Protected Quotation of an external market (i.e., such orders are not unslid).

As an example of the Exchange's handling of Non-Displayed Orders in the context of price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.11. If the Exchange receives a Non-Displayed Order bid to buy 100 shares at $10.12 per share, the Exchange would re-price the order to a $10.11 bid to buy to avoid potentially trading through the $10.11 offer displayed as the NBO (i.e., to ensure the Exchange will not allow the bid to trade at $10.12 per share). In the event the NBBO moved to $10.09 by $10.10, the Exchange would again re-price the Non-Displayed bid to buy 100 shares to $10.10 per share. If the NBBO then moved to $10.10 by $10.11, the Non-Displayed bid would not be re-priced to $10.11, but would remain on the Exchange's order book at $10.10.

As described above, the Exchange has proposed to offer multiple price sliding to Exchange Users that opt-in to the functionality. The remaining changes described above are intended to clarify and expand upon the written description of display-price sliding, but do not represent changes to the existing functionality offered by the Exchange. Consistent with achieving better clarity, the Exchange has proposed structural changes to the description of display-price sliding by separating the description into several sub-paragraphs.

Short Sale Price Sliding

With respect to price sliding offered to ensure compliance with Regulation SHO (''short sale price sliding''), when an order cannot be executed or displayed in compliance with Rule 201 of Regulation SHO,[14] the Exchange currently re-prices short sale orders to one minimum price variation above the current NBB (''Permitted Price''). In order to describe this re-pricing, the Exchange proposes to add the term ''Permitted Price'' to its description of short sale price sliding. In order to offer multiple price sliding in the short sale price sliding context, the Exchange proposes to amend its rules to state that depending upon the instructions of a User, to reflect declines in the NBB the System will continue to re-price a short sale order at the Permitted Price down to the order's original limit price. Accordingly, short sale orders subject to multiple price sliding that are adjusted to lower price levels due to a decline to the NBB will be priced at one minimum price variation above the current NBB. As is true for display-price sliding, multiple price sliding is optional and must be explicitly selected by a User before it will be applied. The Exchange's default short sale sliding process will only re-price an order upon entry. Accordingly, there will be no change to existing Users of short sale price sliding due to the proposed introduction of multiple price sliding unless such Users opt-in to the functionality.

As an example of the Exchange's current short sale price sliding, which adjusts the price of an order only upon entry, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share.[15] Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable offer to sell 100 shares at $10.10 per share and the order is marked ''short'' the Exchange will rank and display the order to sell at $10.11 because executing the short sale at $10.10, the NBB, would be in contravention of Regulation SHO. The result would be the same if the Exchange had no bids at $10.10 because the Exchange cannot display an order marked ''short'' at the current NBB (such display would also lock the protected quote of an external market). If the NBB then moved to $10.09, under existing handling, the Exchange would not re-price or re-display the order, but instead would leave it as a displayed offer to sell 100 shares at $10.11. Under multiple price sliding, however, the Exchange would re-price and display the offer at $10.10 if the NBB moved to $10.09. If, in the example above, the NBB instead moved upwards to $10.11, the Exchange would not re-price or

[12] *See supra* note 9.

[13] As noted above, the Exchange will execute a BATS Post Only Order in certain circumstances where it would receive price improvement. *See supra* note 9.

[14] 17 CFR 242.201.

[15] For purposes of these examples, Rule 201's short sale price test is assumed to be in effect for the security at the time.

restrict execution of the resting $10.11 offer under either type of short sale price sliding. The Exchange notes that if this were the case, its quotation would be locked.

In addition to changes to the description of short sale price sliding to add the option of multiple price sliding, the Exchange proposes various changes to improve the accuracy and the clarity of the description of short sale price sliding. For instance, the Exchange proposes to make clear that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the System may execute a displayed short sale order at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then current NBB. The Exchange also proposes to make clear that orders marked ''short exempt'' will not be subject to short sale price sliding.

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.[16] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[17] 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 facilitating transactions in securities, 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 changes to price sliding are consistent with Section 6(b)(5) of the Act,[18] as well as Rule 610 of Regulation NMS [19] and Rule 201 of Regulation SHO.[20] The Exchange is not modifying the overall functionality of price sliding, which, to avoid locking or crossing quotations of other market centers or to comply with applicable short sale restrictions, displays orders at permissible prices while retaining a price at which the User is willing to buy or sell, in the event display at such price or an execution at such price becomes possible. Instead, the Exchange is making changes to adopt an optional form of price sliding, multiple price sliding, and to clarify portions of its Rules that describe price sliding.

Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.'' [21] Such rules must be ''reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,'' and must ''prohibit * * * members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock.'' [22] Thus, display-price sliding offered by the Exchange, assists Users by displaying orders at permissible prices. Similarly, Rule 201 of Regulation SHO [23] requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. The Exchange's short sale price sliding will continue to operate consistent with this rule, however, if a User opts-in to multiple price sliding, the Exchange will re-price a short sale order based on declines to the NBB. If, instead, a User maintains the default form of price sliding, the Exchange will only re-price and display an order subject to short sale price sliding upon entry but will not update the order to reflect declines to the NBB. The Exchange notes that the proposed descriptions of price sliding will also more closely mirror the description used by at least one of its competitors, the Nasdaq Stock Market LLC (''Nasdaq''), and thus will help to avoid confusion amongst Exchange Users that also utilize analogous functionality at Nasdaq.

(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.

(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.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6)(iii) thereunder.[25]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2012–018 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–BYX–2012–018. 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

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *Id.*

[19] 17 CFR 242.610.

[20] 17 CFR 242.201.

[21] 17 CFR 242.610(d).

[22] *Id.*

[23] 17 CFR 242.201.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 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, or such shorter time as designated by the Commission.

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–BYX–2012–018 and should be submitted on or before September 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20319 Filed 8–17–12; 8:45 am]

BILLING CODE 8011–01–P

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67653; File No. SR–FICC–2012–06]

Self-Regulatory Organizations; The Fixed Income Clearing Corporation; Notice of Filing Proposed Change To Move the Time at Which the Mortgage-Backed Securities Division Runs Its Daily Morning Pass

August 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on August 6, 2012, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed change described in Items I, II and III, below, which Items have been prepared primarily by FICC. The Commission is publishing this Notice to solicit comments on the proposed change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Change

FICC proposes to move the time at which its Mortgage-Backed Securities Division (''MBSD'') runs its first processing pass of the day from 2 p.m. to 4 p.m. Eastern Standard Time. The proposed change does not require revisions to MBSD's rules because those rules do not address the times of MBSD's processing passes. Even so, FICC is notifying its members and the public of the proposed change via this filing in an effort to provide them with adequate notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

In its filing with the Commission, FICC included statements concerning the purpose and basis for the proposed change and discussed any comments it received on the proposed change. The text of these statements and comments may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

The purpose of this filing is to notify members that MBSD intends to move the time at which it runs its first processing pass of the day (historically referred to as the ''AM Pass'') from 2 p.m. to 4 p.m. Eastern Standard Time. MBSD also executes an evening pass (referred to as the ''PM Pass'') at 8 p.m. Eastern Standard Time, which will remain unchanged. On days when MBSD executes its To-Be-Announced Netting cycle, this cycle immediately follows the completion of the first pass of the day. The proposed change to 4 p.m. for the first pass of the day will allow more trades to be included into the To-Be-Announced Net, which will assist in reducing both the amount of fails in the market and the related operational risk. The above change is being made at the request of the Securities Industry and Financial Markets Association (''SIFMA'') MBS Operations Committee. MBSD advised members of the proposed change via Important Notice dated August 1, 2012.

The proposed change does not require amendments to the text of the Rules of the MBSD. The effective date of this change will be announced to MBSD members via Important Notice, and is anticipated to be November 2, 2012, subject to the Commission's approval.

FICC believes the proposed change is consistent with the requirements of the Act, including Section 17A,[4] and the rules and regulations thereunder applicable to FICC. Specifically, FICC believes the proposed change will foster the prompt and accurate clearance and settlement of securities transactions because a greater proportion of transactions will be included in the net, fewer fails will result, and operational risk will therefore be reduced.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Change Received From Members, Participants, or Others

FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register**, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed change, or

(B) Institute proceedings to determine whether the proposed 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 change is consistent with the Act. Comments may be submitted by any of the following methods:

- Electronic comments may be submitted by using the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or by sending an email to *rule-comments@sec.gov*. Please include File No. SR–FICC–2012–06 on the subject line.
- Paper comments should be sent in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange

[3] The Commission has modified the text of the summaries provided by FICC.

[4] 15 U.S.C. 78q–1.

Commission, 100 F Street NE., Washington, DC 20549–0609.

All submissions should refer to File Number SR–FICC–2012–06. To help the Commission process and review your comments more efficiently, please use only one method of submission. 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 change that are filed with the Commission, and all written communications relating to the proposed change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at: *http://www.dtcc.com/downloads/legal/rule_filings/2012/ficc/SR–FICC–2012–06.pdf*.

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–FICC–2012–06 and should be submitted on or before September 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

Elizabeth M. Murphy,

Secretary.

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[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67657; File No. SR–BATS–2012–035]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by BATS Exchange, Inc. To Amend BATS Rules Related to Price Sliding Functionality

August 14, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2012, 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 proposes to amend Rule 11.9, entitled ''Orders and Modifiers'', and Rule 21.1, entitled ''Definitions'', to modify the operation of the Exchange's price sliding functionality described in Rules 11.9 and 21.1 applicable to the BATS equity securities trading platform (''BATS Equities'') and the BATS equity options trading platform (''BATS Options''), respectively. The Exchange also proposes other minor changes, including changes to the terms used to describe price sliding and cross-references contained in Rules 11.13, 21.1, 21.6 and 21.9.

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.

[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).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The Exchange currently offers various forms of sliding which, in all cases, result in the re-pricing of an order to, or ranking and/or display of an order at, a price other than an order's limit price in order to comply with applicable securities laws and/or Exchange rules. Specifically, the Exchange currently offers price sliding to ensure compliance with Regulation NMS and Regulation SHO for BATS Equities, as well as price sliding for BATS Options to ensure compliance rules analogous to Regulation NMS adopted by the Exchange and other options exchanges. Price sliding currently offered by the Exchange re-prices and displays an order upon entry and in certain cases again re-prices and re-displays an order at a more aggressive price one time if and when permissible, but does not continually re-price an order based on changes in the national best bid (''NBB'') or national best offer (''NBO'', and together with the NBB, the ''NBBO''). The Exchange proposes to modify all forms of price sliding in order to create an optional order handling behavior functionality that will continue to re-price, re-rank and/or re-display an order based on changes to the NBBO (''multiple price sliding''), as further described below. Multiple price sliding in all contexts for which it is being proposed will have to be elected by a User[5] in order to be applied by the Exchange. If a User elects to apply multiple price sliding to an order submitted to BATS Equities, multiple price sliding will apply with respect to both display-price sliding and short sale price sliding in connection with the handling of the order by the Exchange. The Exchange also proposes to add language to make clear that display-price sliding is based on Protected Quotations[6] at equities markets and

[5] As defined in BATS Rule 1.5(cc), a User is ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.''

[6] As defined in BATS Rule 1.5(t), applicable to BATS Equities, a ''Protected Quotation'' is ''a quotation that is a Protected Bid or Protected Offer.'' In turn, the term ''Protected Bid'' or ''Protected Offer'' means ''a bid or offer in a stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national securities exchange or association.'' As defined in BATS Rule 27.1, applicable to BATS

Continued

options exchanges other than the Exchange. If the Exchange has a Protected Quotation that an incoming order to the Exchange locks or crosses then such order either executes against the resting order, or, if the incoming order is a BATS Post Only Order or Partial Post Only at Limit Order, such order is executed in accordance with Rules 11.9(c)(6) and (c)(7), respectively, or cancelled back to the entering User, as described in further detail below.

BATS Equities—Display-Price Sliding

With respect to price sliding offered to ensure compliance with Regulation NMS (''display-price sliding''),[7] under the Exchange's current rules for BATS Equities, if, at the time of entry, a non-routable order would cross a Protected Quotation displayed by another trading center the Exchange re-prices and ranks such order at the locking price, and displays such order at one minimum price variation below the NBO for bids and above the NBB for offers. Similarly, in the event a non-routable order that, at the time of entry, would lock a Protected Quotation displayed by another trading center, the Exchange displays such order at one minimum price variation below the NBO for bids and above the NBB for offers.

As an example of display-price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable bid to buy 100 shares at $10.12 per share the Exchange will rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.12 would lock an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy and display it at its ranked price (and limit price) of $10.12.

The Exchange proposes to modify the description of price sliding to make clear that price sliding is generally applied to orders that are eligible for display, as such orders would violate Rule 610(d) of Regulation NMS if they were displayed by the Exchange at a price that locked or crossed a Protected Quotation. As described in further detail below, certain price sliding is also applied to Non-Displayed Orders, and the Exchange has proposed certain changes intended to clarify the application of such price sliding.

The Exchange currently permits Users to instruct the Exchange not to apply price sliding functionality to their orders. As one variation of this instruction, the Exchange currently allows Users to elect to apply display-price sliding only to the extent a display-eligible order at the time of entry would create a violation of Rule 610(d) of Regulation NMS by *locking* a Protected Quotation of an external market (''lock-only display-price sliding''). For Users that select this order handling, price sliding is not applied and any display-eligible order is instead cancelled if, upon entry, such order would create a violation of Rule 610(d) of Regulation NMS by *crossing* a Protected Quotation of an external market. The lock-only display-price sliding option is a variation of display-price sliding that is intended to allow Users to re-evaluate their orders and/or strategies in the event they are submitting orders to the Exchange that are crossing the market. Consistent with the goal of increasing the clarity of its price sliding rule, the Exchange proposes to modify its description of display-price sliding to clearly define the lock-only display-price sliding option.

As an example of lock-only display-price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.14 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable bid to buy 100 shares at $10.13 per share and the User has elected lock-only display-price sliding, the Exchange will cancel the order back to the User. To reiterate a basic example of display-price sliding, if instead the User applied display-price sliding (and not lock-only display-price sliding), the Exchange would rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.13 would cross an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy and display it at $10.12.

The Exchange proposes to modify the description of display-price sliding so that any order subject to display-price sliding will retain its original limit price irrespective of the prices at which such order is ranked and displayed. Accordingly, the Exchange also proposes to clarify language throughout its descriptions of display-price sliding to refer to the ranking and display of an order rather than using the term re-price. In order to ensure compliance with Regulation NMS, as it does today, the Exchange will rank orders subject to display-price sliding at the locking price and will display such orders at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers).

The Exchange also proposes to amend its existing description of display-price sliding to state that when an order is displayed by the Exchange through the display-price sliding process the Exchange will display such order at the most aggressive permissible price. The Exchange's current description of display-price sliding states that orders that are re-displayed by the Exchange receive new timestamps when this new display price is established. The Exchange proposes to retain this language but also to make clear that all orders that are re-ranked and re-displayed pursuant to display-price sliding will retain their priority as compared to other orders subject to display-price sliding based upon the time such orders were initially received by the Exchange. Finally, the proposed description of price sliding also states that following the initial ranking and display of an order subject to display-price sliding, an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price.

In order to offer multiple price sliding to Exchange Users, the Exchange proposes to make clear that the ranked and displayed prices of an order subject to display-price sliding may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO. As noted above, multiple price sliding is optional and must be explicitly selected by a User before it will be applied. The Exchange proposes to make clear that the default display-price sliding process will only adjust the ranked and displayed prices of an order upon entry and then the displayed price one time following a change to the prevailing NBBO. As explained throughout this filing, orders subject to multiple price sliding will be permitted to move all the way back to

Options, a ''Protected Quotation'' is ''a Protected Bid or Protected Offer.'' In turn, the term ''Protected Bid'' or ''Protected Offer'' means ''a Bid or Offer in an options series, respectively, that: (A) Is disseminated pursuant to the OPRA Plan; and (B) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange.'' An ''Eligible Exchange'' is defined in Rule 27.1 and means ''a national securities exchange registered with the SEC in accordance with Section 6(a) of the Exchange Act that: (a) Is a Participant Exchange in OCC (as that term is defined in Section VII of the OCC by-laws); (b) is a party to the OPRA Plan (as that term is described in Section I of the OPRA Plan); and (c) if the national securities exchange chooses not to become a party to this Plan, is a participant in another plan approved by the Commission providing for comparable Trade-Through and Locked and Crossed Market protection.''

[7] The Exchange's Rules for BATS Equities currently describe this functionality as ''NMS price sliding'' but the Exchange proposes to rename such functionality ''display-price sliding.''

their most aggressive price, whereas orders subject to the current handling may not be adjusted to their most aggressive price, depending upon market conditions.

As an example of multiple price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.14 per share. Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable bid to buy 100 shares at $10.13 per share, the Exchange would rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.13 would cross an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy, rank it at $10.13 and display it at $10.12. Under current price sliding functionality, the Exchange would not further adjust the ranked or displayed price following this un-slide. However, under multiple price sliding, if the NBO then moved to $10.14, the Exchange would un-slide the bid to buy and display it at its full limit price of $10.13.

The Exchange offers display-price sliding functionality to avoid locking or crossing other markets' Protected Quotations, but does not price slide to avoid executions on the Exchange's order book (''BATS Book'').[8] Specifically, when the Exchange receives an incoming order that could execute against resting displayed liquidity but an execution does not occur because such incoming order is designated as an order that will not remove liquidity (i.e., a BATS Post Only Order),[9] then the Exchange will cancel the incoming order. The Exchange proposes to make clear in the description of display-price sliding that any display-eligible BATS Post Only Order that locks or crosses a Protected Quotation displayed by the Exchange upon entry will not be price slid upon entry but will be executed as set forth in Rule 11.9(c)(6) or cancelled. Similarly, the Exchange proposes to make clear that any display-eligible Partial Post Only at Limit Order that locks or crosses a Protected Quotation displayed by the Exchange upon entry will be executed as set forth in Rule 11.9(c)(7) or cancelled. The Exchange also proposes to make clear that any display-eligible BATS Post Only Order or Partial Post Only at Limit Order that locks or crosses a Protected Quotation displayed by an external market upon entry will be subject to the display-price sliding process. Consistent with the principal of not price sliding to avoid executions, in the event the NBBO changes such that a BATS Post Only Order subject to display-price sliding would un-slide and would be ranked at a price at which it could remove displayed liquidity from the BATS Book (i.e., when the Exchange is at the NBB or NBO) the Exchange proposes to execute [10] or cancel such order.

The Exchange previously proposed changes to its existing order handling procedures to permit BATS Post Only Orders to be posted to the BATS Book to join the NBB or NBO, as applicable, even when such orders would be posted at prices equal to opposite-side orders ranked at the same price.[11] Consistent with this previously adopted change, the Exchange proposes to add language stating that BATS Post Only Orders will be permitted to post and be displayed opposite the ranked price of orders subject to display-price sliding. As is the case today, in the event an order subject to display-price sliding is ranked on the BATS Book with a price equal to an opposite side order displayed by the Exchange, it will be subject to processing as set forth in Rule 11.13(a)(1).

As an example of the Exchange's handling of BATS Post Only Orders in the context of price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.12 per share. Assume the NBBO (including Protected Quotations of other external markets) is also $10.10 by $10.12. If the Exchange receives a BATS Post Only Order bid to buy 100 shares at $10.12 per share, unless executed pursuant to Rule 11.9(c)(6),[12] the Exchange would cancel the order back to the User because absent the BATS Post Only designation the $10.12 bid would be able to remove the $10.12 offer, and, as explained above, the Exchange does not offer price sliding to avoid executions against orders displayed by the Exchange.

If the Exchange did not have a displayed offer to sell at $10.12 in the example above, but instead the best offer on the Exchange's book was $10.13, the Exchange would apply price sliding to the incoming bid by ranking such order at $10.12 and displaying the order at $10.11. The Exchange's order book would now be displayed as $10.11 by $10.13. Assume, however, that after price sliding the incoming bid from $10.12 to a display price of $10.11, the Exchange received a BATS Post Only offer to sell for $10.12, thus joining the NBO. As noted above, pursuant to previously adopted changes, BATS Post Only Orders are permitted to post and be displayed opposite the ranked price of orders subject to display-price sliding. Accordingly, the Exchange would allow such the incoming BATS Post Only offer at $10.12 to post and display on the Exchange's order book, as described above, with an opposite side price slid order ranked at $10.12 but displayed at $10.11. Assume that next the Protected Offers displayed by all external markets other than the Exchange moved to $10.13. In this situation the Exchange would un-slide but then cancel the bid at $10.12 because, as proposed, in the event the NBBO changes such that a BATS Post Only Order subject to display-price sliding would un-slide and would be ranked at a price at which it could remove displayed liquidity from the BATS Book (i.e., when the Exchange is at the NBB or NBO) the Exchange

[8] The Exchange notes that it inadvertently constructed an example in a previous rule filing that contradicts this statement. Specifically, in Example 5 of SR–BATS–2011–015, in order to establish the possibility of an order that has been price slid and has a working price ranked at the same price as an order displayed by the Exchange on the opposite side of the market, the Exchange explained that an incoming BATS Post Only bid at $10.11 would price slide if it locked an offer displayed by the Exchange at $10.11. *See* Securities Exchange Act Release No. 64475 (May 12, 2011), 76 FR 28830, 28832 (May 18, 2011) (SR–BATS–2011–015) (the ''Order Handling Filing''). However, at the time of the Order Handling Filing, under the current behavior, and as proposed, the Exchange would not price slide a BATS Post Only order to avoid an execution against an order displayed by the Exchange. The Exchange notes that Example 5 from the Order Handling Filing would be accurate if instead the incoming bid at $10.11 locked a protected offer *displayed by an external market and not also displayed by the Exchange,* was price slid and displayed at $10.10, ranked at $10.11, and BATS subsequently received a BATS Post Only offer at $10.11. In other words, the outcome would be the same as set forth in Example 5, insofar as the price slid order could ultimately have a ranked price that locks the contra-side, however the sequence leading up to that outcome neither is nor was possible as described because the Exchange does not price slide to avoid executions against the BATS Book.

[9] The Exchange notes that it recently proposed and implemented a change to Rule 11.9(c)(6) regarding the Exchange's handling of BATS Post Only Orders to permit such orders to remove liquidity from the BATS Book if the value of price improvement associated with such execution equals or exceeds the sum of fees charged for such execution and the value of any rebate that would be provided if the order posted to the BATS Book and subsequently provided liquidity. *See* Securities Exchange Act Release No. 67093 (June 1, 2012), 77 FR 33798 (June 7, 2012) (SR–BATS–2012–018).

[10] As noted above, the Exchange will execute a BATS Post Only Order in certain circumstances where it would receive price improvement. *See id.*

[11] *See* Order Handling Filing, *supra* note 7.

[12] *See supra* note 8.

proposes to execute [13] or cancel such order.

The Exchange currently applies display-price sliding to Non-Displayed Orders that cross Protected Quotations of external markets as well. The Exchange proposes language that makes clear that this functionality is offered both upon entry and once an order has been posted to the Exchange's order book in order to avoid potentially trading through Protected Quotations of external markets. The proposed rule states that Non-Displayed Orders that are subject to display-price sliding are ranked at the locking price on entry. The proposed description also makes clear that display-price sliding for Non-Displayed Orders is functionally equivalent to the handling of displayable orders except that such orders will not have a displayed price and will not be re-priced again unless such orders cross a Protected Quotation of an external market (i.e., such orders are not unslid).

As an example of the Exchange's handling of Non-Displayed Orders in the context of price sliding, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share. Assume the NBBO is $10.10 by $10.11. If the Exchange receives a Non-Displayed Order bid to buy 100 shares at $10.12 per share, the Exchange would re-price the order to a $10.11 bid to buy to avoid potentially trading through the $10.11 offer displayed as the NBO (i.e., to ensure the Exchange will not allow the bid to trade at $10.12 per share). In the event the NBBO moved to $10.09 by $10.10, the Exchange would again re-price the Non-Displayed bid to buy 100 shares to $10.10 per share. If the NBBO then moved to $10.10 by $10.11, the Non-Displayed bid would not be re-priced to $10.11, but would remain on the Exchange's order book at $10.10.

As described above, the Exchange has proposed to offer multiple price sliding to Exchange Users that opt-in to the functionality. The remaining changes described above are intended to clarify and expand upon the written description of display-price sliding, but do not represent changes to the existing functionality offered by the Exchange. Consistent with achieving better clarity, the Exchange has proposed structural changes to the description of display-price sliding by separating the description into several sub-paragraphs.

BATS Equities—Short Sale Price Sliding

With respect to price sliding offered to ensure compliance with Regulation SHO on BATS Equities (''short sale price sliding''), when an order cannot be executed or displayed in compliance with Rule 201 of Regulation SHO,[14] the Exchange currently re-prices short sale orders to one minimum price variation above the current NBB (''Permitted Price''). In order to describe this re-pricing, the Exchange proposes to add the term ''Permitted Price'' to its description of short sale price sliding. In order to offer multiple price sliding in the short sale price sliding context, the Exchange proposes to amend its rules to state that depending upon the instructions of a User, to reflect declines in the NBB the System will continue to re-price a short sale order at the Permitted Price down to the order's original limit price. Accordingly, short sale orders subject to multiple price sliding that are adjusted to lower price levels due to a decline to the NBB will be priced at one minimum price variation above the current NBB. As is true for display-price sliding, multiple price sliding is optional and must be explicitly selected by a User before it will be applied. The Exchange's default short sale sliding process will only re-price an order upon entry. Accordingly, there will be no change to existing Users of short sale price sliding due to the proposed introduction of multiple price sliding unless such Users opt-in to the functionality.

As an example of the Exchange's current short sale price sliding, which adjusts the price of an order only upon entry, assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a posted and displayed offer to sell 100 shares at $10.13 per share.[15] Assume the NBBO is $10.10 by $10.12. If the Exchange receives a non-routable offer to sell 100 shares at $10.10 per share and the order is marked ''short'' the Exchange will rank and display the order to sell at $10.11 because executing the short sale at $10.10, the NBB, would be in contravention of Regulation SHO. The result would be the same if the Exchange had no bids at $10.10 because the Exchange cannot display an order marked ''short'' at the current NBB (such display would also lock the protected quote of an external market). If the NBB then moved to $10.09, under existing handling, the Exchange would not re-price or re-display the order, but instead would leave it as a displayed offer to sell 100 shares at $10.11. Under multiple price sliding, however, the Exchange would re-price and display the offer at $10.10 if the NBB moved to $10.09. If, in the example above, the NBB instead moved upwards to $10.11, the Exchange would not re-price or restrict execution of the resting $10.11 offer under either type of short sale price sliding. The Exchange notes that if this were the case, its quotation would be locked.

In addition to changes to the description of short sale price sliding to add the option of multiple price sliding, the Exchange proposes various changes to improve the accuracy and the clarity of the description of short sale price sliding. For instance, the Exchange proposes to make clear that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the System may execute a displayed short sale order at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then current NBB. The Exchange also proposes to make clear that orders marked ''short exempt'' will not be subject to short sale price sliding.

BATS Options—Display-Price Sliding

In order to maintain consistency between analogous processes offered by BATS Equities and BATS Options, the Exchange proposes to modify the rules of BATS Options to conform with the changes described above related to display-price sliding. Accordingly, the Exchange proposes deleting the current description of price sliding from Rule 21.1(d)(6), and adopting new Rule 21.1(h), which is based on Rule 11.9, as amended. Proposed Rule 21.1(h) relates to display-price sliding [16] offered to ensure compliance with locked and crossed market rules relevant to participation on BATS Options. As proposed, in order to adopt multiple price sliding for BATS Options display-price sliding, Rule 21.1(h) will provide that the ranked and displayed prices of an order subject to display-price sliding may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO. As is true for BATS Equities, display-price sliding for BATS Options will default to the current functionality

[13] As noted above, the Exchange will execute a BATS Post Only Order in certain circumstances where it would receive price improvement. *See supra* note 8.

[14] 17 CFR 242.201.

[15] For purposes of these examples, Rule 201's short sale price test is assumed to be in effect for the security at the time.

[16] The Exchange's Rules for BATS Options currently describe this functionality as ''displayed price sliding'' but the Exchange proposes to rename such functionality ''display-price sliding.''

pursuant to which the ranked and displayed prices of an order will be adjusted upon entry and then the displayed price will be adjusted one time following a change to the prevailing NBBO. Users will need to opt-in to multiple price sliding functionality.

As drafted, Rule 21.1(h) is identical to the description of display-price sliding set forth in proposed Rule 11.9 and described above with the exception of minor references necessary due to the difference between rules applicable to BATS Equities and BATS Options, the omission of certain rule text specific to non-displayed orders, which are applicable to BATS Equities only, and the omission of reference to the specific order handling process for BATS Equities described in Rule 11.13(a)(1).

In addition to the adoption of Rule 21.1(h), the Exchange proposes to delete a portion of the display-price sliding process that is described in Rule 21.1(d)(8), which states that an order that would cross a Protected Quotation will be re-priced to the locking price and ranked in the BATS Options Book. The Exchange proposes to eliminate this language because it is duplicative with the proposed language in Rule 21.1(h). The Exchange also proposes to modify applicable cross-references in Rules 21.1(d), 21.6 and 21.9.

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.[17] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[18] 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 facilitating transactions in securities, 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 changes to price sliding are consistent with Section 6(b)(5) of the Act,[19] as well as Rule 610 of Regulation NMS [20] and Rule 201 of Regulation SHO.[21] The Exchange is not modifying the overall functionality of price sliding, which, to avoid locking or crossing quotations of other market centers or to comply with applicable short sale restrictions, displays orders at permissible prices while retaining a price at which the User is willing to buy or sell, in the event display at such price or an execution at such price becomes possible. Instead, the Exchange is making changes to adopt an optional form of price sliding, multiple price sliding, and to clarify portions of its Rules that describe price sliding.

Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.'' [22] Such rules must be ''reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,'' and must ''prohibit * * * members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock.'' [23] Thus, display-price sliding offered by the Exchange, including the functionality offered for BATS Options, assists Users by displaying orders at permissible prices. Similarly, Rule 201 of Regulation SHO [24] requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order at a price at or below the current NBB under certain circumstances. The Exchange's short sale price sliding will continue to operate consistent with this rule, however, if a User opts-in to multiple price sliding, the Exchange will re-price a short sale order based on declines to the NBB. If, instead, a User maintains the default form of price sliding, the Exchange will only re-price and display an order subject to short sale price sliding upon entry but will not update the order to reflect declines to the NBB. The Exchange notes that the proposed descriptions of price sliding will also more closely mirror the description used by at least one of its competitors, the Nasdaq Stock Market LLC (''Nasdaq''), and thus will help to avoid confusion amongst Exchange Users that also utilize analogous functionality at Nasdaq.

(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.

(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 Changes and Timing for Commission Action

Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6)(iii) thereunder.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2012–035 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–2012–035. This file number should be included on the subject line if email is used. To help the Commission process and review your

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *Id.*

[20] 17 CFR 242.610.

[21] 17 CFR 242.201.

[22] 17 CFR 242.610(d).

[23] *Id.*

[24] 17 CFR 242.201.

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 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, or such shorter time as designated by the Commission.

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2012–035 and should be submitted on or before September 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20320 Filed 8–17–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Star Entertainment Group, Inc., Order of Suspension of Trading

August 16, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Star Entertainment Group, Inc. (''Star Entertainment'') because of questions regarding the accuracy of the company's financial statements published with OTC Markets Group Inc. Star Entertainment's securities are quoted on OTC Link operated by OTC Markets Group Inc. under the ticker symbol ''SETY.''

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-quoted company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-quoted company is suspended for the period from August 16, 2012, 9:30 a.m. EDT, on August 16, 2012 through 11:59 p.m. EDT, on August 29, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–20484 Filed 8–16–12; 4:15 pm]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13196 and #13197]

Colorado Disaster Number CO–00046

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of a major disaster for the State of Colorado, effective 08/08/2012.

Incident: Wildfires in El Paso and Larimer Counties and Subsequent Flooding and Mudslides.

Incident Period: 06/09/2012 through 07/11/2012.

Effective Date: 08/08/2012.

Physical Loan Application Deadline Date: 10/09/2012.

EIDL Loan Application Deadline Date: 05/07/2013.

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 an Administrative declaration for the State of Colorado, dated 08/07/2012 is hereby amended to establish the incident period ending date of 07/11/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 9, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–20303 Filed 8–17–12; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes one revision and one extension of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, *Email address: OIRA_Submission@omb.eop.gov;*

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, *Email address: OPLM.RCO@ssa.gov.*

I

The information collection below is pending at SSA. SSA will submit it to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than October 19, 2012. Individuals can obtain copies of the collection instrument by writing to the above email address.

Vocational Rehabilitation Provider Claim—20 CFR 404.2108(b), 404.2117(c)(1)&(2), 404.2101(a)&(b), 404.2121(a), 416.2208(b), 416.2217(c)(1)&(2), 416.2201(a)&(b), 416.2221(a), 34 CFR 361—0960–0310. State Vocational Rehabilitation (VR) agencies submit Form SSA–199 to SSA to obtain reimbursement of costs incurred for providing VR services. SSA requires state VR agencies to submit reimbursement claims for the following categories: (1) Claiming reimbursement for VR services provided; (2) certifying adherence to cost containment policies and procedures; and (3) preparing

causality statements. The respondents mail the paper copy of the SSA–199 to SSA for consideration and approval of the claim for reimbursement of cost incurred for SSA beneficiaries. For claims certifying adherence to cost containment policies and procedures, or for preparing causality statements, state VR agencies submit written requests as stipulated in SSA's regulations within the Code of Federal Regulations. In most cases, SSA requires adherence to cost containment policies and procedures as well as causality statements prior to determining whether to reimburse the state VR agencies.

SSA uses the information on the SSA–199, along with the written documentation, to determine whether or not, and how much, to pay the state VR agencies under SSA's VR program. Respondents are state VR agencies who offer vocational and employment services to Social Security and Supplemental Security Income recipients.

Type of Request: Revision of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Number of responses	Average burden per response (minutes)	Estimated total annual burden (hours)
a. Claiming Reimbursement on SSA–199—20 CFR 404.2108(b) & 416.2208(b)	80	160	12,800	23	4,907
b. Certifying Adherence to Cost Containment Policy and Procedures—20 CFR 404.2117(c)(1) & (2), 416.2217(c)(1) & (2) & 34 CFR 361	80	1	80	60	80
c. Preparing Causality Statements—20 CFR 404.2121(a), 404.2101(a), 416.2201(a), & 416.2221(a)	80	2.5	200	100	333
Totals	80		13,080		5,320

II.

SSA submitted the information collection below to OMB for clearance. Your comments regarding the information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than September 19, 2012. Individuals can obtain copies of the OMB clearance package by writing to *OPLM.RCO@ssa.gov.*

Integrated Registration Services (IRES) System—20 CFR 401.45—0960–0626. The IRES System verifies the identity of individuals, businesses, organizations, entities, and government agencies who use SSA's eService Internet and telephone applications. Individuals need this verification to electronically request and exchange business data with SSA. Requestors provide SSA the information needed to establish their identities. Once SSA verifies identity, the IRES system issues the requestor a user identification number (User ID) and a password to conduct business with SSA. Respondents are employers and third party submitters of wage data, business entities providing taxpayer identification information, and data exchange partners conducting business in support of SSA programs.

Type of Request: Extension of an OMB-approved information collection.

Collection instrument	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)
IRES Internet Registrations	724,581	1	5	60,382
IRES Internet Requestors	7,987,763	1	2	266,259
IRES CS (CSA) Registrations	25,221	1	11	4,624
Totals	8,737,565			331,265

Dated: August 15, 2012.

Faye Lipsky,

Reports Clearance Director, Social Security Administration.

[FR Doc. 2012–20324 Filed 8–17–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Delegation of Authority DA1–343]

Re-Delegation by the Under Secretary for Management to the Comptroller of Authorities Relating to Administration of the Federal Advisory Committee Act

By virtue of the authority vested in me by the Secretary of State, including by Delegation of Authority No. 198, dated September 16, 1992, and the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. Appendix), and to the extent authorized by law, I hereby re-delegate to the Comptroller, the following functions and authorities:

(1) Committee management, in accordance with Section 8 of FACA; and

(2) The authority to make a written determination to close a meeting of an advisory committee to the public, pursuant to Section 10(d) of FACA.

The Comptroller may re-delegate the function of Committee Management Officer. Any act, executive order, regulation or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Management may at any time exercise any authority or function delegated by this delegation of authority.

Delegations of Authority Nos. 157–1 and 157–2 are revoked, except to the extent that they revoke other delegations of authority. This document shall be published in the **Federal Register**.

Dated: August 3, 2012.

Patrick F. Kennedy,

Under Secretary of State for Management.

[FR Doc. 2012–20419 Filed 8–17–12; 8:45 am]

BILLING CODE 4710–35–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments and notice of public hearing concerning China's compliance with its WTO commitments.

SUMMARY: The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to the Congress on China's compliance with the commitments made in connection with its accession to the World Trade Organization (WTO).

DATES: Persons wishing to testify at the hearing must provide written notification of their intention, as well as a copy of their testimony, by noon, Wednesday, September 19, 2012. Written comments are due by noon, Monday, September 24, 2012. A hearing will be held in Washington, DC, on Wednesday, October 3, 2012.

ADDRESSES: Notifications of intent to testify and written comments should be submitted electronically via the Internet at *http://www.regulations.gov.* For alternatives to on-line submissions, please contact Donald W. Eiss, Trade Policy Staff Committee, at (202) 395–3475.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Donald W. Eiss, (202) 395–3475. All other questions should be directed to Terrence J. McCartin, Deputy Assistant United States Trade Representative for China Enforcement, (202) 395–3900, or Katherine C. Tai, Chief Counsel for China Enforcement, (202) 395–3150.

SUPPLEMENTARY INFORMATION:

1. Background

China became a Member of the WTO on December 11, 2001. In accordance with section 421 of the U.S.-China Relations Act of 2000 (Pub. L. 106–286), USTR is required to submit, by December 11 of each year, a report to Congress on China's compliance with commitments made in connection with its accession to the WTO, including both multilateral commitments and any bilateral commitments made to the United States. In accordance with section 421, and to assist it in preparing this year's report, the TPSC is hereby soliciting public comment. Last year's report is available on USTR's Internet Web site (*http://www.ustr.gov/webfm_send/3189*).

The terms of China's accession to the WTO are contained in the Protocol on the Accession of the People's Republic of China (including its annexes) (Protocol), the Report of the Working Party on the Accession of China (Working Party Report), and the WTO agreements. The Protocol and Working Party Report can be found on the Department of Commerce Web page, *http://www.mac.doc.gov/China/WTOAccessionPackage.htm,* or on the WTO Web site, *http://docsonline.wto.org* (document symbols: WT/L/432, WT/MIN(01)/3, WT/MIN(01)/3/Add.1, WT/MIN(01)/3/Add.2).

2. Public Comment and Hearing

USTR invites written comments and/or oral testimony of interested persons on China's compliance with commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas: (a) Trading rights; (b) import regulation (e.g., tariffs, tariff-rate quotas, quotas, import licenses); (c) export regulation; (d) internal policies affecting trade (e.g., subsidies, standards and technical regulations, sanitary and phytosanitary measures, government procurement, trade-related investment measures, taxes and charges levied on imports and exports); (e) intellectual property rights (including intellectual property rights enforcement); (f) services; (g) rule of law issues (e.g., transparency, judicial review, uniform administration of laws and regulations) and status of legal reform; and (h) other WTO commitments. In addition, given the United States' view that China should be held accountable as a full participant in, and beneficiary of, the international trading system, USTR requests that interested persons specifically identify unresolved compliance issues that warrant review and evaluation by USTR's China Enforcement Task Force.

Written comments must be received no later than noon, Monday, September 24, 2012.

A hearing will be held on Wednesday, October 3, 2012, in Room 1, 1724 F Street NW., Washington, DC 20508. If necessary, the hearing will continue on the next business day. Persons wishing to testify orally at the hearing must provide written notification of their intention by noon, Wednesday, September 19, 2012. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the commitments at issue and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC.

All documents should be submitted in accordance with the instructions in section 3 below.

3. Requirements for Submissions

Persons submitting a notification of intent to testify and/or written comments must do so in English and must identify (on the first page of the submission) ''China's WTO Compliance.''

In order to ensure the most timely and expeditious receipt and consideration of comments, USTR has arranged to accept on-line submissions via *http://www.regulations.gov.* To submit comments via *http://www.regulations.gov,* enter docket number USTR–2012–0020 on the home page and click ''Comment Now!''. (For further information on using the *www.regulations.gov* <*http://www.regulations.gov/*> Web site, please consult the resources provided on the Web site by clicking on ''How to Use This Site'' on the left side of the home page.)

The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a ''type comment'' field, or by attaching a document using the ''upload file(s) field. We prefer submissions to be provided in an attached document. If a document is attached, it is sufficient to type ''See attached'' in the ''type comment'' field.

Submit any documents containing business confidential information with a file name beginning with the characters ''BC''. Submit, as a separate submission, a public version of the submission with a file name beginning with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments. Electronic submissions should not attach separate cover letters; rather, information that might appear in a cover

letter should be included in the comments you submit. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments to a submission in the same file as the submission itself and not as separate files.

We strongly urge submitters to use electronic filing. If an on-line submission is impossible, alternative arrangements must be made with Mr. Eiss prior to delivery for the receipt of such submissions. Mr. Eiss may be contacted at (202) 395–3475.

General information concerning USTR may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Douglas M. Bell,

Chair, Trade Policy Staff Committee.

[FR Doc. 2012–20430 Filed 8–17–12; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Twenty-Second Meeting: RTCA Special Committee 203, Unmanned Aircraft Systems

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

ACTION: Meeting notice of RTCA Special Committee 203, Unmanned Aircraft Systems.

SUMMARY: The FAA is issuing this notice to advise the public of the twenty-second meeting of RTCA Special Committee 203, Unmanned Aircraft Systems.

DATES: The meeting will be held September 11–13, 2012, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at NASA Ames Conference Center, 500 Severyns Road, NASA Ames Research Center, Moffett Field, CA 94035, (650) 604–2082, email: *hmoses@rtca.org.*

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 203. The agenda will include the following:

Tuesday, September 11, 2012

- Introductory Remarks and Introductions
- Approval of Twenty First Plenary Summary
- Chair/Leadership Updates
- Designated Federal Official (DFO) Update
- Schedule Status
- Workgroup Updates
- Other Business
- Date, Place, and Time for Plenary Twenty-Three
- Plenary Adjourns

Work Group Breakout Sessions Will Follow: Tuesday Afternoon—September 11th Through Thursday Noon—September 13th

Note: • *Foreign nationals must give 20 business days notice to Alan Hobbs at alan.hobbs@nasa.gov or phone: 650–604–1336 to attend.*

• More information on meeting location with maps, nearby hotels, and restaurants can be found at *http://naccenter.arc.nasa.gov/index.php.*

• Dress Business Casual.

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 August 10, 2012.

David Sicard,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–20258 Filed 8–17–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Project: I–5: Glendale-Hugo Paving/Sexton Climbing Lane: Douglas and Josephine Counties, OR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitations on Claims for Judicial Review of Actions by FHWA, NMFS, USF&WS, and the Army Corps of Engineers (USACE).

SUMMARY: This notice announces actions taken by the FHWA, USACE, and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project, I–5: Glendale-Hugo Paving/Sexton Climbing Lane, in Douglas and Josephine Counties, Oregon. Those actions grant licenses, permits and approval for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 16, 2013. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Michelle Eraut, Program Development Team Leader, Federal Highway Administration, 530 Center Street NE., Suite 420, Salem, Oregon 97301, Telephone: (503) 316–2559; Dominic Yballe, US Army Corps of Engineers, P.O. Box 2946, Portland, Oregon 97208–2946, Telephone: (503) 808–4392; Kevin Maurice, Wildlife Biologist, USFWS Oregon State Office, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266, Telephone: (503) 231–6179; Marc Liverman, Branch Chief, National Marine Fisheries Service, 1201 NE Lloyd Boulevard, Suite 1100, Portland, Oregon 97232; Telephone: (503) 231–2336.

The I–5: Glendale-Hugo Paving/Sexton Climbing Lane categorical exclusion and other project records are available upon written request from the Federal Highway Administration at the address shown above. Comments or questions concerning this proposed action and the I–5: Glendale-Hugo Paving/Sexton Climbing Lane categorical exclusion should be directed to the FHWA at the address provided above.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA, USACE, USF&WS and NMFS have taken final agency action subject to 23 U.S.C. 139 (*l*)(1) by issuing licenses, permits and approval for the following highway project in the State of Oregon: I–5: Glendale-Hugo Paving/Sexton Climbing Lane. The project will repave between mile points 66.3 and 81.5 on Interstate 5. This will also include replacing substandard and damaged guardrail, and also replacing substandard median barrier. The project will also construct a third lane, a climbing lane, on the northbound side of Sexton Mountain pass between mile points 66.7 and 69.6 to accommodate trucks climbing the pass. The actions by the Federal agencies and the laws under which such actions were taken are described in categorical exclusion issued on August 14, 2012, and in other documents in the FHWA project records. The categorical

exclusion and other project records are available by contacting the FHWA at the address provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].

2. *Air:* Clean Air Act [42 U.S.C. 4321–4347 and 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536 and 7 U.S.C. 136]; Magnuson-Stevenson Fishery and Conservation Management Act [16 U.S.C. 1801 *et seq.*]; Anadromous Fish Conservation Act [16 U.S.C. 757]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667 (e)]; Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(mm)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996–1996a]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j–26)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Emergency Wetlands Resources Act, [16 U.S.C. 3901–3932]; Wetlands Mitigation [23 U.S.C. 103(b)(6)(M) and 133(b)(11)]; Flood Disaster Protection Act, 42 U.S.C. 4001–4120.

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), [42 U.S.C. 9601–9675]; Resource Conservation and Recovery Act (RCRA), [42 U.S.C. 6901–6992(k)].

9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: August 14, 2012.

Michelle Eraut,

Program Development Team Leader, Salem, Oregon.

[FR Doc. 2012–20363 Filed 8–17–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2012–0076]

Proposed Renewed and Amended Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State of Alaska

AGENCY: Federal Highway Administration (FHWA), Alaska Division, DOT.

ACTION: Notice of proposed MOU, request for comments.

SUMMARY: This notice announces that the FHWA and the State of Alaska, acting by and through its Department of Transportation (State), propose to renew and amend a MOU between the parties dated September 22, 2009, pursuant to 23 U.S.C. 326. The MOU would extend the duration of the agreement by three years, continuing the assignment to the State of the FHWA's authority and responsibility for determining whether certain designated activities within the geographic boundaries of the State, as specified in the proposed MOU, are categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). Aside from editorial changes to the MOU, the following minor changes would also be incorporated: (1) The State would be required to submit a list of CE determinations semi-annually as opposed to quarterly, including Section 4(f) decisions; (2) the **Federal Register** notice of availability period would be modified from 45 days to 30 days, where applicable; (3) language would be included clarifying that the presence of unusual circumstances and significant environmental impacts must be considered in CE findings; (4) inclusion of language to clarify that the State coordinate with the Department of Justice and FHWA in the event of litigation, (5) at least a 12-month period between FHWA program reviews would be included in order to give the State adequate time to implement corrective action plans; (6) future changes to 23 CFR 771.117(c) and (d) resulting from rulemaking would be automatically incorporated into the MOU; (7) the termination provisions of the MOU would be changed to comply with the provisions of Moving Ahead for Progress in the 21st Century (MAP–21).

DATES: Please submit comments by September 14, 2012.

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number [FHWA–2012–0076], by any of the methods described below. Electronic or facsimile comments are preferred because Federal offices experience intermittent mail delays from security screening.

1. *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

2. *Facsimile (Fax):* 1–202–493–2251.

3. *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE., Washington, DC 20590.

4. *Hand Delivery:* 1200 New Jersey Ave. SE., Washington, DC 20590 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. For access to the docket to view a complete copy of the proposed MOU, or to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Ave. SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Tim Haugh; by email at *tim.haugh@dot.gov* or by telephone at 907–586–7418. The FHWA Alaska Division Office's normal business hours are 8 a.m. to 4:30 p.m. (Alaska Time), Monday–Friday, except for Federal Holidays. For State: Mr. Ben White; by email at *ben.white@alaska.gov;* by telephone at 907–269–6961. The Alaska Department of Transportation's normal business hours are 8 a.m. to 5 p.m. (Alaska Time), Monday–Friday, except for State and Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov.* An electronic version of the proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at *http://www.regulations.gov.*

Background

Section 326 of title 23, United States Code (23 U.S.C. 326), allows the Secretary of the DOT (Secretary), to assign, and a State to assume, responsibility for determining whether certain designated activities are included within classes of action that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (CFR) (as in effect on October 1, 2003). The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The FHWA and the State had previously entered into an MOU on September 22, 2009, for an initial term of three (3) years. The proposed renewed and amended MOU will replace the original MOU on or before its expiration date on September 22, 2012. Stipulation I (B) of the MOU describes the types of actions for which the State would assume project-level responsibility for determining whether the criteria for a CE are met. Statewide decision-making responsibility would be assigned for all activities within the categories listed in 23 CFR 771.117(c), those listed as examples in 23 CFR 771.117(d), including any added to those sections by FHWA after the date of the new MOU.

The MOU also assigns to the State the responsibility for conducting Federal environmental review, consultation, and other related activities for projects that are subject to the MOU with respect to the following Federal laws and Executive Orders:

1. Clean Air Act (CAA), 42 U.S.C. 7401–7671q (determinations of project-level conformity if required for the project).
2. Compliance with the noise regulations in 23 CFR part 772.
3. Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536.
4. Marine Mammal Protection Act, 16 U.S.C. 1361.
5. Anadromous Fish Conservation Act, 16 U.S.C. 757a–757g.
6. Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d.
7. Migratory Bird Treaty Act, 16 U.S.C. 703–712.
8. Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*
9. Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f) *et seq.*
10. Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; and 23 CFR part 774.
11. Archeological and Historic Preservation Act of 1966, as amended, 16 U.S.C. 469–469(c).
12. American Indian Religious Freedom Act, 42 U.S.C. 1996.
13. Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209.
14. Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319).
15. Coastal Barrier Resources Act, 16 U.S.C. 3501–3510.
16. Coastal Zone Management Act, 16 U.S.C. 1451–1465.
17. Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6.
18. Rivers and Harbors Act of 1899, 33 U.S.C. 401–406.
19. Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287.
20. Emergency Wetlands Resources Act, 16 U.S.C. 3921–3931.
21. TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11).
22. Flood Disaster Protection Act, 42 U.S.C. 4001–4128.
23. Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604 (known as section 6(f)).
24. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675.
25. Superfund Amendments and Reauthorization Act of 1986 (SARA).
26. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k.
27. Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C.
28. Executive Orders Relating to Highway Projects (E.O. 11990, Protection of Wetlands; E.O. 11988, Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593, Protection and Enhancement of Cultural Resources; E.O. 13007, Indian Sacred Sites; E.O. 13175, Consultation and Coordination with Indian Tribal Governments; E.O. 13112, Invasive Species).

The MOU allows the State to act in the place of the FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian tribes, which is required under some of the above-listed laws and executive orders. The State also may assist the FHWA with formal consultations, with consent of a tribe, but the FHWA remains responsible for the consultation. This assignment includes transfer to the State of Alaska the obligation to fulfill the assigned environmental responsibilities on any proposed projects meeting the Criteria in Stipulation I(B) of the MOU that were determined to be CEs prior to the effective date of the original MOU but that have not been completed as of the effective date of the MOU.

The FHWA Alaska Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewed and amended MOU. Once the FHWA makes a decision on the proposed MOU revision, the FHWA will place in the DOT DMS Docket a statement describing the outcome of the decision-making process and a copy of any final MOU. The FHWA also will publish in the **Federal Register** a notice of the FHWA decision and the availability of any final MOU. Copies of the final documents also may be obtained by contacting the FHWA or the State at the addresses provided above, or by viewing the documents at: *http://www.dot.state.ak.us/stwddes/desenviron/resources/6004.shtml.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Issued on: August 10, 2012.

David C. Miller,

Division Administrator, Juneau, Alaska.

[FR Doc. 2012–20401 Filed 8–17–12; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One (1) Individual Designated Pursuant to Executive Order 13573

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is removing the name of one (1) individual whose property and interests in property are blocked pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria'' from the list of Specially Designated Nationals and Blocked Persons (''SDN List'').

DATES: The removal of this individual from the SDN List is effective as of August 14, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On May 18, 2011, the President issued Executive Order 13573, ''Blocking Property of Senior Officials of the Government of Syria,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13338 of May 11, 2004, which was expanded in scope in Executive Order 13572 of April 29, 2011. The Order authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons or entities determined to meet certain criteria set forth in Executive Order 13573.

The Department of the Treasury's Office of Foreign Assets Control has determined that this individual should be removed from the SDN List.

The following designation is removed from the SDN List:

Individual

1. HIJAB, Riyad (a.k.a. HIJAB, Riyad Farid), Syria; DOB 1966; POB Deir Ezzor, Syria; Prime Minister (individual) [SYRIA].

The removal of this individual from the SDN List is effective as of August 14, 2012. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: August 14, 2012.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2012–20386 Filed 8–17–12; 8:45 am]

BILLING CODE 4811–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–K

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 Form 1099–K, Merchant Card and Third Party Payments.

DATES: Written comments should be received on or before October 19, 2012 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Merchant Card and Third Party Payments.

OMB Number: 1545–2205.

Form Number: Form 1099–K.

Abstract: This is a new form is in response to section 102 of Public Law 111–147, the Hiring Incentives to Restore Employment (HIRE) Act. The form reflects a new non-Code general business credit for the retention of certain qualified individuals hired in 2010. The credit is first available for an employer's income tax return with a tax year ending after 3/18/10 where new hired employees hired after 2/3/10 and before 1/1/11 worked not less 52 consecutive weeks where wages paid in last 26 weeks of employment were at least 80% of wages paid in first 26 weeks. These requirements are to be met before employer is legibile for the lesser $1,000 or 6.2% of wages paid by the employer to the employee during the 52 consecutive week period of each qualified retained worker.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit groups, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Governments.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 620.

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: August 10, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–20292 Filed 8–17–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–05

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 Notice 2006–05, Waiver for Reasonable Cause for Failure to Report Loan Origination Fees and Capitalized Interest.

DATES: Written comments should be received on or before October 19, 2012 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Waiver for Reasonable Cause for Failure to Report Loan Origination Fees and Capitalized Interest.

Notice Number: 1545–1996.

Abstract: This Notice provides information to payees who receive payment of interest on qualified education loans who are unable to comply with the information reporting requirements under section 6050S of the Internal Revenue Code.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other-for-profit organizations, Federal Government.

Estimated Total Annual Recordkeeping and Reporting Burden: 500.

Estimated Annual Recordkeeping and Reporting Burden per Respondent: 10 hours.

Estimated Number of Respondents: 5,000.

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: August 10, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–20293 Filed 8–17–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 taxation of fringe benefits and exclusions from gross income for certain fringe Benefits, listed property, and substantiation of business expenses.

DATES: Written comments should be received on or before October 19, 2012 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: EE–63–88 (Final and temporary regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; *IA–140–86* (Temporary) Fringe Benefits; Listed Property; and *REG–209785–95* (Final) Substantiation of Business Expenses.

OMB Number: 1545–0771.

Regulation Project Number: EE–63–88; IA–140–86; and REG–209785–95.

Abstract: EE–63–88—This regulation provides guidance on the tax treatment of taxable and nontaxable fringe benefits and general and specific rules for the valuation of taxable fringe benefits in accordance with Code sections 61 and 132. The regulation also provides guidance on exclusions from gross

income for certain fringe benefits. *IA–140–86*—This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment, and gift expenses be substantiated with adequate records in accordance with Code section 274(d). The regulation also provides guidance on the taxation of fringe benefits and clarifies the types of records that are generally necessary to substantiate any deduction or credit for listed property. *REG–209785–95*—This regulation provides that taxpayers who deduct, or reimburse employees for, business expenses for travel, entertainment, gifts, or listed property are required to maintain certain records, including receipts, for expenses of $75 or more.

Current Actions: There are no changes to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for profits institutions, farms and Federal, state, local or tribal governments.

Estimated Number of Respondents: 28,582,150.

Estimated Time per Respondent: 1 hr., 20 min.

Estimated Total Annual Burden Hours: 37,922,688.

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: August 10, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–20294 Filed 8–17–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 161 August 20, 2012

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Jaguar; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0042; 4500030114]

RIN 1018–AX13

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Jaguar

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the jaguar (*Panthera onca*) under the Endangered Species Act of 1973, as amended (Act). In total, we propose to designate as critical habitat approximately 339,220 hectares (838,232 acres) in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico.

DATES: We will accept comments received or postmarked on or before October 19, 2012. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by October 4, 2012.

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 Search field, enter Docket No. FWS–R2–ES–2012–0042, which is the docket number for this rulemaking. Then click on the Search button. 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–R2–ES–2012–0042; 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 the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Fish and Wildlife Office, 2321 West Royal Palm Drive, Suite 103, Phoenix, AZ 85021; telephone 602–242–0210. 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 rule proposes to designate critical habitat for the species. This is a proposed rule to designate critical habitat for an endangered mammal, the jaguar (*Panthera onca*). In total, we are proposing approximately 339,220 hectares (838,232 acres) for designation as critical habitat for the jaguar in Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico. We are proposing to designate six critical habitat units for the jaguar in Arizona and New Mexico as follows:

- Approximately 56,241 ha (138,975 ac) in the Baboquivari Mountains, Arizona.
- Approximately 58,104 ha (143,578 ac) in the Tumacacori, Atascosa, and Pajarito Mountains, Arizona.
- Approximately 138,821 ha (343,033 ac) in the Santa Rita, Patagonia, and Huachuca Mountains and Canelo Hills, Arizona.
- Approximately 42,694 ha (105,498 ac) in the Whetstone Mountains, including connections to the Santa Rita and Huachuca Mountains, Arizona.
- Approximately 40,290 ha (99,559 ac) in the Peloncillo Mountains, Arizona and New Mexico.
- Approximately 3,071 ha (7,590 ac) in the San Luis Mountains, New Mexico.

We are preparing an economic analysis. To ensure that we consider the probable economic impacts of the proposed designation, pursuant to section 4(b)(2) of the Act, we are preparing an economic analysis. The analysis will be used to inform the development of the final designation of critical habitat for the jaguar. We will publish an announcement and seek public comments on the draft economic analysis when it is completed.

We will seek peer review. We are seeking comments from independent specialists to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions used to develop this proposed critical habitat designation. Because we will consider all comments and information received during the comment period, our final determination may differ from this proposal.

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 other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) 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 there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of jaguar habitat;

(b) What areas, that were occupied at the time of listing (1972) (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) What period of time surrounding the time of listing (1972) should be used to determine occupancy and why, and whether or not data from 1982 to the present should be used in this determination;

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(e) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the jaguar and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) If lands owned and managed by Fort Huachuca should be considered for exemption because the Integrated Natural Resources Management Plan for the Fort currently benefits the jaguar, whether or not the species is specifically addressed.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for

exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address 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 U.S. Fish and Wildlife Service, Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to designation of critical habitat for jaguar in this proposed rule. For more information on the species itself, refer to the *Previous Federal Actions* section, below, the final listing clarification rule published in the **Federal Register** on July 22, 1997 (62 FR 39147), and the previous critical habitat prudency determination published in the **Federal Register** on July 12, 2006 (71 FR 39335).

Species Information

The jaguar (*Panthera onca*), a large member of the cat family (Felidae), is an endangered species that currently occurs from southern Arizona and New Mexico to southern South America. Jaguars are muscular cats with relatively short, massive limbs and a deep-chested body. They are cinnamon-buff in color with many black spots; melanistic (dark coloration) forms are also known, primarily from the southern part of the range.

The life history of the jaguar has been summarized by Seymour (1989, entire) and Brown and López González (2001, entire), among others. Jaguars breed year-round rangewide, but at the southern and northern ends of their range there is evidence for a spring breeding season. Gestation is about 100 days; litters range from one to four cubs (usually two). Cubs remain with their mother for nearly 2 years. Females begin sexual activity at 3 years of age, males at 4. Studies have documented few wild jaguars more than 11 years old, although a wild male jaguar in Arizona was documented to be at least 15 years of age (Johnson *et al.* 2011, p. 12), and in Jalisco, Mexico, two wild females were documented to be at least 12 and 13 (Núñez 2011, pers. comm.). The consensus of jaguar experts is that the average lifespan of the jaguar is 10 years.

The list of prey taken by jaguars throughout their range includes more than 85 species (Seymour 1989, p. 4). Known prey include, but are not limited to, collared peccaries (javelina (*Pecari tajacu*)), white-lipped peccaries (*Tayassu pecari*), capybaras (*Hydrochoerus* spp.), pacas (*Agouti paca*), agoutis (*Dasyprocta* spp.), armadillos (*Dasypus* spp.), caimans (*Caiman* spp.), turtles (*Podocnemis* spp.), white-tailed deer (*Odocoileus virginianus*), livestock, and various other reptiles, birds, and fish (sources as cited in Seymour 1989, p. 4; Núñez *et al.* 2000, pp. iii–iv; Rosas-Rosas 2006, p. 17; Rosas-Rosas *et al.* 2008, pp. 557–558). Jaguars are considered opportunistic feeders, especially in rainforests, and their diet varies according to prey density and ease of prey capture (sources as cited in Seymour 1989, p. 4). Jaguars equally use medium- and large-size prey, with a trend toward use of larger prey as distance increases from the equator (López González and Miller 2002, p. 218). Javelina and white-tailed deer are thought to be the mainstays in the diet of jaguars in the United States and Mexico borderlands (Brown and López González 2001, p. 51).

Previous Federal Actions

In 1972, the jaguar was listed as endangered (37 FR 6476; March 30, 1972) in accordance with the Endangered Species Conservation Act of 1969 (ESCA), a precursor to the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Under the ESCA, the Service maintained separate listings for foreign species and species native to the United States. At that time, the jaguar was believed to be extinct in the United States; thus, the jaguar was included only on the foreign species list. The jaguar's range was described as extending from the international boundary of the United States and Mexico southward to include Central and South America (37 FR 6476). In 1973, the Act superseded the ESCA. The foreign and native lists were replaced by a single ''List of Endangered and Threatened Wildlife,'' which was first published in the **Federal Register** on September 26, 1975 (40 FR 44412). In this regulation, the jaguar's range again was described as including Central and South America (40 FR 44412), but not the United States.

On July 25, 1979, the Service published a notice (44 FR 43705) stating that, through an oversight in the listing of the jaguar and six other endangered species, the United States populations of these species were not protected by the Act. The notice asserted that it was always the intent of the Service that all populations of these species, including the jaguar, deserved to be listed as endangered, whether they occurred in the United States or in foreign countries. Therefore, the notice stated that the Service intended to take action as quickly as possible to propose the U.S. populations of these species (including the jaguar) for listing.

On July 25, 1980, the Service published a proposed rule (45 FR 49844) to list the jaguar and four of the other species referred to above in the United States. The proposal for listing the jaguar and three other species was withdrawn on September 17, 1982 (47 FR 41145). The notice issued by the Service stated that the Act mandated withdrawal of proposed rules to list species which have not been finalized within 2 years of the proposal.

On August 3, 1992, the Service received a petition from the instructor and students of the American Southwest Sierra Institute and Life Net to list the jaguar as endangered in the United States. The petition was dated July 26, 1992. On April 13, 1993 (58 FR 19216), the Service published a finding that the petition presented substantial information indicating that listing may be warranted, and requested public comments and biological data on the status of the jaguar. On July 13, 1994 (59 FR 35674), the Service published a proposed rule to extend endangered status to the jaguar throughout its range.

On April 10, 1995, Congress enacted a moratorium prohibiting work on listing actions (Pub. L. 104–6) and eliminated funding for the Service to conduct final listing activities. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Budget Reconciliation Act of

1996 (Pub. L. 104–134, 100 Stat. 1321, 1996). The Service published guidance for restarting the listing program on May 16, 1996 (61 FR 24722). The listing process for the jaguar was resumed in September 1996, when the Southwest Center for Biological Diversity filed a law suit and motion for summary judgment for the Secretary to finalize the listing for the jaguar and four other species. On July 22, 1997, we published a final rule clarifying that endangered status for the jaguar extended into the United States (62 FR 39147). For more information on previous Federal actions concerning the jaguar, please refer to the July 22, 1997, final clarifying rule (62 FR 39147).

The July 22, 1997, clarifying rule included a determination that designation of critical habitat for the jaguar was not prudent (62 FR 39147). At that time, we determined that the greatest threat to the jaguar in the United States was from direct taking of individuals through shooting or other means. As a consequence, we determined that designating critical habitat for the jaguar was ''not prudent,'' because ''publication of detailed critical habitat maps and descriptions in the **Federal Register** would likely make the species more vulnerable to activities prohibited under section 9 of the Act.'' Therefore, we believed that a critical habitat designation would increase the degree of threat to the species.

In response to a complaint by the Center for Biological Diversity, we agreed to re-evaluate our 1997 prudency determination and make a new determination by July 3, 2006 as to whether designation of critical habitat for the jaguar was prudent. In that subsequent finding (July 12, 2006; 71 FR 39335), we noted that since the time of our July 22, 1997, determination, the Jaguar Conservation Team, Arizona Game and Fish Department, publications, and other sources routinely had given specific and general locations of jaguars that had been sighted in the United States, and, as of 2006, these sightings were being documented through Web sites, public notifications, reports, books, and meeting notes. Publishing critical habitat maps and descriptions, as part of designating critical habitat, would not result in the species being more vulnerable in the United States than it was currently (in 2006). We then assessed whether designation of critical habitat would be beneficial to the species. We found that no areas in the United States met the definition of critical habitat, and, as a result, designation of critical habitat for the jaguar would not be beneficial to the species. As a result, we again determined that designation of critical habitat for the jaguar was not prudent (71 FR 39335). We did not consider designation of lands outside of the United States in this analysis, because, under the Act's implementing regulations, critical habitat cannot be designated in foreign countries (50 CFR 424.12(h)).

The Center for Biological Diversity again challenged the Service's decision that critical habitat was not prudent for the jaguar. On March 30, 2009, the United States District Court for the District of Arizona (Court) issued an opinion in *Center for Biological Diversity* v. *Kempthorne,* CV 07–372–TUC JMR (Lead) and *Defenders of Wildlife* v. *Hall,* CV08–335 TUC JMR (Consolidated) (D. Ariz., Mar. 30, 2009), that set aside our previous prudency determination and required that we issue a new determination as to ''whether to designate critical habitat,'' i.e., whether such designation is prudent, by January 8, 2010. In this opinion, the Court noted, among other things, that the Service's regulations at 50 CFR 424.12(b) require that the Service ''shall focus on the principal biological constituent elements within the defined area that are essential to the conservation of the species.'' Such elements include consideration of space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

On January 13, 2010, we published a notice of determination that we had reevaluated our previous ''not prudent'' finding regarding critical habitat designation for the jaguar and the information supporting our previous findings (75 FR 1741). We also evaluated information and analysis that became available subsequent to the July 12, 2006, finding. We determined there were physical and biological features that can be used by jaguars in the United States. Thus, in responding to the Court's order, and following a review of the best available scientific and commercial information, including the ongoing conservation programs for the jaguar, we determined that the designation of critical habitat for the jaguar would be beneficial. We also determined that designation of critical habitat would not be expected to increase the degree of threat to the species. We solicited comments and information on this determination, and stated we anticipated publishing a proposed critical habitat designation in the **Federal Register** by January 2011.

On October 18, 2010, we sent a letter to the Center for Biological Diversity and Defenders of Wildlife updating them on our process of developing a recovery plan and critical habitat for the jaguar. We stated that, because of scant information currently available for northern jaguars, we would be convening a bi-national Jaguar Recovery Team to synthesize information on the jaguar, focusing on a unit comprising jaguars in the northern portion of their range. We further stated that we would be working with the Conservation Breeding Specialist Group of the Species Survival Commission/International Union for Conservation of Nature to conduct a population viability analysis and a population and habitat viability analysis for the jaguar. We anticipated that these analyses would assist us in determining those recovery actions that would be most effective for achieving a viable jaguar population, as well as providing information relevant to determining critical habitat for the jaguar. Additionally, we stated that, based on the unusual situation where the best information on habitat in the United States essential to the conservation of the jaguar was being gathered through the recovery planning effort, we would postpone publishing a proposed critical habitat rule until spring 2012.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided

under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographic area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, and soil type) that are essential to the conservation of the species. Primary constituent elements are the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographic area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographic area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Jaguar Habitat Requirements in the United States and U.S.-Mexico Borderlands Area

Most of the information regarding jaguar habitat requirements comes from Central and South America; little, if any, is available for the northwestern-most portion of its range, including the United States. Jaguar habitat in Central and South America is quite different from habitat available in the U.S.-Mexico borderlands area, where jaguars show a high affinity for lowland wet communities, including swampy savannas or tropical rain forests toward and at middle latitudes. Swank and Teer (1989, p. 14) state that jaguars prefer a warm, tropical climate, usually associated with water, and are rarely found in extensive arid areas. Rabinowitz (1999, p. 97) affirms that the most robust jaguar populations have been associated with tropical climates in areas of low elevation with dense cover and year-round water sources. Brown and López González (2001, p. 43) further state that, in South and Central America, jaguars usually avoid open country like grasslands or desertscrub, instead preferring the closed vegetative

structure of nearly every tropical forest type.

However, jaguars have been documented in arid areas of northwestern Mexico and the southwestern United States, including thornscrub, desertscrub, lowland desert, mesquite grassland, Madrean oak woodland, and pine-oak woodland communities (Brown and López González 2001, pp. 43–50; Boydston and López González 2005, p. 54; McCain and Childs 2008, p. 7; Rosas-Rosas and Bender 2012, p. 88). The more open, dry habitat of the southwestern United States has been characterized as marginal habitat for jaguars in terms of water, cover, and prey densities (Rabinowitz 1999, p. 97). However, McCain and Childs (2008, p. 7) documented two male jaguars (and possibly a third) using an extensive area including habitats of the Sonoran lowland desert, Sonoran desert scrub, mesquite grassland, Madrean oak woodland, and pine-oak woodland in mountain ranges in southern Arizona. Therefore, while habitat in the United States can be considered marginal when compared to other areas throughout the species' range, it appears that a few, possibly resident jaguars are able to use the more open, arid habitat found in the southwestern United States.

To define the physical and biological features required for jaguar habitat in the United States, we are relying on studies conducted in Mexico as close to the U.S.-Mexico border as available. Many of these studies have been compiled and summarized by the Jaguar Recovery Team in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire) and Digital Mapping in Support of Recovery Planning for the Northern Jaguar report (Sanderson and Fisher 2011, pp. 1–11). These documents describe the entire Northwestern Recovery Unit and Northwestern Management Unit of the jaguar (see *Jaguar Recovery Planning in Relation to Critical Habitat,* below) including areas of Sonora, Chihuahua, Sinaloa, Nayarit, and Jalisco, Mexico, and south-central and southeastern Arizona and southeastern New Mexico in the United States (Jaguar Recovery Team 2012, pp. 20–24). When U.S.-specific data are available, we attempt to narrow the focus of our analysis to information within the United States to determine the physical and biological features currently present that provide jaguar habitat north of the border.

The Jaguar Recovery Team (2012, pp. 15–16) determined that high-quality habitat for jaguars in the Northwestern Recovery Unit and Northwestern Management Unit includes the following features: (1) High abundance of native prey, particularly large prey like deer and peccary and adequate numbers of medium-sized prey; (2) water available within 10 kilometers (km) (6.2 miles (mi)) year round; (3) dense vegetative cover (to stalk and ambush prey and for denning and resting), particularly including Sinaloan thornscrub; (4) rugged topography, including canyons and ridges, and some rocky hills good for denning and resting; (5) connectivity to allow normal demographic processes to occur and maintain genetic diversity; (6) expansive areas of adequate habitat (i.e., area large enough to support 50 to 100 jaguars) with low human density; (7) low human activity, development, and infrastructure, including low densities of high-speed roads, mines, and agriculture; and (8) no to low jaguar persecution or poaching by humans. Therefore, we are basing our definition of jaguar habitat in the United States on these features but with modifications more applicable to areas north of the U.S.-Mexico border (see *Physical or Biological Features,* below).

Jaguar Recovery Planning in Relation to Critical Habitat

The 2012 Recovery Outline for the Jaguar describes two recovery units for the jaguar across its range, the Northwestern and Pan American Recovery Units (Jaguar Recovery Team 2012, p. 58). Recovery units are subunits of the listed species' habitat that are geographically or otherwise identifiable and essential to the recovery of the species (Jaguar Recovery Team 2012, p. 20).

Recovery units for the jaguar are further divided into core, secondary, and peripheral areas (Jaguar Recovery Team 2012, pp. 20–23). Core areas have both persistent verified records of jaguar occurrence over time and recent evidence of reproduction. Secondary areas are those that contain jaguar habitat with either or both historical or recent records of jaguar presence with no recent record or very few records of reproduction. In peripheral areas, most historical jaguar records are sporadic, and there is no or minimal evidence of long-term presence or reproduction that might indicate colonization or sustained use of these areas by jaguars.

Potential jaguar habitat in the U.S.-Mexico borderlands area is part of the secondary area of the Northwestern Management Unit within the Northwestern Recovery Unit for the jaguar (Jaguar Recovery Team 2012, p. 58). Because such a small portion of the jaguar's range occurs in the United States, it is anticipated that recovery of the entire species will rely primarily on actions that occur outside of the United States; activities that may adversely or beneficially affect jaguars in the United States are less likely to affect recovery than activities in core areas of their range (Jaguar Recovery Team 2012, p. 38). However, the portion of the United States is located within a secondary area that provides a recovery function benefitting the overall recovery unit (Jaguar Recovery Team 2012, pp. 40, 42). For example, specific areas within this secondary area that provide the physical and biological features essential to jaguar habitat can contribute to the species' persistence and, therefore, overall conservation by providing areas to support some individuals during dispersal movements, by providing small patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit (about 210 km (130 mi) south of the U.S.-Mexico border in Sonora near the towns of Huasabas, Sahuaripa (Brown and López González 2001, pp. 108–109), and Nacori Chico (Rosas-Rosas and Bender 2012, pp. 88–89)). Independent peer review cited in our July 22, 1997, clarifying rule (62 FR 39147, pp. 39153–39154) states that individuals dispersing into the United States are important because they occupy habitat that serves as a buffer to zones of regular reproduction and are potential colonizers of vacant range, and that, as such, areas supporting them are important to maintaining normal demographics, as well as allowing for possible range expansion. As described in the Recovery Outline for the Jaguar, the Northwestern Recovery Unit is essential for the conservation of the species; therefore, consideration of the spatial and biological dynamics that allow this unit to function and that benefit the overall unit is prudent. Providing connectivity from the United States to Mexico is a key element to maintaining those processes.

As mentioned above, the U.S. lands within the secondary area of the Northwestern Recovery Unit are also located within the Northwestern Management Unit. Management units, as described in the Recovery Outline, are areas within a recovery unit that might require different management, be managed by different entities, or encompass different populations (Jaguar Recovery Team 2012, p. 40). The U.S. lands located within the Northwestern Management Unit simply acknowledge the existence of different species

management on either side of the International Border with Mexico. This additional description of the U.S. lands as part of management unit does not mean that the habitat in United States has any less significance within the secondary area of the recovery unit.

Additionally, as thoroughly discussed in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, pp. 19–20) and Johnson *et al.* (2011, pp. 30–31), populations at the edge of a species' range play a role in maintaining the total genetic diversity of a species; in some cases, these peripheral populations persist the longest as fragmentation and habitat loss impact the total range (Channell and Lomolino 2000, pp. 84–85). The United States and northwestern Mexico represent the northernmost extent of the jaguar's range, with populations persisting in distinct ecological conditions (xeric, or extremely dry, habitat) that occur nowhere else in the species' range (Sanderson *et al.* 2002, entire). Peripheral populations such as these are an important genetic resource in that they may be beneficial to the protection of evolutionary processes and the environmental systems that are likely to generate future evolutionary diversity (Lesica and Allendorf 1995, entire). This may be particularly important considering the potential threats of global climate change (see ''Climate Change,'' below). The ability for jaguars in the Northwestern Recovery Unit to utilize physical and biological habitat features in the Northwestern Management Unit is ecologically important to the recovery of the species; therefore, maintaining connectivity to Mexico is essential to the conservation of the jaguar.

Climate Change

The degree to which climate change will affect jaguar habitat in the United States is uncertain, but it has the potential to adversely affect the jaguar within the next 50 to 100 years (Jaguar Recovery Team 2012, p. 32). Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah and Lovejoy 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015).

The current prognosis for climate change impacts in the American Southwest includes fewer frost days; warmer temperatures; greater water demand by plants, animals, and people; and an increased frequency of extreme weather events, such as heat waves, droughts, and floods (Weiss and Overpeck 2005, p. 2074; Archer and Predick 2008, p. 24). How climate change will affect summer precipitation is less certain, because precipitation predictions are based on continental-scale general circulation models that do not yet account for land use and land cover effects or regional phenomena, such as those that control monsoonal rainfall in the Southwest (Weiss and Overpeck 2005, p. 2075; Archer and Predick 2008, pp. 23–24). Some models predict dramatic changes in Southwestern vegetation communities as a result of climate change (Weiss and Overpeck 2005, p. 2074; Archer and Predick 2008, p. 24), especially as wildfires carried by nonnative plants (e.g., buffelgrass) potentially become more frequent, promoting the presence of exotic species over native ones (Weiss and Overpeck 2005, p. 2075).

The impact of future drought, which may be long-term and severe (Seager *et al.* 2007, pp. 1183–1184; Archer and Predick 2008, entire), may affect jaguar habitat in the U.S.-Mexico borderlands area, but the information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. We do not know whether the changes that have already occurred have affected jaguar populations or distribution, nor can we predict how the species will adapt to or be affected by the type and degree of climate changes forecast. We are not currently aware of any climate change information specific to the habitat of the jaguar that would indicate what areas may become important to the species in the future. Therefore, we are unable to determine what additional areas, if any, may be appropriate to include in the final critical habitat designation for this species specifically to address the effects of climate change.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographic area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features essential for jaguars from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the final clarifying rule published in the **Federal Register** on July 22, 1997 (62 FR 39147), the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire), and the Digital Mapping in Support of Recovery Planning for the Northern Jaguar report (Sanderson and Fisher 2011, pp. 1–11). We have determined that the following physical or biological feature is essential for the jaguar: Expansive open spaces in the southwestern United States with adequate connectivity to Mexico that contain a sufficient native prey base and available surface water, have suitable vegetative cover and rugged topography to provide sites for resting, and have minimal human impact, as further described below.

Space for Individual and Population Growth and for Normal Behavior

Expansive open spaces—Jaguars require a significant amount of space for individual and population growth and for normal behavior. Jaguars have relatively large home ranges and, according to Brown and López González (2001, p. 60), their home ranges are highly variable and depend on topography, available prey, and population dynamics. Home ranges need to provide reliable surface water, available prey, and sites for resting that are removed from the impacts of human activity and influence (Jaguar Recovery

Team 2012, pp. 15–16). The availability of these habitat characteristics can fluctuate within a year (dry versus wet seasons) and between years (drought years versus wet years).

Specific home ranges for jaguars depend on the sex, season, and vegetation type. The home ranges of borderland jaguars are presumably as large or larger than the home ranges of tropical jaguars (Brown and López González 2001, p. 60; McCain and Childs 2008, pp. 6–7), as jaguars in this area are at the northern limit of their range and the arid environment contains resources and environmental conditions that are more variable than those in the tropics (Hass 2002, as cited in McCain and Childs 2008, p. 6). Therefore, jaguars require more space in arid areas to obtain essential resources such as food, water, and cover (discussed below).

Only one limited home range study using standard radio-telemetry techniques and two home range studies using camera traps have been conducted for jaguars in northwestern Mexico. Telemetry data from one adult female tracked for 4 months during the dry season in Sonora indicated a home range size of 100 square km (37 square mi) (López González 2011, pers. comm.). Additionally, using camera traps, a male in Sonora was documented using an average home range of 84 square km (32 square mi) (López González 2011, pers. comm.). No home range studies using standard radio-telemetry techniques have been conducted for jaguars in the southwestern United States, although McCain and Childs (2008, p. 5), using camera traps, reported one jaguar in southeastern Arizona as having a minimum observed ''range'' of 1,359 square km (525 square mi) encompassing two distinct mountain ranges. This study, however, was not designed to determine home range size; therefore, we are relying on minimum home-range estimates for male and female jaguars from Sonora, Mexico (López González 2011, pers. comm.) for the minimum amount of adequate habitat required by jaguars in the United States.

Therefore, based on the information above, we identify expansive open spaces in the United States of at least 84 to 100 square km (32 to 37 square mi) in size with connectivity to Mexico, adequate native prey and available surface water, suitable vegetative cover and rugged topography to provide sites for resting, and minimal human impact as the essential components of the physical or biological feature essential for the conservation of the jaguar in the United States.

Connectivity between expansive open spaces in the United States and Mexico—As discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* section, above, connectivity between the United States and Mexico is essential for the conservation of jaguars. Therefore, we identify connectivity between expansive open spaces in the United States and Mexico as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

Connectivity between expansive open spaces within the United States—We know that connectivity between areas of habitat for the jaguar in the United States is necessary if viable habitat for the jaguar is to be maintained. This is particularly true in the mountainous areas of Arizona and New Mexico, where isolated mountain ranges providing the physical and biological features of jaguar habitat are separated by valley bottoms that may not possess the features described in this proposed rule. However, we also know that, based on home range sizes and research and monitoring, jaguars will use valley bottoms and other areas of habitat connectivity to move among areas of higher quality habitat found in isolated mountain ranges. We acknowledge that jaguars use connective areas to move between mountain ranges in the United States; however, as they are mainly using them for passage, jaguars do not linger in these areas. As a result, there is only one occurrence record of a jaguar in these areas. With only one record, we are unable to describe the features of these areas because of a lack of information. Therefore, while we acknowledge that habitat connectivity within the United States is important, the best available scientific and commercial information does not allow us to determine that any particular area within the valleys is essential, and all of the valley habitat is not essential to the conservation of the species. Therefore we are not designating any areas within the valleys between the montane habitat as critical habitat.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Food—Jaguar and large-cat experts believe that high-quality habitat for jaguars in the northwestern portion of their range should include a high abundance of native prey, particularly large prey like white-tailed deer and collared peccary (javelina), as well as an adequate number of medium-sized prey (Jaguar Recovery Team 2012, pp. 15–16). However, the Jaguar Recovery Team (2012, pp. 15–16) did not quantify ''high abundance'' or ''adequate number'' of each type of prey, making it difficult to state the density of prey required to sustain a resident jaguar in this portion of its range.

Jaguars usually catch and kill their prey by stalking or ambush and biting through the nape as do most Felidae (members of the cat family) (Seymour 1989, p. 5). Like other large cats, jaguars rely on a combination of cover, surprise, acceleration, and body weight to capture their prey (Schaller 1972 and Hopcraft *et al.* 2005, as cited by Cavalcanti 2008, p. 47). Jaguars are considered opportunistic feeders, and their diet varies according to prey density and ease of prey capture (sources as cited in Seymour 1989, p. 4). Jaguars equally use medium- and large-size prey, with a trend toward use of larger prey as distance increases from the equator (López González and Miller 2002, p. 218).

In northeastern Sonora, where the northernmost breeding population of jaguars occurs, Rosas-Rosas (2006, pp. 24–25) found that large prey greater than 10 kilograms (kg) (22 pounds (lbs)) accounted for more than 80 percent of the total biomass consumed. Specifically, cattle accounted for more than half of the total biomass consumed (57 percent), followed by white-tailed deer (23 percent), and collared peccary (5.12 percent). Medium-sized prey (1–10 kg; 2–22 lbs), including lagomorphs (rabbit family) and coatis (*Nasua nasua*), accounted for less than 20 percent of biomass. Small prey, less than 1 kg (2 lbs), were not found in scats (Rosas-Rosas 2006, p. 24). At the Chamela-Cuixmala Biosphere Reserve in Jalisco, Mexico (which is closed to livestock grazing), deer and javelina were the two most preferred prey species for jaguars, with jaguars consuming the equivalent of 85 deer per individual per year (Brown and López González 2001, p. 51). No estimates of the number of javelina consumed were provided, although in combination with deer, armadillo, and coati, these four prey items provided 98 percent of the biomass taken by jaguars (Brown and López González 2001, p. 50). Most jaguar experts believe that collared peccary and deer are mainstays in the diet of jaguars in the United States and Mexico borderlands (62 FR 39147), although other available prey, including coatis, skunk (*Mephitis* spp., *Spilogale gracilis*), raccoon (*Procyon lotor*), jackrabbit (*Lepus* spp.), domestic livestock, and horses are taken as well (Brown and López González 2001, p. 51;

Hatten *et al.* 2005, p. 1024; Rosas-Rosas 2006, p. 24).

Therefore, based on the information above, we identify areas containing adequate numbers of native prey, including deer, javelina, and medium-sized prey items (such as coatis, skunks, raccoons, or jackrabbits) as an essential component of the physical and biological feature essential for the conservation of the jaguar in the United States.

Water—Several studies have demonstrated that jaguars require surface water within a reasonable distance year-round. This requirement likely stems from increased prey abundance at or near water sources (Cavalcanti 2008, p. 68; Rosas-Rosas *et al.* 2010, pp. 107–108), particularly in arid environments, although it is conceivable that jaguars require a nearby water source for drinking, as well. Seymour (1989, p. 4) found that jaguars are most commonly found in areas with a water supply, although the distance to this water supply is not defined. In northeastern Sonora, Mexico, Rosas-Rosas *et al.* (2010, p. 107) found that sites of jaguar cattle kills were positively associated with proximity to permanent water sources. They also found that these sites were positively associated with proximity to roads, but concluded that the effect of roads likely represented a response to major drainages, as roads generally followed major drainages within their study area.

In the United States, only one modeling study analyzing distance to water as a feature of jaguar habitat has been conducted. Hatten *et al.* (2005, p. 1026) used jaguar records from Arizona dating from 1900 to 2002, selecting the most reliable records (those with physical evidence or from a reliable witness) and most spatially accurate records (those with spatial errors of less than 8 km (5 mi)) to create a habitat suitability model. Of the 57 records they considered, 25 records were deemed reliable and accurate enough to include in the model. Using a digital Geographic Information System (GIS) layer that included perennial and intermittent water sources (streams, rivers, lakes, and springs), Hatten *et al.* (2005, p. 1029) found that when perennial and intermittent water sources were combined, 100 percent of the 25 jaguar records used for their model were within 10 km (6.2 mi) of a water source. This distance from water (10 km; 6.2 mi) was then incorporated into jaguar habitat modeling exercises in New Mexico (Menke and Hayes 2003, pp. 15–16), and in northern Mexico and the U.S.-Mexico borderlands area (Sanderson and Fisher 2011, pp. 10–11), and was further acknowledged by jaguar and large cat researchers (primarily with expertise in the northwestern-most portion of the jaguar range) as the maximum distance an area could be from a year-round water source to constitute high-quality jaguar habitat (Jaguar Recovery Team 2012, pp. 15–16).

Using data compiled by Sanderson and Fisher (2011, database) and McCain and Childs (2008, entire, and unpublished data), we collected undisputed Class I reports of jaguar locations in the United States since the time the species was listed (see *Criteria Used To Identify Critical Habitat,* below). Our compilation of data resulted in 130 reports of jaguar locations to use in our analysis, of which we found that approximately 98 percent occurred within 10 km (6.2 mi) of a water source. Therefore, based on the information above, we identify sources of surface water within at least 20 km (12.4 mi) of each other such that a jaguar would be within 10 km (6.2 mi) of a water source at any given time (i.e., if it were halfway between these water sources) as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

Cover or Shelter

Vegetative cover—Jaguars require vegetative cover allowing them to stalk and ambush prey, as well as providing areas in which to den and rest (Jaguar Recovery Team 2012, pp. 15–16). Jaguars are known from a variety of vegetation communities (Seymour 1989, p. 2), sometimes called biotic communities or vegetation biomes (Brown 1994, p. 9). Jaguars have been documented in arid areas in northwestern Mexico and the southwestern United States, including thornscrub, desertscrub, lowland desert, mesquite grassland, Madrean oak woodland, and pine-oak woodland communities (Brown and López González 2001, pp. 43–50; Boydston and López González 2005, p. 54; McCain and Childs 2008, p. 7; Rosas-Rosas *et al.* 2010, p. 103). As most of the information pertaining to jaguar habitat in the U.S.-Mexico borderlands relies on descriptions of biotic communities from Brown and Lowe (1980, map) and Brown (1994, entire, including appendices), for purposes of this document we are using these same sources and descriptions, as well.

According to Brown and López González (2001, p. 46), the most important biotic community for jaguars in the southwestern borderlands (Arizona, New Mexico, Sonora, Chihuahua) is Sinaloan thornscrub (as described in Brown 1994, pp. 100–105), with 80 percent of the jaguars killed in the state of Sonora documented in this vegetation biome (Brown and López González 2001, p. 48). This biotic community, however, is absent in the United States (Brown and Lowe 1980, map; Brown and López González 2001, p. 49). Madrean evergreen woodland is also important for borderlands jaguars; nearly 30 percent of jaguars killed in the borderlands region were documented in this biotic community (Brown and López González 2001, p. 45). Brown and López González (2000, p. 538) indicate jaguars in Arizona and New Mexico predominantly use montane environments, probably because of more amiable temperatures and prey availability. A smaller, but still notable, number of jaguars were killed in chaparral and shrub-invaded semidesert grasslands (Brown and López González 2001, p. 48). In Arizona, approximately 15 percent of the jaguars taken within the State between the years 1900 and 2000 were in semidesert grasslands (Brown and López González 2001, p. 49).

The more recent sightings (2001–2007), as described in McCain and Childs (2008, entire), document jaguars in these same biotic communities (note that the Madrean evergreen woodland and semidesert grassland biotic communities encompass the Sonoran lowland desert, Sonoran desert scrub, mesquite grassland, Madrean oak woodland, and pine-oak woodland habitats), and the most recent sighting of a jaguar in Arizona (2011) was in Madrean evergreen woodland, as well (Arizona Game and Fish Department, unpublished data).

Several modeling studies incorporating vegetation characteristics have attempted to refine the general understanding of habitats that have been or might be used by jaguars in the United States. To characterize vegetation biomes, Hatten *et al.* (2005, entire) used a digital vegetation layer based on Brown and Lowe (1980, map) and Brown (1994, entire). They found that 100 percent of the 25 jaguar records used for their model were observed in four vegetation biomes, including: (1) Scrub grasslands of southeastern Arizona (56 percent); (2) Madrean evergreen forest (20 percent); (3) Rocky Mountain montane conifer forest (12 percent); and (4) Great Basin conifer woodland (12 percent).

In addition, two studies (Menke and Hayes 2003, entire; Robinson *et al.* 2006, entire) attempted to evaluate potential jaguar habitat in New Mexico

using methods similar to those described in Hatten *et al.* (2005, pp. 1025–1028). However, due to the small number of reliable and spatially accurate records within New Mexico, neither model was able to determine patterns of habitat use (and associated vegetation communities) for jaguars in New Mexico, instead relying on literature and expert opinion for elements to include in the models. These vegetation communities included Madrean evergreen woodland, which Menke and Hayes (2003, p. 13) considered the most similar to habitats used by the closest breeding populations of jaguars in Mexico, as well as grasslands (semidesert, Plains and Great Basin, and subalpine), interior chaparral, conifer forests and woodlands (Great Basin, Petran montane, and Petran subalpine), and desertscrub (Chihuahuan, Arizona upland Sonoran, and Great Basin).

Finally, Sanderson and Fisher (2011, pp. 1–11) created a jaguar habitat model for northwestern Mexico and the U.S.-Mexico borderlands area using the methodology described in Hatten *et al.* (2005, pp. 1025–1028), but with some modifications. From 54 references published between the years 1737 and 2010, they compiled 333 potential jaguar locations from across the United States and northern Mexico (Sanderson and Fisher 2011, p. 4). These records were not selected to include only those that were reliable and spatially accurate (as described above in Hatten *et al.* 2005, pp. 1025–1026). Instead, they included cultural evidence (such as a jaguar painting in a cave or a place name including the word jaguar), sightings of live animals or their sign, mortalities (such as hunting events or jaguars killed after a predation event), and observations of possible jaguars (such as a cat, spotted cat, or large quadruped (four-footed animal)) (details as described in the database associated with Sanderson and Fisher 2011). Another modification Sanderson and Fisher (2011, pp. 7–8) made was to substitute a digital layer describing tree cover for the digital vegetation layer based on Brown and Lowe (1980, map) and Brown (1994, entire). In doing so, Sanderson and Fisher (2011, p. 9) determined the percent tree cover at each of the 333 locations used in their model, reporting that approximately 70 percent of the locations were in areas with 3 to 60 percent tree cover. They then used this range of tree cover as a variable delineating jaguar habitat (Sanderson and Fisher 2011, p. 11).

Using the same digital vegetation layer as Hatten *et al.* (2005, p. 1028) and the tree cover layer used by Sanderson and Fisher (2011, pp. 7–8), we analyzed 130 jaguar locations in the United States and found that approximately 98 percent of them occurred in Madrean evergreen woodlands and semidesert grasslands, with 88 percent occurring in areas containing 3 to 40 percent tree cover. Therefore, based on the information above, we identify Madrean evergreen woodlands and semidesert grasslands containing 3 to 40 percent tree cover as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

Rugged topography—Rugged topography (including canyons, ridges, and some rocky hills to provide sites for resting) is acknowledged as an important component of jaguar habitat in the northwestern-most portion of its range (Jaguar Recovery Team 2012, pp. 15–16). The habitat model for the Northern Jaguar Recovery Unit created by Sanderson and Fisher (2011, p. 9) determined that jaguars in this area were most frequently found in intermediately, moderately, and highly rugged terrain. Additionally, one study in the U.S.-Mexico borderlands area (Boydston and López González 2005, entire) and one in northeastern Mexico (Ortega-Huerta and Medley 1999, entire) incorporate slope as a factor in describing jaguar habitat. Although slope can provide some understanding of topography (steep slopes generally indicate a more rugged landscape), it is less descriptive in terms of quantifying terrain heterogeneity (diversity) (Hatten *et al.* 2005, pp. 1026–1027). Nonetheless, in these studies, jaguar distribution was found to be on steeper slopes than those slopes that were available for the study areas in general (Ortega-Huerta and Medley 1999, p. 261; Boydston and López González 2005, p. 54), indicating jaguars were found in more rugged areas in these studies.

Two modeling exercises have been conducted to determine existing jaguar habitat in the southwestern United States, one in Arizona and another in New Mexico. To examine the relationship between jaguars and landscape roughness in Arizona, Hatten *et al.* (2005, p. 1026) calculated a terrain ruggedness index (TRI; Riley *et al.* 1999, as cited in Hatten *et al.* 2005, p. 1026) measuring the slope in all directions of each 1-square-km (0.4-square-mi) cell (pixel) in their model. They divided the TRI data into seven classes according to relative roughness: level, nearly level, slightly rugged, intermediately rugged, moderately rugged, highly rugged, and extremely rugged. With respect to topography, they found that 92 percent of the 25 jaguar records used in their model (see ''*Water*'' in the ''Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements'' section, above) occurred in intermediately rugged to extremely rugged terrain (the remaining 8 percent were in nearly level terrain).

Menke and Hayes (2003, entire) attempted to evaluate potential jaguar habitat in New Mexico using methods similar to those described in Hatten *et al.* (2005, pp. 1025–1028). While patterns of habitat use for jaguars could not be determined (due to the small number of reliable and spatially accurate records within New Mexico, of which there were seven), all sighting locations occurred in areas that were assigned a highly rugged value, and terrain ruggedness was the single variable that appeared to have a high degree of correlation with locations of jaguar observations in New Mexico.

In addition, Sanderson and Fisher (2011, p. 9) determined that approximately 70 percent of the 333 locations used in their model for the Northwestern Recovery Unit of the jaguar were found in intermediately, moderately, or highly rugged terrain. Similarly, our analysis of 130 records of jaguar locations in the United States resulted in approximately 93 percent occurring in intermediately, moderately, or highly rugged terrain. Therefore, based on this information, we identify areas of intermediately, moderately, or highly rugged terrain as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States.

Habitats Protected From Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species

Human populations can impact jaguars directly by killing individuals through hunting, poaching, or depredation control, as well as indirectly through disturbance of normal biological activities, loss of habitat, and habitat fragmentation. Rangewide, illegal killing of jaguars is one of the two most significant threats to the jaguar (Nowell and Jackson 1996, p. 121; Núñez *et al.* 2002, p. 100; Taber *et al.* 2002, p. 630; Chávez and Ceballos 2006, p. 10), and, according to the July 22, 1997, clarifying rule (62 FR 39147), the primary threat to jaguars in the United States is illegal shooting (see listing rule for a detailed discussion). This, however, is no longer accurate, as the most recent known shooting of a jaguar in Arizona was in 1986 (Brown and Lopez González 2001, p. 7). Jaguars are protected by Federal law through the Act and by State law in Arizona and

New Mexico. Four of the individual jaguars most recently documented (since 1996) in Arizona and New Mexico have been documented by lion hunters, who took photographs of the jaguars and then reported them to the Arizona Game and Fish Department and the Service. No livestock predation has been attributed to jaguars since 1947; therefore, none have been killed in response to predating livestock. While illegal killing of jaguars continues to be a major threat to jaguars south of the U.S.-Mexico international border, it does not appear to be a significant threat within the United States.

In terms of human influence and impact on jaguars other than by direct killing, human populations have both direct and indirect impacts on jaguar survival and mortality. For example, an increase in road density and human settlements tends to fragment habitat and isolate populations of jaguars and other wildlife. For carnivores in general, the impacts of high road density have been well documented and thoroughly reviewed (Noss *et al.* 1996 and Carroll *et al.* 2001, as cited by Menke and Hayes 2003, p. 12). Roads may have direct impacts to carnivores and carnivore habitats, including roadkill, disturbance, habitat fragmentation, changes in prey numbers or distribution, and increased access for legal or illegal harvest (Menke and Hayes 2003, p. 12; Colchero *et al.* 2010, entire). Studies have also shown that jaguars selectively use large areas of relatively intact habitat away from certain forms of human influence. Zarza *et al.* (2007, pp. 107, 108) report that towns and roads had an impact on the spatial distribution of jaguars in the Yucatan peninsula, where jaguars used areas located more than 6.5 km (4 mi) from human settlements and 4.5 km (2.8 mi) from roads. In the state of Mexico, Monroy-Vilchis *et al.* (2008, p. 535) report that one male jaguar occurred with greater frequency in areas relatively distant from roads and human populations. In some areas of western Mexico, however, jaguars (both sexes) have frequently been recorded near human settlements and roads (Núñez 2011, pers. comm.). In Marismas Nacionales, Nayarit, a jaguar den was recently located very close to an agricultural field, apparently 1 km (0.6 mi) from a small town (Núñez 2011, pers. comm.). Jaguar presence is affected in different ways by various human activities; however, direct persecution likely has the most significant impact.

Because jaguars are secretive animals and generally tend to avoid highly disturbed areas (Quigley and Crawshaw 1992, entire; Hatten *et al.* 2005, p. 1025), human density was a factor considered in jaguar habitat modeling exercises for Arizona (Hatten *et al.* 2005, p. 1025), New Mexico (Menke and Hayes 2003, pp. 9–13; Robinson *et al.* 2006, pp. 10, 15, 18–20), and the habitat model developed by Sanderson and Fisher (2011, pp. 5–11) for the northwestern Mexico and the U.S.-Mexico borderlands area. Hatten *et al.* (2005, p. 1025) excluded areas within city boundaries, higher density rural areas visible on satellite imagery, and agricultural areas from their Arizona habitat model, as recommended by jaguar experts. All of the jaguar locations used in their model fell outside of these areas, indicating jaguars are not found in highly developed or disturbed areas (Figure 6, p. 1031).

Menke and Hayes (2003, pp. 9–13) attempted to evaluate potential jaguar habitat in New Mexico using methods similar to those described in Hatten *et al.* (2005, p. 1025). Because of a lack of comparable digital data for New Mexico, they instead created a data layer of road density per square km and classified it into habitat suitability categories. However, due to the small number of reliable and spatially accurate jaguar occurrence records within New Mexico (a total of seven), patterns of habitat use for jaguars could not be determined from their model, and they did not summarize the road density categories in which jaguars were found within the State. In the habitat model for New Mexico developed by Robinson *et al.* (2006), areas with continuous row crop agriculture, human residential development in excess of 1 house per 4 hectares (ha) (10 acres (ac)), or industrial areas were not considered jaguar habitat, and were therefore excluded from their model. Similarly to Menke and Hayes (2003, entire), patterns of habitat use for jaguars could not be determined from their model, and they did not summarize the human footprint categories in which jaguars were found within the State.

The habitat model developed by Sanderson and Fisher (2011, pp. 5–11) included a human influence index (HII) criterion developed by the Wildlife Conservation Society (WCS) and Center for International Earth Science Information Network (CIESIN) at the Socioeconomic Data and Applications Center (SEDAC) at Columbia University (SEDAC 2012, p. 1). Using procedures developed by Sanderson (2002, as described in SEDAC 2012, pp. 1–2), WCS and CIESIN combined scores for eight input layers (human population density per square km, railroads, major roads, navigable rivers, coastlines, stable nighttime lighting, urban polygons, and land cover) to calculate a composite HII for 1-square-km (0.4-square-mi) grid cells (pixels) worldwide. These numbers were then normalized to fit within a scale from 1 to 100 within each of six world biomes (Africa, Asia, Europe, North America, South America, and Oceania). A score of 1 within a biome indicates that that grid cell is part of the one percent least influenced (or ''wildest'') area in its biome, while a score of 100 indicates that that area is the most influenced within the biome. Within the region considered for their habitat model, Sanderson and Fisher (2011, pp. 5–11) found that roughly 90 percent of the 333 jaguar records used in their model were located in areas where the HII was less than 30. They therefore considered lands with a HII of less than 30 as potential jaguar habitat within their modeling exercise, while lands with a HII equal to or greater than 30 were excluded. Similarly, in our analysis of 130 reports of jaguar locations in the United States, we found that approximately 99 percent occurred in areas where the HII was 20 or less. Therefore, based on this information, we identify areas in which the HII calculated over 1-square km (0.4-square mi) is 20 or less as an essential component of the physical or biological feature essential for the conservation of the jaguar in the United States. These areas are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square km (0.4-square mi) area.

Primary Constituent Elements for Jaguars

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of jaguars in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

The physical or biological feature we identified for the jaguar is: Expansive open spaces in the southwestern United States with adequate connectivity to Mexico that contain a sufficient native prey base and available surface water, have suitable vegetative cover and rugged topography to provide sites for resting, and have minimal human impact. Because habitat in the United States is at the edge of the species' northern range, and is marginal

compared to known habitat throughout the range, we have determined that all of the primary constituent elements discussed, below, must be present in each specific area to constitute high-quality jaguar habitat in the United States, including connectivity to Mexico (but that connectivity may be provided either through a direct connection to the border or by other areas essential for the conservation of the species; see ''Areas Essential for the Conservation of Jaguars Outside of Occupied Areas,'' below). Based on our current knowledge of the physical or biological feature and habitat characteristics required to sustain the jaguar's vital life-history functions in the Northwestern Management Unit and the United States, we determine that the primary constituent elements specific to jaguars are: Expansive open spaces in the southwestern United States of at least 84 to 100 square km (32 to 37 square mi) in size which:

(1) Provide connectivity to Mexico;

(2) Contain adequate levels of native prey species, including deer and javelina, as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits;

(3) Include surface water sources available within 20 km (12.4 mi) of each other;

(4) Contain 3 to 40 percent canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak, juniper, and pine trees on the landscape, or semidesert grassland vegetation communities, usually characterized by *Pleuraphis mutica* (tobosagrass) or *Bouteloua eriopoda* (black grama) along with other grasses;

(5) Are characterized by intermediately, moderately, or highly rugged terrain;

(6) Are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square-km (0.4-square-mi) area.

Six units proposed to be designated as critical habitat are currently occupied by jaguars and contain the components of the primary constituent element in the appropriate quantity and spatial arrangement sufficient to support the life-history needs of the species. Two of these units also contain unoccupied subunits that provide connectivity to Mexico and are essential to the conservation of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

Jaguar habitat and the features essential to their conservation are threatened by the direct and indirect effects of increasing human influence into remote, rugged areas, as well as projects and activities that sever connectivity to Mexico. These may include, but are not limited to: significant increases in border-related activities, both legal and illegal; widening or construction of roadways, power lines, or pipelines; construction or expansion of human developments; mineral extraction and mining operations; military activities in remote locations; and human disturbance related to increased activities in or access to remote areas.

Jaguars in the United States are understood to be individuals dispersing north from Mexico, where the closest breeding population occurs about 210 km (130 mi) south of the U.S.-Mexico border in Sonora near the towns of Huasabas, Sahuaripa (Brown and López González 2001, pp. 108–109), and Nacori Chico (Rosas-Rosas and Bender 2012, pp. 88–89). Therefore, impeding jaguar movement from Mexico to the United States would adversely affect the Northwestern Recovery Unit's ability to cyclically expand and contract as jaguar populations in that unit recover.

Continuing threats from construction of border infrastructure (such as pedestrian fences and roads), as well as illegal activities and resultant law enforcement response (such as increased human presence, vehicles, and lighting), may limit movement of jaguars at the U.S-Mexico border (Service 2007, pp. 23–27; 2008, pp. 73–75). The border from the Tohono O'odham Nation, Arizona, to southwestern New Mexico has a mix of pedestrian fence (not permeable to jaguars), vehicle fence (fence designed to prevent vehicle but not pedestrian entry; it is generally permeable enough to allow for the passage of jaguars), legacy (older) pedestrian and vehicle fence, and unfenced segments (primarily in rugged, mountainous areas). Fences designed to prevent the passage of humans across the border also prevent passage of jaguars. However, there is little to no impermeable fence in areas proposed for designation as critical habitat, and we do not anticipate the construction of impermeable fence in such areas. Additionally, fences may cause an increase in illegal traffic and subsequent law enforcement activities in areas where no fence exists (such as rugged, mountainous areas). This activity may limit jaguar movement across the border and result in general disturbance to jaguars and degradation of their habitat. While current levels of law enforcement activity do not pose a significant threat, a substantial increase in activity levels could be of concern. We note that some level of law enforcement activity can be beneficial, as it decreases illegal traffic. Significant increases in illegal crossborder activities in the proposed critical habitat areas could pose a threat to the jaguar, and therefore, border security actions provide a beneficial decrease in crossborder violations and their impacts. In summary, special management considerations or protection of the physical or biological features essential to the conservation of jaguar habitat may be needed to alleviate the effects of border-related activities, allowing for some level of permeability so that jaguars may pass through the U.S.-Mexico border.

Under section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), the Secretary of the Department of Homeland Security (DHS) is authorized to waive laws where the Secretary of DHS deems it necessary to ensure the expeditious construction of border infrastructure in areas of high illegal entry. As noted above, there are no known plans to construct additional security fences in the proposed critical habitat. However, if future national security issues require additional measures and the Secretary of DHS invokes the waiver, review through the section 7 consultation process would not be conducted. If DHS chooses to consult with the Service on activities covered by a waiver, special management considerations would occur on a voluntary basis.

Widening or construction of roadways, power lines, or pipelines (all of which usually include maintenance roads), construction or expansion of human developments, mineral extraction and mining operations, and military operations on the ground can have the effect of altering habitat characteristics and increasing human presence in otherwise remote locations. Activities that can permanently alter vegetation characteristics, displace native wildlife, affect sources of water, and/or alter terrain ruggedness, such as construction and mining, may render an area unsuitable for jaguars. In addition, these activities, as well as military operations on the ground in remote areas, bring an increase in human disturbance into jaguar habitat, potentially fragmenting it further. As

described in the ''Habitats Protected from Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species'' section, above, studies have also shown that jaguars selectively use large areas of relatively intact habitat away from human influence (Zarza *et al.* 2007, pp. 107, 108). Modeling exercises both in the United States (Menke and Hayes 2003, entire; Hatten *et al.* 2005, entire; Robinson *et al.* 2006, entire) and in northwestern Mexico and the U.S.-Mexico borderlands area (Sanderson and Fisher 2011, pp. 1–11) incorporate low levels of human influence when mapping potential jaguar habitat in the United States. Special management considerations of the physical and biological features essential to the conservation of the jaguar may be needed to alleviate the effects of road, power line, and pipeline projects; human developments; mining operations; and ground-based military activities on jaguar habitat. Future projects should avoid (to the maximum extent possible) areas identified as meeting the definition of critical habitat for jaguars, and if unavoidable, should be constructed or carried out to minimize habitat effects.

Criteria Used To Identify Critical Habitat

We reviewed available information and supporting data that pertains to the habitat requirements of the jaguar. Much of this information is compiled in the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012, entire) and Digital Mapping in Support of Recovery Planning for the Northern Jaguar report (Sanderson and Fisher 2011, pp. 1–11), which we regard as the best available information for the jaguar and its habitat needs in the northern portion of its range. Additionally, we relied on information provided through modeling exercises for Arizona (Hatten *et al.* 2005, entire) and New Mexico (Menke and Hayes 2003, entire; Robinson *et al.* 2006, entire) to further refine the habitat features available in the United States. Other sources of information include, but are not limited to, Boydston and López González 2005, Brown and López González 2000, Brown and López González 2001, Cavalcanti 2008, Channell and Lomolino 2000, Chávez and Ceballos 2006, Colchero *et al.* 2010, Johnson *et al.* 2011, Lesica and Allendorf 1995, López González and Miller 2002, McCain and Childs 2008, Monroy-Vilchis *et al.* 2008, Núñez *et al.* 2000, Núñez *et al.* 2002, Ortega-Huerta and Medley 1999, Quigley and Crawshaw 1992, Rabinowitz 1999, Rosas-Rosas 2006, Rosas-Rosas *et al.* 2008, Rosas-Rosas *et al.* 2010, Rosas-Rosas and Bender 2012, Sanderson *et al.* 2002, Seymour 1989, Swank and Teer 1989, Taber *et al.* 2002, Zarza *et al.* 2007, and comments and information provided during the public comment period on our January 13, 2010, prudency determination (75 FR 1741).

We have defined the proposed critical habitat as areas with undisputed Class I records (see Occupied Area at the Time of Listing, below) containing all of the essential elements of the physical or biological feature described above, and, in areas not connected directly to Mexico, unoccupied areas providing connectivity to Mexico (see ''Areas Essential for the Conservation of Jaguars Outside of Occupied Areas,'' below).

Occupied Area at the Time of Listing

Determining jaguar occupancy at the time of listing is particularly difficult. Jaguars were added to the list many years ago, and, by nature, are cryptic and difficult to detect, so assuming an area is occupied or unoccupied must be based on limited information that can be interpreted in several ways. For these reasons, we used the best information available to us and analyzed areas both as occupied as well as unoccupied but essential to the conservation of the jaguar. Based on our analysis, we are including areas which may have been occupied (meaning they contain an undisputed Class I record, described in the ''Jaguar Sightings in the United States Since 1962'' section, below) from 1962 to the present. Our reasons for using this time frame are based on the date the jaguar was listed as endangered under the ESCA, the biology of the species, and a lack of survey effort for the species at the time it was listed. However, we acknowledge the uncertainty and lack of concrete information (undisputed Class I records, described below) during the period we are defining as occupied at the time of listing. Therefore, we have evaluated these areas and have also determined these areas to be essential to the conservation of the jaguar. Our rationale is explained below.

While the jaguar was not explicitly listed in the United States until July 22, 1997 (62 FR 39147), we are using the date the jaguar was listed throughout its range as endangered in accordance with the ESCA, which is March 30, 1972 (37 FR 6476). Our rationale for using this date is based on our July 25, 1979, publication (44 FR 43705) in which we asserted that it was always the intent of the Service that all populations of these species, including the jaguar, deserved to be listed as endangered, whether they occurred in the United States or in foreign countries. Therefore, our intention was to consider the jaguar endangered throughout its entire range when it was listed as endangered in 1972, rather than only outside of the United States.

We are including areas in which reports of jaguar exist during the 10 years prior to its listing as occupied at the time of listing, meaning we are considering records back to 1962. Our rationale for including these records is based on expert opinion regarding the average life-span of the jaguar, the consensus being 10 years. Therefore, we assume that areas that would have been considered occupied at the time of listing would have included sightings 10 years prior to its listing, as presumably these areas were still inhabited by jaguars when the species was listed in 1972.

For this same reason, we are including areas as occupied at the time of listing in which reports of jaguar exist during the 10 years after listing, meaning we are considering records up to 1982. If jaguars were present in an area within 10 years after the time of listing in 1972, presumably these areas would have been inhabited by jaguars in 1982.

Additionally, we are including areas as occupied in which reports of jaguars exist from 1982 to the present. Our reasoning for including areas in which sightings have occurred after 1982 is that it is likely those areas were occupied at the time of the original listing, but jaguars had not been detected because of their rarity, the difficulty in detecting them, and a lack of surveys for the species, as described below.

By the time the jaguar was listed in 1972, the species was rare within the United States, making those individuals that may have been present more difficult to detect. The gradual decline of the jaguar in the southwestern United States was concurrent with predator control measures associated with the settlement of land and the development of the cattle industry (Brown 1983, p. 460). For example, from 1900 to 1949, 53 jaguars were recorded as killed in the Southwest, whereas only 4 were recorded as killed between 1950 and 1979 (Brown 1983, p. 460). When a species is rare on the landscape, individuals are difficult to detect because they are sparsely distributed over a large area (McDonald 2004, p. 11).

Jaguars, in particular, are territorial and require expansive open spaces for each individual, meaning large areas may be occupied by just a few individuals, thus reducing the

likelihood of detecting them. As evidence, only six, possibly seven, individual jaguars have been detected in the United States since 1982, including one that was documented utilizing two distinct mountain ranges encompassing approximately 1,359 square km (525 square mi) (McCain and Childs 2008, entire) (see ''Space for Individual and Population Growth and for Normal Behavior'' section, above). Therefore, we believe that Class I records within mountain ranges from 1982 to the present indicate that these mountain ranges were likely occupied by transient jaguars from Mexico at the time the species was listed, but individuals remained undetected due to the jaguar's ability to move long distances within and between mountain ranges.

In addition, many mobile species are difficult to detect in the wild because of morphological features (such as camouflaged appearance) or elusive behavioral characteristics (such as nocturnal activity) (Peterson and Bayley 2004, pp. 173, 175). This presents challenges in determining whether or not a particular area is occupied because we cannot be sure that a lack of detection indicates that the species is absent (Peterson and Bayley 2004, p. 173).

For example, the Sonoran desert tortoise is difficult to monitor in the wild because of its slow movement and camouflaged appearance, especially in the smaller hatchling and juvenile age classes. In addition, the habitat in which Sonoran desert tortoise population densities are the highest is complex, often with many large boulders, somewhat dense vegetation, and challenging topographic relief. These factors can significantly hamper a surveyor's ability to detect them in the field (Zylstra *et al.* 2010, p. 1311).

Compounding this problem is the fact that in many animal populations, not all individuals can be detected using one particular sampling method. Pollock *et al.* (2004, p. 43) present the example of the dugong (sea cow) off the coast of Australia. Using one method of detection—aerial surveys—some dugongs may be underwater and invisible to the observers searching for them from aircraft, or the observer may miss detecting them due to his or her uncertain perception process. Similarly, terrestrial salamanders in North Carolina and Tennessee most often occur below the surface of the ground, making detection particularly difficult, especially when using standard sampling protocols that only sample the surface population (Pollock *et al.* 2004, p. 53). Sampling salamanders subsurface, however, can be problematic because they require cool, moist conditions, and are prone to dessicating (drying out) while being handled. Attempting to detect rare species by using multiple sampling methods or surveying multiple times is often prohibitively time-consuming and expensive, and may not always be feasible because of the sensitivity of the species.

Jaguars, specifically, are secretive and nocturnal in nature (Seymour 1989, p. 2; 62 FR 39147, p. 39153; McCain and Childs 2008, p. 5) and, in the United States and northern Mexico, inhabit rugged, remote areas that are logistically difficult to survey. Even in studies designed to detect jaguars using both camera traps and track surveys in northern Mexico, neither method was completely effective in identifying individuals due to logistical problems related to rugged topography, hard soils, absence of roads, and harsh weather conditions (Rosas-Rosas and Bender 2012, pp. 95–96). In the United States specifically, most of the recent occurrences of jaguars (after 1996) would not have been known but for a substantial amount of time and effort being invested by the Borderlands Jaguar Detection Project (BJDP) (Johnson *et al.* 2011, p. 40). From 1997 to 2010, the BJDP maintained 45–50 remote-camera stations across three counties in Arizona, conducted track and scat (feces) surveys opportunistically, and followed up on credible sighting reports from other individuals, resulting in 105 jaguar locations representing two adult male jaguars and possibly a third of unknown sex (Johnson *et al.* 2011, p. 40). From the time the jaguar was listed in 1972 until 1997, no effort was made to detect jaguars in the United States, and so we cannot be sure that a lack of detection indicates the species was absent.

Based on the above information, we determine that areas in which jaguars have been documented from 1982 to the present may have been occupied at the time of the original listing (March 30, 1972; 37 FR 6476) because: (1) Jaguars were rare on the landscape and distributed over large, rugged areas, meaning they were difficult to detect; (2) jaguars are cryptic and nocturnal by nature, making them difficult to detect; and (3) no survey effort was made to detect them in 1972, meaning we cannot be sure that a lack of detection indicates the species was absent. Therefore, based on the best available information related to jaguar rarity, biology, and survey effort, we determine that areas containing undisputed Class I records from 1982 to the present may have been occupied by jaguars at the time of listing.

However, to the extent that uncertainty exists regarding our analysis of these data, we acknowledge there is an alternative explanation as to whether or not these areas were occupied at the time the jaguar was listed in 1972 (37 FR 6476). The lack of jaguar sightings at that time, as well as some expert opinions cited in our July 22, 1997, clarifying rule (62 FR 39147) (for example, Swank and Teer 1989), suggest that jaguars in the United States had declined to such an extent by that point as to be effectively eliminated. Therefore, there is an argument to be made that no areas in the United States were occupied by the species at the time it was listed, or that only areas containing undisputed Class I records from between 1962 and 1982 (see ''Jaguar Sightings in the United States Since 1962,'' below) were occupied.

For this reason, we also analyzed whether or not these areas are essential to the conservation of the species. Through our analysis, we determine that they are essential to the conservation of the species for the following reasons: (1) They have demonstrated recent (since 1996) occupancy by jaguars; (2) they contain features that comprise suitable jaguar habitat; and (3) they contribute to the species' persistence in the United States by allowing the normal demographic function and possible range expansion of the Northwestern Recovery Unit, which is essential to the conservation of the species (as discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* section, above). Therefore, we include them in the proposed critical habitat designation.

Jaguar Sightings in the United States Since 1962

We are only considering undisputed Class I reports as valid records of jaguar locations. Class I reports are those for which some sort of physical evidence is provided for verification (such as a skin, skull, or photograph); they are considered ''verified'' or ''highly probable'' as evidence for a jaguar occurrence. Class II records have detailed information of the observation provided but do not include any physical evidence of a jaguar. Class II observations are considered ''probable'' or ''possible'' as evidence for a jaguar occurrence. This classification protocol was developed by adapting criteria published by Tewes and Everett (1986, entire), based on work in Texas with jaguarundis and ocelots (*Leopardus pardalis*). The Arizona-New Mexico Jaguar Conservation Team (for a

description and history of this team, see Johnson *et al.* 2011, pp. 37–40) reviewed and endorsed the protocol in 1998, for use in evaluating jaguar occurrence reports for Arizona and New Mexico. Therefore, we are using the same criteria to evaluate jaguar occurrence reports in the United States, and consider undisputed Class I records as the best available information.

Recently (1996 through 2011), five, possibly six, transient male jaguars have been documented in the United States. Two of these six male jaguars were photographed in 1996 in the United States: One on March 7, 1996, in the Peloncillo Mountains, located along the Arizona-New Mexico border (Glenn 1996, entire; Brown and López González 2001, p. 6), and another on August 31, 1996, in the Baboquivari Mountains in southern Arizona (Brown and López González 2001, p. 6; McCain and Childs 2008, p. 2). In February 2006, a jaguar was observed and photographed on the northern end of San Luis Mountains of southwestern New Mexico, very close to the U.S.-Mexico border (McCain and Childs 2008, p. 2; Arizona Game and Fish Department 2011a, p. 2). Using remote cameras, jaguars were photographed in the Pajarito, Atascosa, Tumacacori, Baboquivari, and Coyote Mountains near the Arizona-Mexico border from 2001 through 2009 (McCain and Childs 2008, entire; Arizona Game and Fish Department 2011a, pp. 1–3). The most recently confirmed jaguar sighting occurred on November 19, 2011, where a jaguar was observed and photographed in the Whetstone Mountains in southern Arizona (Arizona Game and Fish Department 2011b, p. 1; and unpublished data).

Other jaguars documented in the United States since 1962 include the following: (1) A photograph of a jaguar track taken on April 19, 1995, in the Peloncillo Mountains near the Arizona-New Mexico border; (2) a male jaguar killed after being tracked by dogs on December 15, 1986, in the Dos Cabezas Mountains in southeastern Arizona; (3) a male jaguar killed by boys duck hunting along the Santa Cruz River on October 16, 1971, south of Highway 82 and north of Nogales, Arizona; and (4) a male jaguar killed during a deer hunt on November 16, 1965, in the Patagonia Mountains in southern Arizona (Brown and López González 2001, pp. 6–7; Arizona Game and Fish Department 2011a, pp. 3–4).

There are three jaguar records from 1962 forward that we are not considering in our analysis. One of these is a female shot on September 28, 1963, in the White Mountains of east-central Arizona, and another is a male trapped on January 16, 1964, near the Black River in east-central Arizona. As described in Johnson *et al.* (2011, p. 9), as well as from information provided during the public comment period on our January 13, 2010, prudency determination (75 FR 1741), the validity of these locations is questionable because of the suspicion that these animals were released for ''canned hunts'' (hunts involving release of captive animals). Therefore, we are not including them as undisputed Class I records. The third exception is a recent sighting of a jaguar in the Santa Rita Mountains by a border patrol agent in a helicopter during the summer of 2011. Because the Coronado National Forest was closed to public entry at that time due to an extremely volatile fire season, this location could not be verified, and therefore it is not considered a Class I record.

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulations at 50 CFR 424.12(e), the Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species. We are proposing to designate critical habitat for the jaguar within the geographical area occupied by the species 10 years prior to the time of listing in 1972. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing that provide connectivity to Mexico, or to another occupied area that provides connectivity to Mexico (see ''Areas Essential for the Conservation of Jaguars Outside of Occupied Areas,'' below), because such areas are essential for the conservation of the species.

Consequently, we are defining areas occupied by jaguars 10 years prior to the time of its listing as rugged mountain ranges in southeastern Arizona and extreme southwestern New Mexico: (1) In which an undisputed Class I record has been documented, and (2) that currently contain the physical or biological features described above (see below for the steps we followed to delineate critical habitat boundaries). Therefore, occupied areas include the Baboquivari, Quinlan, Coyote, Pajarito, Atascosa, Tumacacori, Patagonia, Canelo Hills, Huachuca, Santa Rita, Whetstone, and Peloncillo Mountains of Arizona, and the Peloncillo and San Luis Mountains of New Mexico.

All undisputed Class I records of jaguars documented in the United States since 1962 have been within the aforementioned mountain ranges, with the following two exceptions. We are not including the Dos Cabezas Mountains in Arizona (one male jaguar killed in 1986) as occupied because, while this mountain range contains some of the primary constituent elements of the physical or biological feature required for critical habitat, by itself it is not of an adequate size to meet the expansive open spaces primary constituent element. Additionally, the 1971 record of a male jaguar killed by hunters was along the Santa Cruz River, not within a mountain range. As described above under ''Space for Individual and Population Growth and for Normal Behavior,'' this is the only record found in a valley bottom since the species was listed, and likely represents a jaguar moving between areas of higher quality habitat found in the surrounding isolated mountain ranges. Therefore, because we are unable to describe or delineate the features of areas connecting mountain ranges in the United States due to a lack of information, this record does not fall within or near the physical or biological features described above.

Areas Essential for the Conservation of Jaguars

As described in the ''Occupied Area at the Time of Listing'' section, above, we acknowledge that the lack of jaguar sightings at the time the species was listed as endangered in 1972 (37 FR 6476), as well as some expert opinions cited in our July 22, 1997, clarifying rule (62 FR 39147) (for example, Swank and Teer 1989), suggest that jaguars in the United States had declined to such an extent by that point as to be effectively eliminated. Only two undisputed Class I records (described above) exist for jaguars between 1962 and 1982, both of which were males killed by hunters. To the extent that areas described above may not have been occupied at the time of listing, we determine that they are essential to the conservation of the species for the following reasons: (1) They have demonstrated recent (since 1996) occupancy by jaguars; (2) they contain features that comprise suitable jaguar habitat; and (3) they contribute to the species' persistence in the United States by allowing the normal demographic function and possible range expansion of the Northwestern Recovery Unit, which is essential to the conservation of the species (as discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* section, above). Therefore, we include

them in the proposed critical habitat designation.

Additionally, as discussed in the *Jaguar Recovery Planning in Relation to Critical Habitat* and ''Space for Individual and Population Growth and for Normal Behavior'' sections, above, connectivity to Mexico is essential for the conservation of jaguars. Jaguars in the United States are understood to be individuals dispersing from the nearest core population in Mexico, which includes areas in central Sonora, southwestern Chihuahua, and northeastern Sinaloa (Jaguar Recovery Team 2012, p. 21). The closest known breeding population occurs about 210 km (130 mi) south of the U.S.-Mexico border in Sonora near the towns of Huasabas, Sahuaripa (Brown and López González 2001, pp. 108–109), and Nacori Chico (Rosas-Rosas and Bender 2012, pp. 88–89). In several of our **Federal Register** documents pertaining to the jaguar, including the notice in which we determined that designating critical habitat was prudent (75 FR 1741, p. 1743), we discussed the need to develop and maintain travel corridors for jaguars between the United States and Mexico to enable a few, possibly resident individuals to persist north of the international border. Therefore, we conclude that maintaining travel corridors to Mexico is essential for the conservation of jaguars in the Northwestern Recovery Unit, and therefore for the species as a whole.

As we discussed under ''Space for Individual and Population Growth and for Normal Behavior,'' above, describing these areas of connectivity within the United States is difficult because of a lack of information about what these features encompass. However, in some areas there may be a level of connectivity to Mexico that could be provided because these areas contain some, but not all, of the PCEs described above. In the jaguar habitat model developed for northwestern Mexico and the U.S.-Mexico borderlands area, Sanderson and Fisher (2011, p. 11) described how low human influence is perhaps the most important feature defining jaguar habitat, as jaguars most often avoid areas with too much human pressure. Furthermore, their model describes a level of uncertainty regarding jaguar use of areas with moderate tree cover (in their model, this is from 3 to 60 percent) and intermediate to high ruggedness, as jaguars could potentially be found in areas meeting only one of these habitat qualities. Therefore, we have determined the most likely areas providing connectivity from occupied areas in the United States to Mexico are those in which the human influence is low, and either or both moderate tree cover or intermediately to highly rugged terrain is present.

Consequently, we are further defining areas essential for the conservation of jaguars outside of occupied areas as those areas that: (1) Connect an area that may have been occupied that is isolated within the United States to Mexico, either through a direct connection to the international border or through another area that may have been occupied; and (2) contain low human influence and impact, and either vegetative cover or rugged terrain. Based on these criteria, we identified three subunits outside of occupied areas that are essential for the conservation of jaguars in the United States because they provide connectivity to Mexico. They include the southern extent of the Baboquivari Mountains, an east-west connection area between the Santa Rita Mountains and northwestern extent of the Whetstone Mountains (including the Empire Mountains), and a north-south connection area between the southern extent of the Whetstone Mountains and the Huachuca Mountains (including the Mustang Mountains).

Therefore, we delineated critical habitat boundaries using the following steps:

(1) We mapped areas containing PCEs 3, 4, 5, and 6 as determined from GIS data on water availability, vegetation community, tree cover, ruggedness, and human influence. We did not use data describing distribution of native prey, as wildlife management agencies in Arizona and New Mexico have a history of effective game management strategies resulting in prey species' persistence within occupied areas (for State philosophies of game management, see Arizona Game and Fish Department 2011c, p. 6 and New Mexico Department of Game and Fish 2007, p. 4; for survey information and hunter success rates in Arizona, see Arizona Game and Fish Department 2011d, pp. 10, 15–40, 98–116). Areas (also called polygons) that were adjacent to each other (for example, touching at corners) were merged into one polygon. We then selected polygons containing an undisputed Class I record of a jaguar from 1962 forward. We also selected polygons that fell partially or entirely within 1-km (0.4-mi) of these polygons because most of the GIS datasets we used were of a 1-square-km (0.4-square-mi) resolution (pixel size), and therefore we determined that this was the distance within which some mapping error may have occurred. If the area within the selected polygons surrounding a jaguar record did not meet the minimum size criterion of 84 square km (32 square mi) when added together, we removed those polygons from further consideration.

We placed a 1-km (0.4-mi) buffer around the remaining polygons to account for mapping error, but did not apply this buffer to areas in which the vegetation community was other than Madrean evergreen woodland or semidesert grassland, or areas in which the Human Influence Index (HII) was greater than 20 (see ''Habitats Protected from Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species,'' above). The vegetation community data we used were not mapped at a 1-square-km (0.4-square-mi) resolution, and therefore we determined the 1-km (0.4-mi) buffer did not apply to this dataset. Our rationale for ensuring only areas in which the HII was 20 or less (as described in the ''Habitats Protected from Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species'' section, above) were included in the proposed designation was based on Sanderson and Fisher (2011, p. 11), in which they described low human influence as being essential to the jaguar; we therefore did not include any areas in which this PCE was absent because of its importance in describing jaguar habitat. Small areas of 1 square km (0.4 square mi) or less (our tolerance buffer as described above) that were excluded within the polygons were then included, as these areas were of a size in which a mapping error could have occurred.

(2) If a polygon described in step 1, above, was not connected to Mexico, we selected and added areas containing low human influence and impact and either or both vegetative cover or rugged terrain to connect these areas directly to Mexico or to another occupied area.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack the physical or biological feature necessary for jaguars. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands

would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological feature in the adjacent critical habitat.

Based on our analyses of areas as both occupied and unoccupied (but essential for the conservation of the species), we are proposing for designation of critical habitat lands that we have determined were occupied at the time of listing and contain sufficient elements of the physical or biological feature to support life-history processes essential for the conservation of the species, and lands outside of the geographical area occupied at the time of listing that we have determined are essential. In our analysis we also evaluated the areas we proposed as occupied at the time of listing and determine that these same areas are also essential for the conservation of jaguars in the Northwestern Recovery Unit, and therefore for the species as a whole.

In summary, while we understand there may be alternative explanations as to whether or not areas were occupied at the time the jaguar was listed, we are required to make an administrative decision regarding occupancy status for purposes of delineating critical habitat units and applying the policy as described in the Act. Based on our analyses as discussed under the *Criteria Used To Identify Critical Habitat* section, above, it is our determination that the lands described under ''Occupied Area at the Time of Listing'' were occupied at the time of listing, and thus are described in the unit descriptions, below, as being occupied. However, these same areas are also considered essential, based on our analysis, above. In addition, we are proposing unoccupied lands outside of the geographical area occupied at the time of listing because those lands provide connectivity to Mexico, making them essential for the conservation of the jaguar.

Therefore, six units are proposed for designation based on sufficient elements of physical or biological feature being present to support jaguar life-history processes. The occupied mountain ranges within the units contain all of the identified elements of the physical or biological feature necessary for jaguars. The unoccupied areas denoted as Subunits 1b, 4b, and 4c are essential for the conservation of the species, as they provide the jaguar connectivity with Mexico and the Northwestern Recovery Unit.

Proposed Critical Habitat Designation

We are proposing six units as critical habitat for the jaguar. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the jaguar. The six units we propose as critical habitat are: (1) Baboquivari Unit divided into subunits (1a) Baboquivari-Coyote Subunit, including the Northern Baboquivari, Saucito, Quinlan, and Coyote Mountains, and (1b) the Southern Baboquivari Subunit; (2) Atascosa Unit, including the Pajarito, Atascosa, and Tumacacori Mountains; (3) Patagonia Unit, including the Patagonia, Santa Rita, and Huachuca Mountains and the Canelo Hills; (4) Whetstone Unit, divided into subunits (4a) Whetstone Subunit, (4b) Whetstone-Santa Rita Subunit, and (4c) Whetstone-Huachuca Subunit; (5) Peloncillo Unit, including the Peloncillo Mountains both in Arizona and New Mexico; and (6) San Luis Unit, including the northern extent of the San Luis Mountains at the New Mexico-Mexico border. Table 1 lists both the occupied and unoccupied units.

TABLE 1—OCCUPANCY OF JAGUARS BY PROPOSED CRITICAL HABITAT UNITS

[All units are in Arizona unless otherwise noted]

Unit	Occupied at time of listing
1 Baboquivari Unit	
1a Baboquivari-Coyote Subunit:	
Coyote Mountains	Yes.
Quinlan Mountains	Yes.
Saucito Mountains	Yes.
Northern Baboquivari Mountains.	Yes.
1b Southern Baboquivari Subunit:	
Southern Baboquivari Mountains Connection.	No.
2 Atascosa Unit	
Tumacacori Mountains	Yes.
Atascosa Mountains	Yes.
Pajarito Mountains	Yes.
3 Patagonia Unit	
Santa Rita Mountains	Yes.
Patagonia Mountains	Yes.
Canelo Hills	Yes.
Huachuca Mountains	Yes.
4 Whetstone Unit	
4a Whetstone Subunit:	
Whetstone Mountains	Yes.
4b Whetstone-Santa Rita Subunit:	
Whetstone-Santa Rita Mountains Connection.	No.
4c Whetstone-Huachuca Subunit:	
Whetstone-Huachuca Mountains Connection.	No.
5 Peloncillo Unit	
Peloncillo Mountains (Arizona and New Mexico).	Yes.
6 San Luis Unit	
San Luis Mountains (New Mexico).	Yes.

The approximate area of each proposed critical habitat unit is shown in Table 2.

TABLE 2—AREA OF PROPOSED CRITICAL HABITAT UNITS FOR THE JAGUAR

Unit or subunit	Federal		State		Tribal		Private		Other		Total	Total
	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac
1a—Baboquivari-Coyote Subunit	4,360	10,775	8,483	20,962	20,036	49,511	3,003	7,420	0	0	35,882	88,667
1b—Southern Baboquivari Subunit	644	1,591	7,005	17,310	10,853	26,818	1,857	4,589	0	0	20,359	50,308
2—Atascosa Unit	53,335	131,793	2,295	5,670	0	0	2,475	6,115	0	0	58,104	143,578
3—Patagonia Unit	116,080	286,839	5,618	13,883	0	0	17,115	42,291	8	20	138,821	343,033
4a—Whetstone Subunit	16,406	40,541	4,684	11,575	0	0	2,921	7,219	0	0	24,012	59,335
4b—Whetstone-Santa Rita Subunit	1,577	3,897	6,543	16,168	0	0	2,566	6,341	0	0	10,686	26,406
4c—Whetstone-Huachuca Subunit	1,575	3,892	3,009	7,436	0	0	3,411	8,428	0	0	7,995	19,756
5—Peloncillo Unit	27,387	67,673	7,582	18,736	0	0	5,321	13,150	0	0	40,290	99,559
6—San Luis Unit	0	0	0	0	0	0	3,071	7,590	0	0	3,071	7,590

TABLE 2—AREA OF PROPOSED CRITICAL HABITAT UNITS FOR THE JAGUAR—Continued

Unit or subunit	Federal		State		Tribal		Private		Other		Total	Total
	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac
Grand Total	221,364	547,000	45,220	111,741	30,889	76,329	41,740	103,143	8	20	339,220	838,232

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for jaguar, below.

Subunit 1a: Baboquivari-Coyote Subunit

Subunit 1a consists of 35,882 ha (88,667 ac) in the northern Baboquivari, Saucito, Quinlan, and Coyote Mountains in Pima County, Arizona. This subunit is generally bounded by the Baboquivari Valley to the west, State Highway 86 to the north, the Altar Valley to the east, and Three Peaks to the south. Land ownership within the unit includes approximately 4,360 ha (10,775 ac) of Federal lands; 20,036 ha (49,511 ac) of Tohono O'odham Nation lands; 8,483 ha (20,962 ac) of Arizona State lands; and 3,003 ha (7,420 ac) of private lands. The Federal land is administered by the Service and Bureau of Land Management. We consider the Baboquivari-Coyote Subunit occupied at the time of listing (37 FR 6476; March 30, 1972) based on one photo of a jaguar in 1996, and multiple photos of this same jaguar from 2001–2009 (described in ''Occupied Area at the Time of Listing,'' above), and it may be currently occupied. It contains all elements of the physical or biological feature essential to the conservation of the jaguar, except for connectivity to Mexico.

The primary land uses within Subunit 1a include ranching, grazing, border-related activities, Federal land management activities, and recreational activities throughout the year, including, but not limited to, hiking, birding, horseback riding, and hunting. Special management considerations or protections needed within the unit would need to address increased human disturbances in remote locations through construction of impermeable fences and widening or construction of roadways, power lines, or pipelines to ensure all PCEs remain intact.

Subunit 1b: Southern Baboquivari Subunit

Subunit 1b consists of 20,359 ha (50,308 ac) in the southern Baboquivari Mountains in Pima County, Arizona. This subunit is generally bounded by the Baboquivari Valley to the west, Three Peaks to the north, the Altar Valley to the east, and the U.S.-Mexico border to the south. Land ownership within the unit includes approximately 644 ha (1,591 ac) of Federal lands; 10,853 ha (26,818 ac) of Tohono O'odham Nation lands; 7,005 ha (17,310 ac) of Arizona State lands; and 1,857 ha (4,589 ac) of private lands. The Federal land is administered by the Service and Bureau of Land Management. The Southern Baboquivari Subunit provides connectivity to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas that support individuals during dispersal movements during cyclical expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit.

The primary land uses within Subunit 1b include ranching, grazing, border-related activities, Federal land management activities, and recreational activities throughout the year, including, but not limited to, hiking, birding, horseback riding, and hunting.

Unit 2: Atascosa Unit

Unit 2 consists of 58,104 ha (143,578 ac) in the Pajarito, Atascosa, and Tumacacori Mountains in Pima and Santa Cruz Counties, Arizona. Unit 2 is generally bounded by the San Luis Mountains (Arizona) to the west, Arivaca Road to the north, Interstate 19 to the east, and the U.S.-Mexico border to the south. Land ownership within the unit includes approximately 53,335 ha (131,793 ac) of Federal lands; 2,295 ha (5,670 ac) of Arizona State lands; and 2,475 ha (6,115 ac) of private lands. The Federal land is administered by the Coronado National Forest. We consider the Pajarito-Tumacacori Unit occupied at the time of listing (37 FR 6476; March 30, 1972) based on multiple photos of two, possibly three, jaguars from 2001–2009 (described in ''Occupied Area at the Time of Listing,'' above), and it may be currently occupied. It contains all elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 2 include Federal forest management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the unit would need to address increased human disturbances into remote locations through construction of impermeable fences and widening or construction of roadways, power lines, or pipelines to ensure all PCEs remain intact.

Unit 3: Patagonia Unit

Unit 3 consists of 138,821 ha (343,033 ac) in the Patagonia, Santa Rita, and Huachuca Mountains, as well as the Canelo Hills, in Pima, Santa Cruz, and Cochise Counties, Arizona. Unit 3 is generally bounded by Interstate 19 to the west; Interstate 10 to the north; Cienega Creek, the Mustang Mountains, and Highways 90 and 92 to the east; and the U.S.-Mexico border to the south. Land ownership within the unit includes approximately 116,080 ha (286,839 ac) of Federal lands; 5,618 ha (13,883 ac) of Arizona State lands; 17,115 ha (42,291 ac) of private lands; and 8 ha (20 ac) of other lands. The Federal land is administered by the Coronado National Forest, Bureau of Land Management, and Fort Huachuca. We consider the Patagonia Unit occupied at the time of listing (37 FR 6476; March 30, 1972) based on the 1965 record from the Patagonia Mountains (described in ''Occupied Area at the Time of Listing,'' above), and it may be currently occupied. The mountain ranges within this unit contain all elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 3 include military activities associated with Fort Huachuca, as well as Federal forest management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the unit would need to address human disturbances through such activities as military ground maneuvers and increased human presence in remote locations through mining and development activities, construction of impermeable fences, and widening or

construction of roadways, power lines, or pipelines to ensure all PCEs remain intact.

Subunit 4a: Whetstone Subunit

Subunit 4a consists of 24,012 ha (59,335 ac) in the Whetstone Mountains in Pima, Santa Cruz, and Cochise Counties, Arizona. Subunit 4a is generally bounded by Cienega Creek to the west, Interstate 10 to the north, Highway 90 to the east, and Highway 82 to the south. Land ownership within the subunit includes approximately 16,406 ha (40,541 ac) of Federal lands; 4,684 ha (11,575 ac) of Arizona State lands; and 2,921 ha (7,219 ac) of private lands. The Federal land is administered primarily by the Coronado National Forest. We consider the Whetstone Subunit occupied at the time of listing (37 FR 6476; March 30, 1972) based on photographs taken in 2011 (described in ''Occupied Area at the Time of Listing,'' above), and it may be currently occupied. The mountain range within this subunit contains all elements of the physical or biological feature essential to the conservation of the jaguar, except for connectivity to Mexico.

The primary land uses within Subunit 4a include Federal forest management activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the subunit would need to address increased human disturbances through development activities, and widening or construction of roadways, power lines, or pipelines to ensure all PCEs remain intact.

Subunit 4b: Whetstone-Santa Rita Subunit

Subunit 4b consists of 10,686 ha (26,406 ac) between the Santa Rita Mountains and northern extent of the Whetstone Mountains in Pima County, Arizona. Subunit 4b is generally bounded by the Santa Rita Mountains to the west, Interstate 10 to the north, the Whetstone Mountains to the east, and Wood Canyon to the south. Land ownership within the subunit includes approximately 1,577 ha (3,897 ac) of Federal lands; 6,543 ha (16,168 ac) of Arizona State lands; and 2,566 ha (6,341 ac) of private lands. The Whetstone-Santa Rita Subunit provides connectivity from the Whetstone Mountains to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas that support individuals during dispersal movements during cyclical expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit.

The primary land uses within Subunit 4b include grazing and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting.

Subunit 4c: Whetstone-Huachuca Subunit

Subunit 4c consists of 7,995 ha (19,756 ac) between the Huachuca Mountains and southern extent of the Whetstone Mountains in Santa Cruz and Cochise Counties, Arizona. Subunit 4c is generally bounded by Highway 83 to the west, Highway 82 to the north, Highway 90 to the east, and the Huachuca Mountains to the south. Land ownership within the subunit includes approximately 1,575 ha (3,892 ac) of Federal lands; 3,009 ha (7,436 ac) of Arizona State lands; and 3,411 ha (8,428 ac) of private lands. The Federal land is administered by the Coronado National Forest, Bureau of Land Management, and Fort Huachuca. The Whetstone-Huachuca Subunit provides connectivity from the Whetstone Mountains to Mexico and was not occupied at the time of listing, but is essential to the conservation of the jaguar because it contributes to the species' persistence by providing connectivity to occupied areas that support individuals during dispersal movements during cyclical expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit.

The primary land uses within Subunit 4c include military activities associated with Fort Huachuca, as well as Federal forest management activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting.

Unit 5: Peloncillo Unit

Unit 5 consists of 40,290 ha (99,559 ac) in the Peloncillo Mountains in Cochise County, Arizona, and Hidalgo County, New Mexico. Unit 5 is generally bounded by the San Bernardino Valley to the west, the San Simone Valley and northern boundary of the Coronado National Forest to the north, the Animas Valley to the east, and the U.S.-Mexico border on the south. Land ownership within the unit includes approximately 27,387 ha (67,673 ac) of Federal lands; 7,582 ha (18,736 ac) of Arizona State lands; and 5,321 ha (13,150 ac) of private lands. The Federal land is administered by the Coronado National Forest and Bureau of Land Management. We consider the Peloncillo Unit occupied at the time of listing (37 FR 6476; March 30, 1972) based on a track documented in 1995 and photographs taken in 1996 (described in ''Occupied Area at the Time of Listing,'' above), and it may be currently occupied. It contains all elements of the physical or biological feature essential to the conservation of the jaguar.

The primary land uses within Unit 5 include Federal forest management activities, border-related activities, grazing, and recreational activities throughout the year, including, but not limited to, hiking, camping, birding, horseback riding, picnicking, sightseeing, and hunting. Special management considerations or protections needed within the unit would need to address increased human disturbances in remote locations through construction of impermeable fences and widening or construction of roadways, power lines, or pipelines to ensure all PCEs remain intact.

Unit 6: San Luis Unit

Unit 6 consists of 3,071 ha (7,590 ac) in the northern extent of the San Luis Mountains in Hidalgo County, New Mexico. Unit 6 is roughly bounded by the Animas Valley to the west, Highway 79 to the north, above approximately 1,600 m (5,249 ft) to the east, and the U.S.-Mexico border to the south. Land ownership within the unit is entirely private land. We consider the San Luis Unit occupied at the time of listing (37 FR 6476; March 30, 1972) based on photographs taken in 2006 (described in ''Occupied Area at the Time of Listing,'' above), and it may be currently occupied. Unit 6 contains almost all elements (PCEs 2–7) of the physical or biological features essential to the conservation of the jaguar except for PCE 1 (expansive open space). This unit is included because, while by itself it does not provide at least 84 square km (32 square mi) of jaguar habitat in the United States, additional habitat can be found immediately adjacent south of the U.S.-Mexico border, and therefore this area represents a small portion of a much larger area of habitat.

The primary land uses within Unit 6 include border-related activities, grazing, and some recreational activities throughout the year, including, but not limited to, hiking, horseback riding, and hunting. Special management considerations or protections needed within the unit would need to address increased human disturbances into remote locations through construction

of impermeable fences and widening or construction of roadways, power lines, or pipelines to ensure all PCEs remain intact.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Determinations of Adverse Effects and Application of the ''Adverse Modification'' Standard

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Section 7(a)(2) of the Act requires Federal agencies to ensure their actions do not jeopardize the continued existence of listed species or destroy or adversely modify critical habitat. The key factor involved in the destruction/adverse modification determination for a proposed Federal agency action is whether the affected critical habitat would continue to serve its intended conservation role for the species with implementation of the proposed action after taking into account any anticipated cumulative effects (U.S. Fish and Wildlife Service 2004, *in litt.* entire). Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the jaguar. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

In general, there are five possible outcomes in terms of how proposed Federal actions may affect the PCEs or physical or biological feature of jaguar critical habitat: (1) No effect; (2) wholly beneficial effects (e.g., improve habitat condition); (3) both short-term adverse effects and long-term beneficial effects; (4) insignificant or discountable adverse effects; or (5) wholly adverse effects.

Actions with no effect on the PCEs and physical or biological feature of jaguar critical habitat do not require section 7 consultation, although such actions may still have adverse or beneficial effects on the species itself that require consultation. Examples of these actions may include grazing, ranching operations, routine border security activities, or limited recreational activity, which we anticipate would not result in adverse effects or adverse modification to jaguar critical habitat, but may still require section 7 review for effects to the species itself.

Actions with effects to the PCEs or physical and biological feature of jaguar critical habitat that are discountable, insignificant, or wholly beneficial are considered as not likely to adversely affect critical habitat and do not require formal consultation if the Service

concurs in writing with that Federal action agency determination. Examples of these actions may include fuels-management activities, prescribed fire, or closing and re-vegetating roads.

Additionally, actions with adverse effects to the PCEs or physical or biological feature in the short term, but that result over the long term in an improvement in the function of the habitat to the jaguar would likely not constitute adverse modification of critical habitat. We anticipate actions consistent with the stated goals or recovery actions of the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012) or the future recovery plan for the species, once completed, would fall into this category.

Actions that are likely to adversely affect the PCEs or physical or biological feature of jaguar critical habitat require formal consultation and the preparation of a Biological Opinion by the Service. The Biological Opinion sets forth the basis for our section 7(a)(2) determination as to whether the proposed Federal action is likely to destroy or adversely modify jaguar critical habitat. Some activities may adversely affect the PCEs, but not result in adverse modification of critical habitat. Activities that may destroy or adversely modify critical habitat are those that alter the essential physical or biological features of the critical habitat to an extent that appreciably reduces the conservation value of the critical habitat for the listed species. As discussed above, the conservation role or value of jaguar critical habitat is to provide areas to support some individuals during transient movements by providing patches of habitat (perhaps in some cases with a few resident jaguars), and as areas for cyclic expansion and contraction of the nearest core area and breeding population in the Northwestern Recovery Unit. Therefore, actions that could destroy or adversely modify jaguar critical habitat include those that would permanently sever connectivity to Mexico or within a critical habitat unit such that movement of jaguars between habitat in the United States and Mexico is eliminated. In general, such activities could include building impermeable fences (such as pedestrian fences discussed in *Special Management Considerations or Protection,* above) in areas of vegetated rugged terrain, or major road construction projects (such as new highways or significant widening of existing highways). Activities that may adversely affect the PCEs (such as permanently displacing native prey species, increasing the distance to water to more than 10 km (6.2 mi), removing tree cover, altering rugged terrain, or appreciably increasing human presence on the landscape), but may not destroy or adversely modify critical habitat could include habitat clearing, the construction of facilities, or expansion of linear projects (such as power lines or pipelines) that reduce the amount of habitat available but that do not permanently sever essential movement between the United States and Mexico or within a given critical habitat unit.

At this time, we do not anticipate activities such as grazing, ranching operations, or limited recreational activity would have adverse effects to jaguar critical habitat, nor do we anticipate activities consistent with the stated goals or recovery actions of the Recovery Outline for the Jaguar (Jaguar Recovery Team 2012) or the future recovery plan for the species would constitute adverse modification. We also do not anticipate further impermeable fencing being built in areas with rugged terrain, as technological solutions (such as video surveillance) for Homeland Security purposes are more likely to be applied in these areas. We also are unaware of any plans to expand highways through proposed jaguar critical habitat. However, we are aware of one large-scale mining operation (Rosemont Mine) that is being evaluated within jaguar proposed critical habitat. We will need to evaluate this project in the context of connectivity to Mexico to determine if adverse modification to jaguar critical habitat will likely result from this action.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP that specifically includes the jaguar within the proposed critical habitat designation. Fort Huachuca has a completed INRMP that addresses other endangered and threatened species, but currently it does not include management actions specific to the jaguar or its habitat. For this reason, we are not currently considering Fort Huachuca lands as exempt from jaguar critical habitat designation. However, should Fort Huachcua's INRMP be amended to include the jaguar before the final critical habitat rule is completed, or should we receive information demonstrating the INRMP provides benefits to the jaguar through measures designed for other species (for example, the Mexican spotted owl), we would consider exempting lands owned and managed by the Fort in the final rule.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific

data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. The proposed critical habitat areas include Federal, State, tribal, and private lands, some of which are used for mining and recreation (such as hiking, camping, horseback riding, and hunting). Other land uses that may be affected will be identified as we develop the draft economic analysis for the proposed designation.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Arizona Ecological Services Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT**). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. Department of Defense lands eligible for exclusion include Fort Huachuca, as discussed above in *Application of Section 4(a)(3) of the Act* and lands on which the U.S. Customs and Border Protection (CBP) operates along the U.S.-Mexico border. CBP is tasked with maintaining national security interests along the nation's international borders. As such, the CBP's activities may qualify for exclusions under section 4(b)(2) of the Act. In order to achieve and maintain effective control of the United States border, CBP, through its component, the United States Border Patrol (USBP), requires continuing and regular access to certain portions of the area proposed for designation as critical habitat. Because CBP's border security mission has an important link to national security, CBP may identify impacts to national security that may result from designating critical habitat. While we do not have information currently indicating that the lands owned or managed by the Department of Defense and the remaining lands within the proposed designation of critical habitat for the jaguar will have an impact on national security, we may consider excluding certain lands in the final rule. Consequently, the Secretary does not propose to exert his discretion to exclude any areas from the final designation based on impacts on national security at this time. However, should Fort Huachuca or another entity identify impacts to national security that may result from designating critical habitat on lands owned and managed by the Fort, or on the remaining lands within the critical habitat footprint, we may consider excluding those lands in the final rule.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

We are not considering any areas for exclusion at this time from the final designation under section 4(b)(2) of the Act based on partnerships, management, or protection afforded by cooperative management efforts. Some areas within the proposed designation are included in management plans or other large-scale HCPs such as the Malpai Habitat Conservation Plan and lands managed by the Tohono O'odham Nation. In this proposed rule, we are seeking input from the public as to whether or not the Secretary should exclude HCP areas or other such areas under management that benefit the jaguar from the final revised critical habitat designation. (Please see the Public Comments section of this proposed rule for instructions on how to submit comments.)

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 critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

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.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. 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.

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 (RFA; 5 U.S.C. 601 *et seq.*) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C 801 *et seq.*), whenever an 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 effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include such businesses as manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and forestry and logging operations with fewer than 500 employees and annual business less than $7 million. To determine whether small entities may be affected, we will consider the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Importantly, the incremental impacts of a rule must be *both* significant and substantial to prevent certification of the rule under the RFA and to require the preparation of an initial regulatory flexibility analysis. If a substantial number of small entities are affected by the proposed critical habitat designation, but the per-entity economic impact is not significant, the Service may certify. Likewise, if the per-entity economic impact is likely to be significant, but the number of affected entities is not substantial, the Service may also certify.

Under the RFA, as amended, and following recent court decisions, Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and not the potential impacts to indirectly affected entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action they authorize, fund, or carry out is not likely to adversely modify critical habitat. Therefore, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Therefore, because Federal agencies are not small entities, the Service may certify that the proposed critical habitat rule will not have a significant economic impact on a substantial number of small entities.

We acknowledge, however, that in some cases, third-party proponents of the action subject to permitting or funding may participate in a section 7 consultation, and thus may be indirectly affected. We believe it is good policy to assess these impacts if we have sufficient data before us to complete the necessary analysis, whether or not this analysis is strictly required by the RFA. While this rule would not directly regulate these entities, in our draft economic analysis we will conduct a brief evaluation of the potential number of third parties participating in consultations on an annual basis in order to ensure a more complete examination of the incremental effects of this proposed rule in the context of the RFA.

In conclusion, we believe that, based on our interpretation of directly regulated entities under the RFA and relevant case law, this designation of critical habitat would only directly regulate Federal agencies, which are not by definition small business entities. As such, we certify that, if promulgated, this designation of critical habitat would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required. However, though not necessarily required by the RFA, in our draft economic analysis for this proposal we will consider and evaluate the potential effects to third parties that may be involved with consultations with Federal action agencies related to this action.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because there are no energy facilities within the footprint of the proposed critical habitat boundaries, and we are unaware of energy projects currently proposed within the boundaries, we do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

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.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector,

and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments. The lands we are proposing for critical habitat designation are predominantly owned by the U.S. Forest Service, Bureau of Land Management, and State of Arizona. None of these government entities fit the definition of ''small governmental jurisdiction.'' Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. Due to current public knowledge of the species' protections and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values would be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a takings implication assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Arizona and New Mexico. The designation of critical habitat in areas currently occupied by the jaguar may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the jaguar within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose 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.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to

prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of jaguar, under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

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:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) 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 numbers 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.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

There are tribal lands in Arizona included in this proposed designation of critical habitat. Using the criteria found in the *Criteria Used To Identify Critical Habitat* section, we have determined that there are tribal lands that were occupied by jaguar at the time of listing that contain the features essential for the conservation of the species, as well as tribal lands unoccupied by the species at the time of listing that are essential for the conservation of the jaguar in the United States. We will seek government-to-government consultation with these tribes throughout the public comment period and during development of the final designation of jaguar critical habitat. We will consider these areas for exclusion from the final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act. The Tohono O'odham Nation (TON) is the main tribe affected by this proposed rule. We recently sent a notification letter to the TON describing the exclusion process under section 4(b)(2) of the Act, and we have engaged in conversations with the TON about the proposal to the extent possible without disclosing pre-decisional information. In addition, the TON has a representative on the Jaguar Recovery Team and so the tribe has been aware that the Service was working on a critical habitat proposal. We will schedule a meeting with the TON and any other interested tribes shortly after publication of this proposed rule so that we can give them as much time as possible to comment. We will also send letters to all other tribes with interest in the general geographic area of the jaguar's range, including the following: Gila River Indian Community; Salt River-Maricopa Indian Community; Ak Chin Indian Community; San Carlos Apache Nation; Hopi Tribe; Pascua Yaqui Tribe; Mescalero Apache Tribe; and Yavapai-Apache Nation.

References Cited

A complete list of references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Arizona Ecological Services Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to 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.

2. Amend § 17.11(h) by revising the entry for ''Jaguar'' under ''Mammals'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Jaguar	*Panthera onca*	U.S.A. (AZ, CA, LA, NM, TX) Mexico, Central and South America.	Entire	E	5, 622	17.95(a)	NA
*	*	*	*	*	*		*

3. In § 17.95, amend paragraph (a) by adding an entry for ''Jaguar (*Panthera onca*),'' in the same alphabetical order that the species appears in the table at § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(a) *Mammals.*

* * * * *

Jaguar (*Panthera onca*)

(1) Critical habitat units are depicted for Pima, Santa Cruz, and Cochise Counties, Arizona, and Hidalgo County, New Mexico, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological feature essential to the conservation of jaguar consists of expansive open spaces in the southwestern United States of at least 84 to 100 square kilometers (32 to 37 square miles) in size which:

(i) Provide connectivity to Mexico;

(ii) Contain adequate levels of native prey species, including deer and javelina, as well as medium-sized prey such as coatis, skunks, raccoons, or jackrabbits;

(iii) Include surface water sources available within 20 km (12.4 mi) of each other;

(iv) Contain 3 to 40 percent canopy cover within Madrean evergreen woodland, generally recognized by a mixture of oak, juniper, and pine trees on the landscape, or semidesert grassland vegetation communities, usually characterized by *Pleuraphis mutica* (tobosagrass) or *Bouteloua eriopoda* (black grama) along with other grasses;

(v) Are characterized by intermediately, moderately, or highly rugged terrain; and

(vi) Are characterized by minimal to no human population density, no major roads, or no stable nighttime lighting over any 1-square-kilometer (0.4-square-mile) area.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) Critical habitat map units. Digital data layers defining map units were created using hydrography data, vegetation biomes, tree cover, terrain ruggedness, Human Influence Index (HII) (see ''Habitats Protected from Disturbance or Representative of the Historical, Geographic, and Ecological Distributions of the Species,'' above), and undisputed Class I jaguar records from 1962 to the present, and were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) Index map follows:

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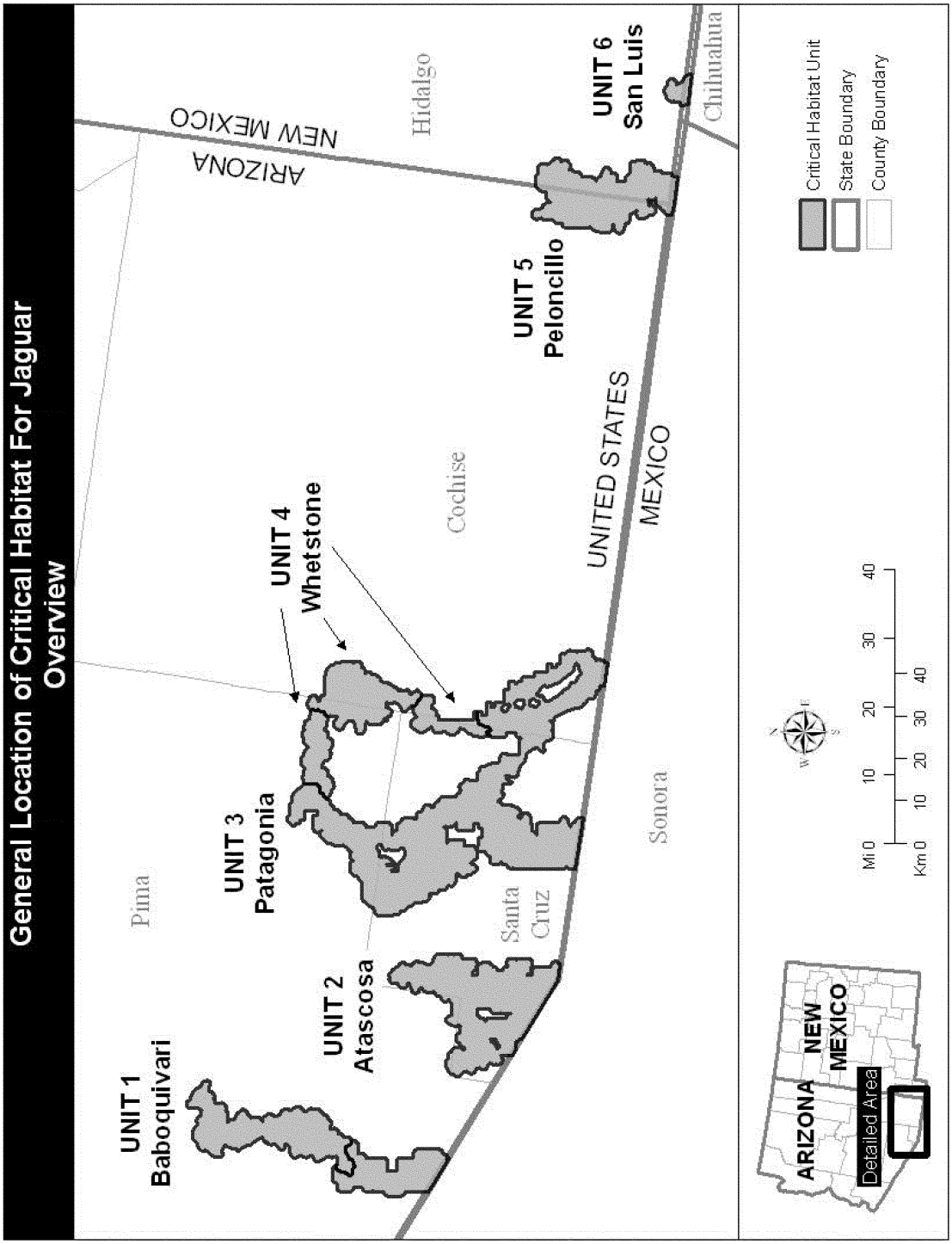
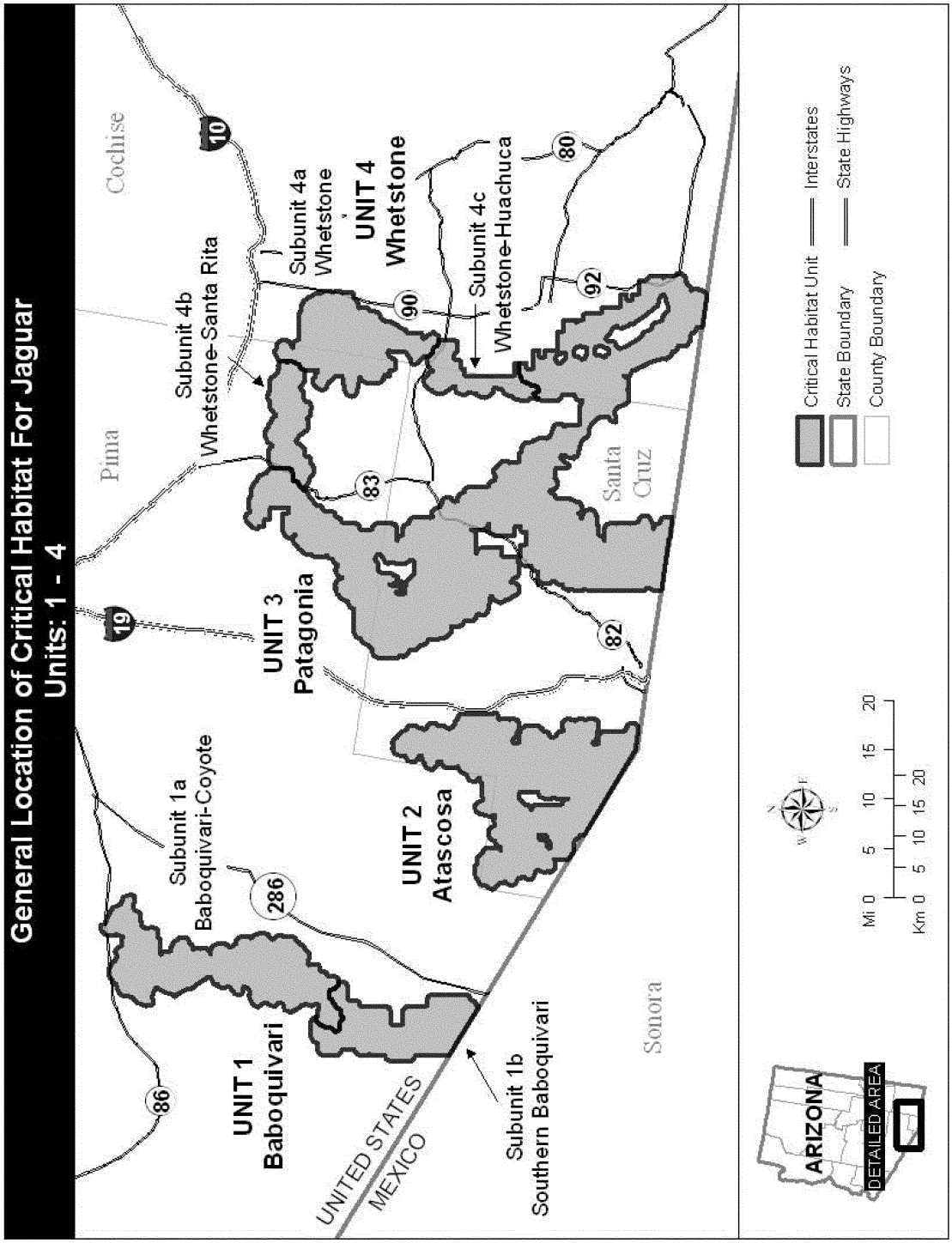


(6) Units 1, 2, 3, and 4: Baboquivari, Atascosa, Patagonia, and Whetstone Units, Pima, Santa Cruz, and Cochise Counties, Arizona.

(i) From USGS 1:24,000 scale digital ortho-photo quarter-quadrangles: Aguirre Peak NE; Aguirre Peak NW; Aguirre Peak SE; Aguirre Peak SW; Alamo Spring NE; Amado SW; Apache Peak NE; Apache Peak NW; Apache Peak SE; Apache Peak SW; Arivaca SE; Arivaca SW; Baboquivari Peak NE; Baboquivari Peak NW; Baboquivari Peak SE; Baboquivari Peak SW; Bartlett Mountain NE; Bartlett Mountain NW; Bartlett Mountain SE; Bartlett Mountain SW; Benson SW; Bob Thompson Peak NW; Canelo Pass NE; Canelo Pass NW; Caponera Peak NE; Caponera Peak NW; Caponera Peak SE; Chiuli Shaik NE; Chiuli Shaik SE; Corona de Tucson SE; Cumero Canyon NE; Cumero Canyon SE; Duchesne NE; Duchesne NW; Empire Ranch NE; Empire Ranch NW; Empire Ranch SW; Fort Huachuca SW; Green Valley SE; Green Valley SW; Haivana Nakya SE; Harshaw NE; Harshaw NW; Harshaw SE; Harshaw SW; Helvetia NE; Helvetia NW; Helvetia SE; Helvetia SW; Huachcua Peak NE; Huachcua Peak NW; Huachcua Peak SE; Huachcua Peak SW; Kino Springs NE; Kitt Peak NE; Kitt Peak NW; Kitt Peak SE; Kitt Peak SW; McGrew Spring NW; McGrew Spring SW; Mescal SE; Mescal SW; Mildred Peak NE; Mildred Peak

NW; Mildred Peak SW; Miller Peak NE; Miller Peak NW; Miller Peak SE; Miller Peak SW; Montezuma Pass NE; Montezuma Pass NW; Mount Fagan SE; Mount Fagan SW; Mt. Hopkins NE; Mt. Hopkins NW; Mt. Hopkins SE; Mt. Hopkins SW; Mt. Hughes NE; Mt. Hughes NW; Mt. Hughes SE; Mt. Hughes SW; Mt. Wrightson NE; Mt. Wrightson NW; Mt. Wrightson SE; Mt. Wrightson SW; Murphy Peak NE; Murphy Peak SE; Murphy Peak SW; Mustang Mountains NE; Mustang Mountains NW; Mustang Mountains SE; Mustang Mountains SW; Nicksville SW; O'Donnell Canyon NW; O'Donnell Canyon SE; O'Donnell Canyon SW; Pajarito Peak NE; Pajarito Peak NW; Palo Alto Ranch NW; Pan Tak SE; Pan Tak SW; Patagonia NE; Patagonia NW; Patagonia SE; Patagonia SW; Pena Blanca Lake NE; Pena Blanca Lake NW; Pena Blanca Lake SE; Pena Blanca Lake SW; Presumido Peak NW; Presumido Peak SE; Presumido Peak SW; Pyeatt Ranch NE; Pyeatt Ranch NW; Pyeatt Ranch SE; Pyeatt Ranch SW; Ruby NE; Ruby NW; Ruby SE; Ruby SW; San Cayento Mountains NE; San Juan Spring NE; San Juan Spring SE; San Pedro SW; Sasabe NW; Saucito Mountain SE; Sonoita NW; Sonoita SE; Sonoita SW; Spring Water Canyon NE; Spring Water Canyon NW; Spring Water Canyon SE; The Narrows SE; The Narrows SW; Tubac NE; Tubac NW; Tubac SE; Tubac SW; Arizona.

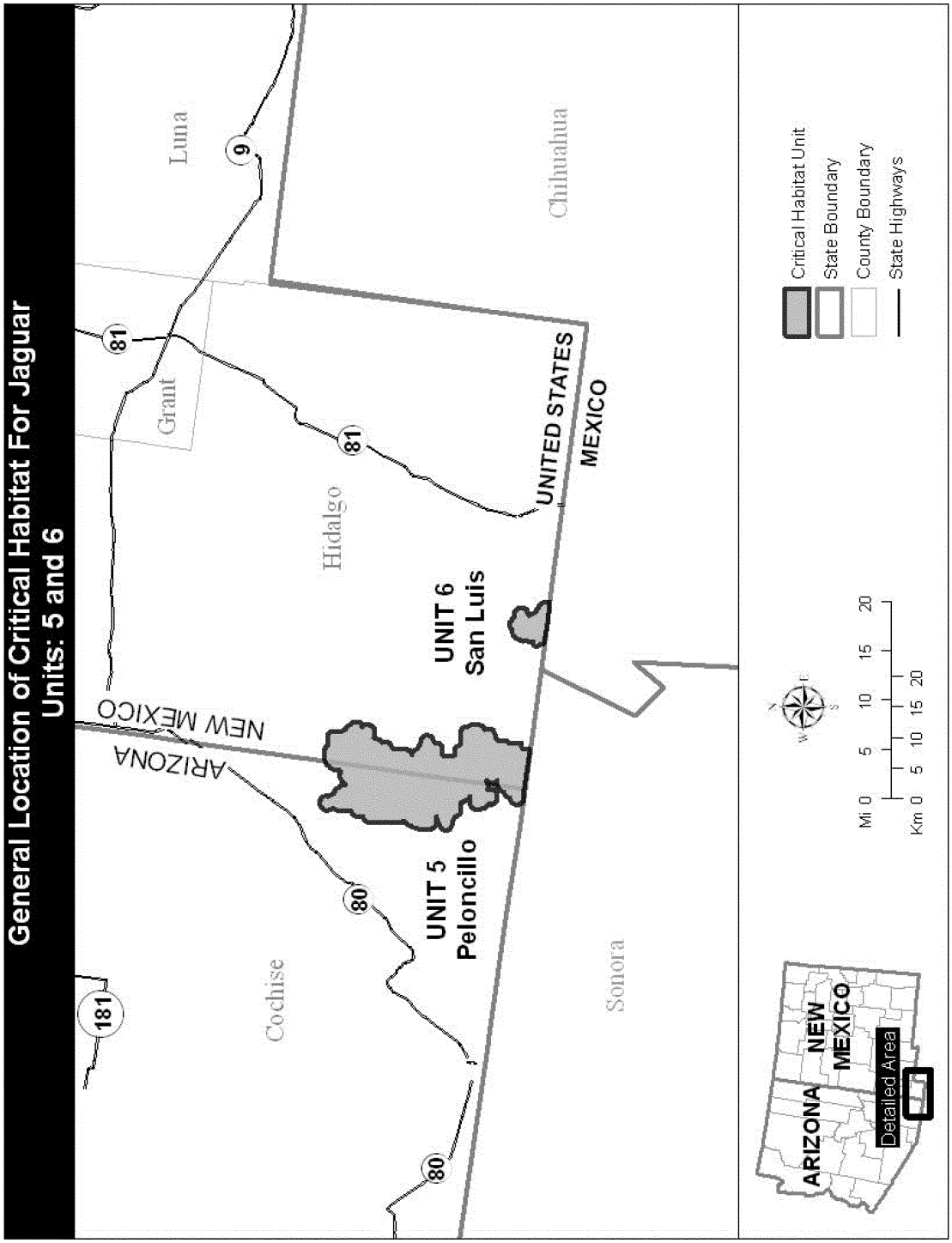
(ii) Map of Units 1, 2, 3, and 4 follows:



(7) Units 5 and 6: Peloncillo and San Luis Units, Cochise County, Arizona, and Hidalgo County, New Mexico.

(i) From USGS 1:24,000 scale digital ortho-photo quarter-quadrangles: Black Point NW; Black Point SW; Clanton Draw NW; Clanton Draw SW; Fitzpatricks SE; Guadalupe Canyon NE; Guadalupe Canyon NW; Guadalupe Pass NW; Guadalupe Spring NE; Guadalupe Spring NW; Guadalupe Spring SE; Guadalupe Spring SW; Lang Canyon NE; Lazy J Ranch NE; Lazy J Ranch SE; Paramore Crater NE; Paramore Crater SE; San Luis Pass SW; Skeleton Canyon NE; Skeleton Canyon NW; Skeleton Canyon SE; Skeleton Canyon SW; Whitewater Creek NW; Arizona and New Mexico.

(ii) Map of Units 5 and 6 follows:



* * * * *

Dated: August 2, 2012.

Eileen Sobeck,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–19950 Filed 8–17–12; 8:45 am]

BILLING CODE 4310–55–C

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Part III

Bureau of Consumer Financial Protection

12 CFR Part 1005

Electronic Fund Transfers (Regulation E); Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

[Docket No. CFPB–2011–0009]

RIN 3170–AA15

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule; official interpretation.

SUMMARY: The Bureau of Consumer Financial Protection is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official interpretation to the regulation, which interprets the requirements of Regulation E. The final rule modifies a final rule published in February 2012 implementing section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act regarding remittance transfers. The final rule adopts a safe harbor with respect to the phrase ''normal course of business'' in the definition of ''remittance transfer provider,'' which determines whether a person is covered by the rule. The final rule also revises several aspects of the February 2012 final rule regarding remittance transfers that are scheduled before the date of transfer, including preauthorized remittance transfers.

DATES: This rule is effective February 7, 2013.

FOR FURTHER INFORMATION CONTACT: Eric Goldberg, Counsel, or Andrea Edmonds or Dana Miller, Senior Counsels, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552, at (202) 435–7700.

SUPPLEMENTARY INFORMATION:

I. Overview

Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] amended the Electronic Fund Transfer Act (EFTA) to create a new comprehensive consumer protection regime for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. For covered transactions conducted by remittance transfer providers, the statute generally requires: (i) The provision of disclosures prior to and at the time of payment by the sender for the transfer; (ii) cancellation and refund rights; (iii) the investigation and remedy of errors by remittance transfer providers; and (iv) liability standards for remittance transfer providers for the acts of their agents. The Bureau of Consumer Financial Protection (Bureau) published a final rule on February 7, 2012, to implement section 1073 of the Dodd-Frank Act. 77 FR 6194, Feb. 7, 2012 (February Final Rule). The February Final Rule takes effect February 7, 2013. The Bureau concurrently published a proposed rule with request for public comment seeking comment on whether to provide additional safe harbors and flexibility in applying the February Final Rule to certain transactions and persons. 77 FR 6310, Feb. 7, 2012 (February Proposal).[2]

The February Proposal addressed two aspects of the February Final Rule. First, the Bureau proposed to adopt a safe harbor for determining whether a person is providing remittance transfers in the ''normal course of business,'' and thus is a ''remittance transfer provider.'' Second, it sought comment on possible refinements to disclosure and cancellation requirements for certain remittance transfers that are scheduled before the date of transfer, including ''preauthorized remittance transfers,'' which are authorized in advance to recur at substantially regular intervals. The Bureau noted that providing further clarification on these issues might reduce compliance burdens for remittance transfer providers and provide better disclosures and cancellation rights to consumers. The Bureau also stated that it expected to complete any further rulemaking on matters raised in the February Proposal on an expedited basis before the February 7, 2013 effective date for the February Final Rule.

The final rule adopts a safe harbor with respect to the phrase ''normal course of business'' in the definition of ''remittance transfer provider,'' which determines whether a person is covered by subpart B of Regulation E. The final rule states that if a person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, then the person is deemed not to be providing remittance transfers for a consumer in the normal course of its business. For a person that crosses the 100-transfer threshold, and is then providing remittance transfers for a consumer in the normal course of its business, the final rule permits a reasonable time period, not to exceed six months, to begin complying with subpart B of Regulation E.

The final rule also modifies several aspects of the February Final Rule regarding remittance transfers that are scheduled before the date of transfer, including preauthorized remittance transfers. First, when a sender schedules a one-time transfer or the first in a series of preauthorized remittance transfers five or more business days before the date of transfer, the final rule permits remittance transfer providers to estimate certain information in the pre-payment disclosure and the receipt provided when payment is made. If estimates are provided under this exception, the provider generally must give the sender an additional receipt with accurate figures after the transfer is made. With respect to subsequent preauthorized remittance transfers, the final rule generally eliminates the requirement that a remittance transfer provider mail or deliver a pre-payment disclosure for each subsequent transfer, unless certain specified information has changed. However, the final rule generally requires a remittance transfer provider to provide accurate receipts after subsequent transfers are made.

The final rule also modifies the February Final Rule in several respects with regard to the disclosure requirements for remittance transfers scheduled at least three business days before the date of transfer and for preauthorized remittance transfers. The final rule generally requires disclosure of the date of transfer on the initial receipt and on any subsequent receipts provided with respect to a particular transfer. For subsequent preauthorized remittance transfers, the final rule also requires the remittance transfer provider to disclose the future date or dates the remittance transfer provider will execute subsequent transfers in the series; in most cases, the final rule offers some flexibility in how such disclosures can be made.

As noted in the February Final Rule, the Bureau intends to continue working with consumers, industry, and other regulators in the coming months regarding implementation issues. In the near future, the Bureau expects to release a small business compliance guide and a list of countries that providers may rely on for purposes of

[1] Public Law 111–203, 124 Stat. 1376, section 1073 (2010).

[2] The Bureau issued the February Final Rule and the February Proposal on January 20, 2012. Consequently, when referencing the final rule, the February Proposal used the term ''January 2012 Final Rule.'' That term is being replaced in today's rule with ''February Final Rule'' to reflect the date the rule was published in the Federal Register (*i.e.,* February 7, 2012). Similarly, the term ''February Proposal'' is being used here in place of the term ''January 2012 Proposed Rule,'' which was used in the February Final Rule. Additionally, a technical correction to the February Final Rule was published on July 10, 2012. 77 FR 40459. For simplicity, that technical correction is incorporated into the term ''February Final Rule.''

determining whether estimates may be provided under certain circumstances. The Bureau also expects to conduct a public awareness campaign to educate consumers about the new disclosures and their other rights under the Dodd-Frank Act with respect to remittance transfers.

II. Background

A. Summary of February Final Rule

The February Final Rule imposes on remittance transfer providers new disclosure, error resolution, and other substantive requirements relating to remittance transfers. These requirements are set forth in subpart B of Regulation E. Consistent with the statute, the February Final Rule provides that the term remittance transfer provider means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. 12 CFR 1005.30(f). The February Final Rule provides guidance in the commentary indicating that whether a person provides remittance transfers in the ''normal course of business'' will be evaluated based on the facts and circumstances, and does not set forth a numerical threshold.

Among other requirements, the February Final Rule imposes several new disclosure requirements on remittance transfer providers. First, the rule generally requires a remittance transfer provider to provide a written pre-payment disclosure to a sender containing information about the specific transfer requested by the sender, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient. Second, the provider also must provide a written receipt when payment is made for the transfer. The receipt must include the information provided on the pre-payment disclosure, as well as additional information such as the date of availability of the funds, the designated recipient's contact information, and information regarding the sender's error resolution and cancellation rights. Consistent with the statute, which permits remittance transfer providers to provide estimates only in two narrow circumstances, the February Final Rule generally requires that disclosures state the actual exchange rate that will apply to a remittance transfer and the actual amount that will be received by the designated recipient of a remittance transfer.

The February Final Rule also sets forth special requirements for the timing and accuracy of disclosures with respect to ''preauthorized remittance transfers,'' which are defined as remittance transfers authorized in advance to recur at substantially regular intervals. As discussed in the February Final Rule, 77 FR 6194, 6267, the Bureau recognizes that the market for preauthorized remittance transfers is still developing.

The February Final Rule differentiates between the first and subsequent transfers in a series of preauthorized remittance transfers. The first transfer in a series is treated the same as other standalone remittance transfers. Accordingly, the February Final Rule requires, for the first transaction in a series of preauthorized remittance transfers, that the provider provide a pre-payment disclosure at the time the sender requests the transfer and a receipt at the time payment for the transfer is made, which the commentary explains means when payment is authorized. In addition, the disclosures must be accurate as of when the payment for the transfer is made, unless a statutory exception applies.

However, recognizing the potential risks to providers associated with setting exchange rates and determining the amount to be provided to a designated recipient weeks or months before any subsequent transfer, and the potentially limited utility to consumers of information provided far in advance, the February Final Rule does not require that disclosures for the entire series of preauthorized remittance transfers be provided at the time of the sender's initial request and payment authorization. Rather, the February Final Rule requires providers to issue pre-payment disclosures and receipts for each subsequent transfer near the date of the individual transfer. Specifically, the pre-payment disclosure for each subsequent transfer must be provided within a reasonable time prior to the scheduled date of the transfer. The receipt for each subsequent transfer generally must be provided no later than one business day after the date on which the transfer is made.

Finally, the February Final Rule also provides senders specified cancellation and refund rights. Under the rule, a sender generally has 30 minutes after payment is made to cancel a remittance transfer. The February Final Rule, however, contains special cancellation procedures for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, including preauthorized remittance transfers. In such case, the provider would be required to cancel the remittance transfer if it received a request to cancel the transfer from the sender at least three business days before the date of the transfer.

B. Summary of the February Proposal

Concurrent with the February Final Rule, the Bureau issued a proposed rule that sought comment on two aspects of the February Final Rule. First, the Bureau proposed to adopt in commentary a safe harbor clarifying when certain persons are excluded from the statutory scheme because they do not provide remittance transfers in the normal course of business. Second, the February Proposal sought comment on a possible safe harbor and other refinements to the disclosure and cancellation requirements for remittance transfers that are scheduled before the date of the transfer, including preauthorized remittance transfers. The Bureau indicated that these proposed amendments to the February Final Rule may reduce compliance burden for providers and allow for better disclosure and cancellation rights for senders. The Bureau stated its belief that these issues would benefit from further public comment.

Regarding the first aspect of the February Proposal, the Bureau sought comment on a proposed safe harbor interpreting the phrase ''normal course of business.'' The Bureau proposed commentary stating that if a person made no more than 25 remittance transfers in the previous calendar year, the person does not provide remittance transfers in the normal course of business during the current calendar year if it provides no more than 25 remittance transfers in that year. The Bureau also specifically solicited comment on whether, if such a safe harbor is appropriate, the threshold number should be higher or lower than 25 remittance transfers, such as 10 or 50 transfers, or some other number.

Regarding the second aspect of the February Proposal, the Bureau sought comment on refinements to the disclosure and cancellation requirements for remittance transfers that are scheduled before the date of transfer, including preauthorized remittance transfers. Specifically, the February Proposal solicited comment on whether estimates should be permitted to be disclosed in the pre-payment disclosure and receipt given at the time the transfer is requested and authorized when: (i) A consumer schedules a one-time transfer or the first in a series of preauthorized remittance transfers more than ten days in advance; or (ii) a consumer enters into an agreement for preauthorized remittance transfers under which the amount of the transfers can vary and the provider does not

know the exact amount of the first transfer at the time the disclosures for that transfer are given. The February Proposal further requested comment on whether a remittance transfer provider that uses estimates in the two situations described above should be required to provide a second receipt with accurate information within a reasonable time closer to the scheduled date of the transfer. In addition, the February Proposal sought comment on whether the second receipt should be provided to senders ten days before the date of the transfer or whether the period should be longer or shorter.

The February Proposal also solicited comment on possible refinements to the disclosure provisions applicable to subsequent preauthorized remittance transfers. For example, the Bureau sought comment on two alternative approaches to the disclosure provisions for subsequent preauthorized remittance transfers: (i) Whether the Bureau should retain the requirement that a remittance transfer provider provide a pre-payment disclosure for each subsequent transfer and provide a safe harbor for what constitutes ''a reasonable time'' for providing this disclosure; or (ii) whether the Bureau should eliminate the requirement to provide a pre-payment disclosure for each subsequent transfer.

The February Proposal also sought comment on possible changes to the cancellation requirements for remittance transfers that are scheduled before the date of the transfer, including preauthorized remittance transfers. The February Proposal solicited comment on whether the three-business-day period for canceling such remittances transfers adopted in the February Final Rule is appropriate, or whether the rule should require a deadline to cancel these transfer that is more or less than three business days. Further, the February Proposal solicited comment on three issues related to the disclosure of the deadline to cancel as set forth in the February Final Rule: first, whether the three-business-day deadline to cancel transfers scheduled before the date of transfer should be disclosed to senders, such as by requiring a remittance transfer provider to disclose in the receipt the specific date on which the right to cancel will expire; second, whether a remittance transfer provider should be allowed to describe both the three-business-day and 30-minute deadline-to-cancel time frames on a single receipt and either describe the transfers to which each deadline is applicable, or alternatively, use a checkbox or other method to designate which deadline is applicable to the transfer to which the receipt relates; third, whether the disclosure of the deadline to cancel should be disclosed in the pre-payment disclosure, rather than in the receipt, for each subsequent preauthorized remittance transfer.

C. Overview of Comments and Outreach

The Bureau received more than 50 comments on the proposed rule. The majority of comments were submitted by industry commenters, including depository institutions, credit unions, a money transmitter, and industry trade associations. In addition, letters were submitted by individual consumers, consumer groups, and an association of state banking regulators.

Commenters generally supported, or did not oppose, clarifying the meaning of ''normal course of business'' with a safe harbor. Consumer group commenters supported the proposed threshold of 25 transfers per year. The majority of industry commenters argued that the proposed safe harbor threshold was insufficient and suggested higher numerical thresholds, ranging from 50 remittance transfers annually to 25 transfers daily. Some industry commenters suggested alternative benchmarks for the safe harbor, including tests based on a percentage of an entity's revenues or transactions processed. A number of industry commenters stated that they or others would cease to offer remittance transfers if they did not qualify for the safe harbor. Some commenters also suggested changes in how any safe harbor was implemented, such as that the Bureau should provide time for an entity to come into compliance if the entity becomes a remittance transfer provider once the safe harbor threshold is exceeded.

Commenters also generally supported revisions to the February Final Rule regarding remittance transfers that are scheduled before the date of the transfer. Commenters generally supported providing additional flexibility in disclosure requirements and expanding the use of estimates in order to reduce risks and costs that might be passed through to senders. Industry commenters cited various operational and financial challenges, as well as legal risks, associated with disclosing an accurate exchange rate for a future transfer. (Although the February Proposal asked about estimates for one-time transfers or the first in a series of preauthorized remittance transfers, most commenters addressed the use of estimates generally for any transfer scheduled before the date of such transfer.) Some industry commenters argued that small remittance transfer providers in particular would not have the scale or expertise to create the risk management practices necessary to comply. Other industry commenters expressed concern about the potential for behavior by consumers that would increase providers' exposure to foreign exchange risk in light of the February Final Rule's three-business-day cancellation period for transfers scheduled before the date of the transfer. Thus, these commenters supported permitting estimates in pre-payment disclosures and receipts provided for remittance transfers scheduled before the date of transfer. Separately, some commenters thought the Bureau should allow providers, *in lieu* of (or in addition to) providing an estimate of the exchange rate on a disclosure for a transfer scheduled before the date of the transfer, to disclose the formula the provider will use to calculate the exchange rate that will apply to a transfer.

For similar reasons, industry commenters further stated that the proposed ten-day period after which estimates would not be permitted was too long, and should be shortened. Industry commenters suggested shorter time periods ranging from one to seven business days. Several industry commenters suggested that, even if estimates were permitted, remittance transfer providers might respond to the requirement to provide accurate disclosures for other one-time transfers scheduled before the date of the transfer or initial transfers in series of preauthorized remittance transfers scheduled in advance by only offering same-day remittance transfers, or remittance transfers scheduled ten or more days before the date of the transfer.

Consumer group commenters agreed that the use of estimates in disclosures may be appropriate for the first remittance transfers in series of preauthorized remittance transfers, but stated that if remittance transfer providers were allowed to use estimates in disclosures for such transfers, senders should be informed they would not receive actual notice of the price of the transfer or of the amount to be received by the designated recipient during the periods when the senders can cancel the transfers. Alternatively, consumer group commenters suggested requiring providers to later give senders disclosures for such transfers that include accurate information about any amounts previously estimated.

Industry commenters urged the Bureau to eliminate the requirement to provide pre-payment disclosures a reasonable time prior to each subsequent preauthorized remittance

transfer. Commenters stated that such disclosures could cause consumer confusion in cases where senders receive pre-payment disclosures in close proximity to receipts for previous preauthorized remittance transfers. Further, industry commenters argued that many senders scheduling preauthorized remittance transfers are more concerned with the convenience allowed by the scheduling of transfers before the date of the transfer and having transfers made on time than with comparison shopping with pre-payment disclosures for each transfer. Thus, these commenters stated that the cost of providing pre-payment disclosures would outweigh any potential consumer benefit. Industry commenters also stated that if the requirement to provide updated pre-payment disclosures was not eliminated, the Bureau should permit estimates to be provided in those disclosures. Consumer group commenters stated that the Bureau should maintain the requirement to provide pre-payment disclosures before all subsequent preauthorized remittance transfers, but while allowing providers to provide estimates in those disclosures. These commenters also supported the Bureau's proposal that ten days before the date of transfer constitute a ''reasonable time.''

Most industry commenters argued that three business days is an appropriate time period for a sender to cancel a remittance transfer that is scheduled at least three business days before the date of the transfer. Some industry commenters conditioned their support for the three-business-day cancellation period on whether a remittance transfer provider would be required to disclose to the sender the exchange rate that would apply to a transfer scheduled more than three business days before the date of such transfer. One commenter suggested that the Bureau adopt a five-business-day cancellation deadline in lieu of the three-business-day deadline adopted in the February Final Rule.

With respect to the content and format of disclosures related to the cancellation period, most industry commenters argued against requiring that remittance transfer providers disclose the specific cancellation deadline in the receipt provided to a sender for a remittance transfer scheduled more than three business days before the date of the transfer. One commenter asserted that requiring disclosure of the specific cancellation deadline would create significant technical challenges for service providers. Commenters, however, generally supported the proposal to permit remittance transfer providers that provide both transfers scheduled at least three business days before and transfers less than three business days before the date of the transfer to include both the 30-minute and three-business-day cancellation periods in their receipts along with a checkbox or other method that allows the provider to designate which cancellation period is applicable to the transfer at issue.

The Bureau received few comments in response to its inquiry regarding disclosure of cancellation requirements for subsequent preauthorized remittance transfers. Among those received, there was little consensus regarding how cancellation rights for subsequent transfers should be disclosed. Some commenters asserted that the cancellation provision should be included on the pre-payment disclosure and one industry commenter supported including it on the receipt.

In addition to the comments received on the February Proposal, Bureau staff conducted outreach with various parties to gather more data regarding issues discussed in the proposal or raised in comments. Records of these outreach conversations are reflected in *ex parte* submissions included in the rulemaking record (accessible by searching by the docket number associated with this final rule at www.regulations.gov).

III. Summary of the Final Rule

A. Normal Course of Business

The final rule provides a new safe harbor clarifying when a person provides remittance transfers in the normal course of business for purposes of determining whether a person falls under the definition of ''remittance transfer provider.'' The proposed safe harbor was located in the commentary; the final safe harbor is included in regulatory text, with further guidance in the commentary. As adopted, the final rule states that if a person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, then the person is deemed not to be providing remittance transfers for a consumer in the normal course of its business. For a person that crosses the 100-transfer threshold, and is then providing remittance transfers for a consumer in the normal course of its business, the final rule permits a reasonable time period, not to exceed six months, to begin complying with subpart B of Regulation E.

B. Disclosure Rules for Remittance Transfers Scheduled Before the Date of Transfer

The final rule modifies the February Final Rule with respect to remittance transfers that are scheduled before the date of transfer, including preauthorized remittance transfers. First, when a sender schedules a one-time transfer or the first in a series of preauthorized remittance transfers five or more business days before the date of transfer, the final rule permits remittance transfer providers to estimate certain information in the pre-payment disclosure and the receipt provided when payment is made. If a provider gives disclosures that include estimates under this exception, the final rule also requires that the provider give the sender an additional receipt with accurate figures (unless a statutory exception applies), which generally must be provided no later than one business day after the date on which the transfer is made.

Second, with respect to subsequent preauthorized remittance transfers, the final rule eliminates the requirement that a remittance transfer provider mail or deliver a pre-payment disclosure for each subsequent transfer. A receipt must be sent, however, a reasonable time prior to the transfer if certain disclosed information is changed from what was disclosed regarding the first preauthorized remittance transfer. This receipt may also contain estimates. If estimates are provided or no update is necessary, the final rule also requires a remittance transfer provider to give an accurate receipt to a sender after a transfer is made.

C. Cancellation Period and Disclosures

The final rule modifies the February Final Rule in several respects with regard to the disclosure requirements for remittance transfers scheduled at least three business days before the date of transfer and for preauthorized remittance transfers. First, the final rule requires a remittance transfer provider to disclose the date of transfer in the receipt provided when payment is made with respect to remittance transfers scheduled at least three business days before the date of the transfer and the initial transfer in a series of preauthorized transfers. The transfer date for a given transfer is also required to be disclosed on any subsequent receipts provided with respect to that transfer. The transfer date will enable a sender to identify the transfer to which the receipt pertains, and, when received prior to the date of the transfer,

generally calculate the date on which the right to cancel will expire.

Second, for subsequent preauthorized remittance transfers, the final rule requires the remittance transfer provider to disclose the date or dates on which the provider will make those subsequent transfers in the series, with certain other information. The final rule provides providers some flexibility in how they may make these disclosures to senders. However, for subsequent preauthorized remittance transfers for which the date of transfer is four or fewer business days after payment is made for the transfer, the final rule requires disclosure of future dates of transfer in the receipt provided for the first transfer in the series.

Finally, the final rule also permits providers to describe on a receipt both the three-business-day and 30-minute cancellation periods and either describe the transfers to which each deadline applies, or alternatively, use a checkbox or other method to designate which cancellation period is applicable to the transfer. The final rule does not change the three-business-day cancellation period for these transfers.

IV. Legal Authority

Section 1073 of the Dodd-Frank Act creates a new section 919 of the EFTA and requires remittance transfer providers to provide disclosures to senders of remittance transfers, pursuant to rules prescribed by the Bureau. In particular, providers must give a sender a written pre-payment disclosure containing specified information applicable to the sender's remittance transfer. The remittance transfer provider must also provide a written receipt that includes the information provided on the pre-payment disclosure, as well as additional specified information. EFTA section 919(a).

In addition, EFTA section 919(d) directs the Bureau to promulgate rules regarding appropriate cancellation and refund policies. Except as described below, the final rule is adopted under the authority provided to the Bureau in EFTA section 919, and as more specifically described in this **SUPPLEMENTARY INFORMATION**.

In addition to the statutory mandates set forth in the Dodd-Frank Act, EFTA section 904(a) authorizes the Bureau to prescribe regulations necessary to carry out the purposes of the title. The express purposes of the EFTA, as amended by the Dodd-Frank Act, are to establish ''the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems'' and to provide ''individual consumer rights.'' EFTA section 902(b). EFTA section 904(c) further provides that regulations prescribed by the Bureau may contain any classifications, differentiations, or other provisions, and may provide for such adjustments or exceptions for any class of electronic fund transfers or remittance transfers that the Bureau deems necessary or proper to effectuate the purposes of the title, to prevent circumvention or evasion, or to facilitate compliance.

As described in more detail below, the provisions adopted in the final rule in part or in whole pursuant to the Bureau's authority in EFTA sections 904(a) and 904(c)[3] include §§ 1005.30(f)(2)(ii), 1005.32(b)(2), 1005.36(a), 1005.36(b) and 1005.36(d).[4] The provisions adopted in whole or in part pursuant to the Bureau's authority in EFTA section 919(a)(5)(A) include § 1005.31(a)(3)(iv) and (a)(5)(iv).

V. Section-by-Section Analysis

Section 1005.30 Remittance Transfer Definitions

30(f) Definition of Remittance Transfer Provider

Overview

Section 1005.30(f) of the February Final Rule and the accompanying commentary implement the definition of the term ''remittance transfer provider'' in EFTA section 919(g)(3). Section 1005.30(f) states that a ''remittance transfer provider'' means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person. A remittance transfer provider is required to comply with subpart B of Regulation E relating to remittance transfers.

As adopted in the February Final Rule, comment 30(f)–2 provides guidance interpreting the phrase ''normal course of business'' as used in the definition of remittance transfer provider. Specifically, comment 30(f)–2 to the February Final Rule states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. Comment 30(f)–2 also sets forth illustrative examples.

To provide clearer guidance on whether a person provides remittance transfers in the normal course of business, the Bureau proposed to add to comment 30(f)–2 an express safe harbor further interpreting the phrase ''normal course of business.'' The proposed safe harbor was based on the number of remittance transfers that a person provides. Proposed comment 30(f)–2 stated that if a person provided no more than 25 remittance transfers in the previous calendar year, the person does not provide remittance transfers in the normal course of business for the current calendar year if it provides no more than 25 remittance transfers in that year. The proposed comment clarified, however, that if that person makes a 26th remittance transfer in the current calendar year, the person would be evaluated under the facts and circumstances test to determine whether the person is a remittance transfer provider for that transfer and any other transfers provided through the rest of the year.

The Bureau solicited comment on the proposal to adopt a safe harbor interpreting the term ''normal course of business.'' The Bureau also specifically solicited comment on whether, if such a safe harbor is appropriate, the threshold number should be higher or lower than 25 remittance transfers, such as 10 or 50 transfers, or some other number.

Commenters generally supported or did not oppose clarifying the meaning of ''normal course of business'' with a safe harbor. Consumer group commenters supported the proposed threshold of 25 transfers per year. Some industry commenters proposed that any safe harbor be based on criteria other than or in addition to the number of transfers provided per year. Furthermore, most industry commenters argued that if the Bureau adopts a safe harbor based on the number of remittance transfers provided per year, that the Bureau should use a threshold number that is higher (and in some cases significantly higher) than 25 transfers per year. Finally, some commenters suggested changes in how any safe harbor would be implemented, such as that the Bureau should provide time for an entity to come into compliance if the person becomes a remittance transfer provider once the safe harbor threshold

[3] Throughout this **SUPPLEMENTARY INFORMATION**, the Bureau is citing its authority under both EFTA section 904(a) and EFTA section 904(c) for purposes of simplicity. The Bureau notes, however, that with respect to some of the provisions referenced in the text, use of only EFTA section 904(a) is needed.

[4] The consultation and economic impact analysis requirement previously contained in EFTA sections 904(a)(1)–(a)(4) were not amended to apply to the Bureau. Nevertheless, the Bureau consulted with the appropriate prudential regulators and other Federal agencies and considered the potential benefits, costs, and impacts of the rule to consumers and covered persons as required under section 1022 of the Dodd-Frank Act, and through these processes would have satisfied the requirements of these EFTA provisions if they had been applicable.

is exceeded. These comments are discussed in more detail below.

Regulatory Text

Consumer group commenters suggested that if the Bureau adopted a safe harbor related to the term ''normal course of business,'' that the safe harbor be included in the text of subpart B to Regulation E rather than in the commentary to the rule in order to help consumers understand when the protections in subpart B of Regulation E will apply to their transactions. Upon further consideration, the Bureau believes that, for clarity, it is appropriate to include the safe harbor regarding the phrase ''normal course of business'' in the text of subpart B of Regulation E. Consequently, the Bureau redesignates former § 1005.30(f) as § 1005.30(f)(1), and adopts § 1005.30(f)(2)(i), which creates the new safe harbor described below. New § 1005.30(f)(2)(ii) also creates a new transition period, described below. Revised comment 30(f)–2 provides interpretive guidance and illustrative examples.

Facts and Circumstances

Comment 30(f)–2 to the February Final Rule states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. The Bureau did not propose any modification to this guidance. However, one consumer group commenter suggested a rewording of the proposed safe harbor that would mean that any person who does not qualify for the safe harbor should be subject to the requirements of subpart B of Regulation E, regardless of the facts and circumstances. Furthermore, some commenters appeared to misunderstand the relevance of the Bureau's guidance in proposed comment 30(f)–2 regarding persons that do not qualify for the safe harbor.

Comment 30(f)–2 to the February Final Rule is renumbered and adopted with several non-substantive edits for clarity, and one minor modification, as comment 30(f)–2.i to the final rule. The modification is necessary because as discussed below, the final rule adopts a safe harbor similar to the safe harbor in proposed comment 30(f)–2, but, among other things, increases the threshold for that safe harbor from 25 to 100 remittance transfers per calendar year. For conformity, the Bureau has changed its guidance regarding a person that provides remittance transfers in the normal course of business. Final comment 30(f)–2.i interprets the phrase ''normal course of business'' to include a financial institution that makes remittance transfers generally available to customers and makes such transfers ''many'' times per month. Comment 30(f)–2 in the February Final Rule uses the term ''multiple'' rather than ''many.'' The Bureau believes that the term ''many'' is more consistent with the language and approach in the safe harbor as adopted.

A Safe Harbor Based on the Number of Remittance Transfers Provided

Though most commenters did not oppose a safe harbor based on the number of remittance transfers provided, several industry commenters urged the Bureau to create a safe harbor based on other criteria. Some industry commenters suggested that a safe harbor be based on qualitative criteria, such as whether or not persons hold themselves out to be remittance transfer providers. Alternatively, some industry commenters suggested that the safe harbor apply to some or all financial institutions with less than $10 billion in assets, and other industry commenters suggested that the Bureau look to measures of the relative size of a person's remittance transfer business, such as the percent of a person's total transactions that are remittance transfers, or the percent of a person's revenue or net income that is earned from such transfers. Some industry commenters suggested the Bureau define a safe harbor based on these relative size measures alone, while others suggested that the relative size measures should apply only to certain entities or business models, or that entities should qualify for the safe harbor if they satisfy either of two alternative thresholds, such as the number of remittance transfers provided and a relative size measure. For example, one industry commenter suggested a safe harbor that would exclude from coverage of subpart B of Regulation E credit unions that (a) rely on unrelated third parties to send remittance transfers, and do not provide remittance transfers as their primary business, as long as (b) such transfers account for 30 percent or less of the credit unions' total revenues. In general, commenters suggesting relative size thresholds supported such measures because they would take into account the size of a person's overall business, or because the number of remittance transfers that a person provides may vary from year to year.

The final rule adds a safe harbor, which is described in new § 1005.30(f)(2)(i). The safe harbor in the final rule reflects several modifications to the proposed commentary included in the February Proposal, as well as several non-substantive edits for clarity. Similar to the proposed comment, the safe harbor in § 1005.30(f)(2)(i) is based on a single bright line threshold, the number of remittance transfers a person provides. It states that a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer remittance transfers in the current calendar year. Comment 30(f)–2.ii provides additional clarification. It states that a person that qualifies for the safe harbor in § 1005.30(f)(2)(i) is not a remittance transfer provider, and is thus not subject to the requirements of subpart B of Regulation E. The comment also clarifies that for the purposes of determining whether a person qualifies for the safe harbor, the number of remittance transfers provided includes any transfers that are excluded from the definition of ''remittance transfer'' due simply to this safe harbor. In contrast, the number of remittance transfers provided in a calendar year does not include any transfers that are excluded from the definition of ''remittance transfer'' for reasons other than the safe harbor, such as the small value transactions and securities and commodities transfers that are excluded from the definition of ''remittance transfer'' by § 1005.30(e)(2).

As stated in the February Proposal, 77 FR 6310, 6314–15, the Bureau believes that a safe harbor can reduce compliance burden by increasing legal certainty in the market. Without a safe harbor, some persons who currently provide remittance transfers, or are contemplating doing so, may face uncertainty and litigation risk as to whether they meet the definition of ''remittance transfer provider'' when they provide a small number of transfers in a given year. Increased legal certainty may encourage some such persons to continue providing remittance transfers, when they might not otherwise be inclined to offer such products, due to concerns about legal uncertainty or the cost of compliance with subpart B of Regulation E.

However, the Bureau also recognizes that a safe harbor interpreting the phrase ''normal course of business'' can limit the protections afforded to some consumers. The adoption of a numerical safe harbor may result in consumers not receiving the disclosures, error resolution, and other protections required by this rule in some instances

in which they might otherwise, because these consumers may be customers of persons who qualify for the safe harbor and, therefore, will have certainty that they are not ''remittance transfer providers'' for purposes of subpart B of Regulation E.

Based on these considerations, the Bureau believes that the safe harbor should be derived from the phrase ''normal course of business,'' should provide substantial certainty to potential providers, and should be limited in scope so as to preserve the benefits of the statutory protections as intended by Congress. The Bureau believes that a safe harbor will provide the most certainty if it is based on a bright-line measure that permits persons to identify easily whether or not they qualify.

In addition, the Bureau continues to believe that the provision of only a small number of remittance transfers per year is a reasonable basis for identifying persons that do not provide remittance transfers in the normal course of business. As explained in the February Proposal, 77 FR 6310, 6315, the Bureau believes that the inclusion of the phrase ''normal course of business'' in the statutory definition of ''remittance transfer provider'' was meant to exclude persons that provide remittance transfers on a limited basis. As a result, the fact that a person provides only a small number of remittance transfers can strongly indicate that the person is not providing such transfers in the normal course of its business. Furthermore, the number of transfers provided is an objective standard that is easy to apply and should provide substantial certainty to persons regarding whether or not they qualify for the safe harbor.[5]

The Bureau does not believe that it is appropriate, based on the current administrative record, to define a safe harbor based on asset size or a relative size measure such as percentage of revenue. Commenters did not provide, and the Bureau does not have, data suggesting, across the remittance transfer industry, why any of the specific asset size or relative size thresholds suggested by the comments would be an appropriate basis for defining normal course of business. Moreover, the Bureau is concerned that there may not be a measure of entity size that is currently used by all segments of the remittance transfer industry. While some providers, such as banks and credit unions, tend to measure their size in assets, in other segments of the remittance transfer market, revenues or some other aspect of a business may be a more widely used measure.

Additionally, the Bureau believes that due to the wide variety of business models for offering remittance transfers and lack of currently available data, it would be difficult to craft a single standalone measure of relative size for identifying persons who provide remittance transfers on only a limited basis. For example, a standalone revenue threshold might exclude from the rule's coverage both a person who makes few transfers, but at a high price, and a person who offers many more transfers for free or at a very low price, as a value-added service to its customers. The Bureau is concerned that many persons who fall into the latter category may, in fact, make remittance transfers generally available to customers and make many transfers each month.

The Bureau also believes that a safe harbor based on qualitative criteria could require fact-intensive determinations, and thus, unlike a bright-line threshold, would provide little additional clarity to the market. For instance, a safe harbor based on whether a person ''holds itself out'' as a remittance transfer provider would require context-specific evaluation similar to the evaluation of whether a person provides remittance transfers in the normal course of business based on the facts and circumstances, in accordance with the guidance in final comment 30(f)–2.i. Thus, such a safe harbor would not accomplish the goals of the February Proposal.

Size of Numerical Threshold

In proposing comment 30(f)–2, the Bureau suggested 25 transfers as a potential threshold, noting that the number would be consistent with the general threshold for coverage under the Bureau's Regulation Z, 12 CFR part 1026, which relates to credit transactions. Under Regulation Z, a creditor is defined as an entity that regularly extends consumer credit under specified circumstances. Generally, under Regulation Z, a person regularly extends consumer credit in the current calendar year when it either extended consumer credit more than 25 times in the preceding calendar year or more than 25 times in the current calendar year.[6] *See* § 1026.2(a)(17) and comment 2(a)(17)(i)–4.[7]

The Bureau received a number of comments regarding the appropriate threshold on which to base any safe harbor regarding the definition of ''normal course of business.'' Consumer group commenters supported the proposed threshold of 25 remittance transfers provided per year. In contrast, most industry commenters suggested a range of higher thresholds. For example, some commenters suggested thresholds based on annual transfer volumes ranging from 50 to 5,000 remittance transfers, or 1,000 remittance transfers per method of transfer. Other commenters suggested thresholds of 75 remittance transfers per month, 25 remittance transfers per day, or other figures. State banking regulators did not suggest a specific threshold, but maintained that the Bureau should base the threshold on data received regarding the number of remittance transfers sent by depository institutions with under $10 billion in assets. These regulators also suggested that the Bureau adopt a threshold for depository institutions that is higher than the threshold for other entities.

Many of the commenters that explained why they believed a higher threshold was appropriate focused on the cost of compliance with subpart B of Regulation E. Both in commenting on the proposed ''normal course of business'' safe harbor, and more generally, depository institutions, credit unions, and trade associations of depository institutions and credit unions described challenges associated with complying with the February Final Rule. These industry commenters stated that for open network transfers in particular,[8] the requirements to estimate

[5] As one industry commenter suggested, given the potential for seasonal variation in the demand for remittance transfers, the Bureau believes that an annual figure is the most appropriate for the safe harbor threshold.

[6] Regulation Z in some cases provides additional protections for credit secured by a dwelling and certain high cost mortgages. For example, with respect to whether a person is a creditor, a person regularly extends consumer credit in the current calendar year if it either extended consumer credit for transactions secured by a dwelling more than five times in the previous calendar year or more than five times in the current calendar year. In addition, a person regularly extends consumer credit if it extends consumer credit for just one high-cost mortgage in a 12-month period. *See* 12 CFR 1026.2(a)(17).

[7] The Bureau notes that it has issued a separate notice of request for information on whether it should revise these threshold numbers in Regulation Z. *See* 76 FR 75825, Dec. 5, 2011.

[8] Depository institutions and credit unions have traditionally offered consumers remittance transfers by way of wire transfers, which are generally open network transactions. In an open network, no single provider has control over, or relationships with, all of the participants that may collect funds in the United States or disburse funds abroad. A number of principal providers may access the system. National laws, individual contracts, and the rules of various messaging, settlement, or payment

or disclose third-party fees and exchange rates, to disclose a transfer's date of availability, and to refund transfers in certain circumstances would be impossible, challenging, risky, or costly to implement. Based on these and related concerns, industry commenters who were focused on the concerns of depository institutions and credit unions generally argued that a threshold higher than 25 was necessary in order to relieve more persons from compliance, to encourage greater continued market participation after subpart B of Regulation E takes effect, or to promote the ability of smaller depository institutions to compete with other providers. A number of industry commenters stated that they expected that some (or many) individual depository institutions and credit unions would limit the number of remittance transfers provided in order to qualify for any safe harbor, or would exit the market for remittance transfers, in order to avoid compliance with subpart B of Regulation E.

Alternatively, some industry commenters urged the Bureau to increase the size of the threshold based on what they described as typical practice among banks. For example, one commenter stated that a typical bank could reach 25 remittance transfers within the first few weeks of a year. It suggested a threshold of 300 remittance transfers per year because, it contended, that figure better represents the number of such transfers that a small institution provides, is still small enough that the excepted transactions would not generate a material source of income for a financial institution, and amounts to, on average, less than one transfer for every 25 accountholders for small banks. That commenter and other industry commenters stated that many or most depository institutions or credit unions are not ''in the business'' of providing remittance transfers, do not advertise the service, or generally offer remittance transfers only upon request.

Several industry commenters offered other rationales to support thresholds higher than 25 remittance transfers per year. Some industry commenters stated that a threshold of 25 would not be useful because of the complexity of preparing for compliance if the threshold is crossed. One industry commenter advocated for a threshold of 50 remittance transfers, because that figure would constitute approximately one remittance transfer per week. Suggesting a threshold of 75 remittance transfers per year, another industry commenter argued that Regulation Z was an inappropriate reference point for subpart B of Regulation E because financial institutions tend to provide far more fund transfers per year than they do loans. Another industry commenter contended that a threshold of 600 remittance transfers per year was better to exclude institutions that provide remittance transfers infrequently and in response to specific consumer requests.

Industry commenters also suggested that the Bureau commit to reevaluating the threshold on which the safe harbor is based. One industry commenter suggested that the Bureau revisit the safe harbor threshold nine months after the effective date of subpart B of Regulation E to determine whether further adjustment is appropriate. Similarly, another industry commenter suggested that the Bureau annually adjust the safe harbor threshold.

The safe harbor described in § 1005.30(f)(2)(i) of the final rule establishes a threshold of 100 remittance transfers per calendar year. The Bureau believes that it is reasonable to set a higher transaction threshold for determining when remittance transfers are provided ''in the normal course of business'' than for determining when a person ''regularly extends'' consumer credit under Regulation Z. There are several reasons why remittance transfers are different from extensions of credit. A single extension of credit typically involves an ongoing relationship between a consumer and creditor that may extend over weeks, months, or years. Credit is often provided as a standalone financial product in its own right, and can generate significant per-transaction revenues over time. A remittance transfer, on the other hand, is a one-time transaction, for which the provider generally collects a one-time set of fees. Revenues per transaction are often relatively low; additionally, remittance transfers are sometimes provided as an adjunct to other financial products (such as a long-term account relationship). As a result, a single extension of credit may be more significant to a business than a single remittance transfer would be to the business of a person that provides such transfers. Furthermore, a single extension of credit may meet the demand of a consumer with ongoing credit needs; on the other hand, multiple remittance transfers may be needed to satisfy the annual demand of a consumer with ongoing transaction needs. Similarly, the Bureau believes that because it is not uncommon for consumers who send money abroad to do so 12 or more times per year,[9] a change in the demand of just one or two customers might result in significant variance in the number of remittance transfers provided by a person who sends only a small number of transfers. The Bureau believes the same is less likely to be true of extensions of credit.

The Bureau believes that a figure of 100 or fewer transfers per year appropriately accounts for the differences between remittance transfers and extensions of credit. It is high enough that persons will not risk exceeding the safe harbor based on the needs of just two or three customers seeking monthly transfers. At the same time, the Bureau believes that a threshold of 100 is low enough to serve as a reasonable basis for identifying persons who occasionally provide remittance transfers, but not in the normal course of their business. One hundred transfers per year is equivalent to an average of approximately two remittance transfers per week, or the number of remittance transfers needed to satisfy the needs of a handful of customers sending money abroad monthly.

Though industry commenters suggested a number of thresholds higher than 100 remittance transfers per year, the Bureau is concerned that a person who provides more than 100 transfers in a calendar year is more likely than other persons to be providing remittance transfers in the normal course of its business, such as by making transfers generally available to its customers, and by providing them more frequently. Furthermore, the Bureau does not have industry-wide information linking commenters' suggested higher thresholds either to the definition of ''normal course of business,'' or to other factors that commenters suggested were relevant, such as the cost of compliance with subpart B of Regulation E.

Industry commenters provided little data to support their contentions that any particular threshold was the most appropriate. Two trade associations provided high-level summaries of limited surveys of member banks regarding the number of international funds transfers sent. Otherwise, the comments received in response to the February Proposal generally did not provide data on the overall distribution and frequency of remittance transfers

systems may constrain certain parts of transfers sent through an open network system. However, any participant may use the network to send transfers to unaffiliated institutions abroad with which it has no contractual relationship, and over which it has limited authority or ability to monitor or control. *See* 77 FR 6194, 6195–97.

[9] *See, e.g.,* Bendixen & Amandi, *Survey of Latin American Immigrants in the United States* 22 (Apr. 30, 2008), available at: *http://bendixenandamandi.com/wp-content/uploads/2010/08/IDB_2008_National_Survey_Presentation.pdf.*

across providers to support treating any particular number of transactions as outside the normal course of business.

Through additional outreach, the Bureau obtained limited data from several sources regarding the number of remittances transfers and similar transactions provided by individual depository institutions and credit unions, money transmitters, and other small businesses that may also send money abroad. The Bureau hoped that such information might enable the Bureau to better evaluate the comments received, and reveal patterns in the numbers of transfers sent by different types of providers.

The data received include results from several limited surveys of depository institutions and/or credit unions regarding the number of remittance transfers that they send; estimates of the number of consumer-initiated outbound international wire transfers conducted by individual banks and/or credit unions provided through one correspondent bank or a corporate credit union; the number of remittances and other transactions conducted by state-licensed money transmitters in California, New York, and Ohio; and estimates of the number of outbound international transfers provided by individual credit unions using a specialized service. The Bureau also discussed with an industry expert the characteristics of several types of small businesses other than depository institutions and credit unions that may send money abroad, including start-up enterprises and small businesses that send money abroad that are not registered or licensed as money transmitters.

The Bureau does not believe that it can extrapolate from any of the data sets received to the remittance transfer market as a whole or any segment of it, due to factors including the small sample sizes and the Bureau's inability to determine whether the institutions covered in any data set are representative of the market as a whole or any segment of it. Also, regarding some segments of the market, the Bureau did not receive any data. Furthermore, in some cases, the data received may overestimate or underestimate the number of remittance transfers provided. For example, the data sets from a correspondent bank and a corporate credit union may underestimate the number of transactions provided by individual institutions, as these data sets reflect only wire transfers sent through either that correspondent bank or corporate credit union, and the institutions covered by the data sets may use other such intermediary institutions, or send remittance transfers by means other than wire. By contrast, the three states' transaction data both underestimate and overestimate the number of remittance transfers sent. On the one hand, one state provided data regarding transactions only from that state to foreign countries, rather than all international transfers that the state-licensed entities may have sent from the United States. On the other hand, all three states' data mix consumer-initiated outbound international transactions with transactions that are not remittance transfers, as defined in subpart B of Regulation E, including transfers initiated by businesses, domestic transfers, and/or sales of certain payment devices or other state-regulated transactions, depending on the state.

As a result of these limitations, the Bureau does not believe it can rely on the data received to describe the number of remittance transfers provided by ''typical'' entities or to identify a clear pattern in the distribution of providers by the number of transfers provided. Nor does the data received allow the Bureau to distinguish meaningfully among a number of the more modest thresholds suggested by commenters, in terms of the challenge of compliance for such institutions, or other factors suggested by commenters.

Nevertheless, the Bureau believes the data collected provide some additional support for a safe harbor based on a threshold of 100 remittance transfers per year. Though the data sets regarding state-licensed money transmitters did not show that any of the licensees that recorded some transaction volume also recorded 100 or fewer transactions per year nationally,[10] each of the data sets regarding depository institutions and credit unions suggested that a meaningful portion of the institutions covered by the data set were sending 100 or fewer remittance transfers annually. In other words, the threshold is not so low as to be meaningless. In the data sets for which the Bureau received detailed information, between roughly 40 percent and roughly 90 percent of those responding to or covered by the data who reported any transactions in the most recent year also stated that they provided 100 or fewer such transactions in that year.

As commenters suggested, the Bureau intends to monitor the 100-transfer threshold over time. The Bureau is working to develop better sources of information on the frequency of remittance transfers provided not only by depository institutions, credit unions, and state-licensed money transmitters, but also by other types of entities, particularly broker-dealers and others that may send money abroad but that are not state- or federally-licensed or chartered. The Bureau believes based on available information that many nonbank companies that send money abroad fewer than 100 times per year may be agents for remittance transfer providers that are required to comply with subpart B of Regulation E. However, data about the market for international money transfers remains limited, especially with regard to providers that are not State- or Federally-licensed or chartered. Thus, the Bureau intends to continue seeking better data about the business structures and consumer protection concerns in all segments of the market.

Application of the Safe Harbor

Commenters raised several questions and suggestions regarding the application of the safe harbor described in proposed comment 30(f)–2. For example, some industry commenters sought clarification that a newly formed entity or a new entrant to the market would be considered to have provided zero remittance transfers in the previous calendar year.

New § 1005.30(f)(2)(i) does not generally distinguish between entities that provided zero remittance transfers in the previous calendar year and those that provided from one to 100. For entities formed during a particular calendar year, the Bureau recognizes that the number of transfers provided during the previous calendar year (*i.e.,* none), sheds little light on those entities' current or future business practices. However, the Bureau is concerned that an exception to the safe harbor for newly formed entities or new entrants would mean that none of those entities would be able to take advantage of the increased legal certainty that the safe harbor provides to other persons. Furthermore, the Bureau expects that any newly formed entity (or new entrant) that plans to offer remittance

[10] For transmitters licensed in California, the Bureau does not know whether the number of transactions reported for a company in California is the same as or less than the number of transactions that a company sent nationwide. Because each of the states' data sets combines remittance transfers with domestic transfers, business-initiated transfers, and/or sales of certain payment instruments (depending on the state), the Bureau cannot be certain as to the number of remittance transfers provided by each listed entity. However, the Bureau's review of entity Web sites suggests that many of the licensees that provide international money transfers to consumers focus on that line of business, and thus, that for many of the licensees that provide any remittance transfers, most of the reported transactions are, in fact, remittance transfers.

transfers in the normal course of its business will develop systems to comply with subpart B of Regulation E from the start, rather than wait until its 101st transfer. The Bureau notes that newly formed entities or new entrants conducting 100 or fewer remittance transfers in their first year in operation likely account for a very small portion of the total volume of remittance transfers sent each year.

Some industry commenters suggested that persons who exceed the safe harbor threshold not be required to come into compliance immediately with subpart B of Regulation E. One industry commenter suggested that providers be given six months to come into compliance with subpart B of Regulation E after exceeding any safe harbor threshold. Another industry commenter suggested that compliance be required only after a person exceeds the threshold for two consecutive years.

In response to the comments received, the Bureau adopts new § 1005.30(f)(2)(ii), which provides a transition period for any person that provided 100 or fewer remittance transfers in the previous calendar year but provides more than 100 remittance transfers in the current calendar year. Upon exceeding the 100-transaction threshold, that person would be subject to greater uncertainty as to whether it is providing remittance transfers in the normal course of business. Section 1005.30(f)(2)(ii) states that if such person is then providing remittance transfers for a consumer in the normal course of its business, then the person may have a reasonable period of time, not to exceed six months, to begin complying with subpart B of Regulation E. Compliance with subpart B will not be required for any remittance transfers for which payment is made during that reasonable period of time.

Comment 30(f)–2.iii offers further explanation and clarification. It states that if a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 such transfers in the current calendar year, the safe harbor described in § 1005.30(f)(2)(i) applies to the first 100 remittance transfers that the person provides in the current calendar year. But similar to proposed comment 30(f)–2, final comment 30(f)–2.iii clarifies that for any additional remittance transfers provided in the current calendar year and for any remittance transfers provided in the subsequent calendar year, whether the person provides remittance transfers for a consumer in the normal course of business, and is thus a remittance transfer provider for those additional transfers, depends on the facts and circumstances. The comment further explains that for such a person, compliance with subpart B of Regulation E will be required at the end of the ''reasonable period of time'' permitted by § 1005.30(f)(2)(ii) unless, based on the facts and circumstances, such a person is not a remittance transfer provider. Comment 30(f)–2.iv provides an example with specific dates to illustrate application of the safe harbor and transition period.

The Bureau believes it necessary and proper to use its EFTA section 904(a) and (c) authority to adopt the transition period described in new § 1005.30(f)(2)(ii) because the transition period will effectuate the purposes of the EFTA and facilitate compliance. The Bureau expects that a person initiating compliance with subpart B of Regulation E may need some time to adjust business processes and computer systems and train its staff. The Bureau is concerned that absent a transition period, persons who intend to become remittance transfer providers may temporarily suspend service in order to change their systems, and that such temporary suspension could be disruptive to consumers, as well as to the providers. However, the Bureau believes that any transition period should be limited because it will permit some persons to provide remittance transfers in the normal course of business without providing the disclosure, error resolution, and other protections generally required by subpart B of Regulation E. The Bureau believes that six months is an adequate period of time for entities to come into compliance, particularly because the Bureau expects that service providers will emerge or evolve to permit new remittance transfer providers to accelerate compliance. The Bureau expects that persons who are remittance transfer providers will use the transition period permitted by § 1005.30(f)(2)(ii) to take all reasonable steps toward compliance with subpart B of Regulation E.

One industry commenter stated that it does not have a system in place to count remittance transfers during the year. The Bureau recognizes that prior to the implementation of this rule, many persons likely had no reason to identify remittance transfers. In the future, the Bureau expects that many small providers will accurately track their remittance transfers to know whether they qualify for the safe harbor described in § 1005.30(f)(2). With regard to transfers provided prior to this rule's effective date, the Bureau expects that providers who did not distinguish remittance transfers from other electronic transfers of funds sent to recipients in other countries can use reasonable means to identify what subset of these transfers were remittance transfers, based on available information. For example, a bank might conclude that every outbound international wire transfer initiated by a consumer is a remittance transfer for purposes of determining whether the safe harbor applies in the first year after the effective date.

Other Comments

Consumer group commenters requested that the Bureau clarify that transfers provided by persons that qualify for the ''normal course of business'' safe harbor are governed by Article 4A of the Uniform Commercial Code (UCC). Article 4A applies to international funds transfers, but generally provides that it does not apply to a funds transfer any part of which is governed by the EFTA. In the February Final Rule, 77 FR 6194, 6212, the Bureau recognized that one consequence of covering remittance transfers under the EFTA could be legal uncertainty under the UCC for certain remittance transfer providers. The Bureau stated its belief that the best mechanisms for resolving that uncertainty rests with the states that have adopted the UCC, with the purveyors of rules applicable to specific wire systems, which can bind direct participants in the system, and with participants in wire transfers who can incorporate UCC Article 4A into their contracts. Similarly, the Bureau does not believe that the requested clarification is proper, as the Bureau does not implement or administer Article 4A. Furthermore, the Bureau believes that subpart B of Regulation E already makes clear what transactions it governs.

Consumer group commenters also suggested that the Bureau require that either just insured institutions or all persons that qualify for the safe harbor described in § 1005.30(f)(2)(i) disclose to consumers that consumer protections applicable to remittance transfers provided by remittance transfer providers will not apply to transactions provided by those persons. The Bureau does not believe it is appropriate to impose such a requirement without seeking notice and comment on it. Furthermore, such a requirement would be in tension with EFTA Section 919, which subpart B implements, and which does not impose any express obligation on persons that are not remittance transfer providers.

Section 1005.31 Disclosures

Overview

In the February Proposal, the Bureau solicited comment on issues relating to disclosure of the cancellation requirements in § 1005.36(c) for remittance transfers scheduled by the sender at least three business days before the date of the transfer. To address these issues, the Bureau is amending the disclosure requirements in §§ 1005.31(a)(3), (a)(5), and (b)(2) to improve consumers' ability to determine the cancellation deadlines for particular transfers. In addition, the Bureau is amending § 1005.31(b)(3), regarding combined disclosures, to allow providers to give a confirmation that the transfer has been scheduled in lieu of the proof of payment required for transfers scheduled before payment is processed for the transfer. These amendments are discussed in detail in their respective sections below.

Disclosure of Deadline To Cancel Transfers Scheduled Before the Date of Transfer

As discussed in more detail below regarding § 1005.36(c), the February Final Rule adopts a cancellation policy for remittance transfers. Under § 1005.34(a) of the February Final Rule, a sender generally has 30 minutes after payment is made to cancel a remittance transfer. The February Final Rule, however, contains special cancellation procedures for any remittance transfer that is scheduled at least three business days before the date of the transfer, including a series of preauthorized remittance transfers. For these transfers, the provider is required to cancel the remittance transfer if it receives a request to cancel from the sender at least three business days before the date of the transfer.

The February Proposal solicited comment on possible changes to the cancellation requirements for remittance transfers that are scheduled at least three business days before the date of the transfer, including preauthorized remittance transfers. Specifically, the February Proposal solicited comment on whether the three-business-day period for cancelling such remittance transfers adopted in the February Final Rule is appropriate, or whether the rule should require a deadline to cancel these transfer that is more or less than three business days. The February Proposal also solicited comment on three issues related to the disclosure of the deadline to cancel as set forth in the February Final Rule. The first issue was whether the three-business-day deadline to cancel transfers scheduled before the date of the transfer should be disclosed differently to senders, such as by requiring a remittance transfer provider to disclose in the receipt the specific date on which the right to cancel will expire. The second issue was whether a provider should be allowed to describe both the three-business-day and 30-minute cancellation provisions on a single receipt and either describe the transfers to which each cancellation period is applicable, or alternatively, use a checkbox or other method to designate which cancellation period is applicable to the transfer to which the receipt relates. The third issue was whether the cancellation requirements should be disclosed in the pre-payment disclosure, rather than in the receipt, for each subsequent preauthorized remittance transfer.

The approaches taken in the final rule for the three-business-day cancellation period and the disclosures required to be provided in connection with subsequent remittance transfers within a series of preauthorized remittance transfers are described in greater detail below in the discussion regarding § 1005.36(c) and (d). Consistent with these provisions, the Bureau is also revising § 1005.31 to add new paragraphs (a)(3)(iv), (a)(5)(iv), and (b)(2)(vii), and associated commentary, regarding the content and format of the disclosures that must be provided to senders of transfers scheduled at least three business days before the date of the transfer and of certain preauthorized remittance transfers.

Taken together, the final rule requires remittance transfer providers to disclose the date of transfer, and in certain instances, the future date or dates of transfer and related information in receipts that may be provided at the time payment is made or after the date of transfer. For any remittance transfer scheduled at least three business days before the date of the transfer, the receipt provided when payment is made must disclose the date of transfer for that transfer. Where a consumer schedules a series of preauthorized remittance transfers, the receipt provided for the first transfer must also provide the date of transfer for that first transfer. In each case, if a second receipt is required after the date of transfer, that receipt must also disclose the date the transfer was made. The final rule also addresses, among other things, a requirement to disclose future dates of transfer for subsequent preauthorized transfers. In addition to the information described above, the receipt provided for the initial transfer in a series of preauthorized remittance transfers must also disclose the future date or dates of transfer for any subsequent preauthorized remittance transfer in that series for which the date of transfer is scheduled four or fewer business days after the date on which payment for the initial transfer is made. For other subsequent preauthorized transfers, the rule provides flexibility as to whether the information regarding transfer dates and cancellation requirements for subsequent transfers is included in one or more receipts or standalone disclosures, so long as it is provided sufficiently in advance to allow the consumer to exercise his or her cancellation rights.

Finally, as is the case with one-time transfers scheduled at least three business days before the date of the transfer, the final rule also requires that receipts for subsequent preauthorized remittance transfers include the date of transfer for the transfer that is the subject of the receipt and, if the provider chooses, the future dates of transfer for the next scheduled subsequent transfer or transfers.

31(a) General Form of Disclosures

31(a)(3)(iv)

As discussed below, the Bureau adds new § 1005.31(b)(2)(vii) to require that in certain circumstances, a receipt for a remittance transfer include the date of the transfer for that specific transfer in order to provide consumers with a clearer explanation of their cancellation rights. Further, the Bureau adds new § 1005.36(d) to require that in certain instances, such receipts disclose the dates of upcoming transfers and related information. The Bureau is making corresponding changes to the disclosure requirements for transfers conducted entirely by telephone to require oral disclosure of transfer date information in certain circumstances. As stated in the February Final Rule, the Bureau believes that for oral telephone transactions, senders should be informed of their cancellation rights before the cancellation period has passed. 77 FR 6194, 6217. Because a receipt would generally be mailed to a sender for telephone transactions as permitted by § 1005.31(e)(2), the sender may not receive the cancellation disclosure included in that receipt until after the standard 30-minute cancellation period had passed unless the Bureau required the disclosure to be made orally before the 30-minute cancellation period expires. Consequently, § 1005.31(a)(3)(iii), as adopted in the February Final Rule, requires oral disclosure of cancellation rights when the sender requests the remittance transfer and prior to payment

for the transfer, if the provider takes advantage of the option to provide pre-payment disclosures orally for transactions conducted entirely by telephone.

For similar reasons, among others, the Bureau believes that for a remittance transfer scheduled at least three business days before the date of the transfer, and for any preauthorized remittance transfer scheduled to occur four or fewer business days after the date payment is made for the transfer, an oral pre-payment disclosure regarding cancellation rights should be accompanied by an oral disclosure regarding the date of that transfer. Although the time period for cancellation of transfers scheduled in advance may be calculated in days rather than minutes, the period may still expire before the consumer receives any written material, particularly if the consumer is scheduling the transfer three or four days in advance. For preauthorized remittance transfers, several transfers in the series may be sent before a written receipt is received.

Accordingly, pursuant to its authority under EFTA section 919(a)(5)(A), the Bureau is amending § 1005.31(a)(3) to add § 1005.31(a)(3)(iv) as a further condition for the provision of oral disclosures for remittance transfers conducted entirely by telephone. This provision permits oral disclosures if (among other requirements) the provider discloses orally, to the extent applicable, (A) the information required by § 1005.31(b)(2)(vii) and (B) the information required by § 1005.36(d)(1)(i)(A) with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in § 1005.31(e)(1).

31(a)(5)(iv)

As discussed in the section-by-section analysis to the February Final Rule, since remittance transfers sent via mobile application or text message on a telephone are conducted entirely by telephone, EFTA section 919(a)(5)(A) permits the Bureau to allow oral pre-payment disclosures in connection with transfers sent via mobile application or text message if the transfer is conducted entirely by telephone. 77 FR 6194, 6217. Because oral disclosures are not retainable, the Bureau further observed that for such transactions, senders would not be less protected, and might be better informed, by receiving pre-payment disclosures via mobile application or a text message even though these disclosures may also not be retainable. *Id.* Accordingly, to effectuate the purposes of the EFTA and facilitate compliance, the Bureau used its authority under EFTA sections 904(a) and (c) to include in the February Final Rule § 1005.31(a)(5), which states that the pre-payment disclosure may be provided orally or via mobile application or text message if: (i) The transaction is conducted entirely by telephone via mobile application or text message; (ii) the remittance transfer provider complies with the foreign language requirements of § 1005.31(g)(2); and (iii) the provider discloses orally or via mobile application or text message a statement about the rights of the sender regarding cancellation required by § 1005.31(b)(2)(iv) pursuant to the timing requirements in § 1005.31(e)(1).

Pursuant to the same authority, and for the same reasons as those discussed above regarding with § 1005.31(a)(3)(iv), the Bureau adopts new § 1005.31(a)(5)(iv), which adds as an additional condition for the provision of the pre-payment disclosures orally or via mobile application or text message a requirement that the provider disclose, to the extent applicable, (A) the information required by § 1005.31(b)(2)(vii) and (B) the information required by § 1005.36(d)(1)(i)(A) with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in § 1005.31(e)(1).

31(b)(2) Receipt

31(b)(2)(vii) Date of Transfer

The February Final Rule requires the receipt provided to a sender to include an abbreviated statement about the sender's cancellation rights. § 1005.31(b)(2)(iv). In the February Proposal, the Bureau noted that senders may have difficulty determining the specific date on which the right to cancel expires for a particular transfer. 77 FR 6310, 6321. Accordingly, the Bureau sought comment on whether, as applicable, the three-business-day deadline to cancel transfers should be disclosed differently to consumers, such as by requiring a remittance transfer provider to disclose in the receipt the specific date on which the right to cancel will expire or to state its business days in receipts provided to senders. The Bureau also solicited comment on alternative means of disclosing the deadline for cancelling transfers scheduled at least three business days before the date of the transfer.

The Bureau received a number of comments on the cancellation disclosure from various industry members and one consumer group. Most comments focused on whether providers should be required to include the specific cancellation deadline in the receipts provided to senders. Commenters did not address any of the other questions raised on this issue in the February Proposal nor did they suggest alternatives.[11]

With respect to disclosure of the specific cancellation date, the majority of industry commenters opposed such a requirement. Some industry commenters asserted that requiring disclosure of the specific cancellation deadline for a particular transaction would make it more difficult and expensive to produce receipts by adding a new element specific to each transfer. One industry commenter stated that requiring a remittance transfer provider to specify the exact date for cancellation would create significant technical challenges because at that point, the disclosure becomes dynamic, rather than static. This commenter stated that producing such a dynamic disclosure may require updating based on the time of day of the transfer request and the provider's processing deadline, whereas a static disclosure without such a requirement can be reliably produced at any time of day. Further, the commenter stated that a sender uncertain of the cancellation deadline will contact a remittance transfer provider directly for clarification and then cancel the transaction in the course of the same contact.

In contrast, the consumer group commenter argued that the period for cancellation rights should be disclosed as a specific date. One industry commenter did not oppose requiring remittance transfer providers to disclose the specific cancellation date for each transaction, but argued that providers should be allowed to disclose a cut-off time for exercising the cancellation right because the lack of clarity regarding the time of day the cancellation period expires could result in a transfer being delayed until the next business day.

Pursuant to the Bureau's authority under EFTA section 919(d)(3), the February Final Rule is revised to add a new § 1005.31(b)(2)(vii), which requires that a receipt for any remittance transfer scheduled by the sender at least three business days before the date of the transfer, or the first transfer in a series of preauthorized remittance transfers, disclose the date the remittance transfer provider will make or made the

[11] Regarding the Bureau's inquiry about disclosure of the provider's business days, the Bureau did not receive comment on this issue specifically, although one industry commenter stated that providers should not be required to disclose the specific deadline to cancel or other additional items that are not required to be disclosed by the February Final Rule.

remittance transfer, using the term ''Transfer Date,'' or a substantially similar term.

The Bureau is also adopting commentary to provide further guidance on the application of § 1005.31(b)(2)(vii). As explained in more detail below in the discussion of § 1005.36, for certain transactions, a receipt meeting the requirements of § 1005.31(b)(2), including the transfer date required under § 1005.31(b)(2)(vii), may need to be provided at different times. For example, for the first in a series of preauthorized remittance transfers, an initial receipt will need to be provided at the time payment is made for the transfer; and then in some cases, a receipt will need to be provided shortly after that particular transfer has been made. Thus, comment 31(b)(2)–4 clarifies that, where applicable, § 1005.31(b)(2)(vii) requires disclosure of the date of transfer for the remittance transfer that is the subject of a receipt required by § 1005.31(b)(2), including a receipt that is provided in accordance with the timing requirements in § 1005.36(a).

Comment 31(b)(2)–4 further clarifies that, for any subsequent preauthorized remittance transfer subject to § 1005.36(d)(2)(ii), the future date of transfer and related information must be provided on any receipt provided for the initial transfer in that series of preauthorized remittance transfers, or where permitted, or disclosed as permitted by § 1005.31(a)(3) and (a)(5), in accordance with § 1005.36(a)(1)(i).

Comment 31(b)(2)–5 provides an example of how disclosure of the dates of transfer required by § 1005.31(b)(2)(vii) and § 1005.36(d)(1) should be provided in receipts required by § 1005.31(b)(2) pursuant to the timing requirements in § 1005.36(a)(1)(i) or (a)(1)(ii). Comment 31(b)(2)–5 also explains that if the provider discloses on either receipt the cancellation period applicable to and dates of subsequent preauthorized remittance transfers in accordance with 1005.36(d)(2)(i), the disclosure must be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable each date of transfer on the receipt.

Upon further review and analysis, the Bureau concludes that because the cancellation requirements in § 1005.36(c) are based on and calculated from the date of transfer, the actual transfer date is the most logical piece of information to require since the remittance transfer provider is already required to obtain this information in order to comply with § 1005.36(c), although it is not required to be disclosed to the sender under the February Final Rule.

Further, the Bureau also believes that requiring a remittance transfer provider to disclose the date of a remittance transfer, along with a disclosure that the sender's cancellation rights will expire three business days before the date of the transfer, provides a reasonable balance between consumer and industry interests. This approach significantly improves the information provided to senders because, under the February Final Rule, a provider is generally only required to disclose the cancellation policy, with a statement such as ''you can cancel for a full refund no later than three business days prior to the scheduled date of the transfer.'' 77 FR 6310, 6321. This required disclosure, however, does not elaborate on what constitutes the date of transfer or how the sender may determine the cancellation deadline from the date of transfer. Without a clear starting point from which to count the three-business-day deadline, the Bureau believes senders may be confused about the dates by which they are required to cancel transfers, which may make cancellation disclosures less effective. In situations such as when transferred funds will be drawn from an account at a later date rather than paid up front, the transfer date may also help the sender understand when the funds for the transfer must be available for the provider to conduct the transfer. The transfer date may also help senders differentiate and keep track of completed transfers, especially where the sender receives a number of receipts in the mail or on an account statement in close proximity to one another.

The Bureau also believes that requiring disclosure of the date of transfer is the most technically feasible solution relative to the alternatives raised in the February Proposal. The dates of transfer should be readily available to remittance transfer providers since they are likely primarily responsible for executing remittance transfer requests, and as part of their business processes should already know when they must execute transfers to satisfy the terms of their contracts with senders (if the contracts are based on the date of the transfer) or to meet any delivery deadlines (if those deadlines are the bases of the contracts). The Bureau also believes that disclosure of the date of transfer is an added benefit for senders who may choose to schedule a transaction based on when the funds must be available. Finally, the Bureau notes that the requirement to disclose the date of transfer is consistent with the existing requirement for certain preauthorized electronic fund transfers. In particular, § 1005.10(d)(1) (in subpart A of Regulation E) requires an electronic fund transfer provider to send the consumer the date of transfer (and other information) at least ten days before the scheduled date of the transfer when a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization. Consequently, certain remittance transfer providers that also provide preauthorized electronic fund transfers may already have the capability to produce disclosures with the date of transfer.

Moreover, the Bureau believes that keeping disclosure forms short, simple, and succinct is helpful to senders. As noted in the February Final Rule, participants in consumer testing understood and responded positively to concise, abbreviated disclosures. 77 FR 6194, 6228. Of the options considered, the Bureau believes that disclosure of only the date of transfer best accomplishes this goal because that date may be provided independently of other information. While disclosure of the specific dates of cancellation deadlines would inform senders of the actual dates on which their rights to cancel expire, the Bureau believes that consumers would still benefit from disclosure of the date of transfer. The Bureau is concerned that requiring providers to include multiple dates on receipts may be more confusing to senders and possibly dilute the usefulness of the disclosures regarding cancellation rights.

Likewise, the Bureau is concerned that requiring providers to state their business days on receipts may result in a longer, more unwieldy form. The Bureau believes that providers will generally make available to the public upon request the days that constitute ''business days'' under subpart B of Regulation E, and that, therefore, senders can obtain this information as necessary. Absent further data regarding the usefulness of this information, the Bureau does not believe that it is appropriate at this time to make the forms significantly longer and more complicated to include information that is likely to be used by only a small subset of consumers who may contact their remittance transfer providers in any event to effectuate the cancellation.

Accordingly, the Bureau believes that requiring the date of transfer and cancellation rights in receipts strikes the appropriate balance between providing senders with information about their transfers and minimizing the burden to providers. However, the Bureau will

continue to gather data on consumers' exercise of cancellation rights, the effectiveness of related disclosures, and programming burdens on providers over time and, if warranted, will reexamine this issue at a later date to determine if a better solution exists.

The Bureau has further determined that it is appropriate to require disclosure of the date of transfer at the time payment is made, but also in subsequent receipts required to be provided with respect to a given transfer in accordance with § 1005.36(a)(1)(ii) or § 1005.36(a)(2)(ii). The Bureau believes that a single consistent rule will be simpler as a matter of programming for providers and will frequently provide additional benefits to consumers in light of the fact that the final rule eliminates the requirement to provide the pre-payment disclosure and receipt in advance of the transfer for subsequent preauthorized transfers in a series. (*See* discussion below regarding § 1005.36(a).)

In particular, although stating the date of transfer in a post-transfer receipt will not facilitate senders' understanding of cancellation deadlines that have already passed, the Bureau believes the information will frequently be useful to senders in other ways. For example, as noted above, if a sender schedules a number of standalone transfers before the date of transfer, or a series of closely-spaced preauthorized remittance transfers, senders may receive a number of receipts in close proximity to each other and may use the date of transfer to identify and track which transfer has occurred. Having the date of transfer on receipts with respect to each transfer would likewise be helpful in situations where the receipt is provided with a periodic statement on which there are several transactions.

In addition, because senders may not receive additional disclosures prior to the subsequent preauthorized transfer in a series, the receipt provided after the transfer is completed in accordance with § 1005.36(a)(2)(ii) will contain information regarding cancellation rights (as well as the exchange rate, fees and taxes) that could help inform the sender about the upcoming subsequent remittance transfer. Furthermore, as most preauthorized remittance transfers are likely to be scheduled some time in advance, senders will generally receive receipts after the transfer is completed. This receipt would provide confirmation that the transfer occurred as scheduled. Finally, where remittance transfer providers choose to satisfy their obligations under § 1005.36(d)(1) by disclosing the future transfer dates for preauthorized transfers on a receipt relating to a prior transaction, providing the date of transfer for the prior transaction will help differentiate to which transfer the disclosures in the receipt apply.

Disclosure of Both the Three-Business-Day Deadline and the 30-Minute Deadline in Same Receipt

Under § 1005.31(b)(2)(iv) of the February Final Rule, notice of the period to cancel a remittance transfer must be disclosed in the receipt provided pursuant to § 1005.31(b)(2). For any transfer scheduled at least three business days before the date of the transfer, the receipt provided by the remittance transfer provider to the sender may describe only the cancellation rights and three-business-day deadline set forth in § 1005.36(c). For all other remittance transfers, the provider is required to describe the cancellation rights and 30-minute cancellation period set forth in § 1005.34(a). In the February Proposal, the Bureau solicited comment on whether remittance transfer providers that offer both types of transfers should be given flexibility to include the two different cancellation periods permitted by this rule on the same receipt with some statement or method such as a checkbox to designate which cancellation period applies to a given transaction.

The Bureau received only a few comments on this issue. Of those received, two industry commenters urged the Bureau to permit providers flexibility in disclosing the cancellation requirement. One industry commenter argued that allowing providers to include both cancellation period options on the same receipt would enable providers to rely on one standard receipt form, which, compared to the alternative, may result in lower costs for providers (and, presumably, lower prices for senders). The other industry commenter stated that it supported any disclosure modification that would allow smaller providers to generate and deliver one disclosure and that the proposed option would eliminate the need to produce multiple disclosures to reflect the different cancellation periods. A consumer group commenter, however, stated that, to ensure that senders receive accurate and precise information to avoid potential confusion, only the cancellation provision that corresponds to the type of remittance transfer requested should be disclosed.

After consideration of these comments, the Bureau is adding new comment 31(b)(2)–6 to clarify that providers that offer remittance transfers scheduled at least three business days before the date of the transfer, as well as remittance transfers scheduled fewer than three business days before the date of the transfer, may meet the cancellation disclosure requirements in § 1005.31(b)(2)(iv) by describing the three-business-day and 30-minute cancellation periods on the same disclosure and using a checkbox or other method to clearly designate the applicable cancellation period. In other words, remittance transfer providers that provide both transfers scheduled at least three business days before the date of the transfer and transfers scheduled closer to the date of the transfer may disclose the cancellation period applicable to a particular transfer in one of two ways: (i) describe in the receipt either the 30-minute cancellation period or the three-business-day cancellation period, as applicable to the particular transaction; or (ii) provide a description of both the 30-minute and three-business-day cancellation periods along with a clear indication of which cancellation period applies to the sender's transaction. With respect to the latter option, the comment does not mandate a particular method for identifying the applicable time period for cancellation. The comment, however, clarifies that the provider may use a number of ways to indicate which cancellation period applies to the transaction including, but not limited to, a statement to that effect, use of a checkbox, highlighting, circling, and the like. Finally, comment 31(b)(2)–6 states that for transfers scheduled three or more business days before the date of transfer, the cancellation disclosures provided pursuant to § 1005.31(b)(2)(iv) should be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to the date of transfer disclosed on the receipt.

The Bureau believes senders are unlikely to be confused by having a description of both cancellation deadlines in the same disclosure. To the contrary, including a description of both the 30-minute and three-business-day cancellation period with a checkbox or other method that clearly designates the cancellation time period applicable to the sender's transaction may improve senders' understanding of the cancellation provisions generally. Moreover, the ability for remittance transfer providers to use pre-printed receipt forms that describe both cancellation options with some method to identify the applicable cancellation time period may reduce the need to create multiple standard receipts,

potentially reducing costs for some providers. The Bureau also notes that nothing in the final rule prohibits a provider from including only the applicable cancellation policy on a receipt.

31(b)(3) Combined Disclosure

The Bureau is revising the requirements in the February Final Rule for combined disclosures that remittance transfer providers may choose to give to senders. Under § 1005.31(b)(3) in the February Final Rule, a remittance transfer provider may combine the pre-payment disclosure required by § 1005.31(b)(1) and the receipt required by § 1005.31(b)(2) into a single, combined disclosure, if such a disclosure is provided pursuant to the timing requirements applicable to pre-payment disclosures. *See* § 1005.31(e)(1). Section 1005.31(b)(3) provides that if the provider chooses to provide a combined disclosure, the provider must also provide the sender a proof of payment for the transfer when payment is made for the remittance transfer. As described in the February Final Rule, the Bureau issued § 1005.31(b)(3) pursuant to its authority under EFTA sections 919(a)(5)(C), and 904(a) and (c).

Pursuant to the same authority, the Bureau is revising § 1005.31(b)(3) to allow a remittance transfer provider to provide a confirmation of scheduling in lieu of the proof of payment with combined disclosures for transfers scheduled before the date of transfer in order to facilitate compliance and enhance consumer protection. The Bureau is redesignating § 1005.31(b)(3) from the February Final Rule as § 1005.31(b)(3)(i) and is adopting a new § 1005.31(b)(3)(ii). Section 1005.31(b)(3)(ii) states that if the disclosure described in § 1005.31(b)(3)(i) is provided in accordance with § 1005.36(a)(1)(i) (which concerns one-time transfers scheduled five or more business days before the date of transfer or the first in a series of preauthorized remittance transfers) and payment is not processed by the remittance transfer provider at the time the remittance transfer is scheduled, a remittance transfer provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment otherwise required by § 1005.31(b)(3)(i). The confirmation of scheduling must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

Although the February Proposal did not propose changes to § 1005.31(b)(3), it sought comment generally on the form of disclosures for transfers scheduled before the date of transfer. 77 FR 6310, 6317. The Bureau believes that adjustments are necessary to § 1005.31(b)(3) because while comment 31(e)–2 in the final rule states that payment is made for purposes of subpart B of Regulation E when payment is authorized, this does not necessarily mean that providing ''proof of payment'' at the time of authorization will make sense for either the provider or the sender for a one-time remittance transfer that is scheduled before the date of transfer or the first in a series of preauthorized remittance transfers when payment may not be processed until closer to the date of such transfer.

For many remittance transfers, senders tender payment for immediate processing once they authorize the remittance transfer provider to complete the transfer (*e.g.,* by paying cash or by providing a payment device). In those situations, the Bureau does not believe there would be any downside for the sender or the remittance transfer provider if the provider provided proof of payment at the time that payment is made, *i.e.,* authorized. These situations are distinct from the case in which a sender arranges with the provider to have funds deducted from the sender's account with the provider or to process a payment with a payment device at some later time, closer to the date of a transfer. In such an instance, the Bureau is concerned that providing a sender with ''proof of payment'' could confuse the sender. Furthermore, the Bureau is concerned that providers may not wish to provide ''proof of payment'' in such instances.

New comment 31(b)(3)–2 provides additional guidance regarding the confirmation of scheduling. This comment explains that, as discussed in comment 31(e)–2, payment is considered to be made when payment is authorized for purposes of various timing requirements in subpart B, including with regard to the timing requirement for provision of the proof of payment described in § 1005.31(b)(3)(i). However, where a transfer (whether a one-time remittance transfer or the first in a series of preauthorized remittance transfers) is scheduled before the date of transfer and the provider does not intend to process payment until at or near the date of transfer, the provider may provide a confirmation of scheduling in lieu of the proof of payment required by § 1005.31(b)(3)(i). No further proof of payment is required when payment is later processed.

Section 1005.32 Estimates

32(b)(1) Permanent Exception for Transfers to Certain Countries

In the February Proposal, the Bureau proposed renumbering § 1005.32(b) to § 1005.32(b)(1) to allow for the proposed exception for the disclosure of estimates for transfers scheduled before the date of transfer (*i.e.,* proposed § 1005.32(b)(2)). The February Proposal also proposed conforming changes to provisions that reference this exception. No comments were received on this renumbering. As discussed below, the Bureau is adopting a new exception for estimates and thus is adopting as proposed conforming revisions to § 1005.32(b)(1) and is renumbering the official interpretations thereto. *See* comments 32(b)(1)–1 through –7.

32(b)(2) Permanent Exception for Transfers Scheduled Before the Date of Transfer

In the February Proposal, the Bureau proposed to use its EFTA section 904(a) and (c) authority to add a new exception, in proposed § 1005.32(b)(2), that would provide additional flexibility for remittance transfer providers to disclose estimates in pre-payment disclosures and receipts for one-time transfers or the first in a series of preauthorized remittance transfers scheduled to occur more than ten days after the transfer is authorized.

In the February Proposal, the Bureau noted that the market for remittance transfers scheduled in advance of the date of transfer, including preauthorized remittance transfers, is still in its nascent stages. The Bureau also noted its concern that requiring a remittance transfer provider to set exchange rates before the date of transfer might cause a provider that is already permitting consumers to schedule remittance transfers in advance of the date of transfer to stop offering a potentially useful product to consumers rather than bear or manage the increased exchange rate risk that might be associated with such a product. While remittance transfer providers (or their business partners) may be able to develop tools to manage such risk, the Bureau stated that it was concerned that providers might not do so, or that they would pass on any new risk management costs to consumers. Based on these concerns, the Bureau sought comment on whether providers should be permitted to disclose estimates of exchange rates, and related figures, in two circumstances: (i) A sender schedules a one-time transfer or the first in a series of preauthorized remittance transfers to occur more than ten days after the

transfer is authorized; or (ii) a sender enters into an agreement for preauthorized remittance transfers where the amount of the transfers can vary and the provider does not know the exact amount of the first transfer at the time the disclosures for that transfer are given. The Bureau received comments about the use of estimates generally and conducted additional outreach to better understand some of the issues raised by commenters.

The Bureau is adopting new § 1005.32(b)(2), which permits disclosures to contain estimates in certain cases for remittance transfers scheduled before the date of transfer. The new provision allows for certain estimates for all remittance transfers scheduled five or more business days before the date of transfer, rather than only for one-time transfers or the first in a series of preauthorized remittance transfers scheduled more than ten business days before the date of the transfer (as was proposed). The allowance for estimates in disclosures for subsequent preauthorized remittance transfers will have limited application, insofar as the Bureau is eliminating the requirement that pre-payment disclosures be sent prior to subsequent preauthorized remittance transfers and is only requiring pre-transfer receipts for such transfers when certain previously disclosed figures change. However, to the extent that a remittance transfer provider must send a pre-transfer receipt, the final rule permits the provider to disclose estimates in accordance with § 1005.32(b)(2). *See* § 1005.36(a)(2)(i) (discussing pre-transfer disclosure requirements for subsequent preauthorized remittance transfers). In addition, the new exception permitting estimates is expanded from the February Proposal to allow estimates in certain cases when the provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded. The new provisions and comments received are discussed in more detail below.

Provision of Estimates for Transfers Scheduled Before the Date of Transfer

Industry commenters generally supported the first option for estimates suggested by the February Proposal: an exception from the general rule requiring accurate disclosures (§ 1005.31(f)) that would permit remittance transfer providers to disclose estimates of the amount of currency to be received, as well as other information such as exchange rates, for certain remittance transfers scheduled before the date of transfer. Although the February Proposal only sought comment regarding disclosure of estimates in one-time transfers and the first in a series of preauthorized remittance transfers scheduled more than ten business days before the date of transfer, most commenters addressed the use of estimates for all transfers scheduled before the date of transfer (*i.e.,* one-time transfers scheduled before the date of transfer, the first in a series of preauthorized remittance transfers, and subsequent preauthorized remittance transfers).

Industry commenters stated that absent an exception allowing for the disclosure of estimates, remittance transfer providers would face difficulties adjusting their risk management systems to provide accurate exchange rates before the date of transfer, particularly when providers are required to allow senders to cancel remittance transfers up to three business days before the scheduled date of transfer. *See* § 1005.36(c). Commenters also favored the disclosure of estimates due to the potential legal consequences associated with creating risk management strategies required in order to provide accurate (rather than estimated) disclosures far before a scheduled remittance transfer.

First, multiple industry commenters argued that if remittance transfer providers were required to give accurate disclosures of the exchange rates that would apply to remittance transfers scheduled before the date of transfer, any providers offering such transfers would likely need to change their current methods of managing foreign exchange risk. One commenter stated that remittance transfer providers often assume the risk from fluctuations in the wholesale rates at which they buy foreign currency during the course of a day, by setting one retail exchange rate to apply to remittance transfers (or other transactions) conducted throughout that day. However, industry commenters stated that setting retail exchange rates farther before the date of transfer would cause a remittance transfer provider to incur more exchange rate risk due to the extended time period during which wholesale foreign currency markets might fluctuate. Commenters contended that in order to disclose the exchange rate that would apply to a remittance transfer far before the date of such transfer, a provider would either have to (1) bear the risk of the wholesale exchange rate changing before the date of transfer or (2) use some method to purchase currency before the date of transfer and bear the risk of the sender cancelling the transfer, leaving the provider (or its business partner) with unneeded currency.

During outreach conversations, the Bureau spoke to industry participants to learn more about how remittance transfer providers can or do manage foreign exchange risk. In these conversations, foreign currency providers and other market participants stated that if they were required to disclose accurate exchange rates several days in advance of the date of transfer, remittance transfer providers (or their business partners) might have to develop new procedures to manage fluctuations in the wholesale foreign exchange rates, *i.e.,* the rates at which remittance transfer providers (or their business partners) generally buy foreign currency.

Second, several industry commenters stated that remittance transfer providers would face difficulties implementing any of the methods that would allow them to manage the risk associated with disclosing exchange rates before the date of a transfer, and that these methods could result in increased prices for senders. Industry commenters indicated, and participants in outreach conducted by the Bureau further explained, that the primary method for remittance transfer providers (or their business partners) to manage any additional risk created due to the disclosure of actual exchange rates for remittance transfers scheduled before the date of transfer would likely be through employing foreign exchange futures or forward contracts, through which a buyer commits to buying a specified amount of foreign currency, at a specified foreign exchange rate, at a later date.[12] Industry commenters stated that a remittance transfer provider could itself, or through a third party, purchase a futures or a forward contract for the amount of the remittance transfer, and/or sell such a contract to the sender. One industry commenter explained, however, that such methods can be risky if foreign currency markets fluctuate and if a sender cancels a remittance transfer after the provider secures the currency needed for the transfer. In such a case, a remittance transfer provider (or its business partner) may experience a loss due to changes in the foreign exchange markets.

Third, industry commenters stated that setting exchange rates before the

[12] A futures contract for foreign currency is a contract between two parties to purchase a specified amount of foreign currency at a date in the future for a price agreed upon at the time of contracting. Such contracts would allow a provider to ''lock-in'' a rate in order for it to give customers an accurate rate when scheduling the transfer.

date of transfer could implicate other laws and regulations. For example, one trade association commenter expressed concern that for some types of entities, simply setting an exchange rate before the date of transfer might be considered a forward contract, and that therefore these entities might become subject to U.S. Commodity Futures Trading Commission regulations that contain registration, capital, reporting, and recordkeeping requirements. Separately, in an outreach conversation, one bank expressed concern that restrictions on depository institutions' investments created by the Dodd-Frank Act may similarly limit depository institutions' ability to purchase the necessary contracts needed to manage the risk associated with setting far in advance the exchange rates that will apply to remittance transfers. Finally, one credit union commenter expressed concern that Federal credit union regulations might restrict credit unions' ability to manage foreign currency risk.

Fourth, apart from regulatory concerns, some industry commenters and participants in outreach suggested that requiring accurate disclosures of exchange rates far before the date of transfer would significantly increase costs. Several commenters stated that any additional efforts to provide exact exchange rates in advance would result in increased prices charged to senders (though none estimated by how much). These commenters indicated that costs could be so high that senders would not choose these products.

Fifth, an industry commenter expressed concern that any requirement to disclose an accurate exchange rate before the date of a remittance transfer would pose a significant risk to remittance transfer providers if senders decide to take advantage of the three-business-day cancellation period to seek better exchange rates. The requirements in the February Final Rule in §§ 1005.31(b)(1)(iv), 1005.33(a)(1)(iii), and 1005.36(b) that remittance transfer providers disclose the exchange rate that applies to a remittance transfer in pre-payment disclosures and receipts and that the provider must make available to the designated recipient the amount of currency stated in the disclosure means, in effect, that a remittance transfer provider must commit to a specific exchange rate at the time the sender authorizes the transfer, even if disclosed days or weeks before the date of the transfer. As a result, the commenter stated some senders might use the three-day cancellation period applicable to transfers scheduled before the date of transfer strategically in order to seek better exchange rates. Thus, if prior to expiration of the cancellation period, the remittance transfer provider offered an exchange rate that was more favorable to the sender than the exchange rate set for the transfer, the commenter felt that a sender might decide to cancel the remittance transfer and immediately rebook it at the more favorable exchange rate available that day. Conversely, if the provider offered an exchange rate that was less favorable than the earlier rate, the sender would benefit from having locked in a better rate that the remittance transfer provider was contractually bound to apply to the transfer. The commenter stated that this phenomenon would increase providers' exchange rate risk and the cost of managing such risk. Some industry commenters indicated that, at least in some instances, providers would refuse to offer consumers the ability to schedule remittance transfers before the date of transfer if the Bureau required providers to disclose, before the cancellation deadline passes, the exchange rate that will apply to any such remittance transfer.

Consumer group commenters agreed that the use of estimates in disclosures may be appropriate for initial transfers in series of preauthorized remittance transfers, but stated that, if remittance transfer providers were allowed to use estimates in disclosures for such transfers, senders should be informed they would not receive actual notice of the price of the transfer or of the amount to be received by the designated recipient during the periods when the senders can cancel the transfers. Some of these commenters also stated that if remittance transfer providers were permitted to use estimates for transfers scheduled before the date of transfer, then providers should also be required to ensure that senders eventually receive disclosures that state the actual exchange rates that will apply to the remittance transfers prior to the expiration of the cancellation periods for those transfers, or the providers should be required to commit to the method they will use to set the exchange rate on the date of transfer.

Finally, an individual commenter and several industry commenters stated that disallowing estimates would disproportionately harm smaller remittance transfer providers. The individual commenter suggested that small providers would not have the scale or expertise to manage exchange rate risk in a manner necessary to comply with any requirement that providers disclose accurate exchange rates before the date of transfer. Relatedly, industry commenters stated that not allowing estimates for disclosures provided prior to the date of a remittance transfer would disproportionately affect small providers relative to large providers. Similarly, several industry commenters urged the Bureau to allow estimates because without estimates they would not be able to manage risk and thus would have no reliable way of providing accurate disclosures before the date of transfer of the exchange rate and related figures. If the February Final Rule remained unchanged, these providers stated they would not permit consumers to schedule transfers before the date of transfer.

Based on comments received and the Bureau's outreach and further analysis, and in order to effectuate the purposes of the EFTA and facilitate compliance, the Bureau believes it necessary and proper to use its EFTA section 904(a) and (c) authority to adopt proposed § 1005.32(b)(2) with the changes discussed in more detail below concerning (i) when estimates will be allowed under this provision and (ii) situations where the amount to be transferred may vary.

The Bureau continues to believe that the market for remittance transfers scheduled significantly before of the date of transfer, including preauthorized remittance transfers, is currently limited. Nevertheless, the Bureau believes that if it did not adopt this provision to allow estimates, the subset of remittance transfers providers that currently offer senders the ability to schedule remittance transfers before the date of transfer—or are considering doing so—may limit such offerings because the providers (or their business partners) would not want to absorb or manage the risk associated with fixing the exchange rates that would apply to transfers far in advance of the date of transfer. As described above, many retail exchange rates are set through reference to wholesale currency markets in which rates can fluctuate frequently. As a result, whenever there are time lags between when the retail rate applied to a transfer is set, when the relevant foreign currency is purchased, and when funds are delivered, a remittance transfer provider (and/or its business partner) may face losses due to unexpected changes in the value of the relevant foreign currency. Generally, this risk may increase the more time that elapses between these events.

The Bureau is concerned that in many cases, remittance transfer providers (or their business partners) will find it more difficult or costly to manage the risks related to disclosing accurate exchange rates before the date of transfer and that such risks may be exacerbated because

the final rule allows senders to cancel transfers up to three business days before the date of transfer. The Bureau is also concerned that, because remittance transfers scheduled before the date of transfer are a relatively small portion of the remittance transfer market, providers may decide not to develop necessary risk management tools and may not offer transfers scheduled before the date of transfer. The Bureau further believes that for such transactions, allowing estimates may be beneficial to senders in many instances even though senders may receive less information before the date of transfer than they would under the February Final Rule. If senders received exchange rates set long before the dates of remittance transfers, in some cases, senders would receive a more favorable exchange rate than they would otherwise, while other senders would receive less favorable rates, depending on the fluctuation of the exchange rate between the date of disclosure and the date of transfer. However, allowing estimates may result in lower costs for remittance transfer providers (and thus lower prices for all senders of transfers scheduled before the date of transfer), as well as wider access for senders to the convenience of one-time transfers scheduled before the date of transfer and preauthorized remittance transfers.

Furthermore, while under § 1005.32(b)(2) senders will not always receive disclosures of a fixed exchange rate and amount of currency to be received, the Bureau believes that even estimates of these amounts will still permit consumers to learn some information that could assist in comparing remittance transfer providers' price models. As is discussed below (*see* § 1005.32(d)) estimates provided pursuant to § 1005.32(b)(2) must be based on the exchange rate or, where applicable, the estimated exchange rate based on an estimation methodology permitted under § 1005.32(c) that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.

Time Period for Estimates for Transfers Scheduled Before the Date of Transfer

Proposed § 1005.32(b)(2)(i) stated that estimates could be provided for certain items required in the pre-payment disclosure, receipt, or combined disclosure if a remittance transfer was requested or authorized by the sender more than ten days before the date of transfer. The Bureau sought comment on whether ten days is an appropriate period after which estimates should no longer be permitted or whether the period should be longer or shorter.

The Bureau received a number of comments on the appropriate period for use of estimates in disclosures provided for all remittance transfers scheduled before the date of transfer (rather than just one-time transfers scheduled before the date of transfer and first in a series of preauthorized remittance transfers as covered by the February Proposal). Industry commenters supported estimates in disclosures for all remittance transfers scheduled more than ten days before the date of transfer, but many also urged the Bureau to allow estimates for remittance transfers scheduled ten or less days before for many of the reasons discussed above—namely the risk management and other challenges that they believed that remittance transfer providers would face if they were required to disclose exchange rates far in advance of remittance transfers. These commenters urged a shorter period within which they would not be permitted to provide estimated disclosures. Commenters also expressed concern that providers would refuse to offer consumers the ability to schedule transfers ten or fewer days before the date of transfer because providers would not want to disclose exact exchange rates between one and ten days before the date of transfer.

Industry commenters suggested a range of alternatives less than ten days. One industry commenter proposed allowing estimates for all transfers scheduled more than one day before the date of transfer because it was unable to manage the risks associated with providing accurate exchange rates more than one day in advance. Other industry commenters provided similar rationales for proposed periods of less than two days, two or three days, five days, and seven days. One trade group commenter urged the Bureau to allow estimates for all remittance transfers scheduled two or more days before the date of transfer and to require only a two-day cancellation period because a shorter cancellation period would still allow senders to cancel transfers and would exacerbate providers' foreign currency risks.

Consumer group commenters favored the ten-day rule expressed in the February Proposal. One of these commenters explained that although it understood the difficulty of disclosing the actual exchange rate before the date of transfer, its research showed that consumers are better informed when they receive accurate and precise disclosures, and thus this commenter preferred to expand the period during which estimates would not permitted.

The Bureau is adopting a revised § 1005.32(b)(2)(i), which permits remittance transfer providers to estimate exchange rates and, in some instances fees and taxes, for all remittance transfers scheduled five or more business days before the date of transfer, rather than for one-time transfers or the first in a series of preauthorized remittance transfers scheduled more than ten days before the date of transfer as proposed. As is explained above regarding the use of estimates generally, compared to the proposal permitting estimates in some cases more than ten days before the date of transfer, the Bureau believes this provision will allow providers increased flexibility to continue to offer transfers scheduled five or more business days before the date of transfer while still requiring accurate disclosures for transfers scheduled less than five days before the date of transfer (except when estimates are permitted by § 1005.32(a) or (b)(1)).

The Bureau recognizes that for transfers scheduled three or four business days before the date of transfer, providers will have to disclose an accurate exchange rate (rather than an estimate) while maintaining the sender's right to cancel the transfer. *See* § 1005.36(c). The Bureau believes, however, that as compared to transfers scheduled five or more business days before the date of transfer, risk management needs are reduced for transfers scheduled less than five business days before the date of transfer. The Bureau believes that providers should not be permitted to use provide estimates, other than as permitted under § 1005.32(a) and (b)(1), for transfers scheduled less than five business days before the date of transfer. Because risk is generally more manageable closer to the date of transfer, the Bureau believes consumers should receive accurate disclosures during that period. To the extent that any remittance transfer providers that currently offer, or plan to offer, remittance transfers scheduled in advance may be inclined to limit senders' ability to schedule transfers three or four business days before the date of transfer (because they are unwilling or unable to provide an accurate exchange rate while cancellation remains possible), the Bureau believes there is a limited loss of convenience to consumers as compared to a scenario where estimates are disallowed for a longer period. The Bureau presumes that any consumer has the option of a same-day transfer with a remittance transfer provider who does not offer two, three, or four days advance scheduling.

Thus, in the final rule, § 1005.32(b)(2)(i) provides that estimates may be provided in certain cases for the amounts to be disclosed under § 1005.31(b)(1)(iv) through (vii) if a remittance transfer is scheduled by a sender five or more business days before the date of transfer.

The Bureau proposed revisions to comment 32–1 to explained when the proposed § 1005.32(b)(2) exception would apply. The Bureau is revising proposed comment 32–1 to clarify that § 1005.32(b)(2) permits estimates to be used for certain information if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer, for disclosures described in § 1005.36(a)(1)(i) and (a)(2)(i). Section 1005.36(a)(1)(i) and (a)(2)(i) concern pre-payment disclosures and receipts for one-time transfers scheduled five or more business days before the date of transfer and preauthorized remittance transfers and are discussed in detail below.

Estimates of the Amount To Be Transferred

The Bureau also sought comment on whether remittance transfer providers should be allowed flexibility to estimate certain information in disclosures for the first scheduled transfer in a series of preauthorized remittance transfers where the exact amount of the transfer can vary. The few commenters on this issue suggested that the need to estimate the amount to be transferred could occur in two scenarios. For example, an industry commenter suggested that senders may want to transfer a variable amount (such as a paycheck or government benefits payment in an amount that varies), or may want to prearrange the delivery of a fixed amount of one currency from an account denominated in another currency, *e.g.,* U.S. dollars (which would result in the transfer amount depending on the exchange rate). The Bureau believes it unnecessary to adjust the rule expressly to address the first potential scenario. No industry commenter stated that it currently allows customers to schedule transfers of a variable amount, and the Bureau is not aware of business models permitting such remittance transfers. Under the final rule, § 1005.36(a)(2)(i) requires a receipt to be provided a reasonable time prior to a subsequent preauthorized transfer if the amount to be transferred changes from the first transfer in series a of preauthorized remittance transfers.

As to the latter scenario, outreach confirmed that the marketplace currently permits some consumers to schedule series of recurring remittance transfers in which the transfer amount is fixed in a currency other than that in which the transfer is funded. To address this latter scenario, the Bureau believes it necessary and proper to effectuate the purposes of the EFTA and to facilitate compliance to exercise its EFTA section 904(a) and (c) authority to adopt an additional revision to § 1005.32(b)(2). Specifically, the final rule states in § 1005.32(b)(2)(i) that if, at the time the sender schedules a transfer, the remittance transfer provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded, estimates may also be provided for the amounts to be disclosed under § 1005.31(b)(1)(i) through (iii), except as provided in § 1005.32(b)(2)(iii) (*i.e.,* in certain cases the provider can disclose estimates of the fees and taxes imposed on the transaction and the total amount of the transaction, as well as the amount that will be transferred in the currency in which the remittance transfer is funded).

New comment 32(b)(2)–1 provides an example regarding the exception for remittance transfers scheduled before the date of transfer in which the amount to be transferred is fixed in a currency other than that in which the transfer is funded.

New comment 32(b)(2)–2 clarifies the interaction between the final rule and § 1005.10(d) of subpart A of Regulation E.[13] It states that to the extent § 1005.10(d) requires, for an electronic fund transfer that is also a remittance transfer, notice when a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, that provision applies even if subpart B would not otherwise require notice before the date of transfer. However, insofar as § 1005.10(d) does not specify the form of such notice, a notice sent pursuant to § 1005.36(a)(2)(i) will satisfy § 1005.10(d) as long as the timing requirements of § 1005.10(d) are satisfied.

Relatedly, the Bureau solicited comment as to whether a remittance transfer provider should be permitted to estimate the date in the foreign country on which the funds will be available, if the amount of the transfers under the preauthorized remittance transfer arrangement varies from one transfer to the next, and the remittance transfer provider does not know the exact date on which the remittance transfer must be sent at the time that disclosures are given for the first transfer. 77 FR 6310, 6318 (suggesting that this situation could arise, for example, if remittance transfers are being used to pay bills with due dates that are not known in advance). No comments were received on this issue. The Bureau is not adopting any changes to the February Final Rule regarding estimates of the date on which funds will be available.

32(b)(2)(ii) and (b)(2)(iii)

To accommodate the allowance for estimates of exchange rates in certain disclosures for remittance transfers scheduled five or more business days before the date of transfer, several additional provisions are included in § 1005.32(b)(2) regarding other information disclosed in pre-payment disclosures and receipts.

Proposed § 1005.32(b)(2)(ii) permitted a remittance transfer provider to estimate taxes imposed on the remittance transfer by a person other than the provider for transfers scheduled more than ten days before the date of transfer only if those taxes were a percentage of the amount transferred to the designated recipient and are to be disclosed in the currency in which the funds will be received. Proposed § 1005.32(b)(2)(iii)(A) similarly permitted a remittance transfer provider to estimate fees imposed on the remittance transfer by a person other than the provider for transfers scheduled more than ten days before the date of transfer only if those fees were a percentage of the amount transferred to the designated recipient and are to be disclosed in the currency in which the funds will be received. Unlike proposed § 1005.32(b)(2)(ii), proposed § 1005.32(b)(2)(iii) contained an additional provision—§ 1005.32(b)(2)(iii)(B)—that, in effect, reasserted the temporary exception (in § 1005.32(a)) for ''insured institutions'' to estimate fees. Because § 1005.32(a) remains unchanged in the final rule and continues to apply regardless of the application of § 1005.32(b)(2), the Bureau believes it unnecessary to include a provision incorporating that exception.[14]

[13] Section 1005.10(d)(1) states: ''*Notice.* When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution shall send the consumer written notice of the amount and date of the transfer at least 10 days before the scheduled date of the transfer.''

[14] For the same reasons, the Bureau is not adopting the proposed change to comment 32(c)(1)–1, concerning potential transmittal routes or proposed comment 32(b)(2)–1 concerned fees

As a result, there is no longer a need for separate provisions for estimation of the fees and taxes in the disclosure required under § 1005.31(b)(1)(vi). In place of proposed § 1005.32(b)(2)(ii) and (b)(2)(iii)(A), as well as proposed comment 32(b)(2)–7, the Bureau adopts § 1005.32(b)(2)(ii), which provides that fees and taxes described in § 1005.31(b)(1)(vi) may be estimated under § 1005.32(b)(2)(i) only if the exchange rate is also estimated under § 1005.32(b)(2)(i) and the estimated exchange rate affects the amount of fees and taxes under § 1005.31(b)(1)(vi). The revised provision expands the ability to estimate fees and taxes to cover not just situations in which the tax or fee is a percentage of the amount of the funds transferred, but also to cover situations in which a tax or fee may otherwise vary depending on the exchange rate (*i.e.* a tax is only charged on transfers that exceed a certain threshold denominated in the currency in which the funds will be received, and that amount depends on the exchange rate).

The final rule also includes § 1005.32(b)(2)(iii). This provision allows remittance transfer providers to estimate fees and taxes in certain disclosures provided for remittance transfers scheduled five or more business days before the date of transfer, when a remittance transfer provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded. But § 1005.32(b)(2)(iii) explains that fees and taxes described in § 1005.31(b)(1)(ii) may be estimated under § 1005.32(b)(2)(i) only if the amount that will be transferred in the currency in which it is funded is also estimated under § 1005.32(b)(2)(i), and the estimated amount affects the amount of such fees and taxes.

Disclosure of Formulas Used To Calculate the Exchange Rate

In the February Proposal, the Bureau sought comment on whether, in lieu of providing an estimate of the exchange rate for a remittance transfer scheduled before the date of transfer, the Bureau should allow providers to disclose a formula that will be used to calculate the exchange rate that will apply to such a transfer, and that is based on information that is publicly available prior to the time of transfer. The sender could then use that formula to calculate the exchange rate that will apply to the transfer.

Several industry and consumer group commenters supported the use of such a formula although they disagreed on whether its use should be optional. One industry commenter stated that the disclosure of a formula could eliminate the need for remittance transfer providers to manage exchange rate risk and would reduce the burden on providers as compared to a rule that required providers to disclose actual exchange rates for transfers scheduled before the date of transfer. Another industry commenter favored disclosure of formulas rather than estimates for remittance transfers scheduled before the date of transfer because the volatility of currency markets makes disclosure of estimates of limited utility to senders trying to gauge the pricing of a particular provider's services. Other industry commenters stated that either a formula or use of estimates could reduce compliance burden on providers. One consumer group favored the use of formulas whenever the Bureau would also permit estimates on disclosures provided more than ten days before the date of transfer because formulas may make comparison shopping easier for consumers.

In contrast, one industry commenter preferred disclosure of estimates to formulas because, the commenter stated, for remittance transfers scheduled before the date of transfer, it would be easier to provide an estimate of an exchange rate to senders and such an estimate would be easier for a sender to understand.

The Bureau believes that, in some cases, compared to either an estimated or an actual exchange rate, a well-designed formula could better serve consumers and potentially reduce burden on remittance transfer providers. The Bureau believes that, given the nature of foreign currency markets, in many cases, any estimate of the exchange rate for a remittance transfer scheduled days or weeks in the future may not provide a highly precise indication to the sender of the exchange rate that would actually be applied to the sender's transfer. By contrast, a formula that will be used to calculate the exchange rate applicable to a transfer could provide more certainty to a sender as to relative prices or the pricing mechanism used and allow the sender to calculate the actual exchange rate that will apply to a transfer, before the date of the transfer. In addition, disclosing a formula would reduce the need for a remittance transfer provider to manage the currency risk associated with providing an accurate exchange rate for a transfer scheduled before the date of transfer.

Nevertheless, the Bureau does not believe it is appropriate to allow for the use of formulas in disclosures at this time. First, the Bureau is concerned that the disclosure of formulas themselves could be confusing to senders if not designed in a way that consumers can understand. Second, if a formula was not required to be disclosed by all remittance transfer providers, the Bureau is concerned that consumer confusion could be a problem if some providers disclose formulas while others disclose estimates. However, the Bureau expects to continue evaluating how disclosures can most effectively inform senders without imposing undue burden on remittance transfer providers.

32(c) and (d) Bases for Estimates

The February Proposal sought comment on the appropriate method to calculate estimates of exchange rates, and related figures, under the proposed exception for remittance transfers scheduled before the date of transfer. However, the Bureau did not propose specific changes to § 1005.32(c), which concerns the allowable bases for estimates of required disclosures.[15] The Bureau received a few comments on this issue but none that suggested revisions to § 1005.32(c). However, in order to allow remittance transfer providers to give estimates for transfers scheduled five or more business days before the date of transfer and to make those estimates more useful for consumers, the Bureau believes revisions to the allowable bases for such estimates are necessary for disclosures that contain estimates pursuant to § 1005.32(b)(2). These changes are adopted in a new § 1005.32(d).

The February Final Rule contains, in § 1005.32(c)(1), three specific approaches by which a remittance transfer provider may estimate an exchange rate when using the exceptions for estimates in § 1005.32(a) and (b) (now renumbered as (b)(1)). Section 1005.32(c) further allows a

imposed on the remittance transfer provider by a person other than the remittance transfer provider. The Bureau received no comments regarding comment 32(b)(2)–1. Nevertheless, the Bureau is not adopting the proposed comment because it is duplicative. *See* § 1005.32(a) and (b)(2)(ii). The final rule continues, in effect, to allow estimates for the fees described in § 1005.31(b)(1)(vi) in two circumstances: (i) Where the fees are calculated as a percentage of the amount transferred to the designated recipient pursuant to § 1005.32(b)(2)(ii); or (ii) where an ''insured institution'' as defined in § 1005.32(a)(3) is permitted to estimate fees under the temporary exception in § 1005.32(a).

[15] In the February Proposal, the Bureau did propose conforming changes to comment 32(c)(3)–1 that referenced the renumbered provisions relating to the permanent exception for transfers to certain countries (what is § 1005.32(b)(1) in the final rule). The Bureau received no comments on the proposed changes to this comment, and the Bureau is adopting it as proposed.

provider to use an estimation approach not listed in § 1005.32(c)(1) so long as the designated recipient receives the same, or greater, amount of funds than the remittance transfer provider disclosed, as required by § 1005.31(b)(1)(vii). Under, the February Proposal, the bases for determining estimates under proposed § 1005.32(b)(2) would have been the same as the bases for determining estimates under the existing provisions permitting estimates in the February Final Rule (*i.e.,* § 1005.32(c)).

In commenting on proposed § 1005.32(b)(2), industry commenters noted that if allowed, the most likely way that they would ''estimate'' the future exchange rate would be by providing the actual rate available on the day of scheduling to customers sending same-day transfers. One commenter explained that while they could always disclose the actual rate available on the date the transfer is scheduled, the commenter cautioned that many variables could alter exchange rates over time. Furthermore, industry commenters stated that they believed that senders typically do little comparison shopping when scheduling transfers before the date of transfer and instead are more interested in reliable and timely transfers from a remittance transfer provider that the senders trust.

To clarify the proper bases for disclosing estimates, the Bureau adds § 1005.32(d), which states that estimates provided pursuant to § 1005.32(b)(2) must be based on the exchange rate or, where applicable, the estimated exchange rate based on an estimation methodology permitted under § 1005.32(c) that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, in accordance with § 1005.32(d), a remittance transfer provider uses a basis described in § 1005.32(c) but not listed in § 1005.32(c)(1), the provider is deemed to be in compliance with § 1005.32(d) regardless of the amount received by the designated recipient, so long as the estimation methodology is the same as that the provider would have used or did use in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.[16]

The Bureau is making two changes to the bases for estimates applicable to the exception for estimates for remittance transfers scheduled five or more business days before the date of transfer. The first requires providers to base estimates on the exchange rate (or estimated exchange rate) that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. In order to allow for easier comparison shopping and for estimates to be of use to senders, the Bureau believes that remittance transfer providers should base their estimates on similar methodologies. The Bureau believes that if providers uniformly disclose the actual rate available that day as the estimated rate for transfers scheduled before the date of transfer, senders will more easily be able to compare the offerings of various remittance transfer providers by comparing rates and fees. Moreover, commenters did not suggest any other reliable method to estimate future exchange rates.

The second change concerns estimates pursuant to § 1005.32(b)(2) by remittance transfer providers that can otherwise use the two statutory exceptions in § 1005.32(a) or (b)(1). As explained above, providers of transfers scheduled before the date of transfer who cannot use one of the enumerated methods for estimating in § 1005.32(c)(1) will have difficulties guaranteeing that the designated recipient receives the same, or greater, amount of funds than the remittance transfer provider disclosed. The Bureau is concerned about remittance transfer providers that use estimates pursuant to § 1005.32(a) or (b)(1), and that, as permitted by § 1005.32(c), have chosen to use an estimation methodology other than those specified in § 1005.32(c)(1). With regard to such methodologies, § 1005.32(c) requires that if a provider bases an estimate on an approach that is not listed in that paragraph, the provider is deemed to be in compliance with the paragraph so long as the designated recipient receive the same, or greater, amount of funds than the provider disclosed under § 1005.31(b)(1)(vii). The Bureau is concerned that due to the fluctuations in wholesale foreign exchange markets discussed above, in many cases, remittance transfer providers that have developed estimation methodologies that reliably satisfy the requirements of § 1005.32(c) for same-day transfers, may not be able to do the same for estimates of exchange rates provided for transfers scheduled five or more business days before the date of a remittance transfer. The Bureau also recognizes that the elimination of this guarantee will reduce burden on providers.

The Bureau expects that most remittance transfer providers, if allowed, will set the retail exchange rate that applies to a remittance transfer scheduled before the date of transfer on the date of that transfer, in rough reference to one of several measures of the wholesale or market exchange rates. Insofar as there are a large number of factors that may alter exchange rates, the Bureau believes that in most scenarios, there is no method to predict with precision what those market or wholesale rates will be far before the date on which a remittance transfer provider sets a retail exchange rate. Thus, the requirement in § 1005.32(c) that providers who cannot use a listed methodology guarantee that the amount received by the designated recipient must be the same, or greater than, the estimated amounts disclosed to the sender, is not feasible for disclosures provided five or more business days before the date of transfer. Nevertheless, because providers must use the same method for transfers scheduled before the date of transfers as they use for same-day transfers, the Bureau believes there will still be consistency in the estimation methodology.

New comment 32(d)–1 explains that when providing an estimate pursuant to § 1005.32(b)(2), § 1005.32(d) requires that a remittance transfer provider's estimated exchange rate must be the exchange rate (or estimated exchange rate) that the remittance transfer provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, for the same-day remittance transfer, the provider could utilize either of the other two exceptions permitting the provision of estimates in § 1005.32(a) or (b)(1), the provider may provide estimates based on a methodology permitted under § 1005.32(c). For example, if, on February 1, the sender schedules a remittance transfer to occur on February 10, the provider should disclose the exchange rate as if the sender was requesting the transfer be sent on February 1. However, if at the time payment is made for the requested transfer, the remittance transfer provider could not send any remittance transfer until the next day (for reasons such as the provider's deadline for the batching of transfers), the remittance transfer provider can use the rate (or estimated exchange rate) that the remittance transfer provider would have used or did use in providing disclosures that day with respect to a remittance transfer

[16] Section 1005.32(c)(1) contains three methodologies for providing estimates. If a provider chooses to use a non-listed method, § 1005.32(c) explains that the amount received by the designated recipient must be the same, or greater then, the estimated amount disclosed to the sender.

requested that day that could not be sent until the following day.

Section 1005.33 Procedures for Resolving Errors

As noted above, consumers may be permitted to schedule a series of preauthorized remittance transfers in which the transfer amount is fixed in a currency other than that in which the transfer is funded. Thus, § 1005.32(b)(2)(i) permits estimates to be provided for, among other things, the total amount of the transfer. In light of this new provision, a revision to § 1005.33(a)(1)(i) is necessary to clarify that disclosing an estimate of the total amount of the transfer in this case would not result in an error.

Under the February Final Rule, § 1005.33(a)(1)(i) states than ''error'' means an incorrect amount paid by a sender in connection with a remittance transfer. Comment 33(a)–1 explains that § 1005.33(a)(1)(i) covers circumstances in which a sender pays an amount that differs from the total amount of the transaction, including fees imposed in connection with the transfer, stated in the receipt or combined disclosure provided under § 1005.31(b)(2) or (3).

The Bureau is revising this provision to exempt from the definition of error estimates of the total amount of the transfer provided in accordance with the new exception in § 1005.32(b)(2). This exception allows for, among other things, an estimate of the amount to be transferred if, at the time the sender schedules the transfer, the remittance transfer provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded. When the amount to be transferred is estimated under this section, the provider is also permitted to estimate the total amount of the transaction (*i.e.,* the amount to be paid by the sender).

Thus, as revised, § 1005.33(a)(1)(i) states that the term error means an incorrect amount paid by a sender in connection with a remittance transfer, unless the disclosure stated an estimate of the amount paid by a sender in accordance with § 1005.32(b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amount. As discussed in detail below, when a remittance transfer provider estimates of the total amount of the transfer in a receipt provided at least five or more business days before the date of transfer (*see* § 1005.36(a)(1)(i) and (a)(2)(i)), the provider must also send a receipt without the estimate after the transfer (*see* § 1005.36(a)(1)(ii) and (a)(2)(ii)). Thus, the sender will still receive a receipt with the actual amount the sender paid for the transfer and can still assert an error based on the disclosure of the amount paid in that receipt.

Section 1005.36 Transfers Scheduled Before the Date of Transfer

Overview

The February Final Rule sets forth several procedures for the timing, content, and accuracy of pre-payment disclosures and receipts for preauthorized remittance transfers. At the same time, the February Proposal sought comment on whether further adjustments were necessary to address one-time transfers scheduled before the date of transfer and preauthorized remittance transfers.

Specifically, the February Final Rule treats the first in a series of preauthorized remittance transfers the same as most other remittance transfers by requiring that accurate (not estimated) figures be disclosed in the pre-payment disclosure and receipt. But in recognition of the potential risks associated with setting exchange rates and the potential difficulty of determining the amount to be provided to a designated recipient weeks or months before subsequent transfers, the February Final Rule does not require that disclosures for an entire series of preauthorized remittance transfers be provided when the sender initially requests the transfer and authorizes payment. Instead, the February Final Rule requires remittance transfer providers to issue pre-payment disclosures and receipts for each subsequent transfer closer to the dates of the individual transfers. In particular, under the February Final Rule, the pre-payment disclosure for each subsequent transfer must be provided within a reasonable time prior to the scheduled date of the transfer, and the receipt for each subsequent transfer generally must be provided no later than one business day after the date on which the transfer is made. The pre-payment disclosure and receipt for each subsequent transfer must be accurate when the respective transfer is made, unless a statutory exception applies. *See* § 1005.36(b). Senders must also be permitted to cancel these transfers up to three business days before the date of transfer. *See* § 1005.36(c).

Because the Bureau was concerned that even with the modifications permitted by the February Final Rule, the disclosure requirements could pose difficulty for certain remittance transfers scheduled significantly before the date of transfer, the February Proposal asked a number of questions regarding whether to make further adjustments to the disclosure and cancellation regime for these transfers. The Bureau sought input on how to manage the importance to senders of accurate and timely disclosures, permit growth of this portion of the remittance transfer market, and limit industry compliance burdens in light of the potential risks associated with providing accurate exchange rates and the difficulty of determining the amount to be received by designated recipients for a particular transfer.

Specifically, the February Proposal sought comments on a number of potential changes to the February Final Rule concerning the type, timing, and accuracy of pre-payment disclosures and receipts a sender should receive in connection with one-time transfers and the first in a series of preauthorized remittance transfers scheduled to occur more than ten days before the date of transfer. The February Proposal also sought comment on whether senders should receive disclosures for subsequent preauthorized remittance transfers and, if so, what form those disclosures should take. Finally, the February Proposal sought comment on what cancellation rules should apply to these transactions and how and when those rules should be disclosed to senders.

Based on comments received, the Bureau is amending the February Final Rule to allow providers increased flexibility, while maintaining requirements that senders receive sufficient and timely information to help inform their selection of remittance transfer providers and help them understand the terms of their remittance transfers. With respect to timing, the final rule requires pre-payment disclosures and receipts for one-time transfers scheduled five or more business days before the date of transfer and the first in a series of preauthorized remittance transfers to be provided in the same manner as they are provided for all other transfers (*i.e.,* at request and at payment authorization). The final rule also requires providers to give senders additional, accurate receipts after the transfer is sent if prior disclosures contained estimates pursuant to § 1005.32(b)(2). The Bureau is also maintaining the three-business-day cancellation period in § 1005.36(c). Finally, although the Bureau is generally eliminating the requirement to provide pre-payment disclosures for subsequent remittance transfers in a preauthorized series, the Bureau is adopting a new § 1005.36(d) to require disclosure of upcoming dates of transfer

and cancellation provisions a reasonable time before the dates of such transfers.

36(a) Timing

Section 1005.36(a) of the February Final Rule addresses the timing of disclosures for the first in a series of preauthorized remittance transfers. In the February Proposal, the Bureau sought comment on a number of questions relating to the timing of disclosures for all remittance transfers that are scheduled more than ten days before the date of transfer, including preauthorized remittance transfers, as described below.

As is discussed further below, to further the purposes of the EFTA and facilitate compliance, the Bureau finds it necessary and proper to use its EFTA section 904(a) and (c) authority to adopt § 1005.36(a)(1)(i), (a)(1)(ii), and (a)(2)(i) through (iii) and to eliminate the requirement to provide pre-payment disclosures for subsequent preauthorized remittance transfers. Sections 1005.36(a)(1)(i), (a)(1)(ii), (a)(2)(i), and (a)(2)(ii) are revised from the February Final Rule. Section 1005.36(a)(2)(iii) is a new provision in the final rule.

36(a)(1) Timing of Disclosures for One-Time Transfers Scheduled Before the Date of Transfer and the First in a Series of Preauthorized Remittance Transfers

Section 1005.36(a) of the February Final Rule addresses the timing of required disclosures for preauthorized remittance transfers. Section 1005.36(a)(1) of the February Final Rule requires that, for the first in a series of preauthorized remittance transfers, the pre-payment disclosure and receipt be provided in the same manner as required for all other transfers. In the February Proposal, the Bureau sought comment on whether to make further adjustments in the disclosure rules for preauthorized remittance transfers and certain other transfers scheduled before the date of transfer.

With respect to the timing of pre-payment disclosures and receipts given to senders upon request of and payment for a transfer, the Bureau received few comments, apart from those raising the concerns discussed earlier regarding the disclosure of exact exchange rates far before the date of a remittance transfer. Largely, industry commenters did not raise other concerns about the requirement that remittance transfer providers give pre-payment disclosures (or combined disclosures) when transfers are requested and prior to payment and receipts (if no combined disclosures were provided) when payment is authorized for either one-time transfers scheduled before the date of transfer or the first in a series of preauthorized remittance transfers. In the final rule, the Bureau maintains the requirement from the February Final Rule that for any one-time remittance transfer scheduled five or more business days before the date of transfer, and for the first transfer in a series of preauthorized remittance transfers, a remittance transfer provider must provide a pre-payment disclosure and a receipt to the sender subject to the same timing rules that apply to any one-time transfer.

For clarity and consistency, the Bureau is revising § 1005.36(a)(1) from the February Final Rule as a new § 1005.36(a)(1)(i) by adjusting the provision to apply both to a one-time advance transfer scheduled five or more business days before the date of transfer and the first in a series of preauthorized remittance transfers, rather than just the latter. The Bureau is also clarifying that remittance transfer providers may use combined disclosures, pursuant to § 1005.31(b)(3), for transfers covered by this provision.

The Bureau also requested comment on what follow-up disclosures, if any, should be provided to senders after authorization of a remittance transfer scheduled before the date of transfer. Specifically the Bureau asked whether a second receipt with accurate information should be provided to a sender within a reasonable time period prior to such a transfer, if the remittance transfer provider previously disclosed estimates pursuant to proposed § 1005.32(b)(2).

Most industry commenters argued against requiring a second receipt with accurate figures to be given prior to a remittance transfer when the original pre-payment disclosure and receipt contained estimates. These commenters argued that to the extent such a provision required disclosure of accurate figures ten days before the date of transfer, it would render the exception allowing providers to disclose estimates meaningless.

To the extent the Bureau would instead allow a second receipt to contain estimates, industry commenters argued that giving senders three documents (a pre-payment disclosure when requesting the remittance transfer, a receipt when payment is authorized for the transfer, and a second receipt a reasonable time before the transfer) would be confusing and unhelpful to senders. One industry commenter suggested there would be limited value added by a second receipt that could contain information that, other than updated estimated exchange rates and associated figures, would be identical to the information included in the initial receipt. Another commenter expressed concern that a sender could be confused into thinking that a remittance transfer provider has made a single transfer multiple times or that an error had occurred, necessitating the additional disclosure. Industry commenters also stated that they thought senders would benefit little from additional disclosures before a transfer, particularly when any such benefit is balanced against the increased upfront and ongoing costs to the remittance transfer providers of giving senders the additional receipt. These commenters argued that providers would pass these costs on to senders. Finally, as an alternative to a second pre-transfer receipt, one industry commenter suggested that providers give senders receipts reflecting actual figures (and not estimates) after the providers send the transfers to the designated recipient. Consumer group commenters argued that receipts with actual figures (and not estimates) be provided to senders a reasonable time prior to the date of each transfer.

In light of the Bureau's decision to allow the use of estimates in certain disclosures for remittance transfers scheduled five or more business days before the date of a remittance transfer rather than ten days as originally proposed, the Bureau believes that a follow-up receipt provided closer to the date of the transfer is not likely to provide significant benefit to senders in many cases. For example, if a remittance transfer provider schedules a remittance transfer one month before the date of transfer, and discloses an estimated exchange rate at that time, and then provides a sender a receipt with an accurate exchange rate only four business days before the date of transfer (because unless a statutory exception applies, § 1005.32(b)(2) of the final rule permits estimates only for disclosures five or more business days before the date of transfer) the receipt might not reach the sender before the expiration of the three-business-day cancellation period in § 1005.36(c). Conversely, if this follow-up receipt were sent five or more business days before the date of transfer, estimates of certain amounts would be permitted under § 1005.32(b)(2). The Bureau believes that such a disclosure generally would be of little additional value as compared to the initial estimate provided in the pre-payment disclosure and receipt required by § 1005.36(a)(1)(i) if the wholesale rate, and thus the retail rate, had not moved significantly since the initial estimate was provided.

Although the Bureau is not requiring a second receipt closer to the time of transfer, the Bureau believes that for every remittance transfer, where a sender receives a disclosure that contains estimates pursuant to § 1005.32, the sender should also receive an accurate post-transfer disclosure that informs the sender of the actual exchange rate (as well as fees, taxes, and other figures) applied to the transfer. Thus, to further consumer protections, the Bureau is adopting a revised § 1005.36(a)(1)(ii), which requires that if the disclosures provided pursuant to § 1005.36(a)(1)(i) contain estimates as permitted by § 1005.32(b)(2) (for transfers scheduled five or more business days before the date of transfer), the provider must mail or deliver to the sender an additional receipt meeting the requirements described in § 1005.31(b)(2) no later than one business day after the date of transfer.[17] If the transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by § 1005.36(a)(1)(ii) may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided. As required by § 1005.36(b)(3), which is discussed below, this receipt must contain accurate figures unless estimates are allowed by § 1005.32(a) or (b)(1).

As many remittance transfers scheduled before the date of transfer are conducted by senders who have accounts with remittance transfer providers, the Bureau believes the final rule may relieve many providers of having to provide receipts immediately after each preauthorized remittance transfer or after one-time transfer scheduled five or more business days before the date of the transfer. In addition, the Bureau believes that an accurate receipt will ensure that senders receive accurate accountings of their transfers. Furthermore, to the extent that senders of preauthorized remittance transfers want to comparison shop based on price for future transfers, these receipts may be a mechanism that allows senders to better understand providers' pricing mechanisms (by allowing a sender to know the exchange rate applied to each transfer) and the amount received by the designated recipient.

[17] The timing requirement in § 1005.36(a)(1)(ii) does not prevent a remittance transfer provider from providing this receipt before the date of the transfer. The same is true for disclosures required by § 1005.36(a)(2)(ii), which are discussed below.

36(a)(2) Timing of Disclosures for Subsequent Preauthorized Remittance Transfers

The February Final Rule contains disclosure provisions specific to subsequent preauthorized remittance transfers (*i.e.,* all preauthorized remittance transfers after the first in the series of transfers). Section 1005.36(a)(2)(i) of the February Final Rule requires that a remittance transfer provider also mail or deliver a pre-payment disclosure to the sender for each subsequent transfer and requires the disclosure to be mailed or delivered within a reasonable time prior to the scheduled date of each subsequent transfer. This provision is in lieu of the general timing rule, which would have required that a pre-payment disclosure for each transfer in a series of preauthorized remittance transfers be given at the time of the initial request (and thus a sender would receive a disclosure for every preauthorized transfer when requesting the entire series). *See* § 1005.31(e)(1). Section 1005.36(a)(2)(ii) in the February Final Rule requires a receipt to be mailed or delivered no later than one business day after the transfer or, for account-based transactions, on or with the next regularly scheduled periodic statement or within 30 days after payment is made for the remittance transfer if a periodic statement is not provided.

In the February Proposal, the Bureau sought comment on an alternative to the requirement in the February Final Rule that a pre-payment disclosure for each subsequent transfer in a series of preauthorized remittance transfer be provided within a reasonable time prior to the scheduled date of transfer: Whether the pre-payment disclosure requirement for subsequent preauthorized remittance transfers should be eliminated.

Industry commenters generally favored eliminating the requirement for providing pre-payment disclosures for subsequent preauthorized remittance transfers for many of the same reasons these commenters disfavored a rule requiring accurate pre-payment disclosures for other transfers scheduled before the date of transfer. These commenters argued that a pre-payment disclosure for each subsequent transfer would be unnecessary, potentially confusing to senders, and burdensome to providers. For example, one commenter argued that senders schedule preauthorized remittance transfers for purposes of convenience and that senders typically do not comparison shop to complete each recurring transfer. The same commenter expressed concern that the requirement of an additional pre-payment disclosure might cause some providers to no longer allow consumers to schedule transfers before the date of transfer.

In contrast, one consumer group commenter supported requiring pre-payment disclosures to be provided to senders ten days before each subsequent transfer in a series of preauthorized remittance transfers (and stated that if estimates were permitted for disclosures related to such transfers, that those disclosures contain current estimates). This commenter urged that the Bureau maintain the requirement in the February Final Rule for pre-payment disclosures so that senders have additional information regarding the details of each preauthorized remittance transfer prior to such transfer.

Upon consideration of these comments and to facilitate compliance, the Bureau is eliminating the requirement to provide a pre-payment disclosure within a reasonable time prior to the scheduled date of each subsequent preauthorized remittance transfer. Thus, the Bureau is eliminating what was § 1005.36(a)(2)(i) in the February Final Rule. The Bureau is doing so for several reasons. The Bureau is concerned that the requirement in the February Final Rule—a pre-payment disclosure sent a reasonable time prior to each subsequent remittance transfer—might provide senders only a limited amount of information because pre-payment disclosures for subsequent preauthorized remittance transfers sent five or more business days before the date of transfer could contain estimates, pursuant to § 1005.32(b)(2). In addition, in some scenarios, this could create a potential for confusing and overlapping disclosures and receipts.

Conversely, the Bureau believes that if it mandated that pre-payment disclosures be sent less than five business days before a subsequent transfer such that the disclosures could not contain estimates under § 1005.32(b)(2), the disclosure would be of little use to the sender for the upcoming transfer as it could be received too close to (or after) the cancellation deadline. Separately, confusion for senders could exist in some circumstances where preauthorized remittance transfers are scheduled relatively close together or receipts are provided with periodic statements. In these cases, a sender might receive a post-transfer receipt from a prior preauthorized remittance transfer close in time to a pre-payment disclosure for the next transfer. These documents, with potentially differing

exchange rates and other figures, might confuse senders unnecessarily.

The Bureau also believes that eliminating the requirement for pre-payment disclosures for subsequent preauthorized remittance transfers is appropriate in part because senders will receive some relevant information in receipts for prior preauthorized remittance transfers. The final rule requires that for any preauthorized remittance transfer, the remittance transfer provider must provide a sender a receipt with accurate information (except to the extent estimates are permitted by § 1005.32(a) or (b)(1)). A receipt from the prior transfer with accurate amounts may provide the sender with information that could educate the sender not only about the prior transfer but also about the provider's practices generally, which may help the sender judge whether to continue with the provider for future preauthorized remittance transfers. The Bureau believes a sender can learn about a remittance transfer provider's exchange rate practices from what the designated recipient actually received from the prior transfers in the series. In addition, the receipt provided for the initial transfer in a series provides information about the fees and taxes that will apply to all subsequent preauthorized remittance transfers, unless a change necessitates a new disclosure, as discussed below.

Although the Bureau is eliminating the requirement that a remittance transfer provider provide a pre-payment disclosure for each subsequent transfer in a series of preauthorized remittance transfers, the Bureau remains concerned that previously disclosed figures (other than the estimates themselves) could change, rendering the figures disclosed in the pre-payment disclosure provided for the initial transfer inaccurate as applied to the subsequent transfers.[18] Comment 31(f)–1 to the February Final Rule explains that under the general timing and accuracy rules in subpart B of Regulation E, providers must give senders new pre-payment disclosures before accepting payment if previously provided pre-payment disclosures are inaccurate. However, since a receipt provided pursuant to § 1005.36(a)(1)(i) or, as discussed below, .36(a)(2)(i), may serve as a disclosure with respect to multiple subsequent preauthorized transfers, the temporal elements disclosed on those receipts would only be accurate with respect to the transfer to occur after the receipt is provided.

Thus, the Bureau is adopting a new § 1005.36(a)(2)(i) to specifically address certain changes in terms related to subsequent preauthorized remittance transfers. Section 1005.36(a)(2)(i) states that if any of the information on the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or § 1005.36(a)(2)(i), other than the temporal disclosures required by § 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, then the remittance transfer provider must provide an updated receipt meeting the requirements described in § 1005.31(b)(2) to the sender. The provider must mail or deliver this receipt to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. Such receipt must clearly and conspicuously indicate that it contains updated disclosures.

New comment 36(a)(2)–1 clarifies when the disclosure required by § 1005.36(a)(2)(i) must be provided. Specifically, it states that when a sender schedules a series of preauthorized remittance transfers, the provider is generally not required to provide a pre-payment disclosure prior to the date of each subsequent transfer. However, § 1005.36(a)(1)(i) requires the provider to provide a pre-payment disclosure and receipt for the first in the series of preauthorized remittance transfers in accordance with the timing requirements set forth in § 1005.31(e). *See* § 1005.36(a)(1)(i). While certain information in those disclosures is expressly permitted to be estimated (*see* § 1005.32(b)(2)(i) through (iii)), other information is not permitted to be estimated, or is limited in how it may be estimated. When any of the information on the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), other than the temporal disclosures required by § 1005.31(b)(2)(ii) (the Date Available) and (b)(2)(vii) (the Transfer Date), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, the provider must provide, within a reasonable time prior to the scheduled date of the next preauthorized remittance transfer, a receipt that complies with § 1005.31(b)(2) and which discloses, among the other disclosures required by § 1005.31(b)(2), the changed terms.

For example, if the provider discloses in the pre-payment disclosure for the first in the series of preauthorized remittance transfers that its fee for each remittance transfer is $20 and, after six preauthorized remittance transfers, the provider increases its fee to $30 (to the extent permitted by contract law), the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. Barring a further change, this receipt will apply to transfers after the seventh transfer. Or, if, after the sixth transfer, a tax increases from 1.5% of the amount that will be transferred to the designated recipient to 2.0% of the amount that will be transferred to the designated recipient, the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. In contrast, § 1005.36(a)(2)(i) does not require an updated receipt where an exchange rate, estimated as permitted in § 1005.32, changes.

New comment 36(a)(2)–2 explains that in order to clearly and conspicuously indicate that the provider's fee has changed as required by § 1005.36(a)(2)(i), the provider could, for example, state on the receipt: ''Transfer Fees (UPDATED) * * * $30.'' To the extent that other figures on the receipt must be revised because of the new fee, the receipt should similarly indicate that those figures are updated.

In the February Proposal, the Bureau also solicited comment on whether it should provide a safe harbor interpreting the ''within a reasonable time'' standard for providing a pre-payment disclosure for subsequent preauthorized remittance transfers. Although such a disclosure is no longer required, the same ''within a reasonable time'' requirement now applies to receipts required by § 1005.36(a)(2)(i). The bulk of the comments received on how to interpret ''within a reasonable time'' concerned industry commenters' concerns regarding the requirement in the February Final Rule that any required pre-payment disclosures reflect the actual exchange rates that will apply to preauthorized remittance transfers. Industry commenters stated that it would be difficult to disclose accurate exchange rates ten days before the date of a remittance transfer. Insofar as § 1005.32(b)(2) allows estimates in disclosures provided for remittance transfers scheduled five or more business days before the date of transfer, this concern should be alleviated. Industry commenters generally stated that if estimates were permitted, ten days was a reasonable period of time.

[18] Although changes in terms trigger notice requirements in some instances under Regulation E (*see* 12 CFR 1005.10), that provision does not apply to remittance transfers that are not electronic fund transfers.

New comment 36(a)(2)–3 explains if a receipt required by § 1005.36(a)(2)(i) (or, as discussed below, required by § 1005.36(d)(1)) is mailed, the receipt would be considered to be received by the sender five business days after it is posted in the mail. If hand delivered or provided electronically, the receipt would be considered to be received by the sender at the time of delivery. Thus, if the provider mails the receipt not later than ten business days before the scheduled date of the transfer, or hand or electronically delivers the receipt not later than five business days before the scheduled date of the transfer, the provider would be deemed to have mailed or delivered the receipt within a reasonable time prior to the scheduled date of the subsequent preauthorized remittance transfer.

In addition, the Bureau is modifying § 1005.36(a)(2)(ii) from the February Final Rule, which requires receipts for all subsequent preauthorized remittance transfers. As adopted, § 1005.36(a)(2)(ii) explains when receipts must be sent. It states that unless a receipt was provided in accordance with § 1005.36(a)(2)(i) that contained no estimates pursuant to § 1005.32, the remittance transfer provider must mail or deliver to the sender a receipt described in § 1005.31(b)(2) no later than one business day after the date of the transfer. If the remittance transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

Finally, the Bureau is adopting an additional disclosure requirement for subsequent preauthorized remittance transfers as § 1005.36(a)(2)(iii), which requires providers to provide the disclosures required by § 1005.36(d) in accordance with the timing requirements of that section. Section 1005.36(d) is discussed in more detail below.

36(b) Accuracy

The February Final Rule contains, in § 1005.36(b), requirements for the accuracy of disclosures for preauthorized remittance transfers. Under that provision in the February Final Rule, the pre-payment disclosures and receipt for the first scheduled transfers in a series of preauthorized remittance transfers are required to be accurate at the time of payment (*i.e.,* they must comply with § 1005.31(f), which states that disclosures must be accurate when a sender makes payment for the remittance transfer, except to the extent estimates are permitted by § 1005.32). For subsequent preauthorized remittance transfers, as discussed above, the February Final Rule requires providers to give accurate pre-payment disclosures as of when the transfer is made within a reasonable time prior to each transfer and then to provide an accurate receipt after each transfer.

To further compliance and to enhance consumer protections, the Bureau finds it necessary and proper to use its EFTA section 904(a) and (c) authority to adopt a revised § 1005.36(b). The Bureau is revising § 1005.36(b) to address the accuracy of receipts provided for remittance transfers that are scheduled five or more business days before the date of transfer, as well as preauthorized remittance transfers. The Bureau is adopting § 1005.36(b)(1), which states that for a one-time transfer scheduled five or more business days before the date of transfer or the first in a series of preauthorized remittance transfers, disclosures provided in accordance with § 1005.36(a)(1)(i) must comply with § 1005.31(f) by being accurate when the sender makes payment, except to the extent estimates are permitted by § 1005.32.

For subsequent preauthorized remittance transfers, the Bureau is adopting § 1005.36(b)(2), which states that for each subsequent preauthorized remittance transfer, the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of when such transfer is made, except: (i) The temporal elements required by § 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date) must be accurate only if the transfer is the first transfer to occur after the disclosure was provided, and (ii) to the extent estimates are permitted by § 1005.32. As noted above, since a receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) may serve as a disclosure with respect to multiple subsequent preauthorized transfers, the temporal elements disclosed on those receipts need only be accurate with respect to the transfer to occur after the receipt is provided.

To address situations in which receipts may be provided after the date of a remittance transfer, the Bureau is adopting a new § 1005.36(b)(3). That provision states that such receipts (provided pursuant to either § 1005.36(a)(1)(ii) or (a)(2)(ii)) must be accurate as of when the remittance transfer to which it pertains is made, except to the extent estimates are permitted by § 1005.32(a) or (b)(1).

Proposed comment 36(b)–1 addressed estimates and, in particular, stated that providers may use any of the exceptions set forth in § 1005.32, to the extent applicable. This comment is adopted largely as proposed, with changes to reflect the newly adopted § 1005.32(b)(2), which allows for estimates in certain disclosures for transfers scheduled five or more business days before the date of transfer, and the revised § 1005.36(a)(1)(i) and (a)(2)(i), which permit use of estimates under § 1005.32(b)(2). The comment also notes that when estimates are permitted, they must be disclosed in accordance with § 1005.31(d).

New comment 36(b)–2 explains that, for a subsequent transfer in a series of preauthorized remittance transfers, the receipt provided pursuant to § 1005.36(a)(1)(i), except for the temporal disclosures in that receipt required by § 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), applies to each subsequent preauthorized remittance transfer unless and until it is superseded by a receipt provided pursuant to § 1005.36(a)(2)(i). For each subsequent preauthorized remittance transfer, only the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of the date each subsequent transfer is made. As a receipt may apply to multiple transfers in a series of preauthorized remittance transfers, the disclosure required by § 1005.31(b)(2)(ii) (*i.e.* disclosure of the date in the foreign country on which funds will be available to the designated recipient) need not be accurate for subsequent preauthorized remittance transfers that occur after the first transfer to which the receipt pertains.

Finally, new comment 36(b)–3 clarifies that a receipt required by § 1005.36(a)(1)(ii) must accurately reflect the details of the transfer to which it pertains and may not contain estimates pursuant to § 1005.32(b)(2). However, the remittance transfer provider may continue to disclose estimates to the extent permitted by § 1005.32(a) or (b)(1). In providing receipts pursuant to § 1005.36(a)(1)(ii) or (a)(2)(ii), § 1005.36(b)(2) and (b)(3) do not allow a remittance transfer provider to change figures previously disclosed on a receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), unless a figure was an estimate or based on an estimate disclosed pursuant to § 1005.32. Thus, for example, if a provider disclosed its fee as $10 in a receipt provided pursuant to § 1005.36(a)(1)(i) and that receipt contained an estimate of the exchange rate pursuant to § 1005.32(b)(2), the

second receipt provided pursuant to § 1005.36(a)(1)(ii) must also disclose the fee as $10. The Bureau is adopting this comment to clarify that the purpose of receipts required by § 1005.36(a)(1)(ii) and (a)(2)(ii) is to provide a sender with the actual exchange rate applied to the transfer (unless the statutory exceptions for estimates apply) rather than the estimate previously disclosed for the transfer pursuant to § 1005.32(b)(2). Thus, the final rule does not permit a provider to change other items, such as non-estimated fees and taxes, from a prior disclosure applicable to that transfer on the post-transfer receipt.

36(c) Cancellation

The February Final Rule contains cancellation requirements for remittance transfers. For most remittance transfers, § 1005.34(a) requires the remittance transfer provider to comply with a cancellation request received no later than 30 minutes after the sender makes payment for the remittance transfer if: (i) The sender's request allows the provider to identify the sender's name and address or telephone number and the specific transaction to be cancelled; and (ii) the transferred funds have not been picked up by the designated recipient or deposited into the recipient's account. For remittance transfers scheduled at least three business days before the date of the transfer, including preauthorized remittance transfers, § 1005.36(c) of the February Final Rule requires the remittance transfer provider to comply with a sender's request for cancellation if the request: (i) Enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and (ii) is received at least three business days before the scheduled date of the remittance transfer. Section 1005.31(b)(2)(iv) requires the provider to include a statement about the sender's cancellation rights, using the language set forth in Model Form A–37 of Appendix A to subpart B or substantially similar language.

The Bureau is amending Regulation E in this final rule to, among other things, clarify the obligations of the remittance transfer provider for remittance transfers scheduled before the date of transfer and to provide senders with information to calculate the cancellation deadline for remittance transfers scheduled at least three business days before the date of the transfer. As discussed above, the Bureau is making certain adjustments to the disclosure and timing requirements in other sections of the final rule in order to enhance senders' ability to properly determine the cancellation deadline for remittance transfers, to enable senders to more easily identify and track preauthorized remittance transfers that occur in close proximity to one another, and to facilitate industry compliance with the cancellation disclosure requirements.

As discussed above, the final rule adds § 1005.31(b)(2)(vii), which requires remittance transfer providers to disclose the date of transfer in certain receipts provided to senders pursuant to § 1005.31(b)(2). These requirements apply only to remittance transfers scheduled by the sender at least three business days before the date of the transfer, as well as the initial transfer in a series of preauthorized remittance transfers. As discussed below, § 1005.36(d)(2)(ii) also requires future transfer dates to be disclosed for subsequent transfers in a series of preauthorized remittance transfers, for which payment is made by the sender four or fewer business days before the date of the transfer.

However, as discussed below, the Bureau is retaining in § 1005.36(c) the requirement that a remittance transfer provider must comply with any oral or written request to cancel a remittance transfer if the request to cancel is received at least three business days before the scheduled date of the remittance transfer. The Bureau is also adopting a new § 1005.36(d) to require providers to disclose the future dates of transfer, cancellation requirements, and provider's contact information for subsequent preauthorized remittance transfers no more than 12 months and no less than five business days before the date of the transfer. This timing requirement for these disclosures does not apply to subsequent transfers in a series of preauthorized remittance transfers for which payment is made by the sender four or fewer business days before the date of the transfer. For this subset of transfers, the information required by § 1005.36(d)(1), including future dates of transfer, must instead be included in the receipt for the first transfer in the series of preauthorized remittance transfers provided in accordance with § 1005.36(a)(1)(i). For subsequent preauthorized remittance transfers and transfers scheduled at least three business days before the date of transfer, any receipt provided after the transfer is made in accordance with § 1005.36(a)(1)(ii) or (a)(2)(ii) must include the date of transfer (and cancellation requirements) for the transfer that is the subject of the receipt.

The Three-Business-Day Deadline To Cancel

As noted above, section 919(d)(3) of the EFTA provides the Bureau broad discretion to fashion cancellation requirements for remittance transfers. In the February Final Rule, the Bureau adopted in § 1005.36(c) specific cancellation requirements for remittance transfers scheduled at least three business days before the date of the transfer. In adopting the three-business-day cancellation rule for such transfers, the Bureau explained that the general 30-minute cancellation period would not be appropriate for remittance transfers scheduled far in advance because it would permit only a short time for cancellation even though the remittance transfer might not occur for many days or even months. 77 FR 6194, 6268. Thus, the Bureau concluded that a three-business-day time period is more beneficial because it provides senders with more time to decide whether to go through with the transaction while giving remittance transfer providers sufficient time to process a cancellation request before the transaction is executed. *Id.*

In the February Proposal, the Bureau explained that further consideration of the three-business-day cancellation rule and its application to remittance transfers scheduled before the date of transfer was necessary to ensure that the rule provided appropriate protection to senders without imposing an undue burden on providers. 77 FR 6310, 6321. Accordingly, the Bureau solicited comment on whether the three-business-day deadline to cancel advance transfers accomplishes these goals, or whether the deadline to cancel should be more or less than the three days adopted in the February Final Rule. The Bureau also solicited comment on whether it is important to maintain consistency between the cancellation deadline adopted for preauthorized remittances transfers in § 1005.36(c) and the cancellation deadline for preauthorized electronic fund transfers in § 1005.10(c)(1). 77 FR 6310, 6321. Finally, the Bureau solicited comment on whether the deadline to cancel would be easier to calculate if the cancellation period was based on calendar days instead of business days.

Several commenters addressed the cancellation deadline for remittance transfers scheduled three or more business days in advance. Both industry and consumer group commenters generally agreed that the three-business-day time period for cancellation in the February Final Rule appropriately balances the interests of both parties to

the transfer. One industry commenter opposed the three-business-day time period for cancellation; this commenter proposed as an alternative a five-day cancellation period, arguing that the Bureau should take into consideration providers' existing compliance obligations under other laws as well. Another industry commenter posited that, if the Bureau does not amend the definition of ''remittance transfer provider'' to exclude depository institutions executing certain types of international wire transfers, cancellation should be allowed only until a transfer has been executed by a depository institution. One industry commenter agreed that the Bureau should continue to require the deadline to cancel to be expressed in business days as opposed to calendar days.

Although most commenters expressed support for the three-business-day cancellation period, a few industry commenters conditioned their support on whether and to what extent remittance transfer providers may be required to disclose to senders the exchange rates that apply to transfers scheduled before the date of transfer. One industry commenter stated that the three-business-day cancellation period would be appropriate only if a remittance transfer provider were not required to disclose the actual exchange rates that would apply to preauthorized remittance transfers ten days before the dates of such transfers. The industry commenter, however, also agreed that senders should be able to cancel preauthorized remittance transfers or other remittance transfers scheduled to take place in the future, but that the cancellation requirements should be balanced with a shorter time period for exchange rate disclosure. Another industry commenter argued that the three-business-day cancellation requirement would present a substantial risk of loss to a remittance transfer provider if the provider were required to disclose the exchange rate that would apply to a remittance transfer more than one day before the scheduled date of transfer. This commenter suggested that the Bureau establish a bifurcated cancellation structure for transfers scheduled before the date of transfer under which: (i) the 30-minute cancellation period in § 1005.34(a) would apply for any transfer for which the provider discloses the actual exchange rate; and (ii) the three-business-day cancellation period established in § 1005.36(c) would apply for any transfer in which the provider discloses an estimated exchange rate.

The Bureau recognizes the concern expressed by a few industry commenters that remittance transfer providers may incur additional risk if the time period to cancel a transfer extends beyond the date upon which a remittance transfer provider must disclose the actual exchange rate that will apply to a remittance transfer. As the Bureau noted in the discussion regarding § 1005.32(b)(2)(i), whenever there are time lags between when the retail exchange rate that applies to a remittance transfer is set, when the relevant foreign currency is purchased, and when funds are delivered, a remittance transfer provider (and/or its business partner) may face losses due to unexpected changes in the value of the relevant foreign currency. The Bureau's decision in § 1005.32(b)(2) of the final rule to allow remittance transfer providers to provide an estimated exchange rate in certain disclosures for remittance transfers scheduled five or more business days before the date of transfer should help alleviate these concerns. (*See* discussion above regarding § 1005.32(b)(2) for additional analysis of foreign exchange risks.) As a result, under the final rule, a remittance transfer provider will not be required to disclose, prior to the date of the transfer, an actual, as opposed to an estimated, exchange rate if the transfer is scheduled five or more business days before the date of transfer. This five-business-day period is shorter than the more than ten day period proposed in the February Proposal and reduces the period during which a remittance transfer provider that permits transfers to be scheduled before the date of transfer may face additional foreign exchange risks due to the gap between the time the provider sets an exchange rate and the date of the transfer. And, while there is a short period outside the cancellation window in which the remittance transfer provider is required to disclose actual rather than estimated exchange rates, the Bureau believes that providers may be able to manage the foreign currency risks or may choose not to offer consumers the ability to schedule remittance transfers in this period. The Bureau does not believe the latter option presents a substantial risk of harm to senders, because it believes that any provider that generally permits consumers to schedule remittance transfers in advance will at least retain the option for consumers to schedule their transfers the day of or five or more business days before the date of the transfer.

Accordingly, the Bureau concludes that the three-day-business cancellation period for remittance transfers scheduled at least three business days before the date of the transfer as adopted in the February Final Rule is appropriate. The Bureau believes that cancellation rights are important because they allow senders time to review the disclosure for accuracy and cancel the transaction when warranted by a change in circumstances. In addition, the Bureau believes the three-business-day cancellation period strikes an appropriate balance between sender and remittance transfer provider interests. This time period is close enough to the transfer date so that senders will know if there are circumstances warranting a cancellation, while it gives providers an adequate amount of time to process a cancellation request. Finally, as the Bureau noted in the February Final Rule, the three-business-day cancellation period is consistent with the cancellation requirement for electronic fund transfers. 77 FR 6194, 6268. Since many remittance transfer providers also provide electronic fund transfers, maintaining similar regulatory regimes should minimize burden and facilitate compliance.

Disclosure of Cancellation Period in Pre-Payment Disclosures for Subsequent Preauthorized Remittance Transfers

In the February Proposal, the Bureau solicited comment on whether a remittance transfer provider should be required to disclose the cancellation period in the pre-payment disclosure for each subsequent remittance transfer in a series of preauthorized remittance transfers, rather than in the receipt for each subsequent transfer. As the Bureau recognized in the February Proposal, this issue would be relevant only if the pre-payment disclosure requirement in § 1005.36(a)(2)(i) of the February Final Rule is retained in this rulemaking. 77 FR 6310, 6323.

As discussed above, the Bureau is revising the disclosure requirements for preauthorized remittance transfers to eliminate the requirement that remittance transfer providers provide a pre-payment disclosure for each subsequent transfer in series of preauthorized remittance transfers. Instead, the final rule requires that, in most circumstances, a receipt for each subsequent transfer be provided to the sender. Consequently, the Bureau's inquiry of whether the cancellation disclosure should be provided in the pre-payment disclosure or the receipt for each subsequent transfer is now generally moot. Since there generally is no longer a requirement to provide a pre-payment disclosure for subsequent transfers, the sender's cancellation rights must be disclosed on any receipt

provided in accordance with § 1005.36(a)(2) and (d)(2) (*see* discussion below), as applicable.

36(d) Additional Requirements for Subsequent Preauthorized Remittance Transfers

Under the February Final Rule, remittance transfer providers are required to provide senders with both a pre-payment disclosure and a receipt for each subsequent preauthorized remittance transfer in a series. Specifically, the pre-payment disclosure for each subsequent transfer must be provided within a reasonable time prior to the scheduled date of the transfer, and the receipt for each subsequent transfer generally must be provided no later than one business day after the date on which the transfer is made. As discussed above, however, the Bureau is concerned with balancing the interest of consumers in receiving timely disclosures for subsequent transfers with the interests of industry in reducing risks and developing this market segment. Thus, in the February Proposal, the Bureau sought comment on a number of issues related to subsequent preauthorized remittance transfers, including whether senders should receive disclosures for subsequent preauthorized remittance transfers and, if so, what form those disclosures should take. 77 FR 6310, 6223. The February Proposal also sought comment on what cancellation rules should apply to these transfers and when those rules should be disclosed to senders.

The Bureau received few comments in response to its inquiry regarding disclosure of cancellation requirements for subsequent preauthorized remittance transfers. Among those received, there was little consensus regarding how cancellation rights for subsequent preauthorized transfers should be disclosed. One industry commenter advocated for flexibility on the disclosure requirements to minimize costs. Another industry commenter asserted that the cancellation rights should be included only in the first pre-payment disclosure for each subsequent transfer, while a consumer group commenter posited that a subsequent pre-payment disclosure disclosing cancellation rights should be sent before each subsequent transfer. Only one industry commenter supported including the statement regarding cancellation rights for the next scheduled transfer on the current receipt, arguing that it would give senders more time to cancel the transfer than if the cancellation rights were included in a pre-payment disclosure provided before the subsequent transfer.

Having eliminated the pre-payment disclosure requirement for subsequent transfers and altered the requirements for when a receipt would have to be provided for a subsequent transfer in the final rule, the Bureau is concerned that senders may not receive adequate and timely information regarding the dates of upcoming transfers and, thus, may not know when their right to cancel those transfers expires. Further, as discussed above regarding § 1005.31(b)(2)(vii), even when senders receive disclosures regarding their cancellation rights, they may not have the type of information needed to determine the date on which the right to cancel a subsequent transfer expires. The Bureau is also concerned that, where senders receive a number of receipts in close proximity to one another as part of a series of preauthorized remittance transfers, senders may not have information that would be helpful in distinguishing to which transfer a particular receipt applies.

Accordingly, to further the purposes of the EFTA, the Bureau believes it is necessary and proper to use its authority under EFTA sections 904(a) and (c) to adopt a new § 1005.36(d), which amends the disclosure requirements for subsequent preauthorized remittance transfers. Section 1005.36(d)(1)(i) states that, for any subsequent transfer in a series of preauthorized remittance transfers, the remittance transfer provider must disclose to the sender: (A) the date the provider will make the subsequent transfer, using the term ''Future Transfer Date,'' or a substantially similar term; (B) a statement about the rights of the sender regarding cancellation as described in § 1005.31(b)(2)(iv); and (C) the name, telephone number(s), and Web site of the remittance transfer provider. Section 1005.36(d)(1)(ii) states that if the future date or dates of transfer required to be disclosed by this paragraph are described as occurring in regular periodic intervals, *e.g.,* the 15th of every month, rather than as a specific calendar date or dates, the remittance transfer provider must disclose any future date or dates of transfer that do not conform to the described interval.

Section 1005.36(d)(2)(i) establishes the general timing requirements for disclosures required by § 1005.36(d)(1), stating that, except as described in § 1005.36(d)(2)(ii), the disclosures required by § 1005.36(d)(1) must be received by the sender no more than 12 months, and no less than five business days prior to the date of any subsequent preauthorized remittance transfer to which it pertains. Section 1005.36(d)(2)(i) also states that the disclosures required by § 1005.36(d)(1) may be provided in a separate disclosure or on one or more disclosures required by subpart B related to the same series of preauthorized remittance transfers, so long as the consumer receives the required information for each subsequent preauthorized remittance transfer in accordance with the timing requirements of § 1005.36(d)(2)(i).

The Bureau believes that information regarding cancellation rights is as important to subsequent preauthorized remittance transfers as it is to other transfers. Accordingly, as noted in the discussion regarding § 1005.31(b)(2)(vii), senders need the date of transfer to determine, among other things, when the cancellation period for a certain preauthorized transfer expires. At the same time, the Bureau recognizes that when authorizing a preauthorized remittance transfer, the sender establishes a recurring schedule. The Bureau believes the repetitive and cyclical nature of preauthorized remittance transfers reduces the need for senders to receive notice of the cancellation period in individual notices sent immediately before each subsequent transfer, and warrants additional flexibility to remittance transfer providers to determine the timing and type of disclosure to be used to advise senders of their cancellation rights for subsequent preauthorized remittance transfers. The Bureau notes, however, that such notices must be provided within a timeframe that would be useful to senders and is concerned that a notice provided more than 12 months before the date of such transfers would likely be unhelpful to senders. Likewise, a notice received fewer than five business days before the date of transfer may not provide the sender with enough time to determine whether cancellation is warranted and, thus, would also not be helpful to senders.

The Bureau also recognizes that for subsequent preauthorized remittance transfers scheduled four or fewer business days before the date of the transfer, remittance transfer providers will be unable to provide the disclosures regarding the future date of transfer and cancellation rights five or more business days before the date of transfer. Accordingly, § 1005.36(d)(2)(ii) states that for any preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made for that transfer, the information required by

§ 1005.36(d)(1) must be provided on or with the receipt described in § 1005.31(b)(2), or disclosed as permitted by § 1005.31(a)(3) and (a)(5), for the initial transfer in that series in accordance with § 1005.36(a)(1)(i). For example, if, on Monday, a sender authorizes a series of preauthorized remittance transfers in which the initial transfer occurs that day and the first subsequent transfer is scheduled to occur on Wednesday, the 30-minute cancellation period under § 1005.34(a) would apply to both transfers. If, however, in the same series of preauthorized remittance transfers the second subsequent remittance transfer is scheduled to occur on Friday, the three-business-day cancellation period would apply to that transfer. For either subsequent transfer, the provider would be unable to provide the required information at least five business days before the date of the transfer. In that instance, the provider would be required to disclose the cancellation period and future date of transfer for the subsequent remittance transfer on or with the receipt provided for the initial preauthorized remittance transfer.

As a result, preauthorized remittance transfers scheduled fewer than three business days from the date of the transfer are now subject to different disclosure requirements than standalone remittance transfers scheduled fewer than three business days from the date of the transfer. With respect to the latter, there is no requirement to disclose the date of transfer or future date of transfer on receipts. The Bureau, however, believes these two sets of transfers present different concerns warranting different treatment. Preauthorized remittance transfers by definition are authorized to recur at substantially regular intervals. As a result, as discussed above, preauthorized remittance transfer present a higher risk of confusion since, depending on the frequency of the subsequent transfers in the series, senders may receive multiple receipts at or around the same time and, absent identifying information such as the date of transfer, may be unable to identify the transfer to which a particular receipt applies. One-time transfers scheduled in advance do not generally present the same risks because in most instances the sender would schedule a single transfer at any given time as opposed to a series of transfers and should not have difficulty identifying the transfer to which the receipt applies. Further, if disclosures were only required for subsequent preauthorized transfers occurring at least three business days in the future, consumers may mistakenly believe that no transfers were scheduled on any days prior to that time.

Thus, while the Bureau believes the date of transfer would be helpful to senders of preauthorized remittance transfers, it does not believe such information is necessary for standalone transfers scheduled fewer than three business days from the date of the transfer. As stated above, the Bureau believes that it will be simpler for remittance transfer providers to program their receipts to include the transfer date information consistently for preauthorized transfers than to create separate receipt forms for one-time and preauthorized remittance transfers.

New § 1005.36(d)(3) and (d)(4) address formatting and accuracy requirements for disclosures required under § 1005.36(d)(3). Section 1005.36(d)(3) states that the information required by § 1005.36(d)(1)(i)(A) generally must be disclosed in close proximity to the other information required by § 1005.36(d)(1)(i)(B). Section 1005.36(d)(4) states that any disclosure required by § 1005.36(d)(1) must be accurate as of the date the subsequent preauthorized remittance transfer to which it pertains is made.

The Bureau is also adopting commentary to provide further guidance on the application of § 1005.36(d). Comment 36(d)–1 clarifies that § 1005.36(d)(2) permits remittance transfer providers some flexibility in determining how and when the disclosures required by § 1005.36(d)(1) may be provided to senders. Comment 36(d)–1 states that the disclosure may be provided as a separate disclosure, or on or with any other disclosures required by subpart B of Regulation E related to the same series of preauthorized remittance transfers, provided that the disclosure and timing requirements in § 1005.36(d)(2) and other applicable provisions in subpart B are satisfied. For example, the required disclosures may be made on or with a receipt provided pursuant to § 1005.36(a)(1)(i); a receipt provided pursuant to § 1005.36(a)(2)(ii); or in a separate disclosure created by the provider. The comment also provides a fact pattern describing how a remittance transfer provider would comply with § 1005.36(d)(1).

Comment 36(d)–2 clarifies that § 1005.36(d)(2)(i) requires that the sender receive disclosure of the date of transfer, applicable cancellation requirements, and the provider's contact information no more than 12 months and no less than 5 business days prior to the date of the subsequent preauthorized remittance transfer. Comment 36(d)–2 also cross-references comment 36(a)(2)–3 for purposes of determining when a disclosure required by § 1005.36(d)(1) is received by the sender.

Comment 36(d)–3 provides guidance on how the remittance transfer provider should disclose the date of transfer. Specifically, comment 36(d)–3 clarifies that the date of transfer of a subsequent preauthorized remittance transfer may be disclosed either as a specific date (*e.g.,* July 19, 2013), or by using a method that clearly permits identification of the date of transfer, such as periodic intervals (*e.g.,* the third Monday of every month, or the 15th of every month). Comment 36(d)–3 further clarifies that if the future dates of transfer are disclosed as occurring periodically and there is a break in the sequence, or the date of transfer does not conform to the described period, *e.g.,* if a weekend or holiday causes the provider to deviate from the normal schedule, the provider should disclose the specific date of transfer for the affected transfer. Finally, comment 36(d)–4 clarifies the accuracy requirements for disclosures required by § 1005.36(d)(1). Comment 36(d)–4 explains that if any of the information required by § 1005.36(d)(1) changes, the provider must provide an updated disclosure with the revised information that is accurate as of when the transfer is made, pursuant to § 1005.36(d)(2).

VI. Section 1022(b)(2) Analysis

In developing the proposed rule, the Bureau has considered potential benefits, costs, and impacts, and has consulted or offered to consult with the prudential regulators and the Federal Trade Commission, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.[19]

In this rulemaking, the Bureau is amending subpart B of Regulation E, which implements EFTA section 919, and the accompanying commentary. This rule modifies the February Final Rule and the accompanying commentary. The final rule provides a new safe harbor clarifying when a person does not provide remittance transfers in the normal course of business for purposes of determining whether a person is a ''remittance transfer provider.'' In the final rule, the

[19] Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with $10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

Bureau is also refining the disclosure requirements for certain remittance transfers scheduled before the date of the transfer, including preauthorized remittance transfers, and the accompanying interpretations of those requirements. The analysis below considers the benefits, costs, and impacts of this rule relative to the baseline provided by the February Final Rule.

In the February Proposal, the Bureau sought information regarding various aspects of the market for remittance transfers. Among other things, the Bureau sought information describing the number of consumers who send remittance transfers through persons who would qualify for the proposed safe harbor or who schedule remittance transfers before the date of the transfer. Similarly, the Bureau sought data describing the number and characteristics of persons who would qualify for the proposed safe harbor. Additionally, the Bureau requested that interested parties provide data describing the number of firms that schedule remittance transfers before the date of the transfer, the number of remittance transfers provided, and the revenues earned from those transfers.

The Bureau received limited information in response to these requests. In their comments in response to the February Proposal, two trade associations provided high-level summaries of limited surveys of member depository institutions. Through additional outreach, the Bureau obtained more detailed data from these associations, as well as data from several other sources regarding the number of remittance transfers or similar transactions provided by individual depository institutions, credit unions, and state-licensed money transmitters. However, as discussed above, the data received through this process were neither comprehensive nor necessarily representative of the entire population of remittance transfer providers or of the populations covered by the data. Furthermore, the Bureau did not receive any data pertaining to certain types of persons who may be remittance transfer providers, such as non-depository institutions that are not state-licensed money transmitters.

The Bureau also did not receive any industry-wide data regarding the number of remittance transfer providers that send preauthorized remittance transfers or standalone remittance transfers scheduled before the date of the transfer, or the number of consumers using these services. Nor did the Bureau receive specific figures regarding the costs of the options discussed in the February Proposal.

Due to the limited quantitative information received, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the final rule. Considered with the limited data that are available, general economic principles provide insight into these benefits, costs, and impacts but do not support a quantitative analysis.

A. Benefits and Costs to Consumers and Covered Persons

Normal Course of Business

Section 1005.30(f) of the February Final Rule defines the term ''remittance transfer provider'' to mean any person that provides remittance transfers for a consumer in the normal course of its business. Such persons are required to comply with subpart B of Regulation E relating to remittance transfers. Comment 30(f)–2 to the February Final Rule states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. Though it includes two examples, comment 30(f)–2 to the February Final Rule does not state a specific numerical threshold for determining when a person is not providing remittance transfers in the normal course of its business.

The final rule provides, in § 1005.30(f)(2)(i), a safe harbor clarifying when a person does not provide remittance transfers in the normal course of business for purposes of determining whether a person is a ''remittance transfer provider.'' The final rule states that if a person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, then the person is deemed not to be providing remittance transfers for a consumer in the normal course of its business.

For a person that crosses the 100-transfer threshold, and is then providing remittance transfers in the normal course of its business, the final rule also permits a reasonable period of time, not to exceed six months, to begin complying with subpart B of Regulation E. For such a person, compliance with subpart B of Regulation E will be required at the end of the ''reasonable period of time'' unless, based on the facts and circumstances, such a person is not a remittance transfer provider.

The safe harbor will benefit persons who qualify by reducing the legal uncertainty they likely would have had under the February Final Rule regarding whether they provided remittance transfers in the normal course of business and their compliance costs to the extent they decide not to comply voluntarily with subpart B of Regulation E. Furthermore, the safe harbor does not impose any burden on the persons who qualify. The safe harbor is based on a bright-line numerical threshold that persons may use to determine easily whether they do not meet the definition of remittance transfer provider. The bright-line threshold should reduce uncertainty and legal risk for persons who provide a small number of remittance transfers each year as to whether they do not provide remittance transfers in the normal course of business and thus are not required to comply with subpart B of Regulation E. For those persons who do not qualify for the safe harbor, whether or not they are providing remittance transfers in the normal course of business will continue to depend on the facts and circumstances.

As a result, the Bureau expects that the safe harbor could enable persons who qualify to continue providing remittance transfers to consumers, as opposed to exiting the market or increasing prices in response to the February Final Rule. The Bureau expects that some persons who qualify for the safe harbor would have exited the market for remittance transfers, absent the safe harbor, rather than incurred the cost associated with implementing the requirements of subpart B of Regulation E under the February Final Rule or risking non-compliance (due to legal risk surrounding the interpretation of the term ''normal course of business''). Alternatively, some persons may have chosen to implement subpart B of Regulation E if it resulted in higher expected net benefits than either risking non-compliance or ceasing to offer remittance transfers (and foregoing any revenues earned from them). Such persons may have increased their prices to recover some, or all, of the cost of complying with subpart B of Regulation E.

Under the final rule, by contrast, the Bureau expects that most persons who qualify for the safe harbor will not voluntarily choose to implement the requirements of subpart B of Regulation E given the expense associated with implementing the requirements. The Bureau expects that, for these persons, the cost associated with counting remittance transfers (to ensure the conditions of the safe harbor are met) is lower than the cost of unnecessarily

implementing the requirements of subpart B of Regulation E. Furthermore, the Bureau expects that the clarity provided by the safe harbor will encourage more persons to continue to offer remittance transfers rather than exiting the market—thus retaining a revenue stream they may otherwise have foregone.

For certain persons who are newly entering the market or who plan to expand their business such that they may no longer qualify for the safe harbor, the Bureau expects that the transition period in the final rule may also reduce the cost of compliance, by permitting such providers a reasonable period of time during which to come into compliance with subpart B of Regulation E. Under the February Final Rule, those persons considered to be remittance transfer providers would have been required to implement the requirements of subpart B of Regulation E for each remittance transfer.

Consumers may experience both benefits and costs from the additional clarity offered by both the safe harbor and the transition period permitted by the final rule. Some consumers may benefit from additional access to remittance transfers and increased competition among providers, including potentially lower prices, if, absent the safe harbor, some persons who qualify for the safe harbor would have exited the market. However, some consumers may incur costs associated with not receiving disclosures, error resolution rights, and other protections generally required by subpart B of Regulation E. Some consumers might incur such costs due to the transition period. Other consumers may incur such costs because some of the persons who qualify for the safe harbor might have complied with subpart B of Regulation E absent the safe harbor. If persons who would have provided more than 100 remittance transfers absent the safe harbor choose to limit the number of remittance transfers provided so that they may qualify for the safe harbor, some consumers could also experience decreased access. However, the Bureau expects any cost arising from not receiving disclosures, error resolution rights, and other protections will be incurred by a small number of consumers, as the Bureau estimates that depository institutions, credit unions, and others that will qualify for the safe harbor are responsible for only a very small fraction of all remittance transfers provided each year.

The Bureau cannot quantify the number of persons who will qualify for the safe harbor or the transition period implemented in the final rule. As discussed above, the Bureau received limited survey results and data from several sources regarding the number of remittance transfers or similar transactions provided by individual depository institutions, credit unions, and state-licensed money transmitters. The Bureau does not believe that it can extrapolate from any of these data sources to determine precisely the number of persons who will qualify for the safe harbor, or the fraction of those persons who might cross the 100-transfer threshold in any year, and thus be eligible for the transition period. However, as discussed above, the data suggest that a meaningful number of insured institutions and credit unions will likely qualify for the safe harbor while few state-licensed money transmitters will qualify. Data sources of varying quality and comprehensiveness show that between roughly 40 and roughly 90 percent of depository institutions or credit unions that responded to a survey or were otherwise covered by the data, and that reported any transactions, sent 100 or fewer covered transactions in the prior year.[20] As noted above, the Bureau estimates that the depository institutions, credit unions, and others that qualify for the safe harbor are responsible for only a very small fraction of the remittance transfers provided each year.

In addition, the Bureau cannot determine the number of persons who will no longer implement subpart B of Regulation E as a result of the final rule. It is likely that some persons who qualify for the safe harbor would not have implemented subpart B of Regulation E, in any event, either because they would have relied on the facts and circumstances to conclude that they were not providing remittance transfers in the normal course of business under the February Final Rule, or because they would have exited the market absent the safe harbor. It is also possible that some of the persons who qualify for the safe harbor or are eligible for the transition period will choose to implement some portions of the requirements in subpart B of Regulation E due to market demands. Therefore, whether there is a change, and the extent of such a change, in the number of institutions that will implement subpart B of Regulation E relative to the February Final Rule is not known. However, all persons who qualify for the safe harbor now have an additional option available to them for determining whether they are required to comply with subpart B of Regulation E and therefore may potentially benefit from this provision of the final rule. Furthermore, all persons who qualify for the safe harbor but then cross the 100-transfer threshold will be eligible for the transition period.

Estimates and Disclosure Requirements

The February Final Rule requires, for the first transfer in a series of preauthorized remittance transfers, that the provider provide a pre-payment disclosure at the time the sender requests the transfer and a receipt at the time payment for the transfer is made, which the commentary explains means when payment is authorized. The February Final Rule also generally requires that both the pre-payment disclosure and the receipt be accurate when payment is made. In the case of subsequent preauthorized remittance transfers, the February Final Rule requires that a pre-payment disclosure be provided a reasonable time prior to each subsequent preauthorized remittance transfer and that a receipt be provided following the transfer. These pre-payment disclosures and receipts are required to include accurate figures, unless a statutory exception permitting the use of estimates applies.

In the final rule, a new exception, § 1005.32(b)(2), permits disclosures required to be provided prior to or when payment is made to contain estimates of exchange rates and certain related figures in certain cases for remittance transfers scheduled five or more business days before the date of the transfer, including preauthorized remittance transfers. If a remittance transfer provider discloses estimates under this provision, the final rule requires that the provider later give senders receipts with accurate figures unless a statutory exception permitting the use of estimates applies.

As discussed above, industry commenters stated that disclosing an exchange rate that would apply to a remittance transfer long before the date of that transfer poses particular difficulties. Commenters stated that such a disclosure would potentially subject the remittance transfer provider (or its business partners) to additional exchange rate risk since a wholesale exchange rate may vary between the date that a remittance transfer is scheduled (and disclosures are provided) and the date of the transfer. Although some of this risk may be reduced through the use of financial instruments, risk mitigation strategies may increase costs to providers, and some providers may not want to absorb or manage the associated risks. In addition, an industry commenter

[20] Caveats associated with these data sources are described above.

indicated that, at least in some instances, providers would refuse to offer remittance transfers scheduled three or more business days before the date of the transfer if the Bureau required providers to disclose an accurate exchange rate prior to the expiration of the consumer's cancellation right.

Under the final rule, remittance transfer providers choosing to provide estimates in certain circumstances will avoid the cost associated with providing accurate figures before the date of transfer but will incur the cost associated with providing accurate receipts after the date of transfer. Since remittance transfer providers retain the option of giving accurate pre-payment disclosures and receipts as required under the February Final Rule, net costs incurred by remittance transfer providers choosing to use the new exception for estimates should not increase relative to the February Final Rule. Permitting estimates of certain amounts on the pre-payment disclosure and receipt given in connection with remittance transfers scheduled five or more business days before the date of the transfer reduces the cost of compliance. Specifically, the exception eliminates the need for remittance transfer providers (or their business partners) to manage any exchange rate or other risk associated with committing to an exchange rate on disclosures provided five or more business days before the date of the transfer.

If a remittance transfer provider chooses to estimate certain information under this new exception, it is also required to provide an additional receipt with figures that are accurate as of the date the transfer is made (unless estimates are permitted under either of the two statutory exceptions). For one-time remittance transfers or the first in a series of preauthorized remittance transfers scheduled five or more business days before the date of the transfer, this requirement could require three disclosure forms, rather than the two disclosures required by the February Final Rule. To provide this additional disclosure in these cases, remittance transfer providers may incur additional costs, *e.g.* for programming, printing or distribution, if it is not already the providers' standard business practice to provide this disclosure.

Consumers scheduling remittance transfers five or more business days before the date of the transfer may receive benefits or incur costs as a result of the changes made by the final rule to provisions concerning these transfers. Industry commenters indicated that, at least in some instances, remittance transfer providers would cease offering transfers scheduled before the date of the transfer if they were required to disclose accurate exchange rates at the time of scheduling. In addition, to address any risk associated with setting exchange rates before the date of the transfer, providers might have disclosed less favorable exchange rates to consumers, thus effectively increasing the prices of their services. Permitting the use of estimates may result in more providers offering remittance transfers scheduled before the date of the transfer, and doing so at a lower cost. Therefore, consumers may benefit from expanded access to remittance transfers scheduled five or more business days before the date of the transfer, increased competition, and potentially lower prices. If providers who otherwise would have provided accurate figures choose to disclose estimates under the final rule, some consumers may incur costs if they receive less reliable information regarding the exchange rate, the amount transferred, and the amount received before the date of the transfer. The magnitude of these costs would depend on the size of any discrepancy between estimated and accurate disclosures and the extent to which the consumer relies on the disclosure to choose among providers or to make spending, budgeting, or other financial decisions. However, consumers valuing accurate information retain the option of not pre-scheduling remittance transfers. Furthermore, this change will have no impact on consumers who send remittance transfers that require no foreign exchange because they are funded and received in the same currency and thus no exchange rate needs to be disclosed.

Disclosure Rules for Subsequent Preauthorized Remittance Transfers

The final rule eliminates the requirement that remittance transfer providers mail or deliver a pre-payment disclosure a reasonable time prior to each subsequent preauthorized remittance transfer. Instead, the final rule requires that a provider send a receipt a reasonable time prior to the scheduled date of the next preauthorized remittance transfer if certain disclosed information is changed from what was disclosed regarding the first preauthorized remittance transfer (or what was disclosed in a prior updated receipt, if such a receipt was provided previously). This receipt must disclose the changed terms, in addition to the other disclosures required by § 1005.31(b)(2).[21] If no updated receipt is necessary (or if the updated receipt contains estimates), providers generally must give an accurate receipt to consumers for each subsequent preauthorized remittance transfer shortly after the date of transfer.

The Bureau does not know the number of remittance transfer providers offering preauthorized remittance transfers, but comments and information received through outreach suggest that they comprise a small percentage of all remittance transfers.[22] Furthermore, based on the Bureau's understanding of the remittance transfer market, the Bureau believes that, although some depository institutions and credit unions that are remittance transfer providers offer preauthorized remittance transfers, a very small number of state-licensed money transmitters do so.

For the remittance transfer providers that offer preauthorized remittance transfers, the elimination of the pre-payment disclosure for subsequent preauthorized remittance transfers reduces the costs associated with providing preauthorized remittance transfers. These costs may include distribution cost as well as compliance risk arising from uncertainty surrounding the interpretation of ''reasonable time.''

For consumers, the changes in the requirements regarding subsequent preauthorized remittance transfers could result in some benefits and some costs. Since the risk and burden associated with providing accurate pre-payment disclosures for subsequent preauthorized remittance transfers might have discouraged some providers from offering preauthorized remittance transfers or caused them to increase prices, consumers potentially will have increased access to this product and the convenience associated with it. Furthermore, in some cases, the elimination of the pre-payment disclosure requirement may provide some benefit to consumers who might otherwise have been confused when receiving, in close proximity, both receipts from completed preauthorized remittance transfers as well as pre-

[21] It may contain estimates as permitted by § 1005.32(b)(2).

[22] One trade association reported that it believes that less than three percent of remittance transfers at credit unions are preauthorized remittance transfers. Another trade association noted that ''preauthorized international transfers'' make up only a small percentage of the ''total international transfers initiated by consumers.'' One money transmitter stated that, although the product is relatively new and growing, scheduled payments currently represent only a small percentage of its overall business.

payment disclosures for future preauthorized remittance transfers.

With the elimination of the requirement for pre-payment disclosures for subsequent preauthorized remittance transfers, consumers could also be harmed by generally not receiving additional reminders of upcoming remittance transfers and their cost close to the date of the transfer. However, the Bureau expects that any such effect will be small. As discussed below, the final rule generally requires that providers disclose the date of the transfer, cancellation requirements, and the provider's contact information to senders of subsequent preauthorized remittance transfers no fewer than five business days and no more than 12 months before the date of the transfer. This should serve as a reminder to consumers of future preauthorized remittance transfers and the method of cancellation. With respect to cost, the accurate figures provided in receipts may serve as a basis for the consumer to project the likely cost associated with future preauthorized remittance transfers.

Cancellation Period and Other Disclosures

The final rule modifies the February Final Rule in several respects with regard to the cancellation disclosure requirements for transfers scheduled at least three business days before the date of the transfer, as well as preauthorized remittance transfers. First, the final rule requires a remittance transfer provider to disclose the specific date of the transfer in receipts given in association with certain transfers, so that a sender may calculate the date on which the sender's right to cancel will expire. This requirement applies to one-time remittance transfers scheduled at least three business days before the date of the transfer, as well as the first transfer in a series of preauthorized remittance transfers. Also, the final rule requires, in conjunction with certain disclosures related to initial transfers in series of preauthorized transfers, disclosures of the date of transfer regarding any subsequent preauthorized transfer in that series for which the date of the transfer is four or fewer business days after the date payment is made for that transfer. Second, for other preauthorized remittance transfers (*i.e.,* those scheduled five or more business days before the date of the transfer), the final rule requires the remittance transfer provider to disclose the date or dates on which the remittance transfer provider will execute such subsequent transfers in the series of preauthorized remittance transfers, the applicable cancellation requirements, and contact information for the provider. The final rule permits providers some flexibility in determining how these disclosures may be provided, although there are specific timing requirements. In addition, disclosures regarding the dates of transfer for all preauthorized remittance transfers must be accurate as of the date the preauthorized remittance transfer to which the disclosure pertains is made. Finally, the final rule also permits providers to describe on the same receipt both the three-business-day and 30-minute cancellation periods (the latter applying to remittance transfers scheduled fewer than three business days before the date of the transfer) and either describe the transfers to which each period applies or, alternatively, use a checkbox or other method to designate which cancellation period is applicable to the transfer.

Remittance transfer providers could incur costs from the requirement in the final rule that they disclose certain dates of transfer on receipts given in connection with one-time remittance transfers scheduled at least three business days before the date of the transfer and certain preauthorized remittance transfers. To comply with this new requirement, remittance transfer providers will need to revise receipts for these transfers to include the date or dates of the transfers.[23] The additional disclosures on certain receipts may constitute an additional cost to remittance transfer providers if they do not already include this information on their receipts. The Bureau lacks specific information regarding the additional burden imposed on remittance transfer providers by this change but believes that it involves a slight modification of a disclosure required by the February Final Rule to include information maintained by providers. For those providers producing receipts electronically, this customization will likely involve a one-time change to information technology systems.

For transfers scheduled at least three business days before the date of the transfer, the date of the transfer gives consumers a basis from which to determine when their cancellation rights expire, thus providing consumers with additional clarity regarding their cancellation rights that could benefit those consumers who may want to cancel. This requirement also provides consumers with additional information about when the transfer will take place and, thus, the date by which a consumer's funds must be available in order for the remittance transfer provider to make the transfer.

As discussed above, the final rule also requires that the provider disclose to the sender the upcoming date of the transfer, cancellation requirements, and the provider's contact information for any subsequent preauthorized remittance transfer scheduled five or more business days before the date of the transfer.[24] This additional requirement in the final rule represents an additional cost to providers who are not already required to, or do not otherwise voluntarily, provide this information to consumers. The Bureau does not have information regarding the cost associated with disclosing the dates of transfer, cancellation requirements, and the provider's contact information for subsequent preauthorized remittance transfers. For remittance transfer providers who choose to include this information on an electronically-generated periodic statement or receipt, this likely represents a modest, one-time programming cost. The final rule does not require that this information be provided on an additional, separate disclosure, but rather permits providers to modify existing statements, receipts, or disclosures to include this information, which is already maintained by the remittance transfer provider. If the provider elects to do so, however, it may disclose this information in a separate disclosure that may be provided annually.

As described above, the date of the transfer gives consumers a basis from which to determine when their cancellation rights expire. This requirement provides consumers with additional clarity regarding their cancellation rights that could benefit those consumers that may want to cancel. It also provides consumers with additional information about when the transfer will take place and, thus, the date by which the consumer's funds must be available in order for the remittance transfer provider to make the transfer.

The final rule also states that remittance transfer providers that offer both remittance transfers scheduled at least three business days before the date of the transfer and remittance transfers scheduled fewer than three business days before the date of the transfer may describe both the three-business-day and 30-minute cancellation periods

[23] In some limited circumstances described in § 1005.36(d)(2)(ii), disclosure regarding future dates of transfer may also be accompanied by additional information regarding cancellation periods.

[24] Timing requirements for this additional requirement are addressed in § 1005.36(d)(2)(i).

applicable to such transfers on one receipt, provided they either describe the applicable deadline, or alternatively, use a checkbox or some other method to designate which cancellation period is applicable. This allows providers to use one standardized form, though each receipt needs to be modified for that particular remittance transfer. Providers who offer remittance transfers scheduled three or more business days before the date of the transfer, in addition to remittance transfers scheduled closer to or on the date of the transfer, may be relieved of costs since they are otherwise required by the February Final Rule to produce two distinct types of receipts. This additional flexibility benefits providers without imposing any additional costs because providers retain the option of complying with the requirements of the February Final Rule.

Disclosing both cancellation provisions on the same receipt could result in a receipt that is potentially more confusing to consumers.[25] However, the Bureau believes that consumers are unlikely to be confused by having a description of both cancellation deadlines in the same disclosure. To the contrary, including a description of both the 30-minute and three-business-day cancellation periods with a checkbox or other method that clearly designates the cancellation time period applicable to a consumer's transaction may improve consumers' understanding of the cancellation provisions generally.

B. Potential Specific Impacts of the Final Rule

Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets, as Described in Section 1026

The Bureau does not believe that the costs and benefits arising from the final rule for depository institutions and credit unions with $10 billion or less in total assets are substantively different from those discussed in the general analysis. However, the Bureau does believe that those depository institutions and credit unions with $10 billion or less in total assets are more likely to benefit from the additional clarity and burden reduction provided by the safe harbor than larger institutions or non-depository institutions. Although the Bureau lacks comprehensive data describing the number of remittance transfers provided by each entity, information that the Bureau obtained through comments and outreach suggests that, among depository institutions and credit unions that provide any remittance transfers, an institution's asset size and the number of remittance transfers sent by the institution is positively, though imperfectly, related. As a result, the Bureau expects that a greater share of depository institutions and credit unions with $10 billion or less in total assets that provide any remittance transfers will qualify for the safe harbor compared with those with more than $10 billion in total assets. The Bureau does not have any data with which to predict the percentage of those institutions that may, at some point, stop qualifying for the safe harbor, and thus be eligible for the transition period included in the final rule.

With respect to the elements of the final rule addressing remittance transfers scheduled before the date of the transfer, the Bureau does not believe that the costs and benefits arising from the final rule for depository institutions and credit unions with $10 billion or less in total assets are substantively different from those discussed in the general analysis.

Consumers in Rural Areas

Consumers in rural areas may experience different impacts from the final rule than consumers in general. In the February Proposal, the Bureau solicited additional information regarding the characteristics of rural consumers who send remittance transfers, the types of businesses through which they send remittance transfers, and the quantitative and qualitative characteristics of the services provided to them. The Bureau did not receive information regarding the types of institutions that rural consumers use to send remittance transfers and whether those institutions are more or less likely to benefit from the additional clarity provided by the safe harbor provision.[26] Furthermore, the Bureau did not receive information regarding whether rural consumers are more or less likely than other consumers either to schedule remittance transfers three or more business days before the date of the transfer or to send preauthorized remittance transfers.

As discussed above, the final rule generally lowers costs for persons providing remittance transfers relative to the February Final Rule.[27] If consumers in rural areas are more likely to send remittance transfers through persons who qualify for the safe harbor and, absent the safe harbor, would have exited the market, they likely will experience greater benefits from the final rule—in terms of increased access or more competitive pricing—than consumers generally. If persons providing remittance transfers to rural consumers are more likely to qualify for the safe harbor and, absent the safe harbor, would have chosen to implement subpart B of Regulation E, rural consumers may be more likely to lose potential benefits arising from the disclosure, cancellation, and error resolution rights.

It is likely that depository institutions and credit unions serving rural consumers are smaller in terms of asset size, on average, suggesting that they might be more likely to benefit from the safe harbor. This benefit may be muted, however, if rural consumers are more likely than other consumers to use remittance transfer providers that are not depository institutions or credit unions.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.[28] The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to

[25] These potential confusion costs, which the Bureau is unable to monetize, are likely only incurred by consumers using remittance transfer providers that offer remittance transfers scheduled more than three business days before, as well as remittance transfers scheduled closer to, the date of the transfer. It is possible, however, that a consumer using a provider that does not offer remittance transfers scheduled three or more business days before the date of the transfer could be exposed to both cancellation periods if, for example, the provider utilizes a third-party software solution that prints both periods on the same receipt.

[26] A few commenters suggested that rural banks would benefit from the safe harbor. The Bureau did not receive comment regarding whether rural consumers were more or less likely to use non-depository institutions than other consumers.

[27] Exceptions include additional requirements in certain cases to disclose the date of the transfer and other cancellation information as described above.

[28] For purposes of assessing the impacts of the proposed rule on small entities, ''small entities'' is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. 5 U.S.C. 601(6). A ''small business'' is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. 5 U.S.C. 601(3). A ''small organization'' is any ''not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' 5 U.S.C. 601(4). A ''small governmental jurisdiction'' is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. 5 U.S.C. 601(5).

proposing a rule for which an IRFA is required.[29]

The Bureau is certifying the final rule. Therefore, a FRFA is not required for this rule because it will not have a significant economic impact on a substantial number of small entities.

In this rulemaking, the Bureau is amending subpart B of Regulation E, which implements the EFTA, and the official interpretation to the Regulation. This rule modifies the February Final Rule as well as the accompanying commentary. The final rule provides a new safe harbor clarifying when a person does not provide remittance transfers in the normal course of business for purposes of determining whether a person is a ''remittance transfer provider.'' In the final rule, the Bureau is also refining the disclosure requirements for certain remittance transfers scheduled before the date of the transfer, including preauthorized remittance transfers, and the accompanying interpretations of those requirements.

This rule facilitates compliance with the February Final Rule and eases possible compliance burden while generally preserving potential benefits to consumers arising from the disclosure, cancellation, and error resolution requirements of the February Final Rule. The Bureau concluded that the February Proposal would not have a significant economic impact on a substantial number of small entities, and to the extent that it has such impacts, they would largely be positive.

The Bureau received a number of comments in response to the February Proposal addressing the burden imposed by the February Proposal and potential alternatives as well as the burden imposed by the February Final Rule. These comments are summarized above. The Bureau also invited comment from members of the public regarding whether the rule, as proposed, would have a significant impact on a substantial number of small entities. One commenter urged the Bureau to employ the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel process. This commenter also suggested that the Bureau engage in outreach to credit unions and community banks prior to finalizing the rule.[30]

As discussed below, the Bureau considered these comments, data, and other information obtained through further outreach in concluding that a factual basis exists for certifying the final rule. The analysis examines the regulatory impact of the final rule against the baseline of the February Final Rule.

A. Affected Small Entities

Potentially affected small entities include depository institutions and credit unions that have $175 million or less in assets that offer remittance transfers as well as non-depository institutions that have average annual receipts that do not exceed $7 million.[31] These affected small entities may include state-licensed money transmitters, among others.[32] Of the 7,319 insured depository institutions, 3,845 are small entities.[33] As explained in the February Final Rule, these institutions generally offer remittance transfers through wire transfers, though they may also offer remittance transfers through other means.

Regulatory filings by insured depository institutions do not contain information about the number of institutions that offer consumer international wire transfers (or other types of remittance transfers). Two trade association surveys of a small number of depository institutions found that seven percent of respondents (in one survey) and ten percent (in the other survey) stated that they do not offer international funds transfers on behalf of consumers.[34] The Bureau does not believe it can extrapolate from either survey to the entire population of depository institutions. However, for the purposes of this analysis, the Bureau assumes that all but seven percent of small depository institutions, *i.e.,* 3,576, send remittance transfers. The Bureau believes that this figure likely overestimates the number of small entity depository institutions offering remittance transfers. Data from the National Credit Union Administration suggest that, as of March 2012, 3,382 of the 7,019 federally insured credit unions offer international wire transfers. Of the insured credit unions that offer international wire transfers, 2,548 are small entities. Though the Bureau does not have exact data on the number of credit unions that offer remittance transfers, the Bureau assumes that the figure is similar.

Apart from insured depository institutions and credit unions, the Bureau believes that most of the other small entities affected by this rule are state-licensed money transmitters. In comment to the February Final Rule, one trade association estimated that there are about 500 state-licensed money transmitters. In an analysis performed in connection with the February Final Rule, the Bureau estimated that 350 of these 500 state-licensed money transmitters had $7 million or less in total revenues and therefore would be considered small entities under the Small Business Administration's small business size standards.[35]

As discussed below, the Bureau expects that many small entities will likely benefit from the additional clarity provided by the safe harbor. The small entities directly affected by other aspects of the final rule are those entities that are required to comply with subpart B of Regulation E and either (i) Provide remittance transfers scheduled at least five business days before the date of the transfer; (ii) provide preauthorized remittance transfers; or (iii) provide remittance transfers scheduled three or more business days

[29] 5 U.S.C. 609.

[30] This commenter appeared to be confusing the February Proposal with the February Final Rule. The letter states: ''As noted in the final rule, the agency concluded that the proposed rule could have a significant economic impact on small entities regarding international wire transfers.'' This is not true of the February Proposal in which the Bureau certified that the February Proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities.

[31] Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Effective March 26, 2012.

[32] For the purpose of this analysis, the Bureau assumes that providers, and not their agents, will assume any costs associated with implementing the final rule. A remittance transfer provider is liable for any violation of subpart B by an agent when the agent acts for the provider (*See* § 1005.35). There may be other entities that serve as remittance transfer providers that are not depository institutions, credit unions, or money transmitters, as traditionally defined. These entities could include broker-dealers that send remittance transfers. The Bureau does not have information regarding the number of broker-dealers that send remittance transfers.

[33] Federal Deposit Insurance Corporation, *http://www2.fdic.gov/idasp/main.asp,* downloaded July 12, 2012. Count includes active institutions as of March 31, 2012.

[34] One survey of 146 banks reported that 10.3 percent of respondent banks did not ''initiate electronic funds transfers (wires or IAT) for consumers in the U.S. to persons or entities outside the U.S.'' Another survey of 277 banks found that 6.9 percent of bank respondents did not send international fund transfers on behalf of consumers. In its comment letter, the same trade association stated that 68 percent of community banks offer international funds transfers to consumers and cited to a survey with 713 respondents (implying that 32 percent of banks do not offer international funds transfers).

[35] Regulatory data received from New York shows that 55 percent of money transmitters licensed in that state had $7 million or less in revenue in 2011. Applying that percentage to the figure of 500 state-licensed money transmitters would result in an estimate of 275 small entity money transmitters. However, absent further information, the Bureau does not believe that it can extrapolate from the New York data to the entire money transmitter market.

before the date of the transfer as well as remittance transfers scheduled fewer than three business days before the date of the transfer.

B. Normal Course of Business

Comment 30(f)–2 to the February Final Rule states that whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. The final rule provides a new safe harbor clarifying when a person does not provide remittance transfers in the normal course of business for purposes of determining whether a person is a ''remittance transfer provider.'' The final rule states that if a person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, then the person is deemed not to be providing remittance transfers for a consumer in the normal course of its business. For a person that crosses the 100-transaction threshold, and is providing remittance transfers for consumers in the normal course of its business, the final rule permits a reasonable period of time, not to exceed six months, to begin complying with subpart B of Regulation E. For such a person, compliance with subpart B of Regulation E will be required at the end of the ''reasonable period of time'' unless, based on the facts and circumstances, such a person is not a remittance transfer provider.

The Bureau expects that persons who believe they qualify for the safe harbor will endeavor to track the number of remittance transfers that they send each year. Though there may be a cost associated with tracking the number of remittance transfers provided, persons elect to incur it at their option. Persons qualifying for the safe harbor will be relieved of uncertainty and legal risk regarding whether they provide remittance transfers in the normal course of business. Furthermore, persons who formerly qualified for the safe harbor, but then provide more than 100 remittance transfers in a year, will benefit from the final rule's transition period. Therefore, the final rule may only decrease compliance costs relative to the baseline established by the February Final Rule.

As discussed above, the Bureau is unable to state definitively the number of small entities that would benefit from the additional certainty provided by the safe harbor and the benefits of the transition period. The Bureau received limited survey results and data from several sources describing the number of remittance transfers or similar transactions (which may include remittance transfers) provided by individual depository institutions, credit unions, and state-licensed money transmitters. This information suggests that a meaningful number of depository institutions and credit unions will likely qualify for the safe harbor. Furthermore, for depository institutions and credit unions that provide remittance transfers, these sources also suggest a generally positive relationship between asset size and remittance transfer counts, suggesting that small entity institutions are more likely to qualify for the safe harbor than larger institutions.

In addition to data regarding depository institutions and credit unions, the Bureau obtained some information from state regulators in California, New York, and Ohio regarding entities licensed as money transmitters in those states. These data generally tracked transactions that are money transmissions under each state's law, which generally include remittance transfers, as defined in subpart B of Regulation E, but may not include all such remittance transfers, and may include a number of other types of transactions that are not remittance transfers under subpart B of Regulation E. Nevertheless, these data, combined with the Bureau's research regarding the business models of covered companies, suggest that few state-licensed money transmitters would qualify for the safe harbor. Therefore, the additional clarity provided by the safe harbor would likely represent little, if any, change relative to the February Final Rule for small entity state-licensed money transmitters.[36]

C. Estimates and Disclosure Requirements

In the final rule, § 1005.32(b)(2) permits providers to estimate certain information in pre-payment disclosures and certain receipts provided for remittance transfers scheduled by a sender five or more business days before the date of the transfer, including preauthorized remittance transfers. If a remittance transfer provider chooses to give estimated disclosures pursuant to § 1005.32(b)(2), the final rule also requires that it provide a receipt with accurate figures (unless a statutory exception permitting the use of estimates applies).

This provision for estimates only affects remittance transfer providers that offer consumers the option to schedule remittance transfers five or more business days before the date of the transfer. As discussed above in the Section 1022 Analysis, these providers are relieved of the potential burden associated with disclosing accurate exchange rates five or more business days before the date of the transfer.

Remittance transfer providers choosing to employ this exception for estimates will potentially incur additional costs associated with providing an additional receipt with accurate figures to consumers in connection with one-time transfers and the first in a series of preauthorized remittance transfers. However, remittance transfer providers retain the option of complying with the February Final Rule and providing accurate pre-payment disclosures and receipts (and thus not providing a second receipt) for every transfer. Therefore, remittance transfer providers, including small entity providers, should only benefit and not incur any additional costs from this change.

D. Disclosure Rules for Subsequent Preauthorized Remittance Transfers

The final rule eliminates the requirement that remittance transfer providers mail or deliver pre-payment disclosures within a reasonable time prior to the date of each subsequent preauthorized remittance transfer. Instead, the final rule requires a receipt be provided to the consumer within a reasonable time prior to the date of the next preauthorized remittance transfer only if certain figures (generally those that are not estimates or based on estimates) on the receipt provided with respect to the first in that series of preauthorized remittance transfers change (or the figures disclosed from a prior updated receipt change, if one was previously provided). This receipt must disclose the changed terms, among the other disclosures required by § 1005.31(b)(2).[37] This additional flexibility will benefit providers, including small entity providers. With respect to these pre-payment disclosures, providers will no longer incur the costs associated with providing these disclosures or compliance risk arising from uncertainty surrounding the interpretation of ''reasonable time.'' When certain figures change, providers will still incur some cost associated with providing a receipt displaying

[36] Although the Bureau does not have access to data regarding other types of entities that potentially provide remittance transfers, those entities could only benefit from the clarity provided by the safe harbor and the reduction in compliance costs associated with the transition period.

[37] It may contain estimates as permitted by § 1005.32(b)(2).

these figures a reasonable time prior to the subsequent transfer. However, it is expected that an obligation to provide updated receipts will occur less frequently than the requirement in the February Final Rule to provide pre-payment disclosures before every subsequent preauthorized transfer.

E. Cancellation Period and Disclosures

The final rule requires that remittance transfer providers disclose the date of the transfer on receipts given in association with any transfer scheduled at least three business days before the date of the transfer, as well as the first transfer in a series of preauthorized remittance transfers. Also, the final rule requires, in conjunction with certain disclosures related to initial transfers in series of preauthorized transfers, disclosures of the date of transfer regarding any subsequent preauthorized transfer in that series for which the date of the transfer is four or fewer business days after the date payment is made for that transfer. To comply with this new requirement, remittance transfer providers must program systems to disclose the date of the transfer on receipts for certain transfers. This may constitute an additional cost to remittance transfer providers if they do not already include this information on their receipts. The Bureau lacks specific information regarding the additional burden imposed on remittance transfer providers by this provision, but believes it to be modest given that it involves a slight modification of a disclosure already required by the February Final Rule to include information already maintained by the provider. For those remittance transfer providers producing receipts electronically, this will likely involve a one-time programming change to information technology systems.

The additional requirement in the final rule that providers disclose the date of the transfer, as well as cancellation requirements and the provider's contact information, within a certain period before each subsequent preauthorized remittance transfer scheduled five or more business days before the date of the transfer represents an additional cost to remittance transfer providers that do not already disclose this information. Among other options, providers may include this information in an existing statement or disclosure, or in a single notice covering multiple transfers that is provided up to a year before the date of the transfer.[38] The Bureau believes that modifying existing statements or disclosures to include information already maintained by the remittance transfer provider likely represents a modest, one-time programming cost for those remittance transfer providers generating statements or disclosures electronically. Furthermore, the rule permits providers flexibility to disclose the required information in any number of ways. Thus, providers may be able to choose the least expensive among several disclosure options.

The final rule also states that remittance transfer providers may describe both the three-business-day and 30-minute cancellation periods on one receipt, provided they either describe the remittance transfers to which each period applies, or alternatively, use a checkbox or some other method to designate which cancellation period is applicable to the transfer.[39] This permits the use of one standardized form, though each receipt would need to be modified for the particular remittance transfer. This may result in reduced costs for those providers that offer both remittance transfers scheduled either three or more business days before the date of the transfer and closer to or on the date of the transfer, since providers otherwise are required by the February Final Rule to produce two types of receipts. This additional flexibility may benefit providers while not imposing any additional costs on them since they retain the option of complying with the requirements of the February Final Rule.

The Bureau did not receive specific information regarding the number of small entities that would be affected by these changes. As discussed above, the Bureau believes that a meaningful number of small insured depository institutions and credit unions will qualify for the safe harbor in the final rule, and thus are not remittance transfer providers and are not required to comply with subpart B of Regulation E. The Bureau additionally believes that, though few state-licensed money transmitters are likely to qualify for the safe harbor in the final rule, very few small state-licensed money transmitters offer consumers preauthorized remittance transfers or the ability to schedule remittance transfers to be sent at some later date. Therefore, the Bureau believes that provisions relating to preauthorized or prescheduled transfers are not likely to have a significant economic impact on a substantial number of small entities.

F. Cost of Credit for Small Entities

The final rule does not apply to credit transactions or to commercial remittances. Therefore, the Bureau does not expect the final rule to increase the cost of credit for small businesses. With a few exceptions, the final rule generally does not change or lowers the cost of compliance for depositories and credit unions, many of which offer small business credit. Any effect of this rule on small business credit, however, would be highly attenuated. The final rule also generally does not change or lowers the cost of compliance for money transmitters. Money transmitters typically do not extend credit to any entity, including small businesses.

G. Certification

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

VIII. Paperwork Reduction Act

The Bureau's information collection requirements contained in this final rule have been submitted to and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). This collection of information was submitted to OMB as an amendment to the previously approved collection for the Electronic Fund Transfer Act (Regulation E) 12 CFR part 1005 under OMB control number 3170–0014. Under the Paperwork Reduction Act (PRA), an agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number.

The information collection requirements in this final rule are in 12 CFR part 1005. This information collection is required to provide benefits for consumers and is mandatory. *See* 15 U.S.C. 1693, *et seq.* The likely respondents are remittance transfer providers, including small businesses. This information collection is required to provide disclosures and receipts to consumers in the United States who, primarily for personal, family, or household purposes, request remittance transfer providers to send remittance transfers to designated recipients, to be received in a foreign country. The disclosures provide pricing information and information regarding cancellation and error resolution rights. This information may be used by consumers

[38] This flexibility does not extend to subsequent preauthorized remittance transfers scheduled four or fewer business days after the date payment is made for that transfer.

[39] Consumers scheduling remittance transfers at least three business days before the date of the transfer may cancel the remittance transfer up to three business days prior to the date of the transfer. Otherwise, consumers have 30 minutes from when they make payment to cancel.

for budgeting and shopping purposes and by consumers and Federal agencies to determine when violations of the underlying rules and statute have occurred.

The Bureau estimates that the frequency of response to the collection of information in the final rule will be on-occasion. The Bureau estimates that the total one-time burden for all 10,689 respondents potentially affected by the final rule to comply with Regulation E decreases by 914,311 hours as a result of the final rule, and the total ongoing annual burden decreases by 532,784 hours.[40] This decrease in total burden is largely, but not exclusively, attributable to respondents who will decide not to comply with subpart B of Regulation E due to the safe harbor provided for in the final rule.[41] Although the Bureau does not have precise information regarding the number of entities qualifying for the safe harbor, the information obtained in this rulemaking suggests that a meaningful number of insured depositories and credit unions may qualify. For purposes of this PRA analysis, the Bureau has assumed that all respondents availing themselves of the safe harbor are non-Bureau respondents, since the Bureau estimates that larger depository institutions and credit unions (in terms of asset size) are less likely to qualify for the safe harbor. Other Federal agencies, including the Federal Trade Commission, are responsible for estimating and reporting to OMB the paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Bureau's burden estimation methodology.

Despite this overall reduction, the Bureau estimates that one-time burden for Bureau respondents increases slightly.[42] For the 154 large depository institutions and credit unions (including their depository affiliates) considered to be Bureau respondents for the purposes of this PRA analysis, the Bureau estimates that the final rule increases one-time burden by 809 hours and has no impact on ongoing burden. For the 500 non-depository money transmitters for which the Bureau has administrative enforcement authority for the purposes of the PRA, the rule increases one-time burden by 1,313 hours and has no impact on ongoing burden.[43]

In conjunction with the February Proposal, the Bureau received comments on the merits of various aspects of the final rule, including the burden of compliance generally, the relative burden of providing actual exchange rates and estimates, whether or how information regarding cancellation periods should be disclosed, estimates of the number of institutions affected by the safe harbor, and whether particular disclosure forms should be required. These comments relate to core issues in the February Proposal and the Bureau's consideration of these comments is discussed above. The Bureau received no comments specifically addressing the Bureau's proposed PRA burden estimates or numbers of Bureau respondents.

List of Subjects in 12 CFR Part 1005

Banking, Banks, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittance transfers, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated in the preamble, the Bureau of Consumer Financial Protection amends 12 CFR part 1005 as set forth below:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

■ 1. The authority citation for part 1005 is revised to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b.

Subpart B is also issued under 12 U.S.C. 5601.

Subpart B—Requirements for Remittance Transfers

■ 2. Amend § 1005.30 to revise paragraph (f) to read as follows:

§ 1005.30 Remittance transfer definitions.

* * * * *

(f) *Remittance transfer provider*—(1) *General definition.* ''Remittance transfer provider'' or ''provider'' means any person that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.

(2) *Normal course of business*—(i) *Safe harbor.* For purposes of paragraph (f)(1) of this section, a person is deemed not to be providing remittance transfers for a consumer in the normal course of its business if the person:

(A) Provided 100 or fewer remittance transfers in the previous calendar year; and

(B) Provides 100 or fewer remittance transfers in the current calendar year.

(ii) *Transition period.* If a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 remittance transfers in the current calendar year, and if that person is then providing remittance transfers for a consumer in the normal course of its business pursuant to paragraph (f)(1) of this section, the person has a reasonable period of time, not to exceed six months, to begin complying with this subpart. Compliance with this subpart will not be required for any remittance transfers for which payment is made during that reasonable period of time.

* * * * *

■ 3. Amend § 1005.31 to revise paragraphs (a)(3)(ii), (a)(3)(iii), (a)(5)(ii), (a)(5)(iii), (b)(2)(v), (b)(2)(vi), and (b)(3); and add paragraphs (a)(3)(iv), (a)(5)(iv), and (b)(2)(vii) to read as follows:

§ 1005.31 Disclosures.

(a) * * *

(3) * * *

[40] The decrease in respondents relative to the PRA analysis for the February Final Rule reflects a revision by the Bureau of the estimate of the number of non-Bureau depository institutions and credit unions offering remittance transfers relative to the number reported in the February Final Rule. The Bureau previously estimated that approximately 11,000 insured depositories and credit unions not supervised by the Bureau provide remittance transfers. The Bureau now believes that that number may be closer to 10,000. The decrease in burden relative to what was previously reported from this revision is not included in the change in burden reported here. However, the revised entity counts are used for the purpose of calculating other changes in burden arising from the final rule. This number also assumes that 500 money transmitters, and not their agents, are respondents.

[41] The Bureau previously made the conservative assumption in the PRA analysis for the February Final Rule that no respondent would choose not to comply with subpart B of Regulation E. By increasing certainty as to whether a remittance transfer provider does not provide remittance transfers in the normal course of business, the Bureau anticipates that the final rule's safe harbor will increase the number of respondents that take advantage of the normal course of business exclusion and therefore decide to not comply with subpart B.

[42] The Bureau's estimates of burden and respondents have changed from the February Proposal due to modifications to the Bureau's estimation methodology. Specifically, this PRA analysis reduces certain burdens in instances where disclosures are no longer required. The Bureau also assumes that no ongoing burden is associated with the modification of an existing disclosure. Additionally, burden attributed to reading the final rule is included. With respect to Bureau respondents, the Bureau further assumes that money transmitters, and not their agents, incur the burden associated with the provisions in this rulemaking, which generally involve the modification of existing disclosures.

[43] The Bureau and the Federal Trade Commission generally both have enforcement authority over non-depository institutions subject to Regulation E. Accordingly, the Bureau has allocated to itself half of the total estimated 2,626 burden hours incurred by non-depository money transmitters subject to the final rule.

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section;

(iii) The provider discloses orally a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section; and

(iv) The provider discloses orally, as each is applicable, the information required by paragraph (b)(2)(vii) of this section and the information required by § 1005.36(d)(1)(i)(A), with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in paragraph (e)(1) of this section.

* * * * *

(5) * * *

(ii) The remittance transfer provider complies with the requirements of paragraph (g)(2) of this section;

(iii) The provider discloses orally or via mobile application or text message a statement about the rights of the sender regarding cancellation required by paragraph (b)(2)(iv) of this section pursuant to the timing requirements in paragraph (e)(1) of this section; and

(iv) The provider discloses orally or via mobile application or text message, as each is applicable, the information required by paragraph (b)(2)(vii) of this section and the information required by § 1005.36(d)(1)(i)(A), with respect to transfers subject to § 1005.36(d)(2)(ii), pursuant to the timing requirements in paragraph (e)(1) of this section.

* * * * *

(b) * * *

(2) * * *

(v) The name, telephone number(s), and Web site of the remittance transfer provider;

(vi) A statement that the sender can contact the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the Consumer Financial Protection Bureau for questions or complaints about the remittance transfer provider, using language set forth in Model Form A–37 of Appendix A to this part or substantially similar language. The disclosure must provide the name, telephone number(s), and Web site of the State agency that licenses or charters the remittance transfer provider with respect to the remittance transfer and the name, toll-free telephone number(s), and Web site of the Consumer Financial Protection Bureau; and

(vii) For any remittance transfer scheduled by the sender at least three business days before the date of the transfer, or the first transfer in a series of preauthorized remittance transfers, the date the remittance transfer provider will make or made the remittance transfer, using the term ''Transfer Date,'' or a substantially similar term.

(3) *Combined disclosure*—(i) *In general.* As an alternative to providing the disclosures described in paragraph (b)(1) and (2) of this section, a remittance transfer provider may provide the disclosures described in paragraph (b)(2) of this section, as applicable, in a single disclosure pursuant to the timing requirements in paragraph (e)(1) of this section. Except as provided in paragraph (b)(3)(ii) of this section, if the remittance transfer provider provides the combined disclosure and the sender completes the transfer, the remittance transfer provider must provide the sender with proof of payment when payment is made for the remittance transfer. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

(ii) *Transfers scheduled before the date of transfer.* If the disclosure described in paragraph (b)(3)(i) of this section is provided in accordance with § 1005.36(a)(1)(i) and payment is not processed by the remittance transfer provider at the time the remittance transfer is scheduled, a remittance transfer provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment otherwise required by paragraph (b)(3)(i) of this section. The confirmation of scheduling must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form.

* * * * *

■ 4. Amend § 1005.32 to revise paragraph (b) and the introductory text of paragraph (c), and to add paragraph (d) to read as follows:

§ 1005.32 Estimates.

* * * * *

(b) *Permanent exceptions*—(1) *Permanent exception for transfers to certain countries.*

(i) *General.* For disclosures described in §§ 1005.31(b)(1) through (b)(3) and 1005.36(a)(1) and (a)(2), estimates may be provided for transfers to certain countries in accordance with paragraph (c) of this section for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (b)(1)(vii), if a remittance transfer provider cannot determine the exact amounts when the disclosure is required because:

(A) The laws of the recipient country do not permit such a determination, or

(B) The method by which transactions are made in the recipient country does not permit such determination.

(ii) *Safe harbor.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether estimates may be provided under paragraph (b)(1) of this section, unless the provider has information that a country's laws or the method by which transactions are conducted in that country permits a determination of the exact disclosure amount.

(2) *Permanent exception for transfers scheduled before the date of transfer.* (i) Except as provided in paragraph (b)(2)(ii) of this section, for disclosures described in §§ 1005.36(a)(1)(i) and (a)(2)(i), estimates may be provided in accordance with paragraph (d) of this section for the amounts to be disclosed under §§ 1005.31(b)(1)(iv) through (vii) if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer. In addition, if, at the time the sender schedules such a transfer, the provider agrees to a sender's request to fix the amount to be transferred in the currency in which the remittance transfer will be received and not the currency in which it is funded, estimates may also be provided for the amounts to be disclosed under §§ 1005.31(b)(1)(i) through (iii), except as provided in paragraph (b)(2)(iii) of this section.

(ii) Fees and taxes described in § 1005.31(b)(1)(vi) may be estimated under paragraph (b)(2)(i) of this section only if the exchange rate is also estimated under paragraph (b)(2)(i) and the estimated exchange rate affects the amount of such fees and taxes.

(iii) Fees and taxes described in § 1005.31(b)(1)(ii) may be estimated under paragraph (b)(2)(i) of this section only if the amount that will be transferred in the currency in which it is funded is also estimated under paragraph (b)(2)(i) of this section, and the estimated amount affects the amount of such fees and taxes.

(c) *Bases for estimates generally.* Estimates provided pursuant to the exceptions in paragraph (a) or (b)(1) of this section must be based on the below-listed approach or approaches, except as otherwise permitted by this paragraph. If a remittance transfer provider bases an estimate on an approach that is not listed in this paragraph, the provider is deemed to be in compliance with this paragraph so long as the designated recipient receives the same, or greater, amount of funds than the remittance transfer provider disclosed under § 1005.31(b)(1)(vii).

* * * * *

(d) *Bases for estimates for transfers scheduled before the date of transfer.*

Estimates provided pursuant to paragraph (b)(2) of this section must be based on the exchange rate or, where applicable, the estimated exchange rate based on an estimation methodology permitted under paragraph (c) of this section that the provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, in accordance with this paragraph, a remittance transfer provider uses a basis described in paragraph (c) of this section but not listed in paragraph (c)(1) of this section, the provider is deemed to be in compliance with this paragraph regardless of the amount received by the designated recipient, so long as the estimation methodology is the same that the provider would have used or did use in providing disclosures to a sender requesting such a remittance transfer to be made on the same day.

■ 5. Amend § 1005.33 to revise paragraph (a)(1)(i) to read as follows:

§ 1005.33 Procedures for resolving errors.

(a) * * *

(1) * * *

(i) An incorrect amount paid by a sender in connection with a remittance transfer unless the disclosure stated an estimate of the amount paid by a sender in accordance with § 1005.32(b)(2) and the difference results from application of the actual exchange rate, fees, and taxes, rather than any estimated amount;

* * * * *

■ 6. Amend § 1005.36 to revise the section heading and paragraphs (a) and (b), and to add paragraph (d) to read as follows:

§ 1005.36 Transfers scheduled before the date of transfer.

(a) *Timing.* (1) For a one-time transfer scheduled five or more business days before the date of transfer or for the first in a series of preauthorized remittance transfers, the remittance transfer provider must:

(i) Provide either the pre-payment disclosure described in § 1005.31(b)(1) and the receipt described in § 1005.31(b)(2) or the combined disclosure described in § 1005.31(b)(3), in accordance with the timing requirements set forth in § 1005.31(e); and

(ii) If any of the disclosures provided pursuant to paragraph (a)(1)(i) of this section contain estimates as permitted by § 1005.32(b)(2), mail or deliver to the sender an additional receipt meeting the requirements described in § 1005.31(b)(2) no later than one business day after the date of the transfer. If the transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(2) For each subsequent preauthorized remittance transfer:

(i) If any of the information on the most recent receipt provided pursuant to paragraph (a)(1)(i) of this section, or by this paragraph (a)(2)(i), other than the temporal disclosures required by § 1005.31(b)(2)(ii) and (b)(2)(vii), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, then the remittance transfer provider must provide an updated receipt meeting the requirements described in § 1005.31(b)(2) to the sender. The provider must mail or deliver this receipt to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. Such receipt must clearly and conspicuously indicate that it contains updated disclosures.

(ii) Unless a receipt was provided in accordance with paragraph (a)(2)(i) of this section that contained no estimates pursuant to § 1005.32, the remittance transfer provider must mail or deliver to the sender a receipt meeting the requirements described in § 1005.31(b)(2) no later than one business day after the date of the transfer. If the remittance transfer involves the transfer of funds from the sender's account held by the provider, the receipt required by this paragraph may be provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided.

(iii) A remittance transfer provider must provide the disclosures required by paragraph (d) of this section in accordance with the timing requirements of that section.

(b) *Accuracy.* (1) For a one-time transfer scheduled five or more business days in advance or for the first in a series of preauthorized remittance transfers, disclosures provided pursuant to paragraph (a)(1)(i) of this section must comply with § 1005.31(f) by being accurate when a sender makes payment except to the extent estimates are permitted by § 1005.32.

(2) For each subsequent preauthorized remittance transfer, the most recent receipt provided pursuant to paragraph (a)(1)(i) or (a)(2)(i) of this section must be accurate as of when such transfer is made, except:

(i) The temporal elements required by § 1005.31(b)(2)(ii) and (b)(2)(vii) must be accurate only if the transfer is the first transfer to occur after the disclosure was provided; and

(ii) To the extent estimates are permitted by § 1005.32.

(3) Disclosures provided pursuant to paragraph (a)(1)(ii) or (a)(2)(ii) of this section must be accurate as of when the remittance transfer to which it pertains is made, except to the extent estimates are permitted by § 1005.32(a) or (b)(1).

* * * * *

(d) *Additional requirements for subsequent preauthorized remittance transfers*—(1) *Disclosure requirement.* (i) For any subsequent transfer in a series of preauthorized remittance transfers, the remittance transfer provider must disclose to the sender:

(A) The date the provider will make the subsequent transfer, using the term ''Future Transfer Date,'' or a substantially similar term;

(B) A statement about the rights of the sender regarding cancellation as described in § 1005.31(b)(2)(iv); and

(C) The name, telephone number(s), and Web site of the remittance transfer provider.

(ii) If the future date or dates of transfer are described as occurring in regular periodic intervals, *e.g.,* the 15th of every month, rather than as a specific calendar date or dates, the remittance transfer provider must disclose any future date or dates of transfer that do not conform to the described interval.

(2) *Notice requirements.* (i) Except as described in paragraph (d)(2)(ii) of this section, the disclosures required by paragraph (d)(1) of this section must be received by the sender no more than 12 months, and no less than five business days prior to the date of any subsequent transfer to which it pertains. The disclosures required by paragraph (d)(1) of this section may be provided in a separate disclosure or may be provided on one or more disclosures required by this subpart related to the same series of preauthorized transfers, so long as the consumer receives the required information for each subsequent preauthorized remittance transfer in accordance with the timing requirements of this paragraph (d)(2)(i).

(ii) For any subsequent preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made for that transfer, the information required by paragraph (d)(1) of this section must be provided on or with the receipt described in § 1005.31(b)(2), or disclosed as permitted by § 1005.31(a)(3) or (a)(5), for the initial

transfer in that series in accordance with paragraph (a)(1)(i) of this section.

(3) *Specific format requirement.* The information required by paragraph (d)(1)(i)(A) of this section generally must be disclosed in close proximity to the other information required by paragraph (d)(1)(i)(B) of this section.

(4) *Accuracy.* Any disclosure required by paragraph (d)(1) of this section must be accurate as of the date the preauthorized remittance transfer to which it pertains is made.

■ 7. In Supplement I to part 1005:

■ a. Under Section 1005.30, amend comment 30(f) by revising paragraph 2;

■ b. Under Section 1005.31, comment 31(b), amend paragraph 31(b)(2) by adding paragraphs 4 through 6;

■ c. Under Section 1005.31, comment 31(b), amend paragraph 31(b)(3) by adding paragraph 2;

■ d. Under Section 1005.32, revise paragraph 1;

■ e. Under Section 1005.32, revise comment 32(b);

■ f. Under Section 1005.32, comment 32(c), amend paragraph (c)(1) by revising paragraph 1;

■ g. Under Section 1005.32, add new comment 32(d); and

■ h. Under Section 1005.36, add comments 36(a), 36(b) and 36(d).

The additions and revisions read as follows:

Supplement I to Part 1005—Official Interpretations

* * * * *

Section 1005.30—Remittance Transfer Definitions

* * * * *

30(f) Remittance Transfer Provider

* * * * *

2. *Normal course of business.* i. *General.* Whether a person provides remittance transfers in the normal course of business depends on the facts and circumstances, including the total number and frequency of remittance transfers sent by the provider. For example, if a financial institution generally does not make remittance transfers available to customers, but sends a couple of such transfers in a given year as an accommodation for a customer, the institution does not provide remittance transfers in the normal course of business. In contrast, if a financial institution makes remittance transfers generally available to customers (whether described in the institution's deposit account agreement, or in practice) and makes transfers many times per month, the institution provides remittance transfers in the normal course of business.

ii. *Safe harbor.* Under § 1005.30(f)(2)(i), a person that provided 100 or fewer remittance transfers in the previous calendar year and provides 100 or fewer remittance transfers in the current calendar year is deemed not to be providing remittance transfers in the normal course of its business. Accordingly, a person that qualifies for the safe harbor in § 1005.30(f)(2)(i) is not a ''remittance transfer provider'' and is not subject to the requirements of subpart B. For purposes of determining whether a person qualifies for the safe harbor under § 1005.30(f)(2)(i), the number of remittance transfers provided includes any transfers excluded from the definition of ''remittance transfer'' due simply to the safe harbor. In contrast, the number of remittance transfers provided does not include any transfers that are excluded from the definition of ''remittance transfer'' for reasons other than the safe harbor, such as small value transactions or securities and commodities transfers that are excluded from the definition of ''remittance transfer'' by § 1005.30(e)(2).

iii. *Transition period.* A person may cease to satisfy the requirements of the safe harbor described in § 1005.30(f)(2)(i) if the person provides in excess of 100 remittance transfers in a calendar year. For example, if a person that provided 100 or fewer remittance transfers in the previous calendar year provides more than 100 remittance transfers in the current calendar year, the safe harbor applies to the first 100 remittance transfers that the person provides in the current calendar year. For any additional remittance transfers provided in the current calendar year and for any remittance transfers provided in the subsequent calendar year, whether the person provides remittance transfers for a consumer in the normal course of its business, as defined in § 1005.30(f)(1), and is thus a remittance transfer provider for those additional transfers, depends on the facts and circumstances. Section 1005.30(f)(2)(ii) provides a reasonable period of time, not to exceed six months, for such a person to begin complying with subpart B, if that person is then providing remittance transfers in the normal course of its business. At the end of that reasonable period of time, such person would be required to comply with subpart B unless, based on the facts and circumstances, the person is not a remittance transfer provider.

iv. *Example of safe harbor and transition period.* Assume that a person provided 90 remittance transfers in 2012 and 90 such transfers in 2013. The safe harbor will apply to the person's transfers in 2013, as well as the person's first 100 remittance transfers in 2014. However, if the person provides a 101st transfer on September 5, the facts and circumstances determine whether the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider for the 101st and any subsequent remittance transfers that it provides in 2014. Furthermore, the person would not qualify for the safe harbor described in § 1005.30(f)(2)(i) in 2015 because the person did not provide 100 or fewer remittance transfers in 2014. However, for the 101st remittance transfer provided in 2014, as well as additional remittance transfers provided thereafter in 2014 and 2015, if that person is then providing remittance transfers for a consumer in the normal course of business, the person will have a reasonable period of time, not to exceed six months, to come into compliance with subpart B. Assume that in this case, a reasonable period of time is six months. Thus, compliance with subpart B is not required for remittance transfers made on or before March 5, 2015 (*i.e.,* six months after September 5, 2014). After March 5, 2015, the person is required to comply with subpart B if, based on the facts and circumstances, the person provides remittance transfers in the normal course of business and is thus a remittance transfer provider.

* * * * *

Section 1005.31—Disclosures

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31(b) Disclosure Requirements.

* * * * *

31(b)(2) Receipt

* * * * *

4. *Date of transfer on receipt.* Where applicable, § 1005.31(b)(2)(vii) requires disclosure of the date of transfer for the remittance transfer that is the subject of a receipt required by § 1005.31(b)(2), including a receipt that is provided in accordance with the timing requirements in § 1005.36(a). For any subsequent preauthorized remittance transfer subject to § 1005.36(d)(2)(ii), the future date of transfer must be provided on any receipt provided for the initial transfer in that series of preauthorized remittance transfers, or where permitted, or disclosed as permitted by § 1005.31(a)(3) and (a)(5), in accordance with § 1005.36(a)(1)(i).

5. *Transfer date disclosures.* The following example demonstrates how the information required by § 1005.31(b)(2)(vii) and § 1005.36(d)(1) should be disclosed on receipts: On July 1, a sender instructs the provider to send a preauthorized remittance transfer of US$100 each week to a designated recipient. The sender requests that first transfer in the series be sent on July 15. On the receipt, the remittance transfer provider discloses an estimated exchange rate to the sender pursuant to § 1005.32(b)(2). In accordance with § 1005.31(b)(2)(vii), the provider should disclose the date of transfer for that particular transaction (*i.e.,* July 15) on the receipt provided when payment is made for the transfer pursuant to the timing requirements in § 1005.36(a)(1)(i). The second receipt, which § 1005.36(a)(1)(ii) requires to be provided within one business day after the date of the transfer or, for transfers from the sender's account held by the provider, on the next regularly scheduled periodic statement or within 30 days after payment is made if a periodic statement is not provided, is also required to include the date of transfer. If the provider discloses on either receipt the cancellation period applicable to and dates of subsequent preauthorized remittance transfers in accordance with § 1005.36(d)(2), the disclosure must be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to any date of transfer on the receipt.

6. *Cancellation disclosure.* Remittance transfer providers that offer remittance transfers scheduled three or more business days before the date of the transfer, as well as remittance transfers scheduled fewer than

three business days before the date of the transfer, may meet the cancellation disclosure requirements in § 1005.31(b)(2)(iv) by describing the three-business-day and 30-minute cancellation periods on the same disclosure and using a checkbox or other method to clearly designate the applicable cancellation period. The provider may use a number of methods to indicate which cancellation period applies to the transaction including, but not limited to, a statement to that effect, use of a checkbox, highlighting, circling, and the like. For transfers scheduled three business days before the date of the transfer, the cancellation disclosures provided pursuant to § 1005.31(b)(2)(iv) should be phrased and formatted in such a way that it is clear to the sender which cancellation period is applicable to the date of transfer disclosed on the receipt.

* * * * *

31(b)(3) Combined Disclosures

* * * * *

2. *Confirmation of scheduling.* As discussed in comment 31(e)–2, payment is considered to be made when payment is authorized for purposes of various timing requirements in subpart B, including with regard to the timing requirement for provision of the proof of payment described in § 1005.31(b)(3)(i). However, where a transfer (whether a one-time remittance transfer or the first in a series of preauthorized remittance transfers) is scheduled before the date of transfer and the provider does not intend to process payment until at or near the date of transfer, the provider may provide a confirmation of scheduling in lieu of the proof of payment required by § 1005.31(b)(3)(i). No further proof of payment is required when payment is later processed.

* * * * *

Section 1005.32—Estimates

1. *Disclosures where estimates can be used.* Sections 1005.32(a) and (b)(1) permit estimates to be used in certain circumstances for disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and(2). To the extent permitted in § 1005.32(a) and (b)(1), estimates may be used in the pre-payment disclosure described in § 1005.31(b)(1), the receipt disclosure described in § 1005.31(b)(2), the combined disclosure described in § 1005.31(b)(3), and the pre-payment disclosures and receipt disclosures for both first and subsequent preauthorized remittance transfers described in § 1005.36(a)(1) and (a)(2). Section 1005.32(b)(2) permits estimates to be used for certain information if the remittance transfer is scheduled by a sender five or more business days before the date of the transfer, for disclosures described in § 1005.36(a)(1)(i) and (a)(2)(i).

* * * * *

32(b) Permanent Exceptions

32(b)(1) Permanent Exceptions for Transfers to Certain Countries

1. *Laws of the recipient country.* The laws of the recipient country do not permit a remittance transfer provider to determine exact amounts required to be disclosed when a law or regulation of the recipient country requires the person making funds directly available to the designated recipient to apply an exchange rate that is:

i. Set by the government of the recipient country after the remittance transfer provider sends the remittance transfer or

ii. Set when the designated recipient receives the funds.

2. *Example illustrating when exact amounts can and cannot be determined because of the laws of the recipient country.*

i. The laws of the recipient country do not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country, on a daily basis, sets the exchange rate that must, by law, apply to funds received and the funds are made available to the designated recipient in the local currency the day after the remittance transfer provider sends the remittance transfer.

ii. In contrast, the laws of the recipient country permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when, for example, the government of the recipient country ties the value of its currency to the U.S. dollar.

3. *Method by which transactions are made in the recipient country.* The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine exact amounts required to be disclosed when transactions are sent via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank or other governmental authority after the provider sends the remittance transfer.

4. *Example illustrating when exact amounts can and cannot be determined because of the method by which transactions are made in the recipient country.*

i. The method by which transactions are made in the recipient country does not permit a remittance transfer provider to determine the exact exchange rate required to be disclosed under § 1005.31(b)(1)(iv) when the provider sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is a rate set by the recipient country's central bank on the business day after the provider has sent the remittance transfer.

ii. In contrast, a remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if it sends a remittance transfer via international ACH on terms negotiated between the United States government and a private-sector entity or entities in the recipient country, under which the exchange rate is set by the institution acting as the entry point to the recipient country's payments system on the next business day. However, a remittance transfer provider sending a remittance transfer using such a method may qualify for the § 1005.32(a) temporary exception.

iii. A remittance transfer provider would not qualify for the § 1005.32(b)(1)(i)(B) methods exception if, for example, it sends a remittance transfer via international ACH on terms negotiated between the United States government and the recipient country's government, under which the exchange rate is set by the recipient country's central bank or other governmental authority before the sender requests a transfer.

5. *Safe harbor list.* If a country is included on a safe harbor list published by the Bureau under § 1005.32(b)(1)(ii), a remittance transfer provider may provide estimates of the amounts to be disclosed under § 1005.31(b)(1)(iv) through (b)(1)(vii). If a country does not appear on the Bureau's list, a remittance transfer provider may provide estimates under § 1005.32(b)(1)(i) if the provider determines that the recipient country does not legally permit or method by which transactions are conducted in that country does not permit the provider to determine exact disclosure amounts.

6. *Reliance on Bureau list of countries.* A remittance transfer provider may rely on the list of countries published by the Bureau to determine whether the laws of a recipient country do not permit the remittance transfer provider to determine exact amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii). Thus, if a country is on the Bureau's list, the provider may give estimates under this section, unless a remittance transfer provider has information that a country on the Bureau's list legally permits the provider to determine exact disclosure amounts.

7. *Change in laws of recipient country.* i. If the laws of a recipient country change such that a remittance transfer provider can determine exact amounts, the remittance transfer provider must begin providing exact amounts for the required disclosures as soon as reasonably practicable if the provider has information that the country legally permits the provider to determine exact disclosure amounts.

ii. If the laws of a recipient country change such that a remittance transfer provider cannot determine exact disclosure amounts, the remittance transfer provider may provide estimates under § 1005.32(b)(1)(i), even if that country does not appear on the list published by the Bureau.

32(b)(2) Permanent Exceptions for Transfers Scheduled Before the Date of Transfer

1. *Fixed amount of foreign currency.* The following is an example of when and how a remittance transfer provider may disclose estimates for remittance transfers scheduled five or more business days before the date of transfer where the provider agrees to the sender's request to fix the amount to be transferred in a currency in which the transfer will be received and not the currency in which it was funded. If on February 1, a sender schedules a 1000 Euro wire transfer to be sent from the sender's bank account denominated in U.S. dollars to a designated recipient on February 15, § 1005.32(b)(2) allows the provider to estimate the amount that will be transferred to the designated recipient (*i.e.,* the amount described in § 1005.31(b)(1)(i)), any fees and taxes imposed on the remittance transfer by the provider (if based on the amount transferred)

(*i.e.,* the amount described in § 1005.31(b)(1)(ii)), and the total amount of the transaction (*i.e.,* the amount described in § 1005.31(b)(1)(iii)). The provider may also estimate any fees and taxes imposed on the remittance transfer by a person other than the provider if the exchange rate is also estimated and the estimated exchange rate affects the amount of fees and taxes (as allowed by § 1005.32(b)(2)(ii)).

2. *Relationship to § 1005.10(d).* To the extent § 1005.10(d) requires, for an electronic fund transfer that is also a remittance transfer, notice when a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, that provision applies even if subpart B would not otherwise require notice before the date of transfer. However, insofar as § 1005.10(d) does not specify the form of such notice, a notice sent pursuant to § 1005.36(a)(2)(i) will satisfy § 1005.10(d) as long as the timing requirements of § 1005.10(d) are satisfied.

32(c) Bases for Estimates

32(c)(1) Exchange Rate

1. Most recent exchange rate for qualifying international ACH transfers. If the exchange rate for a remittance transfer sent via international ACH that qualifies for the § 1005.32(b)(1)(i)(B) exception is set the following business day, the most recent exchange rate available for a transfer is the exchange rate set for the day that the disclosure is provided, *i.e.,* the current business day's exchange rate.

* * * * *

32(d) Bases for Estimates for Transfers Scheduled Before the Date of Transfer

1. *In general.* When providing an estimate pursuant to § 1005.32(b)(2), § 1005.32(d) requires that a remittance transfer provider's estimated exchange rate must be the exchange rate (or estimated exchange rate) that the remittance transfer provider would have used or did use that day in providing disclosures to a sender requesting such a remittance transfer to be made on the same day. If, for the same-day remittance transfer, the provider could utilize either of the other two exceptions permitting the provision of estimates in § 1005.32(a) or (b)(1), the provider may provide estimates based on a methodology permitted under § 1005.32(c). For example, if, on February 1, the sender schedules a remittance transfer to occur on February 10, the provider should disclose the exchange rate as if the sender was requesting the transfer be sent on February 1. However, if at the time payment is made for the requested transfer, the remittance transfer provider could not send any remittance transfer until the next day (for reasons such as the provider's deadline for the batching of transfers), the remittance transfer provider can use the rate (or estimated exchange rate) that the remittance transfer provider would have used or did use in providing disclosures that day with respect to a remittance transfer requested that day that could not be sent until the following day.

Section 1005.36—Transfers Scheduled Before the Date of Transfer

36(a) Timing

36(a)(2) Subsequent Preauthorized Remittance Transfers

1. *Changes in disclosures.* When a sender schedules a series of preauthorized remittance transfers, the provider is generally not required to provide a pre-payment disclosure prior to the date of each subsequent transfer. However, § 1005.36(a)(1)(i) requires the provider to provide a pre-payment disclosure and receipt for the first in the series of preauthorized remittance transfers in accordance with the timing requirements set forth in § 1005.31(e). While certain information in those disclosures is expressly permitted to be estimated (*see* § 1005.32(b)(2)), other information is not permitted to be estimated, or is limited in how it may be estimated. When any of the information on the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), other than the temporal disclosures required by § 1005.31(b)(2)(ii) and (b)(2)(vii), is no longer accurate with respect to a subsequent preauthorized remittance transfer for reasons other than as permitted by § 1005.32, the provider must provide, within a reasonable time prior to the scheduled date of the next preauthorized remittance transfer, a receipt that complies with § 1005.31(b)(2) and which discloses, among the other disclosures required by § 1005.31(b)(2), the changed terms. For example, if the provider discloses in the pre-payment disclosure for the first in the series of preauthorized remittance transfers that its fee for each remittance transfer is $20 and, after six preauthorized remittance transfers, the provider increases its fee to $30 (to the extent permitted by contract law), the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. Barring a further change, this receipt will apply to transfers after the seventh transfer. Or, if, after the sixth transfer, a tax increases from 1.5% of the amount that will be transferred to the designated recipient to 2.0% of the amount that will be transferred to the designated recipient, the provider must provide the sender a receipt that complies with §§ 1005.31(b)(2) and 1005.36(b)(2) within a reasonable time prior to the seventh transfer. In contrast, § 1005.36(a)(2)(i) does not require an updated receipt where an exchange rate, estimated as permitted by § 1005.32(b)(2), changes.

2. *Clearly and conspicuously.* In order to indicate clearly and conspicuously that the provider's fee has changed as required by § 1005.36(a)(2)(i), the provider could, for example, state on the receipt: ''Transfer Fees (UPDATED) * * * $30.'' To the extent that other figures on the receipt must be revised because of the new fee, the receipt should also indicate that those figures are updated.

3. *Reasonable time.* If a disclosure required by § 1005.36(a)(2)(i) or (d)(1) is mailed, the disclosure would be considered to be received by the sender five business days after it is posted in the mail. If hand delivered or provided electronically, the receipt would be considered to be received by the sender at the time of delivery. Thus, if the provider mails a disclosure required by § 1005.36(a)(2)(i) or (d)(1) not later than ten business days before the scheduled date of the transfer, or hand or electronically delivers a disclosure not later than five business days before the scheduled date of the transfer, the provider would be deemed to have provided the disclosure within a reasonable time prior to the scheduled date of the subsequent preauthorized remittance transfer.

36(b) Accuracy

1. *Use of estimates.* In providing the disclosures described in § 1005.36(a)(1)(i) or (a)(2)(i), remittance transfer providers may use estimates to the extent permitted by any of the exceptions in § 1005.32. When estimates are permitted, however, they must be disclosed in accordance with § 1005.31(d).

2. *Subsequent preauthorized remittance transfers.* For a subsequent transfer in a series of preauthorized remittance transfers, the receipt provided pursuant to § 1005.36(a)(1)(i), except for the temporal disclosures in that receipt required by § 1005.31(b)(2)(ii) (Date Available) and (b)(2)(vii) (Transfer Date), applies to each subsequent preauthorized remittance transfer unless and until it is superseded by a receipt provided pursuant to § 1005.36(a)(2)(i). For each subsequent preauthorized remittance transfer, only the most recent receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i) must be accurate as of the date each subsequent transfer is made.

3. *Receipts.* A receipt required by § 1005.36(a)(1)(ii) or (a)(2)(ii) must accurately reflect the details of the transfer to which it pertains and may not contain estimates pursuant to § 1005.32(b)(2). However, the remittance transfer provider may continue to disclose estimates to the extent permitted by § 1005.32(a) or (b)(1). In providing receipts pursuant to § 1005.36(a)(1)(ii) or (a)(2)(ii), § 1005.36(b)(2) and (3) do not allow a remittance transfer provider to change figures previously disclosed on a receipt provided pursuant to § 1005.36(a)(1)(i) or (a)(2)(i), unless a figure was an estimate or based on an estimate disclosed pursuant to § 1005.32. Thus, for example, if a provider disclosed its fee as $10 in a receipt provided pursuant to § 1005.36(a)(1)(i) and that receipt contained an estimate of the exchange rate pursuant to § 1005.32(b)(2), the second receipt provided pursuant to § 1005.36(a)(1)(ii) must also disclose the fee as $10.

* * * * *

36(d) Date of Transfer for Subsequent Preauthorized Remittance Transfers

1. *General.* Section 1005.36(d)(2)(i) permits remittance transfer providers some flexibility in determining how and when the disclosures required by § 1005.36(d)(1) may be provided to senders. The disclosure described in § 1005.36(d)(1) may be provided as a separate disclosure, or on or with any other disclosure required by this subpart B related to the same series of preauthorized remittance transfers, provided that the disclosure and timing requirements in § 1005.36(d)(2) and other applicable

provisions in subpart B are satisfied. For example, the required disclosures may be made on or with a receipt provided pursuant to § 1005.36(a)(1)(i); a receipt provided pursuant to § 1005.36(a)(2); or in a separate disclosure created by the provider. Thus, for example, a remittance transfer provider complies with § 1005.36(d)(1) for a period of one year if it provides in the receipt provided to the sender when payment is made for the initial preauthorized remittance transfer, a schedule or summary of the dates of transfer of all the subsequent preauthorized remittance transfers in the series scheduled to occur over the next 12 months (and the applicable cancellation requirements and contact information).

2. *Delivery of disclosure.* Section 1005.36(d)(2)(i) requires that the sender receive disclosure of the date of transfer, applicable cancellation requirements, and the provider's contact information no more than 12 months, and no less than 5 business days prior to the date of transfer of the subsequent preauthorized remittance transfer. For purposes of determining when a disclosure required by § 1005.36(d)(1) is received by the sender, refer to comment 36(a)(2)–3.

3. *Disclosure of the date of transfer.* The date of transfer of a subsequent preauthorized remittance transfer may be disclosed as a specific date (*e.g.,* July 19, 2013) or by using a method that clearly permits identification of the date of the transfer, such as periodic intervals (*e.g.,* the third Monday of every month, or the 15th of every month). If the future dates of transfer are disclosed as occurring periodically and there is a break in the sequence, or the date of transfer does not otherwise conform to the described period, *e.g.,* if a holiday or weekend causes the provider to deviate from the normal schedule, the remittance transfer provider should disclose the specific date of transfer for the affected transfer.

4. *Accuracy requirements.* Section 1005.36(d)(4) sets forth accuracy requirements for disclosures required for subsequent preauthorized remittance transfers under § 1005.36(d)(1). If any of the information provided in these disclosures change, the provider must provide an updated disclosure with the revised information that is accurate as of when the transfer is made, pursuant to § 1005.36(d)(2).

Dated: August 7, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–19702 Filed 8–14–12; 4:15 pm]

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Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 218

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 218

[Docket No. 110808485–2148–02]

RIN 0648–BB14

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: Upon application from the U.S. Navy (Navy), we (the National Marine Fisheries Service) are issuing regulations under the Marine Mammal Protection Act to govern the unintentional taking of marine mammals incidental to conducting operations of Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar on a maximum of four naval surveillance vessels in areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea, from the period of August 15, 2012, through August 15, 2017. These regulations: allow us to issue Letters of Authorization (LOA) for the incidental take of marine mammals during the Navy's specified activities and timeframes; set forth the permissible methods of taking; set forth other means of effecting the least practicable adverse impact on marine mammal species and their habitat; and set forth requirements pertaining to the monitoring and reporting of the incidental take.

DATES: Effective August 15, 2012, through August 15, 2017.

ADDRESSES: To obtain an electronic copy of: the Navy's application (which contains a list of the references within this document); our Record of Decision; and other documents that we have cited in this document, write to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or download electronic copies at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications* or telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**).

The Navy released a Final Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement (FSEIS/SOEIS) for employment of SURTASS LFA sonar on June 8, 2012. The public may view the document at: *http://www.surtass-lfa-eis.com.* We participated in the development of this document as a cooperating agency under the Council on Environmental Quality's regulations implementing the National Environmental Policy Act of 1972.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Executive Summary

This regulation allows us to issue Letters of Authorization to the Navy (upon their request) for the incidental take of marine mammals during SURTASS LFA sonar operations. The SURTASS LFA sonar system is a long-range, low frequency sonar that has both active and passive acoustic components. The Navy will use the system for long-range detection of quiet, hard-to-find submarines. The Navy's activities are military readiness activities under the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1631 *et seq.*) as defined by the National Defense Authorization Act for Fiscal Year 2004 (NDAA; Pub. L. 108–136).

This is the third rule for SURTASS LFA sonar operations under the Marine Mammal Protection Act. The 2007 regulations governing take incidental to SURTASS LFA sonar activities expire on August 15, 2012. We published the first rule, effective from August 2002 through August 2007, on July 16, 2002 (67 FR 46712), and published the second rule on August 21, 2007 (72 FR 46846). For this five-year period (August 2012 through August 2017), covered under this regulation, the Navy is proposing to conduct the same types of sonar activities as they have conducted over the past nine years.

Purpose and Need for This Regulatory Action

In 2011, we received an application from the Navy requesting five-year regulations and Letters of Authorizations to take marine mammals, by harassment, incidental to conducting SURTASS LFA sonar operations in areas of the world's oceans from August 2012 through August 2017. These operations, which constitute a military readiness activity, have the potential to cause behavioral disturbance and injury (if not mitigated) to marine mammals.

Section 101(a)(5)(A) of the MMPA directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if after notice and public comment: (1) We make certain findings; and (2) issue regulations.

Under this five-year regulation, the Navy will submit an annual application to us for Letters of Authorizations for up to four vessels to take marine mammals, incidental to conducting SURTASS LFA sonar operations.

This regulation establishes a framework to authorize incidental take through our issuing Letters of Authorizations to the Navy for SURTASS LFA sonar operations and contains mitigation, monitoring, and reporting requirements.

Legal Authority for the Regulatory Action

Section 101(a)(5)(A) of the Marine Mammal Protection Act and our implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing the five-year regulations and Letters of Authorization.

Summary of Major Provisions Within the Regulation

The following provides a summary of some of the major provisions within this third rulemaking for SURTASS LFA sonar:

- Required suspension/delay of SURTASS LFA sonar transmissions if a marine mammal enters the 2-kilometer (km) (1.2-mile (mi); 1.1 nautical mile (nm)) mitigation and buffer zones around the vessel;
- Required geographic restrictions in designated offshore biologically important areas (OBIA) and within 22 km (14 mi; 12 nm) of any coastline, including islands, for SURTASS LFA sonar operations to protect marine mammals;
- Required visual, passive acoustic and active acoustic monitoring during routine training, testing and military operations of SURTASS LFA sonar to support the implementation of mitigation measures to protect marine mammals;
- Required monitoring of ambient noise data for incorporation into appropriate ocean noise budget efforts and analyses;
- Required monitoring of marine mammal stranding incidents; and
- Required research on how marine mammals (including harbor porpoises (*Phocoena phocoena*) and beaked whales (*Mesoplodon spp.*)) respond to

SURTASS LFA sonar as well as research on marine mammal vocalizations before, during, and after designated exercises with SURTASS LFA sonar.

Cost and Benefits

This final rule, specific only to the Navy's SURTASS LFA sonar operations, is not significant under Executive Order 12866, Regulatory Planning and Review.

Availability of Supporting Information

We provided extensive **SUPPLEMENTARY INFORMATION** in the Notice of the proposed rule for this activity in the **Federal Register** on Friday, January 6, 2012 (77 FR 842). We did not reprint all of that information here in its entirety; instead, we represent all sections from the proposed rule in this document and provide either a summary of the material presented in the proposed rule or a note referencing the page(s) in the proposed rule where the public can find the information. We address any information that has changed since the proposed rule in this document. Additionally, this final rule contains a section that responds to the public comments submitted during the 30-day public comment period and the 15-day extension of the comment period for the proposed rule.

Background

Section 101(a)(5)(A) of the MMPA directs the Secretary to authorize, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after notice and public comment: (1) We make certain findings; and (2) we issue regulations. We are required to grant authorization for the incidental taking of marine mammals if we find that the total taking will have a negligible impact on the species or stock(s); and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). We must also set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the mitigation, monitoring, and reporting of the takings.

Accordingly, this regulation, which governs our issuance of Letters of Authorization (LOA) to the Navy, designates: (1) The permissible methods of taking; (2) mitigation measures to minimize adverse impacts to the lowest level practicable on marine mammal species and their habitat; and (3) requirements for monitoring and reporting incidental take.

We have defined negligible impact in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 amended section 101(a)(5)(A) of the MMPA by removing the small numbers and specified geographic region provisions; revising the definition of harassment as it applies to a military readiness activity; and explicitly requiring that our determination of ''least practicable adverse impact'' include consideration of: (1) Personnel safety; (2) the practicality of implementation; and (3) impact on the effectiveness of the military readiness activity.

With respect to military readiness activities, the MMPA defines harassment as ''(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].''

Summary of Request

On August 17, 2011, we received an application from the Navy requesting rulemaking and LOAs for the take of individuals of 94 species of marine mammals (70 cetaceans and 24 pinnipeds), by Level A and Level B harassment, incidental to upcoming routine training and testing and use of the SURTASS LFA sonar system during military operations in areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea over the course of five years (2012–2017). The Navy would use the sonar system on a maximum of four naval surveillance vessels during military operations which they have designated as military readiness activities.

The Navy states and we concur, that these military readiness activities may incidentally take marine mammals present within the Navy's mission areas by exposing them to sound from low-frequency active sonar sources. The Navy requests authorization to take individuals of these marine mammals by Level A and Level B harassment. However, as we discuss later in this document, the Navy will likely avoid Level A harassment by implementing required mitigation and monitoring measures.

Please refer to Tables 9–27 (pages 123–140) of the Navy's application for detailed information on the estimated percentages of marine mammal stocks potentially affected by SURTASS LFA sonar activities in areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea per year. This final rule does not specify the number of marine mammals that may be taken in the proposed locations because the Navy calculates the take estimates annually through various inputs such as mission location, mission duration, and season of operation.

As with the 2002 and 2007 rules, the Navy will limit operation of SURTASS LFA sonar to ensure that no more than 12 percent of any marine mammal stock would be taken by Level B harassment, annually, over the course of this rule. This annual, per-stock cap applies regardless of the number of SURTASS LFA sonar vessels operating. The Navy will use the 12 percent cap to guide its mission planning for selecting potential operational areas within each annual authorization application.

As a result of the required mitigation and monitoring measures and standard operating procedures and the Navy's mission planning which, to the greatest extent feasible considering national security tasking, avoids conducting SURTASS LFA sonar operations in areas of high marine animal densities, we believe that the incidental take of marine mammals would likely be lower than the Navy's requested amount of incidental take.

In the Navy's application, their acoustic analyses predict that less than 0.0001 percent of the endangered north Pacific right whale (*Eubalaena japonica*) population; less than 0.0001 of the northern elephant seal (*Mirounga angustirostris*) population; and 0.00 percent of the stocks of all other marine mammal species may be exposed to levels of sound likely to result in Level A harassment. Quantitatively, the Navy's request translates into take estimates of zero animals for any species, including north Pacific right whales. However, because the probability of detection by the Navy's active High-Frequency Marine Mammal Monitoring (HF/M3) sonar system within the SURTASS LFA sonar mitigation and buffer zones is not 100 percent, we will include a small number of Level A harassment takes for marine mammals over the course of the five-year regulations based on qualitative

analyses. These are the only quantitative adjustments that we have made to the Navy's requested takes from their modeled exposure results.

Because the required mitigation measures will minimize any potential risk for mortality and SURTASS LFA sonar has operated under previous regulations for the last ten years without any reports of mortality, we do not expect any mortality to occur as a result of the Navy's SURTASS LFA sonar operations. Thus, we are not authorizing any mortality incidental to the Navy's routine training and testing and military operations of the SURTASS LFA sonar system.

Description of Specified Activities

The proposed rule included a complete description of the Navy's specified activities covered by these final regulations (for which we would authorize the associated incidental take of marine mammals in annual LOAs and described the nature and levels of the use of the SURTASS LFA sonar system (77 FR 842; January 6, 2012; page 843–846). These military readiness activities for SURTASS LFA sonar consist of routine training and testing as well as use of the system during military operations which involves acoustic sources, including low frequency active sonar and high-frequency active sonar components. Below we summarize the description of the specified activities and one small correction from the proposed rule.

Potential SURTASS LFA Sonar Operational Areas

Based on the Navy's current operational requirements, potential operations for SURTASS LFA sonar vessels from August 2012 through August 2017 would include areas located in the Pacific, Indian, and Atlantic Oceans and Mediterranean Sea. The proposed rule provided a list of the Navy's potential operating areas in Table 2 relevant to U.S. national security interests (77 FR 842; January 6, 2012; page 843–844). Use of the SURTASS LFA sonar system could occur on a maximum of four naval surveillance vessels: the United States Naval Ship (USNS) ABLE, the USNS EFFECTIVE, the USNS IMPECCABLE, and the USNS VICTORIOUS.

The Navy will not operate SURTASS LFA sonar in polar regions (i.e., Arctic and Antarctic waters) of the world. The Arctic Ocean, the Bering Sea (including Bristol Bay and Norton Sound), portions of the Norwegian, Greenland, and Barents Seas north of 72° North (N) latitude, plus Baffin Bay, Hudson Bay, and the Gulf of St. Lawrence are non-operational areas for SURTASS LFA sonar. In the Antarctic, the Navy will not conduct SURTASS LFA sonar operations in areas south of 60° South (S) latitude. The Navy has excluded polar waters from operational planning because of the inherent inclement weather conditions and the navigational and operational (equipment) danger that icebergs pose to SURTASS LFA sonar vessels. Further, the Navy would operate SURTASS LFA sonar such that the sound field does not exceed 180 decibels (dB) re: 1 μPa within the coastal standoff zone (i.e., 22 km; 14mi; 12 nm from any coastline) or seaward of any OBIA boundary for SURTASS LFA sonar operations, identified later in this document.

We have included additional operational restrictions beyond what the Navy proposed in their application for SURTASS LFA sonar operations within this rule. We are requiring: (1) An additional 1-km (0.62 mi; 054 nm) buffer around the Navy's 1-km (0.62 mi; 054 nm) LFA sonar mitigation zone to protect marine mammals from entering the 180-dBisopleth around the SURTASS LFA sonar vessel; and (2) an additional 1-km (0.62 mi; 054 nm) buffer seaward of the outer perimeter of any OBIA.

Table 1 summarizes a projected annual deployment schedule for one surveillance vessel using SURTASS LFA sonar.

TABLE 1—EXAMPLE ANNUAL DEPLOYMENT SCHEDULE FOR ONE SURVEILLANCE VESSEL USING SURTASS LFA SONAR

On mission	Days	Off mission	Days
Transit	54	In-Port Upkeep	40
Active Transmissions. 432 transmission hours based on a 7.5% duty cycle.	240	Regular Overhaul	31
Total Days on Mission	294	Total Days off Mission	71.

In the proposed rule, we incorrectly stated that a normal SURTASS LFA sonar deployment schedule for a single vessel would involve 240 days of active sonar transmissions (77 FR 842; January 6, 2012; page 843). The correct statement is that the each vessel will perform up to 240 days of active operations and transmit SURTASS LFA sonar up to 432 hours.

Brief Background on Sound, Marine Mammal Hearing, and Vocalization

An understanding of the basic properties of underwater sound, marine mammal hearing, and vocalization is necessary to comprehend many of the concepts and analyses presented in this document. The proposed rule contains a section that provides a brief background on the principles of sound that are frequently referred to in this rulemaking (77 FR 842; January 6, 2012; pages 857–859). This section also includes a discussion of the functional hearing ranges of the different groups of marine mammals (by frequency) as well as a discussion of the sound metric used in our analysis (sound pressure level and single ping equivalent). The information contained in the proposed rule has not changed.

Acoustic stimuli (i.e., increased underwater sound) generated by the SURTASS LFA sonar system's low-frequency acoustic transmissions have the potential to cause take of marine mammals in the operational areas. The operation of the SURTASS LFA sonar system during at-sea operations would result in the generation of sound or pressure waves in the water at or above levels that we have determined would result in take. This is the principal means of marine mammal taking associated with these military readiness activities. At no point do we expect the Navy to have more than four SURTASS LFA sonar systems in use, and so this rule analyzes the effects on marine mammals due to the deployment of up to four SURTASS LFA sonar systems from 2012 through 2017.

Description of Marine Mammals in the Area of the Specified Activities

Ninety-four (94) marine mammal species or populations/stocks have confirmed or possible occurrence within potential SURTASS LFA sonar operational areas in the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea. Twelve species of

baleen whales (mysticetes), 58 species of toothed whales, dolphins, or porpoises (odontocetes), and 24 species of seals or sea lions (pinnipeds) could be affected by SURTASS LFA sonar operations.

Fifteen of the 94 marine mammal species are endangered and three of the 94 marine mammal species are threatened under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*). Marine mammal species under our jurisdiction that are endangered include: the blue whale (*Balaenoptera musculus*); fin whale (*Balaenoptera physalus*); sei whale (*Balaenoptera borealis*); humpback whale (*Megaptera novaeangliae*); bowhead whale (*Balaena mysticetus*); North Atlantic right whale (*Eubalaena glacialis*); North Pacific right whale (*Eubalena japonica*); southern right whale (*Eubalaena australis*); gray whale (*Eschrichtius robustus*); sperm whale (*Physeter macrocephalus*); the Cook Inlet stock of beluga whale (*Delphinapterus leucas*); the Southern Resident population of Killer whale (*Orca orcinus*); the western distinct population segment (DPS) of the Steller sea lion (*Eumetopias jubatus*); Mediterranean monk seal (*Monachus monachus*); and Hawaiian monk seal (*Monachus schauinslandi*). In addition, the Hawaiian insular distinct population segment of false killer whale (*Pseudorca crassidens*) is a candidate for proposed listing as endangered.

The three threatened marine mammal species under our jurisdiction include: the eastern distinct population segment of the Steller sea lion (currently proposed for delisting); the Guadalupe fur seal (*Arctocephalus townsendi*) and the southern distinct population segment of the spotted seal (*Phoca largha*).

The threatened and endangered marine mammal species mentioned previously are also depleted under the Marine Mammal Protection Act. Other species listed as depleted include: the western north Atlantic coastal stock of bottlenose dolphin (*Tursiops truncatus*); the northeastern offshore stock of the pantropical spotted dolphin (*Stenella attenuata*); and the eastern stock of the spinner dolphin (*Stenella longirostris*).

Ringed seals (*Phoca hispida*), bearded seals (*Erignathus barbatus*), Chinese river dolphins (*Lipotes vexillifer*) and the vaquita (*Phocoena sinus*) do not occur within the Navy's potential SURTASS LFA sonar operational areas (see 77 FR 842; January 6, 2012; page 844).

The U.S. Fish and Wildlife Service is responsible for managing the following marine mammal species: southern sea otter (*Enhydra lutris*), polar bear (*Ursus maritimus*), walrus (*Odobenus rosmarus*), west African manatee (*Trichechus senegalensis*), Amazonian manatee (*Trichechus inunguis*), west Indian manatee (*Trichechus manatus*), and dugong (*Dugong dugon*). None of these species occur in geographic areas that would overlap with potential SURTASS LFA sonar operational areas.

The Description of Marine Mammals in the Area of the Specified Activities section has not changed from what was in the proposed rule (77 FR 842; January 6, 2012; pages 848–857). Tables 3 through 21 of the proposed rule provided lists of marine mammal species known to occur or potentially occur within the Navy's models of potential SURTASS LFA sonar operational areas relevant to U.S. national security interests. Tables 4.5 through 4.23 in the 2012 FSEIS/SOEIS also provide information on the percentages of stocks potentially affected by SURTASS LFA sonar operations. Although not repeated in this final rule, we have reviewed these data, determined them to be the best available scientific information for the purposes of the rulemaking, and consider this information part of the administrative record for this action.

Potential Effects of the Specified Activity on Marine Mammals

For the purpose of MMPA authorizations, our effects assessments serve four primary purposes:

(1) Identification of the permissible methods of taking, meaning the nature of the take (e.g., resulting from anthropogenic noise versus from ship strike, etc.); the regulatory level of take (i.e., mortality versus Level A or Level B harassment); and the estimated amount of take;

(2) Informing the prescription of means of effecting the least practicable adverse impact on such species or stock and its habitat (i.e., mitigation);

(3) Supporting the determination of whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); and

(4) Determining whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses.

In the Potential Effects of the Specified Activity on Marine Mammals section of the proposed rule, we included a qualitative discussion of the different ways that SURTASS LFA sonar operations may potentially affect marine mammals without consideration of mitigation and monitoring measures (see 77 FR 842; January 6, 2012; pages 860–874). Marine mammals may experience direct physiological effects (e.g., threshold shift and non-acoustic injury, acoustic masking, impaired communication, stress responses, behavioral disturbance, stranding, behavioral responses from vessel movement, and injury or death from vessel collisions). The information contained in this section in the proposed rule has not changed.

Later in the Estimated Take of Marine Mammals section in this document, we relate and quantify the potential effects to marine mammals from SURTASS LFA sonar operations discussed in this section to the MMPA definitions of Level A and Level B harassment.

Anticipated Effects on Marine Mammal Habitat

We anticipate that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification. This impact is temporary and reversible, which we considered in proposed rule as behavioral modification. The main impact associated with the activity would be temporarily elevated noise levels and the associated direct effects on marine mammals.

We included a detailed discussion of the potential effects of the Navy's SURTASS LFA sonar operations on marine mammal habitat, including critical habitat and marine mammal prey species (77 FR 842; January 6, 2012; pages 874–875). The information contained in the Anticipated Effects on Marine Mammal Habitat section has not changed from what was in the proposed rule.

Mitigation

In order to issue regulations and LOAs under section 101(a)(5)(A) of the MMPA, we must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.''

The National Defense Authorization Act for Fiscal Year 2004 amended section 101(a)(5)(A) of the MMPA such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The routine training and testing as well as use of the system during military operations described in the SURTASS

LFA sonar application qualify as military readiness activities.

We have reviewed the Navy's proposed SURTASS LFA sonar activities and the proposed mitigation measures in the Navy's application to determine whether the resulting activities and mitigation measures would effect the least practicable adverse impact on marine mammals which includes a careful balancing of the likely degree to which the measure is expected to minimize adverse impacts to marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact of the effectiveness of the military readiness activity (i.e., minimizing adverse impacts to the lowest level practicable with mitigation measures).

Any mitigation measure that we prescribe should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

Goal (a): Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

Goal (b): A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of SURTASS LFA sonar or other activities expected to result in the take of marine mammals (this goal may contribute to goal a or to reducing harassment takes only).

Goal (c): A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of SURTASS LFA sonar or other activities expected to result in the take of marine mammals (this goal may contribute to goal a or to reducing harassment takes only).

Goal (d): A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of SURTASS LFA sonar or other activities expected to result in the take of marine mammals (this goal may contribute to goal a or to reducing the severity of harassment takes only).

Goal (e): A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

Goal (f): For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

We described the Navy's proposed mitigation measures, as well as those that we added, in detail in the proposed rule (77 FR 842; January 6, 2012; pages 875–879). These required mitigation measures, which are summarized below, have not changed with the exception of the addition of one more OBIA. Following are the mitigation and monitoring measures initially proposed by the Navy:

- A 180-dB re:1 μPa isopleth SURTASS LFA sonar mitigation zone around the vessel;
- Delay or suspension of SURTASS LFA sonar transmissions if the Navy detects a marine mammal entering or within the LFA sonar mitigation zone (i.e., the 180-dB re: 1 μPa isopleth) by any of the following detection methods;
  (a) Visual monitoring;
  (b) Passive acoustic monitoring; or
  (c) Active acoustic monitoring;
- Geographic and operational restrictions to avoid generating sound levels above 180 dB re: 1 μPa in the following areas:
  (a) An OBIA; or
  (b) Within coastal standoff zones (22 km; 14 mi; 12 nm of any coastline).

In the proposed rule, we added the following mitigation requirements:

- An additional 1-km (0.62 mi; 054 nm) buffer zone around the 180-dB re: 1 μPa isopleth SURTASS LFA sonar mitigation zone;
- An additional 1-km (0.62 mi; 054 nm) buffer zone seaward of any OBIA boundary.
- Delay or suspension of SURTASS LFA sonar transmissions if the Navy detects a marine mammal entering the 1-km (0.62 mi; 054 nm) buffer zone around the SURTASS LFA sonar mitigation zone.

Within this final rule, we have added additional mitigation measures based upon comments received during the public comment period for the proposed rule (77 FR 842; January 6, 2012) and the Navy's 2011 Draft Supplemental Environmental Impact Statement/Overseas Environmental Impact Statement.

Based on our evaluation of 367 potential areas within the Hoyt's (2011) 2nd Edition of Marine Protected Areas for Whales, Dolphins and Porpoises (see Appendix F of the Navy's 2012 FSEIS/SOEIS), we identified three additional areas for consideration as OBIAs for marine mammals. They were: (1) Abrolhos Bank in the southwest Atlantic Ocean; (2) an area within the Southeast Shoal, Grand Bank in the northwest Atlantic Ocean; and 3) an area within Dogger Bank in the North Sea.

Abrolhos Bank: For this rule, we have added the Abrolhos Bank as an OBIA based on its importance for humpback whale breeding and calving. The specified period of this OBIA would be effective August through November. The Navy concurs with our recommendation to designate Abrolhos Bank as an OBIA.

Southeast Shoal, Grand Bank: There is evidence from a single 1985 line transect survey that humpback whales foraged in this area in the past; however, this information is almost 30 years old. We and the Navy are continuing to gather information to determine whether this area meets the OBIA criteria.

In the 2012 application for LOAs, the Navy states that it does not plan to operate within the northwest Atlantic Ocean in the first year of this rule. Utilizing the adaptive management framework, we and the Navy will make a decision before issuing the second annual LOAs regarding whether this area meets the OBIA criteria and, if so, can be practicably implemented.

Dogger Bank: There is evidence from a single 2007 line transect survey that minke whales aggregated on the slope of Dogger Bank to forage on sandeels (de Boer, 2010). However, sandeels only emerge from their sand burrows when oceanographic conditions are optimal (de Boer, 2010). There is not enough information to support this area as a sustained and predictable foraging ground for minke whales at this time. We will continue to monitor and re-evaluate this area as researchers complete additional surveys on Dogger Bank within the next few years. Utilizing the adaptive management framework, we and the Navy will make a decision before issuing the second annual LOAs regarding whether this area meets the OBIA criteria and, if so, can be practicably implemented.

Operational Exception

We discussed the Navy's need for an operational exception for use of the SURTASS LFA sonar system in the proposed rule (77 FR 842; January 6, 2012; page 878). The information contained in this section has not changed from what was in the proposed rule. Briefly, it may be necessary for the Navy to operate in a manner that results in SURTASS LFA sonar transmissions generating sound levels above 180 dB re: 1 μPa within an OBIA, or for Navy to operate within an OBIA: (1) When it is operationally necessary for the Navy

to continue tracking an existing underwater contact; or (2) when it is operationally necessary for the Navy to detect a new underwater contact within the area. This exception does not apply to routine training and testing with the SURTASS LFA sonar systems.

Mitigation Conclusions

Based on our evaluation of the proposed measures and other measures considered by us or recommended by the public, we have determined that the required mitigation measures (including the Adaptive Management component described later in this document) are means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The proposed rule contains further support for this finding in the Mitigation Conclusion section (77 FR 842; January 6, 2012; pages 878–879).

Research

We included a discussion of the Navy's proposed research that increases the knowledge base about marine mammals and the potential effects from underwater anthropogenic noise (77 FR 842; January 6, 2012; pages 879–880). The information contained in Research has not changed from what was in the proposed rule.

Briefly, the Navy sponsors significant research and monitoring projects for living marine resources to study the potential effects of its activities on marine mammals. This ongoing marine mammal research relates to hearing and hearing sensitivity, auditory effects, dive and behavioral response models, noise impacts, beaked whale global distribution, modeling of beaked whale hearing and response, tagging of free-ranging marine animals at-sea, and radar-based detection of marine mammals from ships. These research projects may not be specifically related to SURTASS LFA sonar operations; however, they are crucial to the overall knowledge base on marine mammals and the potential effects from underwater anthropogenic noise.

Monitoring

Section 101(a)(5)(A) of the MMPA states that in order to issue an Incidental Take Authorization for an activity, we must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' Our implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for Letters of Authorization must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking, or impacts on populations of marine mammals that we expect to be present.

We provided a detailed description of the general goals of monitoring and the Navy's proposed monitoring measures in the proposed rule (77 FR 842; January 6, 2012; page 880). Within this final rule, we have added additional monitoring requirements for harbor porpoises and beaked whales based upon comments received during the public comment periods for the proposed rule. This additional monitoring would augment the Navy's proposed monitoring efforts to increase our understanding of how these species respond–behaviorally or physiologically–to SURTASS LFA sonar.

Beaked Whale and Harbor Porpoise Monitoring

Within the first year of the five-year rule, the Navy will convene a Scientific Advisory Group (SAG). Its goal will be to analyze different types of monitoring and research that could increase the understanding of the potential effects of low-frequency active sonar transmissions on beaked whales and/or harbor porpoises.

The Navy will work closely with the SAG to characterize likely available assets and resources to help them frame their analysis, in order to identify monitoring/research options that would be most feasible for the Navy to implement. SAG members will include recognized marine biology and marine bio-acoustic scientific subject matter experts. The results from the SAG meeting will be considered independent scientific findings, fully accessible to the public.

The Navy's execution of any monitoring/research with beaked whales or harbor porpoises recommended in the SAG's findings will necessarily depend on the availability of scientists with the appropriate background and experience to execute the field research, as well as the availability of adequate resources to plan and conduct the research project and to process, analyze, and report on the collected data.

Following the SAG's submission of findings, and assuming the SAG recommends going forward with beaked whale and/or harbor porpoise monitoring/research, the Navy will either: (1) Draft a plan of action outlining their strategy for implementing the SAG's recommendations, or (2) describe, in writing, why none of the SAG's recommendations are feasible and meet with us to discuss any other potential options.

With the exception of the additional monitoring requirement for harbor porpoises and beaked whales, the information on monitoring in the proposed rule has not changed.

Adaptive Management

Our understanding of the potential effects of SURTASS LFA sonar on marine mammals is continually evolving. Reflecting this, this final regulation governing the take of marine mammals, incidental to the Navy's SURTASS LFA sonar operations contains an adaptive management component. We provided a description of the general framework for adaptive management in the proposed rule (77 FR 842; January 6, 2012; pages 880–881). The information contained in this section has not changed from the proposed rule description.

This framework provides a mechanism for NMFS and the Navy to modify (or add or delete) mitigation or monitoring measures, as appropriate, based on new information.

The following are some of the possible sources of new data that could contribute to our decision to modify mitigation or monitoring measures:

- Results from the Navy's monitoring from the previous year's operation of SURTASS LFA sonar.
- Compiled results of Navy-funded research and development studies.
- Results from specific stranding investigations.
- Results from general marine mammal and sound research funded by the Navy or other sponsors.
- Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by this regulation or within subsequent Letters of Authorization.

We would add, modify or delete mitigation or monitoring measures in consultation with the Navy if doing so creates a reasonable likelihood of accomplishing the goals of mitigation and monitoring laid out in this final rule. We and the Navy will meet annually (if deemed necessary by either agency) to discuss the monitoring reports, Navy research and development outcomes, current science, and determine whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an incidental take authorization for an activity, section 101(a)(5)(A) of the MMPA states that we must set forth requirements pertaining to the monitoring and reporting of such taking. Effective reporting is critical to ensure compliance with the terms and conditions of the Letters of Authorization, and to provide us and the Navy with data of the highest quality based on the required monitoring. A subset of the monitoring reports' information may be classified and thus not releasable to the public.

We provided a detailed description of the Navy's proposed reporting requirements in the proposed rule (77 FR 842; January 6, 2012; pages 881–882). The information contained in the Reporting section has not changed from the proposed rule description. Briefly, the reporting measures require the Navy to provide: notification of injured or dead marine mammals; notification of a ship strike; quarterly mitigation monitoring reports; annual reports; and a five-year comprehensive report.

Comments and Responses

On January 6, 2012, we published a proposed rule (77 FR 842) in response to the Navy's request to take marine mammals, incidental to conducting SURTASS LFA sonar operations in certain areas of the world's oceans. We requested comments, information, and suggestions related to the request. During the 30-day public comment period, we received comments from the Marine Mammal Commission (Commission), the Natural Resources Defense Council (NRDC), OceanCare, the Surfrider Foundation, and 22 private citizens. We also received comments that appear to be directed solely at the Navy's draft 2011 Supplemental Environmental Impact Statement/ Supplemental Overseas Environmental Impact Statement. See the Navy's 2012 FSEIS/SOEIS, which we have adopted. We address the comments here.

Marine Mammal Protection Act Concerns

Comment 1: Citing the broad scope of the Navy's application, the complexity of the proposed rule, and the need for additional time for public comment, the Natural Resources Defense Council requested that we consider extending the public comment period for an additional 15 days.

Response: In response to the request, we extended the public comment period by 15 extra days (77 FR 6771, February 9, 2012).

SURTASS LFA Sonar Activity Concerns

Comment 2: One commenter is concerned that the Navy seems to take very few steps to reduce its use of sonar by using alternative technologies and noted that the Navy could pursue the use of other technologies for this action.

Response: The comment is beyond the scope of our rulemaking for this action. The Navy's specified activity described in their application for regulations is the use of SURTASS LFA sonar, not alternatives to SURTASS LFA sonar.

However, the Navy reviewed and considered the use of non-acoustic alternatives for underwater detection (i.e., radar, laser, magnetic, infrared, electronic, electric, hydrodynamic, and biologic detection systems) in the 2012 FSEIS/SOEIS (see subchapter 1.1.4).

Table 1 in this **Federal Register** notice summarizes a projected annual deployment schedule for SURTASS LFA sonar which amounts to 432 hours (18 days) of active transmissions, annually, for one surveillance vessel. The SURTASS LFA sonar has a relatively low duty cycle (i.e., the amount of time of active sonar transmissions divided by the amount of time that the sonar is not transmitting) of 7.5 to 10 percent. Thus, for an estimated 18-day mission period, SURTASS LFA sonar would be off (quiet) for 90 to 92.5 percent of the time and adding no sound into the water. On an annual basis, the Navy would limit each SURTASS LFA vessel to transmitting no more than 4.9 percent of the time (i.e., 432 hours within one year (8,760 hours)).

Threatened and Endangered Species

Comment 3: One commenter expressed concern that the Navy had underestimated the full impact that sonar has on marine mammals, particularly ones which are also listed under the Endangered Species Act. They stated: ''The Navy's application for authorized use of SURTASS LFA sonar states that the effects of sonar use will not be greater on animals listed under the ESA than the effects on other marine mammals (LOA Application at page 114.)''

Response: The commenter's statement is not accurate. First, the Navy has analyzed the effects of SURTASS LFA sonar on marine mammals, including those listed under the Endangered Species Act, in the 2001 Final Environmental Impact Statement (Don, 2001), the 2007 Final Supplemental Environmental Impact Statement (DoN, 2007) and the 2012FSEIS/SOEIS. Specifically, the types of potential effects on marine mammals from SURTASS LFA sonar operations presented include: (1) Non-auditory injury; (2) permanent loss of hearing; (3) temporary loss of hearing; (4) behavioral change; and (5) masking. We refer the commenter to those documents for the Navy's analysis of the effects of SURTASS LFA sonar on marine mammals.

Second, we also analyzed the effects of SURTASS LFA sonar on marine mammals in the Potential Effects of the Specified Activity on Marine Mammals section of the proposed rule (77 FR 842; January 6, 2012; pages 860–874). We included a qualitative discussion of the different ways that unmitigated SURTASS LFA sonar operations may result in direct physiological effects (e.g., threshold shift and non-acoustic injury, acoustic masking, impaired communication, stress responses, behavioral disturbance, stranding, and effects from vessel movement and vessel collisions). We anticipate that actual effects to marine mammals (including threatened and endangered species) would be in the form of Level B harassment (behavioral), due to the required mitigation and monitoring measures, and geographic restrictions. While marine mammals could potentially be affected by the SURTASS LFA sonar sounds, we have determined that these effects are not reasonably likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.

Finally, previous Endangered Species Act section 7 consultations (NMFS, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011) and the section 7 consultation for this rule have analyzed the effects of SURTASS LFA sonar operations on threatened and endangered marine mammals and concluded that the operation of the SURTASS LFA sonar was not likely to jeopardize the continued existence of any endangered or threatened species under our jurisdiction and would not result in the destruction or adverse modification of critical habitat.

Comment 4: One commenter stated: ''The LOA application states that the Jacksonville training would occur in the winter, yet the winter months are the time when this area is listed as an OBIA (LOA Application at 11–13). Will the Navy be conducting SURTASS LFA training here during calving months? If yes, what will the impact be on the young whales? The diminished population of North Atlantic Right Whales should not have to compete with the Navy for this area. The proper time to conduct training here would be in the summer months when the whales

return to the New England and Canadian coast.''

Response: First, the Navy's application states that the Western Atlantic/Jacksonville Operational Area is a potential area for SURTASS LFA sonar operations; it does not state that training would occur in the area in the winter. This area is one of 19 potential sites that they modeled and analyzed during the winter to assess potential impacts to marine mammals for the rule and the Letter of Authorization application process.

We have designated the U.S. Right Whale Seasonal Habitat as an OBIA specifically to mitigate effects on north Atlantic right whales and their calves during the winter months. Moreover, because we are also requiring the Navy to implement an additional 1-km (0.62 mi; 054 nm) buffer zone seaward of the outer perimeter of this OBIA, these mitigation measures ensure that sound levels within the area do not exceed approximately 175dB re: 1 μPa from November 15 through April 15, the calving months.

If the Navy were to operate within the greater Jacksonville Operational Area outside of the U.S. Right Whale Seasonal Habitat OBIA, the rule requires the Navy to conduct visual, passive acoustic, and active acoustic monitoring and suspend/delay SURTASS LFA sonar transmissions if a marine mammal enters the 2-km (1.2-mi; 1.1-nm) LFA mitigation and buffer zones around the vessel.

In each annual application, the Navy will include information if it plans to operate (or not operate) within the Western Atlantic/Jacksonville Operational Area. Thus, at this time we cannot say if the Navy intends to operate in the Western Atlantic/Jacksonville Operational Area during the period of November through January (i.e., calving months) with the exception of the first year of SURTASS LFA sonar operations, where the Navy has stated in its application, that it does not intend to operate in this area.

To clarify, Table 21 in the Navy's application presents estimates of the percentage of marine mammal stocks potentially affected by SURTASS LFA sonar in the proposed mission area of the Western Atlantic/Jacksonville Operational Area. The Navy has modeled potential effects to all marine mammals in the Western Atlantic/Jacksonville Operational Area during the winter in the 2012 FSEIS/SOEIS (see Tables 4–17 and C–29). If the Navy conducted SURTASS LFA operations in the winter, the Navy's risk estimates predict that 0.12 percent of the north Atlantic right whale population could be potentially exposed to sound levels that may lead to Level B harassment.

Comment 5: A commenter discussed the Navy's estimates of the percentage of marine mammal stocks potentially affected by SURTASS LFA sonar in the proposed mission area of the Sea of Japan operating area. He stated: ''The summer feeding grounds of Western Gray [whales] is located in the Sea of Okhotsk and is part of an OBIA which restricts the Navy from training there. The migratory patterns and route of these whales is largely unknown but is presumed to take them south to Korea. If this is the case then the whales will be migrating through the Sea of Japan during the spring and fall, the modeled season for training.''

Response: Based upon the best available information, we found few data to support designating an area within the Sea of Japan as a migration corridor (i.e., an OBIA for SURTASS LFA sonar). However, any western Pacific gray whales transiting through the Sea of Japan will be protected from exposure to sound pressure levels greater than approximately 175dB re: 1 μPa by the Navy's three-part monitoring protocols and required mitigation measures contained in this regulation.

Comment 6: The same commenter as in Comment 5 also stated: ''There are many other marine mammal populations that are listed under the ESA that occupy areas close to proposed SURTASS LFA training areas. Due to the fragile nature of these populations, the Navy should afford these animals extra protection to maximize their chance of survival and recovery. The SURTASS training in this area could affect the whale's navigation or migration patterns and these populations will not be able to recover from endangered levels when human interactions affect their behavior. The Navy should make a concerted effort to ensure that sonar is not used in areas where ESA species are currently migrating, calving, and feeding.''

Response: See response to Comment 3. We are unclear as to which area or species the commenter referred. We designated OBIAs based on certain criteria and the best available information we had for marine mammals to determine if any areas met the criteria. In some cases, we designated an OBIA because a species listed under the Endangered Species Act has designated critical habitat, breeds, calves, migrates, or forages in a particular area. For example, we designated four OBIAs for north Atlantic right whales, one OBIA each for north Pacific right and fin whales, 10 OBIAs for humpback whales, and six OBIAs for blue whales. Beyond that, the standard mitigation and monitoring measures that apply wherever the Navy operates SURTASS LFA sonar will ensure that marine mammals are not exposed to sound levels that exceed approximately 175 dB re: 1 μPa. Finally, the Navy will perform mission planning for annual Letters of Authorization applications and would limit operation of SURTASS LFA sonar to ensure that no more than 12 percent of any marine mammal stock would be taken by Level B harassment annually, over the course of this five-year regulation.

We anticipate that effects to marine mammals (including threatened and endangered species) would be in the form of Level B harassment (behavioral), due to the required mitigation measures, geographic restrictions, and sporadic nature of the SURTASS LFA sonar operations. While marine mammals may be affected by the SURTASS LFA sonar sounds, we have determined that these effects are not reasonably likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.

Comment 7: One commenter stated: ''There exists significant risk to Southern Resident Killer Whales (SRKW), who are listed as an endangered distinct species population [distinct population segment] under the ESA, in addition to being protected under the MMPA. The critical habitat for these animals is near the San Juan Archipelago in Washington State, near the U.S.-Canadian Border. If sonar use causes mass strandings similar to the incident in the Bahamas in 2000, it could have permanent negative consequences on the long-term survival of this species. While the application and proposed NMFS ruling say harassment is the only foreseen consequence, the mass stranding event in the Bahamas strongly suggests at least the possibility of significant mortality occurring. Additionally J Pod, one of the three SRKW pods, has already had a brush with Navy sonar, along with multiple other marine mammals in the area. While the Navy claims there were no adverse effects from the Sonar output of the USS Shoup in May of 2003, local scientists disagree, and NMFS' own findings were inconclusive. Such uncertain or dissenting expert opinions should create enough doubt in any educated mind and the benefit of this doubt should be given to the whales, not the Navy.

This application should be reconsidered. If an Unusual Mortality Event (UME) were to occur in the San Juan Islands, this would have a ripple effect on the entire ecosystem not just

the various marine mammals in the area. Furthermore, if a UME were to occur involving the SRKW population, this would have a serious detriment on the local tourism economy of the San Juan Islands, creating a direct harm on local citizens and the local economy in addition to the ecological concerns already mentioned.''

Response: Based on the best available information, SURTASS LFA sonar is not associated with strandings of marine mammals. SURTASS LFA sonar has operated subject to our regulations for the last nine years without any reports of strandings since the Navy began using the system operationally in the early 2000s. The Stranding and Mortality section in the proposed rule (77 FR 842; January 6, 2012; pages 871–872) presented information on the potential for stranding from SURTASS LFA sonar as well as information on strandings associated with mid-frequency active sonar use.

Over the past 12 years, there have been five stranding events coincident with military mid-frequency active sonar use in which exposure to sonar is believed (by NMFS and the Navy) to have been a contributing factor to strandings, including the Bahamas (2000). We refer the reader to Cox *et al.* (2006) for a summary of the Bahamas strandings event.

We have also provided a summary of the Navy's acoustic modeling scenarios and risk analysis methods in the proposed rule (77 FR 842; January 6, 2012; pages 859–860). Based upon the best available scientific information, while marine mammals may be potentially affected by the SURTASS LFA sonar sounds, we have determined that these effects are not reasonably likely to adversely affect the species or stock through effects on annual rates of recruitment or survival.

Second, there are three areas designated as critical habitat for the Southern Resident killer whale: the Summer Core Area in Haro Strait and waters around the San Juan Islands; Puget Sound; and the Strait of Juan de Fuca (71 FR 69054, November 29, 2006). These areas are within 22 km (14 mi; 12 nm) of the Washington coastline and thus under our criteria are not OBIAs, but rather fall within the coastal exclusion zone, where sound pressure levels will not exceed 180 dB re: 1 μPa. We also note that sound pressure levels will not exceed approximately 175 dB re: 1 μPa at 1 km (0.62 mi; 054 nm) seaward of the boundary of the OBIA for the Olympic Coast National Marine Sanctuary, the Prairie, Barkley Canyon, and Nitnat Canyon.

NMFS' final rule designating critical habitat for the Southern Resident killer whale (71 FR 69054, November 29, 2006) did not recognize any offshore areas (where the Navy could potentially operate SURTASS LFA sonar) that might qualify as an OBIA for the Southern Resident killer whales. Further, if the Navy were to operate in offshore areas, where individuals of this species are present, they would be protected from sound pressure levels in excess of approximately 175 dB re: 1 μPa via the Navy's three-part monitoring and shutdown/delay protocols.

Finally, the reporting measures in this regulation require the Navy to provide us with a notification that includes reports of injured or dead marine mammals as well as notification of a ship strike.

Comment 8: One commenter stated: ''The Administrative Procedure Act requires agencies such as NMFS to give a reasonable explanation of their decisions. This is to prevent agency decisions from being ''arbitrary and capricious.'' In this case, part of the Navy's LOA application, and part of the reasoning of NMFS, is that: (1) ESA species won't be additionally affected, and (2) it is unlikely these effects will rise past mere harassment. However, as discussed in this comment, there is evidence contradicting both of those statements. We believe that when an agency fails to at least address contradictory evidence in its decision making, those decisions will likely be too arbitrary and capricious to satisfy the APA.''

Response: See our responses to Comments 3, 4, and 5. While threatened and endangered marine mammals may be potentially affected by the SURTASS LFA sonar sounds, we have determined that these effects will be limited to Level B behavioral harassment and are not reasonably likely to adversely affect the species or stock through effects on annual rates of recruitment or survival, NMFS has also determined this action is not likely to jeopardize the continued existence of any endangered or threatened species under our jurisdiction or result in the destruction or adverse modification of critical habitat.

We included a detailed discussion of the potential effects of the Navy's SURTASS LFA sonar operations on marine mammals (including threatened and endangered species), marine mammal habitat, critical habitat, compliance with maritime laws, marine protected areas, and potential physiological and behavioral effects on marine mammals in the **Federal Register** notice of the proposed rule (77 FR 842; January 6, 2012). We have explained the basis for our findings under 16 U.S.C. 1371(a)(5)(A) and our implementing regulations to support issuance of the final rule and Letters of Authorization to the Navy. We disagree that our findings in this rulemaking are arbitrary and capricious.

Acoustic Thresholds for Threshold Shift

Comment 9: One commenter noted that although the Navy is restricted from testing sonar within 22 kilometers of shore and within any Offshore Biologically Important Area, the Navy estimates that sonar waves can retain an intensity of 140 decibels from as far away as 300 miles (NRDC, Lethal Sounds).

Response: We refer the commenter to Appendix C of the 2012 FSEIS/SOEIS for more detailed information on the Navy's modeling of sonar sound waves.

Richardson *et al.* (1995) stated that it would be unlikely that any marine mammal would remain for long in areas where there was continuous underwater noise exceeding 140 dB re: 1 μPa. In fact, the Navy's Low Frequency Sonar Scientific Research Program, which assessed the potential impacts of SURTASS LFA sonar on the behavior of low-frequency hearing specialists, noted no reduction in sighting rates and no reduction in acoustic detection within the vicinity of the SURTASS LFA sonar source vessel during the studies which lasted for several weeks (DoN, 2001). In all three phases of the Program (Clark *et al.,* 2001), most animals showed little to no response to SURTASS LFA sonar signals at received levels up to 155 dB re: 1 μPa, and those individuals that did show a response resumed normal activities within tens of minutes. Thus, avoidance of the greater than 140 dB re: 1 μPa zone of exposure occurred much less than expected. At this received level of sound, the Navy's model for SURTASS LFA sonar estimates that the risk of significant change in a biologically important behavioral is low (less than one percent).

Behavioral Harassment Threshold

Comment 10: One commenter stated that the MMPA itself states: ''[T]here is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully.'' 16 U.S.C. 1361(2)(3). Broadly, this inadequacy seems to be most exposed in our understanding of Level B harassment of these creatures by LFA sonar, which involves such a vast and as-yet-unknown spectrum of possible

behavioral responses by the animals to the technology.''

Response: We don't have a perfect understanding of marine mammal behavioral responses, but we have sufficient information (based on multiple LFA sonar-specific studies, marine mammal hearing/physiology/anatomy, and an extensive body of studies that address impacts from exposure to other anthropogenic sources) to be able to assess potential impacts and design mitigation and monitoring measures to ensure that the Navy's action will avoid the worst effects and have a negligible impact on the affected species and stocks. With this information, we can make the necessary findings under 16 U.S.C. 1371(a)(5)(A) and our implementing regulations and can say with confidence that the Navy's level of effort, including its mission planning, adequately offset the unknowns.

For example, the Navy's Low Frequency Sonar Scientific Research Program (1997–98) assessed the potential impacts of SURTASS LFA sonar on the behavior of low-frequency hearing specialists accounting for three important behavioral contexts for baleen whales: foraging, concentrated migrations, and breeding. The sonar playback experiments focused on baleen species: (1) Blue and fin whales feeding in the southern California Bight, (2) gray whales migrating past the central California coast, and (3) humpback whales breeding off Hawaii. Over the course of the sonar playback experiments, the researchers exposed the marine mammals to received levels ranging from approximately 120 to 155 dB re: 1 μPa. They detected only minor, short-term, behavioral responses by changing their vocal activity, moving away from the source vessel (Clark *et al.,* 2001). Post-playback, the whales (in each case) resumed normal activities within tens of minutes after the initial exposure to the SURTASS LFA signal (Clark *et al.,* 2001).

In the Potential Effects of the Specified Activity on Marine Mammals section of the proposed rule (77 FR 842; January 6, 2012; pages 860–874), we included a qualitative discussion of the different ways that SURTASS LFA sonar operations may potentially affect marine mammals, which was based on the LFA sonar-specific study above as well as many other studies addressing the impacts of other anthropogenic sources.

Strandings and Mortality

Comment 11: Mass strandings of marine mammals should haunt this program, for although direct causal relationships are difficult to establish between the sonar and the strandings, evidence is not entirely lacking.

Response: See Response to Comment 7.

Offshore Biologically Important Areas

Comment 12: One commenter (who was also a subject matter expert on the panel that helped identify OBIAs) felt that the review process to determine OBIAs was limited, creating poor precedent for identifying and protecting marine mammal habitat. The commenter described difficulty in determining how representative the selected areas for marine mammals were or how well they reflected the collective knowledge of a limited number of solicited individuals.

The NRDC also commented that some regions had no experts assigned to them (e.g., Australia); some had only one (e.g., offshore Africa and South America) and suggested that the subject matter experts nominated only those areas they had particular knowledge of rather than attempt a systematic review of an entire oceanic basin or region.

Response: We appreciate the first commenter's efforts in assisting us with identifying OBIAs for SURTASS LFA sonar and we believe that we have used the best available information (including but not limited to input from subject matter experts) to identify OBIAs globally.

We designate OBIAs (based upon qualifying criteria) to protect marine mammals in areas that are biologically important for them. For this process we used the best available data to assess ocean areas greater than 22 km (14 mi; 12 nm) from any shoreline with: (1) High densities of marine mammals; (2) known/defined breeding/calving grounds, foraging grounds, migration routes; or (3) small, distinct populations of marine mammals with limited distributions.

To eliminate the potential for geographic bias in the OBIA selection process, our initial scoping of potential OBIAs encompassed a review of 16 marine regions as designated by the World Commission on Protected Areas (IUCN World Commission on Protected Areas—WCPA): Region 3—Mediterranean; Region 4—northwest Atlantic; Region 5—Northeast Atlantic; Region 6—Baltic; Region 7—Wider Caribbean; Region 8—West Africa; Region 9—south Atlantic; Region 10—central Indian Ocean; Region 11—Arabian Sea; Region 12—East Africa; Region 13—east Asian Sea; Region 14—south Pacific; Region 15—northeast Pacific; Region 16—northwest Pacific; Region 17—southeast Pacific; and Region 18—Australia/New Zealand. We did not include the polar regions (i.e., Regions 1 and 2) in our scoping process because they are non-operational areas for SURTASS LFA sonar.

Initially, we reviewed 403 existing and potential marine protected areas based on the World Database on Protected Areas (WDPA) (IUCN and UNEP, 2009), the Whale and Dolphin Society's online Directory of Cetacean Protected Areas around the World (2009) based upon Hoyt (2005), and prior SURTASS LFA sonar OBIAs. Within that initial review, over 80 percent (340) of the areas were within 22 km (14 mi; 12 nm) of the coastline and are already included in the coastal standoff zone, so they did not qualify for further OBIA consideration. We screened the remaining areas under our OBIA criteria and produced a preliminary list of 27 OBIAs for the subject matter experts to review.

The subject matter experts with expertise in geographic regions including the Atlantic, Pacific, and Indian Oceans, and the Mediterranean Sea, provided their individual analyses of our preliminary list of OBIA nominees and provided additional recommendations for additional OBIAs, resulting in a total number of 73 potential OBIAs. We solicited subject matter experts for Australia and New Zealand but were unsuccessful in finding any volunteers willing to participate in our process. However, we independently reviewed the waters around Australia and New Zealand (Region 18—Australia/New Zealand) and suggested two OBIAs: OBIA # 18—Great Barrier Reef 16° S to 21° S; and OBIA # 19—Bonney Upwelling/Southwestern Australia.

To ensure that we ranked the 73 nominated areas consistently, we screened the nominations for sufficient scientific support, assigning a rank of zero (lowest) to four (highest) depending upon the robustness of the supporting documentation for the selection criteria. Our classification methodology appears on page D–104 of the FSEIS/SOEIS. This framework we developed ensures that the information available for each potential OBIA supports the presence of the relevant OBIA criteria. Briefly, the scores are:

- Level 0, Not applicable: Information does not meet our definition of the corresponding OBIA criteria or the OBIA criteria are not applicable.
- Level 1, Not eligible: Insufficient detail for criteria evaluation or insufficient detail for high density specifically.
- Level 2, Eligible: Supporting information derived from habitat suitability models (non-peer reviewed),

expert opinion, regional expertise, or gray (non-peer reviewed) literature, but requires more justification.

• Level 3, Eligible: Supporting information derived from peer-reviewed analysis, habitat suitability models (peer-reviewed), or a survey specifically aimed at investigating and supporting the corresponding OBIA criteria provides adequate justification.

• Level 4, Eligible: Supporting information derived from peer-reviewed analysis, habitat suitability models (peer-reviewed), or a survey specifically aimed at investigating and supporting the corresponding OBIA criteria provides strong justification.

In cases where the subject matter expert did not provide enough support, we contacted them for additional supporting information and also conducted our own re-analysis and continued review of peer-reviewed literature to supplement nominations with little supporting documentation.

Areas that received a score of two or higher were eligible for further consideration, which resulted in 45 potential OBIAs. Further consideration of marine mammal hearing frequency sensitivity led us to screen out additional areas that qualified solely on the basis of their importance for mid- or high-frequency hearing specialists (e.g., dolphins, toothed whales, and beaked whales that hear best in the mid-frequency (150 Hertz to 160 kilohertz) and high-frequency (200 Hz to 180 kHz) ranges; low frequency hearing specialists, such as large baleen whales, hear best in the low-frequency range of 7 Hz to 22 kHz (Southall, 2007)), resulting in a list of 22 OBIA nominees for the Navy's consideration under a practicability standard.

The list of 22 OBIAs reflects the collective knowledge of not only the subject matter experts but of our own research, before and after their input, which consisted of reading: peer-reviewed scientific literature; reports prepared by natural resource agencies in other countries; reports from non-governmental organizations involved in marine conservation issues; and doctoral dissertations and master's theses.

Table 2 presents the geographic scope of the selected areas in the Proposed Rule. We also note that some OBIAs consist of multiple areas within a single OBIA. Seven of the eight OBIAs for South America, Australia, and the Indian Ocean are newly-designated areas for SURTASS LFA sonar compared to the previous two rulemakings.

TABLE 2—GEOGRAPHIC SCOPE OF THE 22 AREAS IN THE PROPOSED RULE

Marine area	Number selected
Antarctic Convergence Zone	1
Atlantic Ocean—Northwest	4
Atlantic Ocean—Southeast	1
Atlantic Ocean—Southwest	2
Caribbean Sea	1
Indian Ocean	2
Mediterranean Sea	1
Pacific Ocean—Central/Eastern Tropical	2
Pacific Ocean—Northeast	4
Pacific Ocean—Northwest	1
Pacific Ocean—Southeast	1
Pacific Ocean—Southwest	2
Total	22

The commenter's assertion that we did not conduct a systematic review of an oceanic basin or region is not accurate. Hoyt (2005) is recognized as a comprehensive global reference for identifying marine protected areas for whales, dolphins, and porpoises, and it is only logical to use it as a starting point for our identification of OBIAs before asking subject matter experts for additional recommendations. To date, 106 journal articles have cited Hoyt's 1st edition. Additionally, several marine and biological experts have positively reviewed Hoyt's efforts as authoritative, comprehensive, and up-to-date (e.g., Sylvia Earle; Edward O. Wilson; Carl Gustaf Lundin, Head, IUCN Global Marine and Polar Programme; William Rossiter, Director, Cetacean Society International; and one of the subject matter experts we consulted for the OBIA process). See *http://www.cetaceanhabitat.org/reviews.php* for a fuller list of reviews.

We compared the 1st and 2nd editions of Hoyt (2005 and 2011) to ensure that we did not overlook any additional areas for consideration. Appendix F of the 2012 FSEIS/SOEIS includes the results of our re-analysis of 367 additional areas within the Hoyt's (2011) 2nd Edition of Marine Protected Areas for Whales, Dolphins and Porpoises for this final rule.

Based on our evaluation of the 367 potential areas within the Hoyt's (2011) 2nd Edition of Marine Protected Areas for Whales, Dolphins and Porpoises (see Appendix F of the Navy's 2012 FSEIS/SOEIS), we have added one additional OBIA, the Abrolhos Bank in the southwest Atlantic Ocean which is a breeding/calving area for endangered humpback whales. The specified period of this OBIA would be effective August through November.

We also identified two additional areas for further consideration as OBIAs for marine mammals—an area within the Southeast Shoal, Grand Bank in the northwest Atlantic Ocean and an area within Dogger Bank in the North Sea. However, because the supporting information for these specific areas is limited, we and the Navy are continuing to gather information to determine whether these areas meet the OBIA criteria (see Mitigation section in this document).

Finally, this final regulation governing the take of marine mammals incidental to the Navy's SURTASS LFA sonar operations contains an adaptive management component. This provides a mechanism for NMFS and the Navy to modify (or add or delete) mitigation or monitoring measures, as appropriate, based on new information. We would add, modify or delete mitigation or monitoring measures in consultation with the Navy if doing so creates a reasonable likelihood of accomplishing the goals of mitigation and monitoring laid out in this final rule. This includes our continued analysis of the Southeast Shoal on the Grand Bank and an area within Dogger Bank in the North Sea within the first year of this rule.

Comment 13: One commenter suggested that the expert panel did not have a role in establishing the screening criteria (determined in advance by us) to select potential areas and following the submission of potential areas by the subject matter experts. They also suggested that we unilaterally weighed the scientific merits of each proposal and did not afford the expert panel an opportunity to participate in a group discussion or decision-making process.

Response: The commenter correctly noted that the expert panel did not have a role in either establishing the screening criteria for OBIAs or the final decision-making process. The Process Summary for Expert Input (Appendix D–3 in the 2012 FSEIS/SOEIS), Stage 1 (c) specifically states that ''NMFS will incorporate expert input, as appropriate, to produce the final OBIA nominees, which will be included for consideration in the Navy's 2009 [2011] draft supplemental environmental impact statement (DSEIS) for SURTASS LFA sonar.''

The purpose of the panel was to provide scientific information and make additional, scientifically supportable, OBIA recommendations based on the criteria and within the process we set up after careful consideration of the U.S. District Court's opinion and order granting in part plaintiffs' motion for preliminary injunction in *NRDC et al.* v. *Gutierrez et al.,* 2008 WL 360852 (N.D.Cal.).

Comment 14: NRDC and one other commenter suggested that the OBIA process failed to include habitat suitability or density modeling for marine mammals to confirm or, crucially, augment the information acquired from the subject matter experts.

Response: We recognize that baseline data on the distribution and behavior of marine animals are limited for certain areas of the world's oceans. During our OBIA designation process, we instructed the subject matter experts to use predictive habitat or density models in their review process if appropriate. Regarding our use of habitat suitability or density modeling, we have used results from habitat-based density modeling to supplement information provided by the subject matter experts. For example, we considered habitat-based density modeling from Barlow *et al.* (2009) in determining whether an area within the Southern California Bight, including Tanner and Cortes Banks, met our OBIA criteria as an area of blue whale concentration.

For offshore areas (those not associated with coastal areas or within a particular countries' exclusive economic zone) we agree that the data are lacking. In these data-poor scenarios there is debate about whether decision makers should use predictive models to forecast patterns in distribution or density in wide-ranging and heterogeneous areas (Praca *et al.,* 2009). Most models that relate cetacean distribution or population density to environmental factors are based on easily measured environmental proxies that substitute for the ultimate physical, biological, historical, or behavioral factors that interact to produce the observed patterns in cetacean habitat use. The relationship between a given proxy and the underlying ecological mechanism that it represents is likely to be region-specific and might vary among species in a given region. Furthermore, the functional relationship defined by a proxy is likely to depend upon the spatial and temporal scale of the ecological phenomenon that it represents. Therefore, we should use caution when extrapolating relationships between a proxy and cetacean distribution or density from one study area to another that differs in size or geographic location (Ferguson *et al.,* 2010).

Model validation (defined as comparing model fit or predictions to the data upon which the model was built or to a novel data set) is a critical component of cetacean-habitat modeling. If the model's fitted or predicted values are largely biased or imprecise, the model cannot reliably inform a question that it is designed to address. For scenarios in which cetacean distribution or density data are scarce or completely lacking, such as in open ocean areas outside of the United States, our ability to quantitatively or qualitatively validate cetacean-habitat model predictions may be limited or biased. In these situations, model validation must rely on multiple sources of scientific knowledge (including, but not limited to: Personal observations of distribution and density; known migration routes; ecosystem dynamics, such as inter-specific competition; seasonality and environmental regime shifts; live strandings; range expansions or contractions due to changes in population size; and historic whaling data) or indigenous/local knowledge (Ferguson *et al.,* 2010).

While predictive models can indicate regions with physical properties that might have relatively high probabilities of species occurrence, the actual abundance/density estimates for the region are often not known. Predictive models are only as good as the input data and the relationships between animal abundance/density and physical properties. Thus, they must have robust data to accurately predict relationships between animal abundance and/or density and physical properties. Outside of U.S. waters, some available models may not be robust enough to predict a species' true niche due to inter-specific and intra-specific dynamics and interactions with the physical environment.

Regarding the second point, we did not rely solely on the subject matter experts (see our responses to Comments 12 and 13). The subject matter experts' inputs were a crucial component of our selection processes; however, they were only one component. We as the action agency are responsible for the final selection of the SURTASS LFA sonar OBIAs. Because we independently evaluated the subject matter expert's input as well as available data/information for each recommended OBIA, we do not believe that effort bias on the part of the subject matter experts was a factor in our determinations.

In areas not designated as an OBIA (either because they did not meet the criteria or because there weren't sufficient data to support the designation), the regulation provides mitigation and monitoring measures that protect marine mammals nevertheless. The regulation requires the Navy to: (1) Restrict operations of SURTASS LFA sonar such that the sound field does not exceed 180 dB re: 1 μPa within 22 km (14 mi; 12 nm) of any coastline; (2) Conduct visual, passive acoustic, and active acoustic monitoring; and (3) Perform delays/shutdown protocols of active LFA sonar transmissions when monitoring detects a marine mammal effectively ensuring that marine mammals are not exposed to sound levels that exceed approximately 175 dB re: 1 μPa.

In addition to the Navy's required mitigation and monitoring protocols, their annual application to us for LOAs will use a sensitivity/risk assessment process to assess potential impacts to marine mammals (DoN, 2002; 2003; 2004; 2005; 2006). This process starts with the Navy reviewing the proposed mission areas and includes: (1) Data collection and analyses for marine mammal abundances/densities; (2) spatial/temporal analyses for potential geographic restrictions/migration corridors/habitat preferences; (3) mission area changes/refinements as required; (4) risk analysis/estimates; and (5) determination on the viability of a mission area based on potential marine mammal impacts. As with the 2002 and 2007 rules, the Navy will limit operation of SURTASS LFA sonar to ensure that no more than 12 percent of any marine mammal stock would be taken by Level B harassment annually, over the course of this five-year regulation. This annual per-stock cap applies regardless of the number of SURTASS LFA sonar vessels operating. The Navy will use the 12 percent cap to guide its mission planning and annual authorization applications to the greatest extent feasible considering national security tasking.

We and the Navy recognize that available information regarding marine areas will evolve over the next five years and these regulations include an adaptive management component to account for new data. This provides a mechanism for NMFS and the Navy to modify (or add or delete) mitigation or monitoring measures, as appropriate, based on new information. We would add, modify or delete mitigation or monitoring measures in consultation with the Navy if doing so creates a reasonable likelihood of accomplishing the goals of mitigation and monitoring laid out in this final rule. We and the Navy will meet annually (if deemed necessary by either agency) to discuss the monitoring reports, Navy research and development outcomes, current science, and to determine whether mitigation or monitoring modifications are appropriate.

Comment 15: The NRDC and one other commenter suggested that NMFS had established an unreasonably high bar for further consideration of OBIAS,

rather than a precautionary approach, even for areas where very little survey data are available. They also took issue with the proposed rule establishing only 21 discrete OBIAs within an area of operations that includes nearly all of the Atlantic, Pacific, and Indian Oceans and the Mediterranean Sea and suggested that we: did not advance most of the recommended areas to the Navy for discussion regardless of practicability; gave little weight to expert opinion; reviewed the first edition of Hoyt's (2005) Marine Protected Areas for Whales, Dolphins, and Porpoises and relied heavily upon the experts to supply additional information; and did not consider areas with rankings of ''two'' even if they featured baleen whale habitat.

Response: See our response to Comment 12 for a description of our evaluation process and pages 877–878 in the **Federal Register** notice of the proposed rule (77 FR 842; January 6, 2012). Table 2 (in Response to Comment 12) presents information on the geographic scope of the OBIAs. For this rulemaking, we have designated more than double the number of OBIAs in previous rulemakings for SURTASS LFA sonar, and more than 60 percent of these OBIAs are outside of U.S. waters.

Contrary to NRDC's assertion, we forwarded all of the subject matter experts' recommended areas (including those that did not qualify under the selection criteria) to the Navy for discussion. During each phase of the OBIA scoping process, the Navy had access to the following: Our initial screening matrix of 403 potential areas in the world; the potential 27 areas that we presented to the subject matter experts for review; the 73 potential OBIAs recommended by us, the experts and the Navy; the 45 areas resulting after we screened them for adequate scientific support (i.e., areas with a score of 2 or higher for at least one eligibility criteria); and the 22 areas that remained after screening for hearing specialization. The ''bar for further consideration'' the commenter refers to was our requirement that the description of the area recommended by an expert contain enough information for us to verify that it met our criteria. In cases where justification from subject matter experts was limited, we and the Navy conducted additional literature reviews to search for further support for those potential OBIA nominees. The practicability inquiry is immaterial if the area does not meet our standards for an OBIA in the first place.

In fact, based upon our continued re-analysis of the world's oceans, we have designated one additional OBIA (Abrolhos Bank in the southwest Atlantic Ocean) in addition to the 22 that we proposed.

We disagree that our process set an unreasonably high bar for further consideration and we recognize that many areas throughout the world's oceans have little data to support an OBIA designation at this time. The regulation's adaptive management provision allows us and the Navy to re-evaluate areas during the annual request for LOAs as new information becomes available. We will continue to conduct literature reviews and use robust habitat modeling results to support our reconsideration of these data-poor areas; and would consider modifying geographic restrictions as appropriate. In the meantime, the other protective measures in this regulation will be in effect.

Although habitat is a contributing factor to supporting our biological criteria for OBIAs, we did not base our recommendations on areas that solely feature baleen whale habitat. For areas based on habitat suitability models (non-peer reviewed), expert opinion, regional expertise, or gray literature (i.e., non-peer reviewed studies), we ranked these areas as a two (Eligible: Requires More Justification). Contrary to the commenter's assertion, under our classification methodology, we considered areas with a rank of two or higher as eligible for consideration as an OBIA for SURTASS LFA sonar operations. Thus, we included the subject matter expert's submitted areas within the initial screening for OBIA candidates. Many of these recommended areas did not meet our additional screening criterion for low-frequency hearing specialization.

The commenter's assertion that we did not conduct a systematic review of an oceanic basin or region is not accurate. Hoyt (2005) is recognized as a comprehensive global reference for identifying marine protected areas for whales, dolphins, and porpoises. It was a logical starting point for our identification of OBIAs. Later, we compared the 1st and 2nd editions of Hoyt (2005 and 2011) to ensure that we did not overlook any additional areas for consideration. We provide the results in Appendix F of the 2012 FSEIS/SOEIS. Based on that review, we have designated the following additional OBIA: Abrolhos Bank off the Brazilian Coast in the southwest Atlantic Ocean for humpback whales effective August through November.

Further, we and the Navy are continuing to gather current supporting information to continue to review the Southeast Shoal area, Grand Bank in the northwest Atlantic Ocean and Dogger Bank in the North Sea under the OBIA criteria. Because the Navy does not intend to operate within the northwest Atlantic Ocean or North Sea this year, we and the Navy will make a decision on this area as a potential OBIA within the first year of this rule under the adaptive management framework.

To reiterate, we incorporated expert input, as appropriate, to produce the proposed OBIAs (see Comment 12). The commenter's statement about ''heavy reliance on experts'' disregards the extensive analysis that we and the Navy conducted during the initial phase of the identification process as well as our continual efforts to update information on potential OBIAs during the rule making for this regulation.

Comment 16: The NRDC stated that for at least one major area that remained, we failed to consider more limited forms of mitigation when a complete exclusion was deemed impracticable, a failure that led to a complete lack of additional protection for the Southern California Bight.

Response: We designate OBIAs to protect marine mammals. OBIAs are not intended to protect areas per se. Also, the comment ignores the required mitigation and monitoring measures for any Navy SURTASS LFA sonar activities within the area, which will provide protection for marine mammals.

We note that within the Southern California Bight, we require the Navy to limit the SURTASS LFA sonar sound field so that it does not exceed 180 dB re: 1 μPa within 22 km (14 mi; 12 nm) of any coastline, including offshore islands such as San Clemente and San Nicolas Islands, and the Channel Islands National Marine Sanctuary. This would include additional protections for smaller areas within the Southern California Bight such as the San Clemente and San Nicholas Islands. Also, the Navy will restrict SURTASS LFA sonar operations in the vicinity of known recreational and commercial dive sites to ensure that the sound field at such sites does not exceed received levels of 145 dB re: 1 μPa. Within the Southern California Bight, the Navy has designated Tanner and Cortes Banks and the Channel Islands National Marine Sanctuary, as recreational dive sites.

Since the publication of the proposed rule, we have consulted with the Navy on the practicability of finding other means of limiting SURTASS LFA sonar activities within the Southern California Bight to reduce adverse effects to marine mammals without impacting operations. The Navy is not currently planning to use the SURTASS LFA sonar system in

the Southern California Bight. If the Navy were to plan use of SURTASS LFA sonar per the 2012 FSEIS/SOEIS, the Navy would include the details of that plan in their LOA application for the applicable year. At that time, we and the Navy would discuss what, if any, other measures are appropriate in light of the projected use of SURTASS LFA sonar and relevant current information available for the species potentially affected by that use.

Comment 17: The NRDC stated: ''The result of all this is to establish only 21 offshore biologically important areas—21 areas within an MMPA application that encompasses 70–75 percent of the world's oceans, including almost the entirety of the Atlantic, Pacific, and Indian Oceans and the Mediterranean Sea. In its 2002, 2003, and 2008 opinions on SURTASS LFA, the District Court repeatedly emphasized the importance of geographic mitigation to reduce impacts from the LFA system, the need to ensure meaningful inclusion of OBIAs throughout the LFA operating area, and the agencies' obligation to affirmatively identify and protect marine mammal habitat. The agencies' draft approach to designating OBIAs—which leaves most of the Navy's operating area unrepresented and shifts much of the burden for justifying individual areas to experts—does not satisfy the requirements of NEPA and MMPA or the Court's concerns.

Response: Under the regulation, the total area that would be available for SURTASS LFA sonar operations over the five-year period is about 70–75 percent of the world's oceans. This in no way equates to SURTASS LFA sonar operations affecting even close to 70–75 percent of the world's ocean areas during any given annual period for the LOAs. Based on its annual projected operational needs, the Navy will identify the particular geographic areas in which it intends to operate its four SURTASS LFA sonar vessels. In doing so, the Navy considers marine mammal habitats, seasonal activities, and behavioral activities during the process of determining potential mission areas and, to the greatest extent feasible considering national security tasking, avoids planning and conducting SURTASS LFA sonar operations in areas of known high marine animal densities (i.e., hot spots). Also, in performing mission planning for its annual LOA applications the Navy would limit operation of SURTASS LFA sonar to ensure that no more that 12 percent of any marine mammal stock would be taken by Level B harassment annually, over the course of this rule.

We believe that our OBIA analysis was comprehensive (see Comments 12 and 14). We and the Navy conducted separate bibliographic research to look for OBIA candidates in all potential operating areas, even before involving the subject matter experts in our process. And in all cases, we not only applied biologically-based criteria but also required a minimum level of supporting scientific documentation to designate an area as an OBIA.

In designing the OBIA selection process for this rulemaking, we carefully considered and took into account the articulated concerns of the U.S. district court and believe the process addresses those concerns. Recognizing that many areas throughout the world's oceans currently have few data to support an OBIA designation at this time, we and the Navy will continue to conduct literature reviews under the adaptive management provision of this regulation.

Comment 18: The NRDC stated: ''Offshore biologically important areas (OBIAs) lie at the core of the proposed rule, representing the sole difference between the new preferred alternative and the one selected by the agencies during the 2007 SEIS and rulemaking processes, and ultimately rejected by the Court. DSEIS at 2–11 to 2–13. Obtaining sufficient data on potential OBIAs throughout the Navy's entire proposed operating area is therefore critical. NRDC v. Gutierrez, Case No. 07–4771–EDL, 2008 WL 360852 at *7 (N.D. Cal. 2008) (''* * * having chosen not to confine operations to relatively sterile areas of the ocean and seasons of the year and to reduce the coastal exclusion zone, the Secretary must make a serious effort to investigate plausible candidates for OBIAs'').''

Response: See Comments 12 and 14. We conducted a detailed, global evaluation for OBIA candidates. Our responsibility under 16 U.S.C. 1371(a)(5)(A) and our implementing regulations is to prescribe the means of effecting the least practicable adverse impact, which involves consideration of impacts on military readiness training and operations. To that end, we, in coordination with the Navy, developed a suite of mitigation measures for this and previous rulemakings. OBIAs are an important component, but they are by no means the only one or the ''core'' mitigation measure. The U.S. district court, in litigation over our previous rule, took issue with our process for identifying and designating OBIAs. We have remedied the identified deficiency.

Comment 19: The NRDC stated that despite the lack of available density information for most locations and regions, we did not provide density modeling for any area beyond the United States. They also advocated the use of existing habitat suitability and/or density models, such as the one licensed by St. Andrews University's Sea Mammal Research Unit (SMRU).

Response: As the NRDC letter notes, the Navy, under license agreements with St. Andrews University's Sea Mammal Research Unit and Dr. Kristin Kaschner, developed a preliminary database of marine mammal density estimations for the Navy's areas of responsibility that are the result of habitat suitability predictive modeling. For their environmental compliance efforts for mid-frequency active sonar training, the Navy uses a hierarchy of desired methods to estimate marine mammal density in the areas where they plan to train. The St. Andrews/Kaschner methodology is the least preferred method (used only when nothing else is available), with habitat-based density estimates and stratified density estimates being the first and second method of choice. However, for helping to estimate density, it is better than simply spreading an abundance estimate across the entire ocean since it considers species extent and attempts to characterize relative occurrence. As noted in our response to Comment 14, methods that extrapolate significantly past the areas where marine mammal surveys have actually been conducted and into ecologically different regions are far less likely to be accurate. While the Navy's groundtruthing exercises have shown the model to be relatively accurate for predicting most Atlantic species within a few hundred miles of the Atlantic Coast, they found the model inaccurate off the Pacific Coast and have not been able to validate the model in any other areas.

Density estimates are necessary for the Navy to estimate take. The St. Andrews estimates serve as the least preferred option for calculating take for the Navy's mid-frequency active sonar training activities. However, for the reasons noted above, this method for estimating density does not produce estimates that are considered robust or accurate enough to support the designation of OBIAs under our criteria and requirements.

Comment 20: The NRDC and several other commenters recommended that we consider the approach of using proxies such as: persistent oceanographic features (e.g., high primary productivity and nutrient enrichment processes); relative densities of non-marine mammal species (i.e., apex predators and fish); all continental shelf waters and waters 100 km (62 mi)

seaward of the continental slope; waters within 100 km (62 mi) of all islands and seamounts that rise within 500 meters (1,640 feet) to identify marine mammal hotspots or supplement our OBIA analysis in data-poor regions.

Response: OBIAs are but one component of a suite of required mitigation and related monitoring measures designed to effect the least practicable adverse impact on marine mammals. The regulation prescribes mitigation and monitoring measures for SURTASS LFA sonar operations in areas that have persistent oceanographic features and seamounts and island chains that did not meet our OBIA criteria or fall within the 22 km (14 mi; 12 nm) coastal exclusion zone. The Navy is to delay/shutdown active SURTASS LFA sonar transmissions when they detect a marine mammal within the 2-km (1.2-mi; 1.1-nm) LFA sonar mitigation and buffer zones around the vessel by visual, passive acoustic, and active acoustic monitoring protocols, effectively ensuring that marine mammals are not exposed to sound levels that exceed 175 dB re: 1 μPa.

Our process for selecting, assessing, and designating OBIAs for SURTASS LFA sonar relies on three specific screening criteria for biological importance for marine mammals. These include areas with: (a) High densities of marine mammals; or (b) known/defined breeding/calving grounds, foraging grounds, migration routes; or (c) small, distinct populations of marine mammals with limited distributions. Additionally, the area must be 22 km (14 mi; 12 nm) seaward of any coastline. The commenters' recommendations do not meet the criteria we established.

That said, we recognize that the ecological processes recommended by the commenters support cetacean habitats and have considered their guidance in reviewing and designating OBIAs. Information regarding data poor areas is likely to evolve over the five-year course of the final rule and beyond, and NMFS will consider new information to continue identifying OBIAs for SURTASS LFA sonar operations. Under our adaptive management framework, we will consider these factors along with our selection criteria to consider future modifications to the OBIA list. This provides a mechanism for NMFS and the Navy to modify (or add or delete) mitigation or monitoring measures, as appropriate, based on new information. We would add, modify or delete mitigation or monitoring measures in consultation with the Navy if doing so creates a reasonable likelihood of accomplishing the goals of mitigation and monitoring laid out in this final rule.

As a part of our global OBIA selection process, we reviewed continental shelf and slope areas and have designated OBIAs located on the northeast U.S. continental, northwest U.S. continental, Patagonian, Bahamian, Madagascar, east Brazilian, the northeast Australian, the southeast Australian, the Sakhalin Island, and the southeast U.S. continental shelves or slopes.

In our review of areas with enhanced productivity associated with seamounts, we have designated seven OBIAs which meet the commenters' recommendations. These areas include the Silver and Navidad Banks and the Abrolhos Bank in the Atlantic Ocean; the Costa Rica Dome; the Prairie, Barkley, and Nitnat Canyons; Davidson Seamount within the Monterey Bay National Marine Sanctuary; and Penguin Bank in the Pacific Ocean; and Walters Shoal in the Indian Ocean.

Finally, over half of the OBIAs are located in areas categorized as Class I, highly productive or Class II, moderately productive ecosystems based on SeaWiFS global primary productivity estimates (NOAA, 2012).

In areas that are not designated an OBIA, the standard operational mitigation and monitoring measures will apply wherever the Navy operates SURTASS LFA sonar. These required mitigation and monitoring measures and delay/shutdown protocols will ensure that marine mammals are not exposed to sound levels that exceed approximately 175 dB re: 1 μPa.

Comment 21: The NRDC recommended the Transition Zone Chlorophyll Front north of the Hawaiian Islands as an example likely to represent important habitat for cetacean species based upon persistent oceanographic features and relative densities of non-marine mammal species. They also stated that the size of some of these areas is not in itself a reasonable bar against designating them as an OBIA.

Response: See response to Comment 20.

With regard to the Transition Zone Chlorophyll Front north of the Hawaiian Islands, several studies have reported that northern fur seals, Dall's porpoises, northern right whale dolphins, and Pacific white-sided dolphins occur as bycatch in squid driftnets in the region (Baba *et al.,* 1993; Buckland *et al.,* 1993; Yatsu *et al.,* 1993). Applying our OBIA criteria, we found no supporting information that these species are present in high densities or that they use this area in concentrated numbers for foraging, breeding/calving, or migration. Nor are these species a small distinct population within the area. Furthermore, these species are not categorized as low frequency hearing specialists. At this time, the data are not sufficient to consider the Transition Zone Chlorophyll Front as an OBIA.

With regards to the second point related to the size of a potential OBIA, see our Response to Comment 17. We note that several of the OBIAs including the Costa Rica Dome (year-round restriction), Georges Bank (year-round), and the Antarctic Convergence Zone (October through March), and the Bonney Upwelling (December through May), have persistent oceanographic features and are quite large in size.

Comment 22: The NRDC stated: ''the DSEIS explicitly rejects Challenger Bank, an area that has repeatedly been shown to seasonally host humpback whales on their northward migration, on the grounds that ''the available sighting data and information are insufficient to clearly demonstrate that the Challenger Bank individually is the most significant biologically important area in Bermudian waters for humpback whales DSEIS at D–81.''

Response: DSEIS subchapter 4.5.2.3 on the Challenger Bank (Bermuda) OBIA did not adequately describe the justifications for excluding this area as an OBIA. The Navy has revised this section of the 2012 FSEIS/SOEIS based upon re-analysis of this area.

Briefly, Challenger Bank did not qualify under the foraging criterion for humpback whales. Also, the waters off the Bank did not qualify as a defined migration route even though there are anecdotal observations of whales transiting near the Bank. As noted in our original analysis of the area, Stone *et al.* (1987) hypothesized that humpback whales may feed in Bermudian waters and suggested the possibility that humpback whales feed at Bermuda while transiting northward. Other peer-reviewed articles (Clapham and Mattila, 1990; Baraff *et al.,* 1991) repeated Stone *et al.'s* (1987) hypothesis but did not provide additional specific and sufficient scientific justification to support our selection of this area as an OBIA at this time.

Comment 23: The NRDC stated: ''The proposed Dogger Bank OBIA was shown in a survey of the German exclusive economic zone to contain ''fairly high'' densities of harbor porpoises, is associated with several oceanographic features relevant to marine mammal distribution (e.g., a submerged sandbar), and has been proposed by the German government as an MPA, yet is unaccountably accorded a ''one'' on NMFS' scale. DSEIS at D–286. NMFS

should review its low ranking of areas such as Dogger Bank.''

Response: We have re-analyzed our ranking for the Dogger Bank area for harbor porpoises. To clarify, this is an area that we independently evaluated and considered as a potential OBIA for harbor porpoises. Further consideration of marine mammal hearing frequency sensitivity led us to screen out Dogger Bank as an OBIA for SURTASS LFA sonar because harbor porpoises are mid-frequency hearing specialists.

Germany's Federal Agency for Nature Conservation conducted aerial surveys within the German exclusive economic zone and 12 nautical mile zone to assess proposed Sites of Community Importance under the European Union Habitats Directive. They reported that the north-east survey area of the Dogger Bank Special Area of Concern (SAC), off the North Friesian islands of Sylt and Amrum, showed the highest mean summer densities (2.75 individuals per square kilometer (indiv./km^2) in 2002 and 3.7 indiv./km^2) of harbor porpoises (Gilles, Herr, Lehnert, Scheidat, & Siebert, 2008). These areas fall under this regulation's coastal standoff restriction that requires the Navy to restrict operation of SURTASS LFA sonar such that the sound field does not exceed 180 dB re: 1 μPa within 22 km (14 mi; 12 nm) of any coastline and as a result we did not consider these areas for OBIA status.

In 2010, the Joint Nature Conservation Committee (JNCC) re-evaluated the Dogger Bank SAC according to the European Habitats Directive selection criteria and guiding principles in response to scientific questions on the site's justification for harbor porpoises. They concluded that the data indicated that there is no difference in occurrence of harbor porpoise within the Dogger Bank SAC (identified for its sandbank habitat) compared to outside the SAC (JNCC, 2010). They also concluded that there is not ''good population density (in relation to neighboring areas) and that the Dogger Bank SAC cannot be considered a ''clearly identifiable area essential to the life and reproduction'' of harbor porpoise, and that therefore the species should not be a qualifying feature for the site (JNCC, 2010).

Based on the best available information, we arrived at similar conclusions that the area is not eligible as an OBIA for harbor porpoises under the high density criterion at this time. Moreover, there is not enough information at this time to support designation of this area as an OBIA for low-frequency hearing specialists. We will continue to monitor and re-evaluate this area under the adaptive management framework as researchers complete additional surveys on Dogger Bank within the next few years. We and the Navy will make a decision before issuing the second annual LOAs regarding whether this area meets the OBIA criteria and, if so, can be practicably implemented

Comment 24: The NRDC stated: ''Given the extent of the area available for LFA operations, the lack of comparative density data in most parts of the world, and NMFS' express reliance on experts, it is reasonable for the agencies to consider the practicability of recommended OBIAs that score a ''one'' or above on NMFS' scale.''

Response: See Comment 12. The description of the area should contain enough information for us to verify that it met our defining criteria, because in our view it is not appropriate to designate OBIAs without sufficient scientific justification. Also, we discuss the classification methodology for all OBIA rankings in the 2012 FSEIS/SOEIS subchapter 4.5.2 and pages D–104 and D–225.

Comment 25: The NRDC stated: ''Yet NMFS has effectively shifted the burden of identifying OBIA to its volunteer experts, appearing to have screened out areas where its experts did not supply ''sufficient'' information even though additional information might be available. For the Gulf of Mexico, where NMFS' expert recommended the inclusion of slope waters between the 200 m and 1000 m depth contours, the agency merely listed the ''background'' information that the expert provided, and without explanation gave the area two disqualifying ''ones'' for ''high density'' and ''foraging'' and ''zeroes'' in every other habitat category. SDEIS at D–290. Even supposing arguendo that these rankings were reasonable, the agency apparently did not compile other information that might support the recommendation, even though such information was readily available, nor did it consider on its own any alternative areas in the Gulf, including parts of the recommended OBIA, that might have additional support. Cf., e.g., Appendix B to this letter. Instead, NMFS appears to have relied entirely on its expert to define the OBIA boundary and justify it. That form of burden-shifting is not acceptable.''

Response: See Comments 12 and 15. We, along with the Navy, again reviewed the latest and best available scientific information and could not locate adequate information to support designation of an OBIA for SURTASS LFA sonar between the 200- and 1,000-m depth contours in the Gulf of Mexico (see Appendix F of the 2012 FSEIS/SOEIS). At this time, we believe that assigning a rank of one (Not Eligible: Insufficient Information) for the 200- and 1,000-m (656 and 3,281 feet) depth contours in the Gulf of Mexico is reasonable and based on the best available science.

Several papers noted that most marine mammal species had a wide spatial distribution along the slope as well as a wide temporal distribution (Mullin *et al.,* 1991; Davis *et al.,* 1998; Baumgartner *et al.,* 2001). Also, the inter-annual variability of the Mississippi River discharge itself may also have significant impact on sperm whale distributions along the 1,000-m isobath between Mississippi Canyon and De Soto Canyon (Jochens *et al.,* 2008).

The basic unit of sperm whale social organization is the breeding or mixed herd consisting of mature females, juveniles of both sexes, and calves. Studies have reported aggregations of female and mixed juvenile/calf groups commonly sighted around the Mississippi Canyon in summer 2004 (Thomsen *et al.,* 2011). Conversely, in summer 2005, Jochens *et al.* (2008) observed only lone/bachelor males around the Mississippi Canyon and did not observe any mixed herds (Thomsen, *et al.,* 2011). Regarding the inter-annual differences in sighting between the two surveys, Jochens *et al.* (2008) noted that they observed no members of the mixed groups ''core population'', which could be caused by changing oceanographic conditions between the two surveys as the Mississippi River's 2005 discharge level was 59 percent of the average summer monthly outflow.

Until such time that more robust information becomes available that supports the biological criteria (i.e., marine mammals present in high densities or an area on the slope with known/defined breeding/calving grounds, foraging grounds, migration routes, or an area with small, distinct populations of marine mammals with limited distributions) on the continental slope of the northern Gulf of Mexico, we do not designate this area as an OBIA for SURTASS LFA sonar operations. However, within our adaptive management framework, we will consider new information during the five-year period of this regulation to consider future modifications to the OBIA list. This provides a mechanism for NMFS and the Navy to modify (or add or delete) mitigation or monitoring measures, as appropriate, based on new information. We would add, modify or delete mitigation or monitoring measures in consultation with the Navy

if doing so creates a reasonable likelihood of accomplishing the goals of mitigation and monitoring laid out in this final rule.

If SURTASS LFA sonar operations were to occur on the continental slope of the northern Gulf of Mexico, marine mammals present in the operational area are protected by the Navy's mitigation protocols, including: (1) Restricting operations of SURTASS LFA sonar such that the sound field does not exceed 180 dB re: 1 μPa within 22 km (14 mi; 12 nm) of any coastline; (2) Conducting visual, passive acoustic, and active acoustic monitoring; (3) Performing delays/shutdown protocols of active LFA sonar transmissions when monitoring detects a marine mammal, which effectively ensures marine mammals will not be exposed to sound pressure levels greater than approximately 175 dB; and (4) Performing mission planning for annual Letters of Authorization applications.

Comment 26: The NRDC stated: ''The agency incorrectly assumes that certain established or proposed MPAs and recommended OBIAs are located entirely within 12 nm of shore. For example, the Papahanaumokuakea Marine National Monument was apparently excluded early in the OBIA process on the assumption that it does not extend seaward of that distance, which is incorrect.''

Response: We concur that the Papahanaumokuakea (Northwestern Hawaiian Islands) Marine National Monument boundaries extend seaward of the 22-km (12-nm) coastal standoff zone. However, areas noted for breeding or wintering of low-frequency hearing specialists are within the coastal standoff zone and are not located outside of any portion of the Monument seaward of the coastal standoff zone. Thus, there is not enough information to support designation around any islands outside the 22 km (14 mi; 12 nm) coastal standoff zone at this time.

Johnston *et al.* (2007) modeled the extent and spatial location of humpback whale wintering habitat across the Hawaiian Archipelago, using bathymetry and averaged sea surface temperature data. Using the data, they produced polygons identifying areas shallower than 200 m and warmer than 21.1°C as potential wintering habitat. To ground-truth their data, they also conducted a pilot survey across the Northwest Hawaiian Islands and reported nine sightings of humpback whales (n = 19) during the 15-day cruise, including three groups with small calves or exhibiting breeding behaviors. All of the sightings occurred in warm, shallow water at or within their predicted habitat regions. They detected humpback whales on the shallow banks surrounding Nihoa Island, Necker Island, Gardner Pinnacles, Maro Reef, and Lisianski Island (Johnston *et al.,* 2007). Based on the best available information, this area that extends seaward of the 22-km (14-mi; 12-nm) coastal standoff zone does not qualify as an OBIA for SURTASS LFA sonar.

Comment 27: The NRDC stated that we did not consider the following areas in our OBIA analysis: (1) Areas of Increased Awareness designated by the Navy in the Atlantic Fleet Active Sonar Training EIS; (2) areas identified in Hoyt (2011); (3) areas referenced in the previous LFA sonar rulemakings; (4) important habitats in the Northwest Pacific Ocean and in the Gulf of Mexico; (5) areas off the main Hawaiian Islands; (6) areas in southeast Alaska that the SPLASH project identified as seasonal habitat or migration corridors for humpback whales; and (7) the North Atlantic right whale migration corridor.

Response: Following is a summary of our consideration of the areas identified by the commenter. See responses to comments in Chapter 7 of the Navy's 2012 FSEIS/SOEIS for detailed information on our analyses.

- Areas of Increased Awareness: The commenter's assertion is inaccurate. First, several of the Areas of Increased Awareness are protected by the coastal standoff restriction where we require the Navy to limit the SURTASS LFA sonar sound field so that it does not exceed 180 dB re: 1 μPa within 22 km (14 mi; 12 nm) of any coastline. Second, several of these areas are within OBIAs 1, 3, and 4, which include the North Atlantic right whale critical habitat areas as well as areas in the Gulf of Maine, the Great South Channel, Georges Bank, and the southeastern U.S. right whale seasonal habitat.
- Hoyt (2011): We compared the 1st and 2nd editions of Hoyt (2005 and 2011) to ensure that we have not overlooked any additional areas for consideration. The results are in Appendix F of the Navy's 2012 FSEIS/SOEIS. Based on that review and after discussion with the Navy, we have designated an additional OBIA: the Abrolhos Bank off the Brazilian Coast in the Southwest Atlantic Ocean.
- Habitat in the Northwest Pacific Ocean: Even though there is evidence of baleen whale activity in waters around the Emperor Seamount Chain, Oyashio/Kuroshio Currents, Ogasawara and Mariana Archipelagos, and Shatsky Rise, they do not meet the selection criteria for an OBIA as we did not find scientific evidence that these whales occur in these waters in densities higher than any other similar location or use these areas in concentrated numbers for breeding/calving, foraging, or migration. See responses to comments in Chapter 7 of the Navy's 2012 FSEIS/SOEIS for detailed information on our analyses.
- Gulf of Mexico: See Comment 25.
- Hawaiian Islands: See Comment 26.
- Southeast Alaska: The commenters have mischaracterized what the SPLASH report states regarding migration corridors for humpback whales in the North Pacific Ocean. The SPLASH report neither delineates nor depicts migration corridors, but instead describes and depicts movements of individually tagged whales between the winter and summer grounds (Calambokidis *et al.,* 2008). The SPLASH report details the complexity of humpback whale movements in the North Pacific, which encompass much of the North Pacific Ocean between the Hawaiian and Japanese Islands and the Gulf of Alaska and waters of northeastern Russia. We did not exclude this area from the selection process. For example, we considered Fairweather Grounds, although not specifically mentioned in the SPLASH report (Calambokidis *et al.,* 2008), but ultimately did not select the area as a potential OBIA for foraging in southeastern Alaska waters based on a lack of supporting information. Additionally, we also reviewed the Glacier Bay National Park and Preserve, southeastern Alaska.
- North Atlantic Right Whale: The commenter notes the existence of ''the North Atlantic right whale migration corridor'' in waters less than 200 meters in depth off the U.S. Atlantic coast. The available sighting data, collected over several decades, are insufficient to represent a specific migration corridor for the North Atlantic right whale off the U.S. Atlantic coast or elsewhere in the North Atlantic Ocean (Kenney, 2012 personal communication). The winter locations and movements of much of the North Atlantic right whale population are currently unknown (Waring, *et al.,* 2010).
- Areas Referenced in Previous LFA sonar Rules: We have re-evaluated all areas referenced in the previous LFA sonar rulemakings. For additional information see the 2012 FSEIS/SOEIS, Appendices D and F and the Navy's response to public comments.

Monitoring

Comment 28: The Commission recommends that we issue the final rule, provided that we require the Navy to monitor for 60 minutes before resuming SURTASS LFA sonar transmissions

after a delay or suspension related to the sighting of a marine mammal in the LFA sonar mitigation or buffer zones unless the Navy observes the animal leaving those zones.

Response: In this rulemaking, as in our past regulations for SURTASS LFA sonar, we require the Navy to immediately delay or suspend SURTASS LFA sonar transmissions if they detect a marine mammal within or about to enter the SURTASS LFA sonar mitigation and buffer zones. During the delay/suspension, the Navy would still operate the HF/M3 active sonar system to monitor for the presence of marine mammals as well as conducting visual and passive acoustic monitoring. The Navy may resume operations no sooner than 15 minutes after:

(1) All marine mammals have left the SURTASS LFA sonar mitigation and buffer zones; and

(2) Visual, passive acoustic, and active acoustic monitoring have determined that there are no further detections of marine mammals within the SURTASS LFA sonar mitigation and buffer zones.

We believe that requiring the extension of the post-contact monitoring for an additional 45 minutes is not warranted due to the proven effectiveness of the HF/M3 active sonar system. The HF/M3 active sonar system provides 24-hour, all-weather, active acoustic monitoring of the 180-dB SURTASS LFA sonar mitigation zone and the 1-km (0.62 mi; 0.54 nm) buffer zone around the LFA sonar mitigation zone. In all, the Navy can effectively monitor for marine mammals for approximately 2-km (1.2 mi; 1.1 nm) around the vessel. The HF/M3 active sonar system's effective detection probability for marine mammals within the SURTASS LFA sonar mitigation zone approaches 100 percent, based on multiple pings. Combined with the passive acoustic (estimated 25 percent detection probability) and visual monitoring (estimated nine percent detection probability) requirements, all three systems together have an effective detection probability of at least 99 percent at 1 km (0.62 mi; 0.54 nm) from the vessel. Based upon our review of nine years of data from monitoring reports on previous SURTASS LFA sonar activities (i.e., the best available information), we consider the likelihood of the Navy not detecting a marine mammal within the SURTASS LFA sonar mitigation zone to be extremely small (less than one percent).

The Navy has evaluated the effectiveness of the monitoring measures in the 2007 Final Comprehensive Report (DoN, 2007) and the 2011 Final Comprehensive Report (DoN, 2011) submitted under 50 CFR 216.186(c). These reports are available to the public (see **ADDRESSES**).

Comment 29: The Commission recommends that we issue the final rule, provided that we require the Navy to monitor (i.e., visually, passive and active acoustically) for a minimum of 30 minutes after SURTASS LFA sonar transmissions cease, using visual observation (if during daylight hours as defined in the proposed regulations), passive acoustics, and the active sonar system.

Response: In this rulemaking, as in our past regulations for SURTASS LFA sonar, we require the Navy to continue the three-part monitoring program for at least 15 minutes after completing a SURTASS LFA sonar transmission exercise. We decline to extend the post-operational monitoring by an additional 15 minutes.

Per the MMPA, our prescription of the Navy's mitigation measures reflects a careful balancing of the likely benefit of any particular measure for marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Over the last nine years, there have been few marine mammal detections, either by visual observation, passive acoustic or active acoustic monitoring, during the 15-minute post-transmission period. Imposing additional data collection requirements, such as extending post-transmission monitoring to 30 minutes, would not meaningfully increase our knowledge of the species or SURTASS LFA sonar impacts to warrant the additional time and cost expenditures. Moreover, the Navy must balance the small benefits gained by obtaining this incremental amount of additional data against the impact on fleet operations that the additional delay would necessarily entail. Waiting an additional 15 minutes before recovering the towed SURTASS horizontal line array and the SURTASS LFA sonar vertical line array would delay the ship's ability to depart the area at the normal transiting speed of 10 knots (kts) (11.5 miles per hour (mph); 18.5 km per hour (kph)) (rather than the slower operating speed with deployed arrays of three kts (3.5 mph; 5.5 kph).

This regulation also requires the Navy to conduct visual monitoring from the ship's bridge during daylight hours (30 minutes before sunrise and until 30 minutes before sunset) for marine mammals during active SURTASS LFA sonar operations. Although not required by the regulation, the ship's lookouts are monitoring the area at all times, including during array retrieval and non-transmission periods. The Navy will report marine mammal detections noted by the lookouts during non-transmission periods in the quarterly, annual, and five-year comprehensive reports.

Research

Comment 30: One commenter noted that the research conducted by both environmental advocacy groups and government entities such as the Navy were useful; encouraged all parties to maintain reasonable efforts and resources reserved for continued research; and asked that we should remain vigilant and responsive to the results.

Response: We agree and require the Navy to conduct monitoring and research that will result in increased knowledge of the species, the level of taking, or impacts on populations of marine mammals that we expect to be present during SURTASS LFA sonar operations. Also, this final regulation governing the take of marine mammals incidental to Navy's SURTASS LFA sonar operations contains an adaptive management component. This provides a mechanism for NMFS and the Navy to modify (or add or delete) mitigation or monitoring measures, as appropriate, based on new information. We would add, modify or delete mitigation or monitoring measures in consultation with the Navy if doing so creates a reasonable likelihood of accomplishing the goals of mitigation and monitoring laid out in this final rule. We and the Navy will meet annually (if deemed necessary by either agency) to discuss the monitoring reports, Navy research and development outcomes, current science, and determine whether mitigation or monitoring modifications are appropriate.

NEPA Concerns

Comment 31: The NRDC stated that the proposed rule fails to consider single dual criteria alternative for coastal protection, despite the Court's recognition of the importance of the continental shelf.

Response: In light of the comprehensive efforts to identify and analyze areas of biological importance outside of the 22 km (14 mi; 12 nm) coastal standoff zone and the need for broad operational flexibility, the Navy considered the dual criteria for coastal exclusion zones within the overall OBIA analysis process (see Subchapter 4.5.6 of the Navy's 2012 FSEIS/SOEIS). Subchapter 4.8.1 (Alternatives Previously Considered) in the Navy's

2012 FSEIS/SOEIS and subchapter 2.6.4 in the Navy's 2007 FEIS provide a summary of the results of the detailed analysis of the differences in potential impacts if the coastal standoff were increased from 22 km (14 mi; 12 nm) to 46 km (29 mi; 25 nm).

Of the 21 OBIAs in the proposed rule, 17 included continental shelf/slope areas and similar coastal areas. We reviewed the continental shelf area in the northwest Atlantic Ocean (with input from the Navy and subject matter experts) and determined that designating the entire eastern seaboard out to the 200-m (656-ft) isobath did not meet the criteria for a single OBIA. However, several scientifically-supported areas over the continental shelf met the criteria for an OBIA. They are:

- Georges Bank (OBIA #1);
- Roseway Basin Right Whale Conservation Area (OBIA #2);
- Great South Channel (OBIA #3) including North Atlantic right whale critical habitat, Stellwagen Bank National Marine Sanctuary, and areas within the Gulf of Maine; and
- Southeastern U.S. Right Whale Seasonal Habitat (North Atlantic right whale critical habitat) (OBIA #4).

In addition to our review of the continental shelf area in the northwest Atlantic Ocean, the final rule designates OBIAs in the northwest U.S. continental, Patagonian, Bahamian, Madagascar, east Brazilian, the northeast Australian, the southeast Australian, and Sakhalin Island shelves or slopes.

Comment 32: In October 2011, the NRDC requested a meet and confer with the parties to the 2008 SURTASS LFA sonar litigation. Their comment on our proposed rule states that we did not make any modifications to the proposed rule based on their concerns with the proposed mitigation measures (as noted in the Navy's 2011 Draft Supplemental Environmental Impact Statement/ Supplemental Overseas Environmental Impact Statement) nor was there an effort to meet and confer. They further state that they seek mitigation that conservatively identifies and protects important habitat, reflects the global scope of the Navy's action, and addresses the Court's concerns.

Response: See our Responses to Comments 12, 14, 17 and 20. The ''meet-and-confer'' provision contained in the 2008 Stipulated Settlement Agreement Order (Civ. Action No. 07–4771–EDL) relates to altering the agreed-upon operating areas contained in that specific agreement for the five-year period of the 2007 Rule.

Comment 33: The NRDC states: ''The fundamental purpose of an EIS is to compel decision-makers to take a ''hard look'' at a particular action—both at the environmental impacts it will have and at the alternatives and mitigation measures available to reduce those impacts—before a decision to proceed is made 40 CFR 1500.1(b), 1502.1; *Baltimore Gas & Electric* v. *NRDC,* 462 U.S. 87, 97 (1983). To that end, NEPA requires agencies to make every attempt to obtain and disclose data necessary to analyze environmental effects and make a reasoned choice among alternatives. See 40 CFR 1502.22(a). The simple assertion that ''no information exists'' does not suffice; unless the costs of securing the information are exorbitant or the means to obtain it are not known, NEPA requires that it be obtained. Id.; see, e.g., *Cabinet Resource Group* v. *U.S. Fish and Wildlife Service,* 465 F.Supp.2d 1067, 1100 (D. Mont. 2006). Additionally, the alternatives analysis to support NMFS' rulemaking requires a full consideration of available mitigation measures.

Response: See the Navy's response to Comment NRDC–04 in the Navy's 2012 FSEIS/SOEIS and our Response to Comment 20.

With regard to taking a hard look at data poor areas, the adaptive management component of our regulation provides a mechanism for us and the Navy to modify (or add or delete) mitigation or monitoring measures, as appropriate, based on new information. We would add, modify or delete mitigation or monitoring measures in consultation with the Navy if doing so creates a reasonable likelihood of accomplishing the goals of mitigation and monitoring laid out in this final rule. We and the Navy will meet annually (if deemed necessary by either agency) to discuss the monitoring reports, Navy research and development outcomes, current science, and determine whether mitigation or monitoring modifications are appropriate (see the 2012 FSEIS/SOEIS Subchapter 1.4.5).

Comment 34: The NRDC stated that the proposed rule and DSEIS screened out more than 20 recommended OBIAs that otherwise received habitat rankings of ''two'' or greater, on the grounds that they are not of high importance for non-baleen whales including areas in the Northeast Atlantic, the Mediterranean Sea, and the Gully. They believe this approach to be non-precautionary and inappropriate for the marine mammal species on which the SURTASS LFA sonar system has not been tested. They cite that certain species other than baleen whales, such as sperm whales and pinnipeds, have greater acoustic sensitivity in the low frequencies than do odontocetes as a group; and a number of other species, such as beaked whales and harbor porpoises, have demonstrated sensitivity to a variety of sounds at relatively low acoustic thresholds. NRDC further stated: ''Originally, NMFS intended to treat frequency specialization as one factor among several in determining the relative importance of a would-be OBIA. Including such areas in practicability discussions with the Navy, and addressing them on a case-by-case basis, is required under the MMPA, and is a reasonable alternative that should be considered, and adopted, in the SEIS.''

Response: In the **Federal Register** publication of the proposed rule for our initial determination, we explained that it was appropriate to consider marine mammal OBIAs only for those species whose best hearing sensitivity is in the low frequency range and screen out areas that qualified solely on the basis of their importance for mid- or high-frequency hearing specialist species such as sperm whales, beaked whales, and harbor porpoises (77 FR 842; January 6, 2012; page 877). We have carefully considered the commenter's recommendations, and following is a more detailed explanation of how we plan to proceed with a modification to our plan for these species.

We and the Navy both acknowledge the evidence showing that beaked whales and harbor porpoises have responded to a variety of sources (but not SURTASS LFA sonar) at lower received levels than other species respond to those same sources. Even if one assumed that beaked whales or harbor porpoises similarly also respond to SURTASS LFA sonar at lower received levels than other taxa, in light of their very decreased sensitivity to this frequency, the distances at which beaked whales and harbor porpoises can hear LFA sonar sounds (and therefore be expected to respond) are still significantly less than those for low-frequency hearing specialist species.

Additionally, (which is the difference between the animal's hearing threshold for a particular frequency and the received sound level) for beaked whales and harbor porpoises at the LFA sonar frequency is significantly lower than the sensation level for low-frequency hearing specialists. In addition, the sensation level for beaked whales and harbor porpoises at the LFA sonar frequency is also smaller than their sensation level when exposed to higher frequencies. These facts may lessen the likelihood of a response. So–whereas the extensive distances at which low

frequency specialist species might hear and potentially respond to the SURTASS LFA sonar source support the designation of large areas as OBIAs to, where practicable, limit operation and reduce impacts to mysticetes in areas of high densities or important behaviors, the far shorter distances from the LFA sonar source at which beaked whales or harbor porpoises might potentially respond would not support operational limitations across large areas in the form of OBIAs. The SURTASS LFA sonar mitigation and buffer zones and the coastal standoff zones will offer significant protection for beaked whales and harbor porpoises from a sound source that they are less physically equipped to hear than are mysticetes.

Further, regarding the original assumption that beaked whales or harbor porpoises might respond to SURTASS LFA sonar in the same manner and at the same lower received levels (than other taxa) that they respond to other sound sources, some scientists suggest that the ecological context of LFA sonar sweeps (which are similar to mysticete vocalizations) for beaked whales and harbor porpoises is such that one should not expect them to negatively respond. However, we, and the scientists we consulted, are unaware of targeted data to support this hypothesis (though there were opportunistic observations of these species during the Low Frequency Sound Scientific Research Program (LFA SRP)), which is why we recommended that the Navy augment their monitoring plan to address whether and how these species respond to LFA sonar, which they did (see the Beaked Whale and Harbor Porpoise Monitoring Section).

Regarding the inclusion of OBIAs for pinnipeds and sperm whales because they are more sensitive to lower frequency sounds than other odontocetes: we have included OBIAs for pinnipeds where warranted (OBIA 8—Patagonian Shelf Break), and we have not identified any areas that meet the OBIA criteria based solely on sperm whales. We, in consultation with the Navy, will consider designating OBIAs for sperm whales if, through the adaptive management process, areas that meet the OBIA criteria are identified. Based on vocalizations, anatomy, and other information, sperm whales are likely to be more sensitive in the LFA sonar frequency range than other odontocetes and therefore the distance at which they would hear and potentially respond to the source is likely more similar to mysticetes. Accordingly, we will consider the designation of OBIAs for that species should supporting information become available.

Comment 35: The NRDC stated: ''Both LFA I and LFA II [litigation] recognize that the burden to identify OBIAs rests squarely with the agencies. As the Court has noted, ''it is improper for NMFS, the government agency tasked by the MMPA with requiring measures to ensure the least practicable impact on marine mammals when authorizing takes, to shift the burden to members of the public to prove that additional exclusion areas are warranted.'' *NRDC* v. *Gutierrez,* 2008 WL 360852 at *8. It is equally improper for the agencies to shift that same burden to other agencies or experts. Id. (observing that NMFS had 'improperly shifted the burden to its own parent agency to provide detailed information regarding the marine life there').''

Response: See Comments 12 and 13. We did not shift the burden of identifying OBIAs to other agencies or to the subject matter experts.

Comment 36: The NRDC stated: ''The agencies have improperly rejected numerous [OBIA] areas on the grounds that they occur entirely within the Navy's 22-km (12 nm) coastal exclusion zone. First, NMFS failed to consider the relevance of identifying important near-coastal habitat to establishing meaningful buffer zones for these areas. Instead, it summarily ruled out the vast majority of established and proposed MPAs as ineligible for additional protection because they fall within the coastal zone (see DSEIS at D–39 to D–101), and instructed its experts to nominate only areas extending at least partly beyond the 12 nm limit (DSEIS at D–4). (This problem is soluble by generally enlarging the coastal stand-off zone.).'' Citing Navy's the behavioral risk function, the NRDC suggested that the agencies should consider and adopt wider buffer zones around their OBIAs.

Response: The Navy has stated in their request for regulations and Letters of Authorization that they will not operate SURTASS LFA sonar vessels within 22 km (14 mi; 12 nm) of any coastline, including islands. Therefore, focusing our efforts to nominate areas outside of this zone is logical and appropriate.

Regarding the commenter's suggestion that the Navy adopt a wider buffer zone around OBIAs, we refer the commenter to Response to Comment NRDC–17 of the Navy's 2012 FSEIS/SOEIS.

Comment 37: The NRDC stated: ''Under the various settlement agreements and orders that have helped govern use of the LFA system since 2002, the Navy has practicably avoided several biologically important areas in the western Pacific, particularly off the coast of Asia and in the Philippine Sea. It is not entirely clear how NMFS considered these areas in the present process, since the DSEIS suggests that its regional experts proposed somewhat different (and generally more expansive) boundaries than the ones adopted in the course of negotiation in LFA I and LFA II; in any case, however, all but one of these candidate OBIAs were rejected, most receiving scores of ''zero'' (or at best ''one'') on the agency's scale. NMFS' evaluation of these areas is highly problematic. Even though they occur in a region where little comparative density information is available and thus require the use of alternative sources to assess; even though they are supported by expert recommendation; even though additional sources suggest the occurrence there of small, localized populations and endemism in some species; and even though avoidance of at least part of these areas appears practicable, at least on a seasonal basis—none of these potential avoidance areas was assessed for its practicability. See, e.g., DSEIS at D–338 (scoring as ''zero'' a resident population of fin whales in the Yellow Sea and East China Sea that exhibits morphological differences from other fin whales). Nor, apparently, did NMFS attempt to obtain additional data on these areas beyond what its regional experts proposed.''

Response: See Comments 12, 13, and 14 regarding the scope of our analyses. These areas cited in the comment do not meet the biological criteria for designation as an OBIA so there was no need for a practicability assessment by the Navy. Moreover, the Stipulated Settlement Agreement Order setting forth those areas explicitly stated it was not intended to serve as precedent for future rulemaking.

Regarding fin whales in the north Pacific Ocean, we found no new data to clarify the population structure of the species. Mizroch *et al.* (2009) reviewed the distribution and movement data available for the region and cited literature from the late 1950s and early 1960s, noting the possibility of a non-migratory stock of fin whales in the East China Sea. We note that these are the same citations provided by the subject matter expert. Fujino (1960) suggested that whales caught in the East China Sea were part of a local population that did not migrate to northern waters. In addition to Fujino's immunogenetic findings, he analyzed unpublished data that indicated fin whales from the East China Sea were different from other North Pacific fin whales in terms of growth rate, length at sexual maturity,

external body proportions, shape of skull and shape and growth rate of baleen.

Comment 38: The NRDC stated: ''According to the DSEIS, the Navy eliminated the Southern California Bight from the list of ''eligible'' OBIAs because it determined that ''avoiding this area is impracticable.'' DSEIS at 4–80. The Navy does not provide any specific information on LFA training in the SOCAL Range Complex, making a full assessment difficult; but even assuming that its determination is well-founded, more analysis is required. As it stands, the DSEIS appears to consider the practicability only of a complete, year-round LFA sonar exclusion. It does not consider any procedural requirements (e.g., requiring Fleet-level approval for use), substantive standards (e.g., allowing use only when certain criteria are met), or targeted restrictions (e.g., limiting the number of activities per annum or avoiding biologically important periods such as the blue whale foraging season), or any other mitigation methods that would protect this vital habitat while allowing the Navy use for training purposes. The Southern California Bight is an area of high importance to multiple marine mammal species, including several species of endangered baleen whales, and maintains, despite some apparent shifts in habitat, what is certainly one of the largest concentrations of blue whales on the planet. Reconsideration of this area is essential. NMFS should confirm that no other areas have been rejected thus far for reasons of practicability.''

Response: See Comment 16 regarding our discussions with the Navy on the practicality of more limited time/area closures for this area. The Navy's 2012 FSEIS/SOEIS (Subchapter 4.5.2.3) provided specific and sufficient information to support the Navy's determination that avoiding this area is operationally impracticable. Because of the year-round training that occurs on this range, the Southern California Range Complex was the only OBIA candidate that the Navy considered to be operationally impracticable to avoid.

The Navy is not currently planning to use SURTASS LFA sonar in the Southern California Bight. If the Navy were to plan use of SURTASS LFA pursuant to the FSEIS/SOEIS, the Navy would include the details of that plan in the Letter of Authorization application for the applicable year. At that time, we and the Navy will discuss what, if any, other measures are practicable in light of the projected use of SURTASS LFA sonar and best information available for the species potentially affected by that use.

Regarding consideration of other areas by the Navy, we confirm that the Navy has not eliminated other areas from consideration based upon practicability.

Comment 39: The NRDC stated: ''Finally, the Navy may be able to affirmatively define its operating area, in some regions, in a way that avoids high-value habitat and most if not all OBIAs. As the Court has observed, confining LFA operations to areas and seasons of lesser concern would be an effective means of mitigation. See *NRDC* v. *Gutierrez,* 2008 WL 360852 at *6. While the Navy has indicated that it cannot, as a general rule, practicably site its activities in low-value habitat for marine mammals, that option may be available in some regions. The Navy's current operating area off Hawaii, for example, which was established through the 2008 settlement agreement in LFA II, effectively avoids most if not all of the areas of greatest importance to small, localized populations of marine mammals around the main Hawaiian Islands, as well as the Papahanaumokuakea Marine National Monument. The agencies should consider using this reasonable alternative in specific places, like Hawaii, where it may be viable.''

Response: The Navy's annual Letters of Authorization application process (2011 DSEIS/SOEIS Sub-chapter 2.4.2) includes the goal '' * * * to identify marine areas for SURTASS LFA sonar routine testing, training and military operations that would have the least practicable adverse impacts on marine mammals, while meeting National Security objectives.'' This entails, as part of the SURTASS LFA sonar sensitivity/risk assessment approach, the evaluation of operating areas with minimal marine mammal/animal activities, as portrayed in Figure 2–3 and discussed in Subchapter 4.4 of the 2012 FSEIS/SOEIS. As to the commenter's proposal for the Navy to adopt the 2008 settlement agreement's coastal standoff distance in specific places, like Hawaii, we refer the commenter to the comprehensive OBIA analysis process that was detailed in the 2012 FSEIS/SOEIS Appendix D and in Appendix F of the final document. We believe that the OBIA analysis process incorporated the prospect of the Navy avoiding areas of importance to small, distinct populations of marine mammals with limited distributions including around the main Hawaiian Islands and elsewhere to the greatest extent feasible considering national security tasking.

Comment 40: The NRDC stated: ''Finally, the Navy's summary analysis, as the Court recognized, does not take into account the shelf's particular environmental importance and vulnerability. *NRDC* v. *Gutierrez,* 2008 WL 360852 at *23 (''the importance of the location of the continental shelf to the environmental impact''). The LFA II Court agreed that the Navy need not necessarily analyze the specific dual-criteria exclusion [i.e., a 22-km versus a 46-km coastal standoff zone] established in the previous years' injunction for the Philippine Sea; however, it also found that this did not excuse the Navy 'from evaluating a dual criteria alternative that would meet the stated purpose and need, such as a dual criteria alternative used in some areas, but not others, with an exception for non-routine military tracking operations. *NRDC* v. *Gutierrez,* 2008 WL 360852 at *23. The Court based its conclusion particularly on the importance of the location of the continental shelf to the environmental impact and the fact that the Navy has been operating under a dual criteria for five years. The Court's point is all the more salient to the present DSEIS, given that the Navy has been operating with dual criteria throughout the western Pacific (i.e., its entire effective operating area) for almost ten years now.''

NRDC further stated: ''The Court observed in LFA II that NMFS' failure to properly designate OBIAs rendered more serious' its failure to consider dual-criteria alternatives for the continental shelf. SDEIS at *13. The Court did not say that an OBIA analysis could render a dual-criteria analysis completely unnecessary—but even if it could, the agencies' analysis in the DSEIS simply does not fill the need that the Court identified.''

Response: All SURTASS LFA sonar operations must occur under the geographic restriction of a coastal standoff range of at least 22 km (14 mi; 12 nm).

We, along with the Navy, considered the biological importance of the continental shelf outside the current coastal standoff range within the OBIA analysis (see Response to Comment 31).

Comment 41: The NRDC stated: ''The Court, in 2008, observed that the Navy's impact analysis did not reflect the latest abundance data, particularly for 'small localized' populations of marine mammals. *NRDC* v. *Gutierrez,* 2008 WL 360852 at *16–17. Unfortunately, in the present DSEIS, the Navy appears again to have used basin-wide or pelagic abundance estimates in determining the size of some more discrete marine mammal populations, as, for example, around Hawaii. DSEIS at 4–61 to 4–62. The Navy should use the latest, most precautionary data, to properly reflect

new information on marine mammal population structuring.

Response: The Navy used pelagic data because the Navy intends to operate in offshore, pelagic waters. However, they have included modeled estimates for the false killer whale insular stock around Hawaii in addition to information on the pelagic stock in the 2012 FSEIS/SOEIS.

Also, the Navy has revised the 2012 FSEIS/SOEIS to include modeled data on the coastal bottlenose dolphin stocks off U.S. east coast (southern migratory coastal stock, northern Florida coastal stock, and central Florida coastal stock). We refer the reader to Tables 4–14, 4–15, 4–17, C–26, C–27, and C–29 in the Navy's 2012 FSEIS/SOEIS.

We also note that one of our qualifying criteria for designating OBIAs is small, distinct populations of marine mammals with limited distributions.

Comment 42: The NRDC stated that the proposed rule and DSEIS heavily relied on the LFA Scientific Research Program (SRP) in establishing risk parameters for the LFA sonar system. They also noted that the new DSEIS appears to put even more reliance on the SRP, applying it directly to non-focal species and suggested that the SRP's focal follow technique could not detect more complex changes in responses. Finally, the NRDC advocated that we take a more conservative approach in extrapolating from the SRP.

Response: We agree that technologies that produce finer resolution data have advanced since conclusion of the LFA LFS SRP. However, very few active underwater systems/sensors have the benefit of such a directed and extensive research effort as have the LFS SRP. The results of the LFS SRP are still sound (See Response to Comment 9). Moreover, there has never been evidence of SURTASS LFA sonar causing injury, and all analysis and modeling results support the conclusion that no more than 12 percent of any marine mammal species or stock has been taken by Level B harassment from SURTASS LFA sonar on an annual basis. In fact the percentages have been much lower for the majority of marine mammal stocks.

Comment 43: ''The Navy's preferred alternative would allow LFA training to proceed within the Navy's existing U.S. ranges (among many other locations), particularly the Hawaii Range Complex and SOCAL Range Complex. Within these ranges, the Navy has greater opportunity to apply additional monitoring measures. While the 2007 SEIS evaluated and rejected a number of supplemental measures, it did not consider the use of passive gliders or other passive acoustic systems to monitor the potential on-range operating area in advance of LFA activity, whether to ensure that densities of target species are sufficiently low before exercises begin, to relocate or adjust the timing of an LFA exercise, or for another planning purpose. Nor of course could the earlier SEIS evaluate the various new marine mammal monitoring techniques developed by the Office of Naval Research and other bodies over the last four years. The Navy should consider additional monitoring measures when operating LFA close to shore or in established Navy ranges.''

Response: We authorize Navy Range Complex mitigation and monitoring requirements under separate regulations. When SURTASS LFA sonar operates on a Navy range complex, it does so under its current final rule and Letter of Authorization

The commenter also refers to various new marine mammal monitoring techniques developed by the Office of Naval Research (ONR) and other bodies over the last four years. We understand that the Navy's Deputy for Undersea Surveillance, under the Chief of Naval Operations, maintains a cooperative relationship with ONR's Marine Mammals Program and, as such, will be aware of any new marine mammal monitoring systems or techniques that could potentially be used with SURTASS LFA sonar, depending on its safety, efficacy, cost-effectiveness, and practicability.

Miscellaneous Issues

Comment 44: Several individuals, OceanCare, and the Surfrider Foundation, expressed general opposition to SURTASS LFA sonar activities and to our issuance of a Marine Mammal Protection Act authorization because of the danger of killing or harassing marine life. Another individual protested our decision to allow continued harassment of marine mammals by the United States Navy and stated: ''NMFS' responsibility is to act as such a steward, not to rubber stamp proposals which have the potential to cause significant harm to the majestic marine mammals which roam the oceans of the world.''

Response: We appreciate the commenters' concerns for the marine life in the areas of the proposed activities. We note that over the course of the previous two rules, the Navy has reported no incidents of injury to or mortality of any marine mammal. However, because the probability of detection by the active sonar system within the SURTASS LFA sonar mitigation zone is not 100 percent, we will include a small number of Level A harassment takes for marine mammals over the course of the five-year rule.

The activities, described in detail in the Proposed Rule (77 FR 842; January 6, 2012), include the use of active acoustic sources incidental to upcoming routine training and testing and use of the SURTASS LFA sonar system during military operations. It is our responsibility to determine whether the activities will have a negligible impact on the affected species or stocks; will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, where relevant; and to prescribe the means of effecting the least practicable adverse impact on the affected species or stocks and their habitat, as well as monitoring and reporting requirements.

Regarding authorizing harassment, the Marine Mammal Protection Act allows U.S. citizens (which includes the Navy) to request take of marine mammals incidental to specified activities, and requires us to authorize such taking if we can make the necessary findings required by law and if we set forth the appropriate prescriptions. As explained throughout this rulemaking, we have made the necessary findings under 16 U.S.C. 1371(a)(5)(A) to support issuance of this final rule and Letters of Authorization to the Navy.

Comment 45: One commenter stated: ''In *Winter* v. *Natural Resources Defense Council,* 555 U.S. 7, 12 (2008), the court strongly suggested that even if irreparable harm to the marine mammals could be found due to the Navy's activities, 'any such injury is outweighed by the public interest and the Navy's interest in effective, realistic training of its soldiers.' The court, in weighing the Navy's interests against the perceived environmental impact, went so far as to state: '[T]he proper determination of where the public interest lies does not strike us as a close question.' Accordingly, the record fails to show environmental impact projections that outweigh the public interest in national defense here. First, the proposal itself indicates that no mortalities of protected marine mammals are anticipated (77 FR 842–01, 846). Second, projected Level A Harassment seems practically non-existent as well (0.0001% of north Pacific right whale stocks and 0.00% of all other species) (77 FR 842–01, 884).''

Response: This comment is beyond the scope of this rulemaking.

Estimated Take of Marine Mammals

In the Estimated Take of Marine Mammals section of the proposed rule, we related the potential effects to

marine mammals from SURTASS LFA sonar operations to the Marine Mammal Protection Act's definitions of Level A and Level B harassment and attempted to quantify the effects that might occur from the specific activities that the Navy intends to conduct (77 FR 842; January 6, 2012; pages 882–884).

In the Estimates of Potential Marine Mammal Exposure section of the proposed rule, we described in detail how the Navy calculated its take estimates through modeling (77 FR 842; January 6, 2012; pages 883–884). Briefly, the Navy must predict the sound field to which a given marine mammal species could be exposed over time to assess the potential effects on marine mammals by the SURTASS LFA sonar source operating at a given site. This is a multi-part process involving:

(1) The ability to predict or estimate an animal's location in space and time;

(2) The ability to predict or estimate the three-dimensional sound field at these times and locations;

(3) The integration of these two data sets into the Acoustic Integration Model (AIM) to estimate the total acoustic exposure for each animal in the modeled population; and

(4) Converting the resultant cumulative exposures (within the post-AIM analysis) for a modeled population into an estimate of the risk of a significant disturbance of a biologically important behavior (i.e., a take estimate for Level B harassment of marine mammals based upon an estimated percentage of each stock affected by SURTASS LFA sonar operations) or an assessment of risk in terms of injury of marine mammals (i.e., a take estimate for Level A harassment of marine mammals based on a cumulative exposure of greater than or equal to 180-dB re: 1 μPa single ping equivalent).

Because it is infeasible to model enough representative sites to cover all potential SURTASS LFA operating areas, the Navy's application presented 19 modeled sites as examples to provide take estimates for potential operating areas based on the current political climate. These data are examples of areas where the Navy could request Letters of Authorization under the 5-year rule because they are in areas of potential strategic importance and/or areas of possible naval fleet exercises. Thus the proposed rule did not specify the number of marine mammals that may be taken in the proposed locations because these are determined annually through various inputs such as mission location, mission duration, and season of operation.

For this final rule, we are adopting the Navy's estimates shown in the 2012 Final Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement (Tables 4.4 through 4.23) as the best scientific information currently available. The Navy continuously updates the analyses with new marine mammal biological data (e.g., behavior, distribution, abundance, and density) whenever new information becomes available.

For the annual applications for Letters of Authorization, the Navy proposes to present both the estimated percentage of a stock and the corresponding estimated numbers of individual animals of a stock that may be potentially harassed by SURTASS LFA sonar.

We do not expect that marine mammals would be injured by SURTASS LFA sonar because a marine mammal should be detected through the three-part monitoring program (visual, passive acoustic and active acoustic monitoring) and the Navy would suspend or delay active transmissions. The probability of detection of a marine mammal by the HF/M3 active sonar system within the SURTASS LFA sonar mitigation zone approaches 100 percent based on multiple pings (see the 2001 FOEIS/EIS, Subchapters 2.3.2.2 and 4.2.7.1 for the system's sonar testing results). The Navy's acoustic analyses predict that less than 0.0001 percent of the endangered north Pacific right whale stock and 0.00 percent of the stocks of all other marine mammal species may be exposed to levels of sound that could potentially result in Level A harassment (i.e., exposures at 180 dB re: 1 μPa or greater). Quantitatively, the Navy's request translates into take estimates of zero animals for any species including the endangered north Pacific right whale. However, because the probability of detection by the active sonar system within the SURTASS LFA sonar mitigation zone is not 100 percent, we will include a small number of Level A harassment takes for marine mammals over the course of the five-year regulations based on qualitative analyses.

Reviewing the Navy's historical data on visual alerts that have triggered a suspension of SURTASS LFA sonar transmissions, the data indicate that the largest grouping of mysticetes or odontocetes that triggered a shutdown outside of the SURTASS LFA sonar mitigation zone and within the buffer zone is three and two respectively. Based on this, we analyzed the take of no more than six mysticetes (total), across all species requested in the Navy's application by Level A harassment; no more than 25 odontocetes (across all species) by Level A harassment; and no more than 25 pinnipeds (across all species) by Level A harassment over the course of the 5-year regulations. These are the only quantitative adjustments that we have made to the requested takes from the Navy's modeled exposure results. Again, we note that over the course of the previous two rulemakings, the Navy has reported no incidents of injury to or mortality of any marine mammal. As with the 2002 and 2007 Rules, the Navy will limit operation of SURTASS LFA sonar to ensure that no more than 12 percent of any marine mammal stock would be taken by Level B harassment annually, over the course of the five-year regulations. This annual per-stock cap applies regardless of the number of SURTASS LFA sonar vessels operating. Also, the Navy will use the 12 percent cap to guide its mission planning and annual LOA applications. We have made no other changes to this section in the final rule.

Analysis and Negligible Impact Determination

Our proposed rule for SURTASS LFA sonar operations included a section that addressed the analysis and negligible impact determination of the Navy's activities on the affected species or stocks (77 FR 842; January 6, 2012; pages 884–887). The Navy has described its specified activities based on best estimates of the number of hours that the Navy will conduct SURTASS LFA sonar operations. The exact number of transmission hours may vary from year to year, but will not exceed 432 hours (18 days) annually for each vessel.

Taking all of the previous discussions into account, including the following:

- We anticipate no mortalities and very few or more likely no injuries to result from the action;
- We require the Navy to implement mitigation and monitoring measures including performing delay/shutdown protocols of active SURTASS LFA sonar transmissions when monitoring detects a marine mammal; geographic operational restrictions in coastal areas and offshore areas of biological importance for marine mammals;
- We anticipate a relatively small number of SURTASS LFA sonar systems deployed as well as a low number of annual transmission hours;
- We anticipate no adverse effects on annual rates of recruitment or survival of the affected species or stock; and
- Our consideration of the following sections discussed later in this document.

We have determined that Navy training, testing, and military operations

utilizing SURTASS LFA sonar will have a negligible impact on the marine mammal species and stocks present in operational areas in areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea.

Behavioral Harassment

As discussed in the Potential Effects of Exposure to SURTASS LFA Sonar Operations section in the proposed rule (77 FR 842; January 6, 2012; page 865–871), marine mammals may respond to SURTASS LFA sonar operations in many different ways, a subset of which qualifies as behavioral harassment. One thing that the take estimates do not take into account is the fact that marine mammals will most likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.) in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response.

For SURTASS LFA sonar operations, the Navy provided information (Tables 24–42 of the Navy's application) estimating numbers of total takes that could occur within the proposed operational areas. For reasons stated previously in this document, the specified activities associated with the proposed SURTASS LFA sonar operations will most likely fall within the realm of Level B behavioral harassment. We base this assessment on a number of factors from the Navy's 1997–98 Low Frequency Sound Scientific Research Program.

The Navy designed the two-year study to assess the potential impacts of SURTASS LFA sonar on the behavior of low-frequency hearing specialists, those species believed to be at (potentially) greatest risk. This field research addressed three important behavioral contexts for baleen whales: (1) Blue and fin whales feeding in the southern California Bight, (2) gray whales migrating past the central California coast, and (3) humpback whales breeding off Hawaii. Taken together, the results from the three phases of the LFS SRP do not support the hypothesis that most baleen whales exposed to received levels near 140 dB re: 1 μPa would exhibit disturbance behavior and avoid the area. These experiments, which exposed baleen whales to received levels ranging from 120 to about 155 dB re: 1 μPa, detected only minor, short-term behavioral responses. However, short-term behavioral responses do not necessarily constitute significant changes in biologically important behaviors.

Temporary Threshold Shift

Schlundt *et al.* (2000) documented temporary threshold shift in trained bottlenose dolphins and belugas after exposure to intense 1-second signal duration tones at 400 Hertz (Hz), and 3, 10, 20, and 75 kilohertz. We note that at the low frequency band tones of 400 Hz, the researchers were unable to induce temporary threshold shift in any animal at levels up to 193 dB re: 1 μPa at 1 m (the maximum level associated with the experiment's equipment). The researchers implied that the temporary threshold shift for a 100-second signal would be approximately 184 dB (DoN, 2001; Table 1).

When SURTASS LFA sonar transmits, there is a boundary that encloses a volume of water where received levels equal or exceed 180 dB re: 1 μPa (the 180–dB isopleth LFA sonar mitigation zone) and a volume of water outside this boundary where received levels are below 180 dB re: 1 μPa. The level of risk for temporary threshold shift for marine mammals depends on their location in relation to SURTASS LFA sonar. However, the Navy's standard protective measures, captured in our regulation, would ensure delay or suspension of SURTASS LFA sonar transmissions if any of the three monitoring measures detect a marine mammal within 2 km (1.2 mi; 1.1 nm) of the vessel. Thus, the mitigation measures would allow the Navy to reduce the number of marine mammals exposed to received levels of SURTASS LFA sonar or HF/M3 active sonar sound that could result in temporary threshold shift. For transient sounds, the sound level necessary to cause temporary threshold shift is inversely related to the duration of the sound. Again, in the case of SURTASS LFA sonar, we do not expect animals to be exposed to levels high enough or durations long enough to result in temporary threshold shift. In order to receive more than one ''ping'' during a normal vessel leg, an animal would need to match the ship in speed and course direction between pings.

Also, the Navy will conduct SURTASS LFA sonar operations to ensure that the sound field does not exceed 180 dB re: 1 μPa within 22 km (14 mi; 12 nm) of any coastline or within 1-km (0.62 mi; 0.54 nm) of the perimeter of any OBIA. These measures offer protection to areas with higher densities of marine mammals. Because the Navy will operate for the most part in waters that are not areas known for high concentrations of marine mammals, few, if any, marine mammals would be within the SURTASS LFA sonar mitigation and buffer zones.

Because of the relatively short duty cycle, the water depth of the convergence zone ray path, the movement of marine mammals in relationship to the SURTASS LFA sonar vessel, and the effectiveness of the three-part mitigation program, few marine mammals are likely to be affected by temporary threshold shift.

Permanent Threshold Shift

In our 2002 and 2007 rules, we, along with the Navy, based their estimate of take by injury or the significant potential for such take (Level A harassment) on the criterion of 180–dB. We continue to believe this is a scientifically supportable and conservative value for preventing auditory injury or the significant potential for such injury (Level A harassment), as it represents a value less than where the potential onset of a minor temporary threshold shift in hearing might occur based on Schlundt *et al.'s* (2000) research (see the Navy's 2007 Final Comprehensive Report Tables 5 through 8).

This regulation requires the Navy to ensure delay or suspension of SURTASS LFA sonar transmissions if any of the three monitoring protocols detect a marine mammal either entering the LFA sonar mitigation or buffer zone; (i.e., within approximately two km (1.2 mi; 1.1 nm)) of the SURTASS LFA sonar transmit array or vessel. The mitigation protocols would avoid exposing marine mammals to received levels of SURTASS LFA sonar or HF/M3 active sonar sound that would result in injury (Level A harassment). The sound pressure level that is capable of potentially causing injury to an animal is within less than 1 km (0.62 mi; 0.54 nm) of the vessel. Implementing a shutdown zone of approximately 2 km (1.2 mi; 1.1 nm) around the SURTASS LFA sonar array and vessel will ensure that no marine mammals are exposed to a sound pressure level greater than approximately 175 dB re: 1 μPa (received level). This is significantly lower than the 180–dB re: 1 μPa (received level) used for other acoustic projects for protecting marine mammals from injury. Serious injury is unlikely to occur unless a marine mammal is well within the 180–dB LFA sonar mitigation zone and close to the source. The closer the mammal is to the SURTASS LFA sonar transmit array or the vessel, the more likely that the Navy will detect the animal with the three-part monitoring protocols leading to the immediate

delay or suspension of SURTASS LFA sonar transmissions.

From 2003 to 2011, the Navy reported a total of 12 visual sightings (including two sightings during non-operational periods and one sea turtle sighting), four passive acoustic detections, and 130 HF/M3 active sonar system detections of marine mammals, all leading to 139 suspensions/delays of transmissions in accordance with mitigation protocols. Because the HF/M3 active sonar system is able to monitor large and medium marine mammals out to an effective range of 2 to 2.5 km (1.2 to 1.5 mi; 1.1 to 1.3 nm) from the vessel, it is unlikely that the SURTASS LFA sonar operations would expose marine mammals to a sound pressure level greater than approximately 175 dB re: 1 μPa. The area between the 180–dB LFA sonar mitigation zone and the additional 1-km (0.62 mi; 0.54 nm) buffer zone proposed by us (estimated to extend to approximately the 175-dB re: 1 μPa isopleth from the vessel) is an area where marine mammals would experience Level B harassment if exposed to SURTASS LFA sonar transmissions, in accordance with the Navy's risk analysis and acoustic modeling (DoN, 2001; Subchapter 4.2.3). Past results of the HF/M3 sonar system tests provide confirmation that the system has a demonstrated probability of single-ping detection of 95 percent or greater for single marine mammals, 10 m (32.8 ft) in length or larger, and a probability approaching 100 percent for multiple pings for any sized marine mammal. Further, implementing a shutdown zone of approximately 2 km (1.2 mi; 1.1 nm) around the vessel will ensure that no marine mammals are exposed to a sound pressure level greater than approximately 175 dB re: 1 μPa.

With three types of mitigation monitoring for detecting marine mammals, we believe it is unlikely that any marine mammal would be exposed to received levels of 180 dB re: 1 μPa before detection and the resulting SURTASS LFA sonar shutdown. However, because the probability is not zero, the Navy has requested and we considered Level A harassment takes incidental to SURTASS LFA sonar operations.

Mortality

There is no empirical evidence of strandings of marine mammals associated with the employment of SURTASS LFA sonar. Moreover, the system acoustic characteristics differ between low-frequency active sonar addressed here and the mid-frequency active sonars associated with strandings: Low frequency active sonars use frequencies generally below 1,000 Hz, with relatively long signals (pulses) on the order of 60 seconds; while mid-frequency active sonars use frequencies greater than 1,000 Hz, with relatively short signals on the order of 1 second.

We provided a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), Madeira (2000), Canary Islands (2002), Hanalei Bay (2004), and Spain (2006) in the proposed rule (77 FR 842; January 6, 2012; pages 871–872). These included operation of mid-frequency active sonar, deep water close to land (such as offshore canyons), presence of an acoustic waveguide (surface duct conditions), and periodic sequences of transient pulses (i.e., rapid onset and decay times) generated at depths less than 32.8 ft (10 m) by sound sources moving at speeds of 2.6 m/s (5.1 knots) or more during sonar operations (D'Spain, *et al.,* 2006). None of these features relate to SURTASS LFA sonar operations.

In summary, based on these analyses, the past nine years of SURTASS LFA sonar operations, and results from the LFS Scientific Research Program, we do not anticipate that SURTASS LFA sonar operations will likely have adverse effects on annual rates of recruitment or survival (i.e., population-level effects). Further, in consideration of the fact that the 22-km (14mi; 12 nm) coastal standoff zone and designated OBIAs restrict the use of SURTASS LFA sonar in known areas of feeding, calving, and breeding for marine mammals, we do not expect the activity to have the sort of energetic impacts on individuals that would be likely to result in reduced survivorship or reproductive success.

Accordingly we have determined that the total taking over the 5-year period of the regulations and related Letters of Authorization for the Navy's SURTASS LFA sonar activities will have a negligible impact on the affected species or stocks in the Navy's SURTASS LFA sonar mission areas.

Subsistence Harvest of Marine Mammals

We included a detailed discussion of the potential effects of the Navy's SURTASS LFA sonar operations on subsistence harvest (77 FR 842; January 6, 2012; pages 886–887). The information contained in this section has not changed from what was in the proposed rule.

We have determined that the possible future employment of SURTASS LFA sonar will not lead to unmitigable adverse impacts on the availability of marine mammal species or stocks for subsistence uses in the Gulf of Alaska.

Should the Navy operate SURTASS LFA sonar in the Gulf of Alaska, sonar operation would adhere to the shutdown in the mitigation and buffer zones, as well as established geographic restrictions, which include the coastal standoff range (which dictates that the sound field produced by the sonar must be below 180 dB re: 1 μPa within 22 km (14 mi; 12 nm) of any coastline) and at 1 km (0.62 mi; 054 nm) seaward of any OBIA outer perimeter which includes north Pacific right whale critical habitat. Additionally, the Navy will continue to keep Indian Tribal Governments informed of the timeframes of any future SURTASS LFA sonar exercises planned for the Gulf of Alaska or offshore the Washington or Oregon coasts.

Endangered Species Act

There are 15 marine mammal species under our jurisdiction that are listed as endangered or threatened under this Act with confirmed or possible occurrence in potential operational areas for SURTASS LFA sonar: The blue, fin, sei humpback, bowhead, north Atlantic right, north Pacific right, southern right, gray, and sperm whales as well as the western and eastern distinct population segments of the Steller sea lion, Mediterranean monk seal, Hawaiian monk seal, the eastern distinct population segments of the Steller sea lion; the Guadalupe fur seal and the southern distinct population segments of the spotted seal.

Pursuant to Section 7 of the Endangered Species Act, the Navy has consulted with NOAA Fisheries' Office of Protected Resources, Endangered Species Act Interagency Cooperation Division, on this action. We have also consulted internally on the issuance of regulations and annual LOAs under section 101(a)(5)(A) of the Marine Mammal Protection Act for this activity. NMFS' August 2012 Biological Opinion concludes that the proposed SURTASS LFA sonar operations and NMFS' issuance of regulations and subsequent LOAs to authorize incidental take of marine mammals are not likely to jeopardize the continued existence of the threatened and endangered species under NMFS' jurisdiction and are not likely to result in the destruction or adverse modification of critical habitat.

National Environmental Policy Act

We have participated as a cooperating agency on the Navy's 2012 FSEIS/SOEIS for employment of SURTASS LFA sonar, published on June, 8, 2012. The Navy has posted this document at *http://www.surtass-lfa-eis.com*. We have

adopted the Navy's 2012 FSEIS/SOEIS in connection with this Marine Mammal Protection Act rulemaking and prepared a Record of Decision.

Determination

Based on the analyses contained here and in the proposed rule (and other related documents) of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation and monitoring measures, we find that the Navy's SURTASS LFA sonar operations using active acoustic sources (including the HF/M3 active sonar system) over the five-year period will have a negligible impact on the affected species or stocks and will not result in an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses. We have issued regulations for these activities that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain any collection of information requirements for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

The Office of Management and Budget has determined that this final rule is not significant for purposes of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage, that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. We published the certification in the **Federal Register** notice of the proposed rulemaking on January 6, 2012. We received no comments about the certification. Accordingly, a final regulatory flexibility analysis is not required and none has been prepared.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effective date of the measures contained in the final rule. The Navy has a compelling national policy reason to continue military readiness activities without interruption to the routine training and testing as well as use of the SURTASS LFA sonar system during military operations.

This rule making began shortly after our receipt of the Navy's application for take authorization in August 2011. During that year, Navy, with our participation as a cooperating agency, was preparing its FSEIS/SOEIS for SURTASS LFA sonar. Both agencies seriously considered all public comments and worked together to ensure an outcome that satisfied both the Navy's purpose and need and our statutory responsibilities. In addition, after the proposed rule was published in the **Federal Register** in January 2012, we undertook a review of Hoyt (2011), a new edition of our key reference document to identify OBIAs in the world's oceans, to ensure we had not overlooked any other areas as potential OBIAs. In addition to the considerable time it took to review over 300 new areas identified in Hoyt (2011), the outcome of our review required us to engage in additional analyses and discussions both internally and with the Navy to determine if any other areas warranted OBIA consideration and designation.

The current regulation expires on August 15, 2012. The Navy has a compelling national policy reason to continue military readiness activities without interruption to the routine training and testing, and use of the SURTASS LFA sonar system. Under these circumstances, it was not possible to finalize the MMPA rule making and the NEPA obligations with sufficient time to allow for the 30-day delay in effectiveness date.

As discussed below, suspension/interruption of the Navy's ability to conduct routine training and testing as well as use of SURTASS LFA sonar during military operations disrupts adequate and realistic testing of military equipment, weapons, and sensors for proper operation and suitability for combat essential to national security.

In order to meet its national security objectives, the Navy must continually maintain its ability to operate in a challenging at-sea environment, conduct military operations, control strategic maritime transit routes and international straits, and protect sea lines of communications that support international commerce. To meet these objectives, the Navy must identify, develop, and procure defense systems by continually integrating test and evaluation support throughout the defense acquisition process and providing essential information to decision-makers. Such testing and evaluation is critical in determining that defense systems perform as expected and whether these systems are operationally effective, suitable, survivable, and safe for their intended use.

In order to effectively fulfill its national security mission, the Navy has a need to conduct routine training and testing as well as use of the SURTASS LFA sonar system during military operations covered by this final rule as soon as possible. The defense acquisition process is structured to be responsive and acquire quality products that satisfy user needs with measurable improvements on mission capability and operational support in a timely manner. Test and evaluation confirms performance of platforms and systems against documented capability needs and adversary capabilities. Delays in acquisition test and evaluation affect the Navy's need to meet its statutory mission to deploy worldwide naval forces equipped to meet existing and emergent threats. The Navy would be unable to plan to conduct activities covered by this final rule in the immediate future due to the uncertainties in the planning process and the fiscal and other consequences of planning for, preparing for, and then cancelling a major testing event. A 30-day delay furthers the amount of time the Navy is unable to plan for and execute an activity covered by this rule. Further, should an immediate national security issue arise; the 30-day delay would prevent the Navy from meeting its mission, which would have adverse national security consequences.

Waiver of the 30-day delay of the effective date of the final rule will allow the Navy to continue put SURTASS LFA sonar capability into the hands of U.S. Sailors quickly, while also ensuring compliance with the MMPA.

List of Subjects in 50 CFR Part 218

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: August 13, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs.

For reasons set forth in the preamble, 50 CFR part 218 is amended as follows:

PART 218–REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

Subparts T through W [Added and Reserved]

■ 2. Reserved subparts T through W are added.

■ 3. Subpart X is added to read as follows:

Subpart X—Taking and Importing of Marine Mammals; Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

Subpart X—Taking and Importing of Marine Mammals; Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

§ 218.230 Specified activity, level of taking, and species.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than four SURTASS LFA sonar systems conducting active sonar operations in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§ 216.106 and 218.238, include the transmission of low frequency sounds from the SURTASS LFA sonar system and the transmission of high frequency sounds from the mitigation sonar described in § 218.234 during routine training and testing as well as during military operations.

(a) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section may be authorized in certain areas of the Pacific, Atlantic, and Indian Oceans and the Mediterranean Sea, as specified in a Letter of Authorization.

(b) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section is limited to the following species and species groups:

(1) *Mysticetes*–blue whale (*Balaenoptera musculus*), bowhead whale (*Balaena mysticetus*), Bryde's whale (*Balaenoptera edeni*), fin whale (*Balaenoptera physalus*), gray whale (*Eschrichtius robustus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), North Atlantic right whale (*Eubalaena glacialis*), North Pacific right whale (*Eubalena japonica*), pygmy right whale (*Caperamarginata*), sei whale (*Balaenoptera borealis*), southern right whale (*Eubalaena australis*),

(2) *Odontocetes*–Andrew's beaked whale (*Mesoplodon bowdoini*), Arnoux's beaked whale (*Berardius arnuxii*), Atlantic spotted dolphin (*Stenella frontalis*), Atlantic white-sided dolphin (*Lagenorhynchus acutus*), Baird's beaked whale (*Berardius bairdii*), Beluga whale (*Dephinapterus leucas*), Blainville's beaked whale (*Mesoplodon densirostris*), Chilean dolphin (*Cephalorhynchus eutropia*), Clymene dolphin (*Stenella clymene*), Commerson's dolphin (*Cephalorhynchus commersonii*), common bottlenose dolphin (*Tursiops truncatus*), Cuvier's beaked whale (*Ziphiuscavirostris*), Dall's porpoise (*Phocoenoides dalli*), Dusky dolphin (*Lagenorhynchus obscurus*), dwarf sperm and pygmy sperm whales (*Kogia simus* and *K. breviceps*), false killer whale (*Pseudorca crassidens*), Fraser's dolphin (*Lagenodelphis hosei*), Gervais' beaked whale (*Mesoplodon europaeus*), ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), Gray's beaked whale (*Mesoplodon grayi*), Heaviside's dolphin (*Cephalorhynchus heavisidii*), Hector's beaked whale (*Mesoplodon hectori*), Hector's dolphin (*Cephalorhynchus hectori*); Hourglass dolphin (*Lagenorhynchus cruciger*), Hubbs' beaked whale (*Mesoplodon carhubbsi*), harbor porpoise (*Phocoena phocoena*); Indo-Pacific bottlenose dolphin (*Tursiops aduncus*), killer whale (*Orca orcinus*), long-beaked common dolphin (*Delphinuscapensis*), long-finned pilot whale (*Globicephalamelas*), Longman's beaked whale (*Indopacetus pacificus*), melon-headed whale (*Peponocephala electra*), northern bottlenose whale (*Hyperodon ampullatus*), northern right whale dolphin (*Lissodelphis borealis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), pantropical spotted dolphin (*Stenella attenuata*), Peale's dolphin (*Lagenorhynchus australis*), Perrin's beaked whale (*Mesoplodon perrini*), pygmy beaked whale (*Mesoplodon peruvianus*), pygmy killer whale (*Feresa attenuata*), Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Shepherd's beaked whale (*Tasmacetus sheperdii*), short-beaked common dolphin (*Delphinus delphis*), short-finned pilot whale (*Globicephala macrorhynchus*), southern bottlenose whale (*Hyperodon planifrons*), southern right whale dolphin (*Lissodelphis peronii*), Sowerby's beaked whale (*Mesoplodon bidens*), spade-toothed beaked whale (*Mesoplodon traversii*), spectacled porpoise (*Phocoena dioptrica*), sperm whale (*Physeter macrocephalus*), spinner dolphin (*Stenella longirostris*), Stejneger's beaked whale (*Mesoplodon stejnegeri*), strap-toothed beaked whale (*Mesoplodon layardii*), striped dolphin (*Stenella coeruleoalba*), True's beaked whale (*Mesoplodon mirus*), white-beaked dolphin (*Lagenorhynchus albirostris*),

(3) *Pinnipeds*–Australian sea lion (*Neophoca cinerea*), California sea lion (*Zalophus californianus*), Galapagos fur seal (*Arctocephalus galapagoensis*), Galapagos sea lion (*Zalophus wollebaeki*), gray seal (*Halichoerus grypus*), Guadalupe fur seal (*Arctocephalus townsendi*), harbor seal (*Phoca vitulina*), harp seal (*Pagophilus groenlandicus*), Hawaiian monk seal (*Monachus schauinslandi*), hooded seal (*Cystophora cristata*), Juan Fernadez fur seal (*Arctocephalus philippi*), Mediterranean monk seal (*Monachus monachus*), New Zealand fur seal (*Arctocephalus forsteri*), New Zealand fur seal (*Phocarctos hookeri*), northern elephant seal (*Mirounga angustirostris*), northern fur seal (*Callorhinus ursinus*), ribbon seal (*Phoca fasciata*), South African and Australian fur seals (*Arctocephalus pusillus*), South American fur seal (*Arctocephalus australis*), South American sea lion (*Otaria flavescens*), southern elephant seal (*Mirounga leonina*), spotted seal (*Phoca largha*), Steller sea lion (*Eumetopias jubatus*), subantarctic fur seal (*Arctocephalus tropicalis*).

§ 218.231 Effective dates.

Regulations are effective August 15, 2012 through August 15, 2017.

§ 218.232 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 218.238 of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the areas described in § 218.230(a), provided that the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The Holder of the Letter of Authorization must conduct the

activities identified in § 218.230 in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 218.230 is limited to the species listed in § 218.230(b) by the method of take indicated in paragraphs (c)(2) through (5) of this section.

(1) The Navy must maintain a running calculation/estimation of takes of each species over the effective period of these regulations.

(2) Level B harassment will not exceed 12 percent of any marine mammal stock listed in § 218.230(b)(1) through (3) annually over the course of the five-year regulations. This annual per-stock cap of 12 percent applies regardless of the number of SURTASS LFA sonar vessels operating.

(3) Level A harassment of no more than six mysticetes (total), of any of the species listed in § 218.230(b)(1) over the course of the five-year regulations.

(4) Level A harassment of no more than 25 odontocetes (total), of any of the species listed in § 218.230(b)(2) over the course of the five-year regulations.

(5) Level A harassment of no more than 25 pinnipeds (total), of any of the species listed in § 218.230(b)(3) over the course of the five-year regulations.

§ 218.233 Prohibitions.

No person in connection with the activities described in § 218.230 may:

(a) Take any marine mammal not specified in § 218.230(b);

(b) Take any marine mammal specified in § 218.230 other than by incidental take as specified in § 218.232(c)(2) through (5);

(c) Take any marine mammal specified in § 218.230 if NMFS makes a determination that such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, any of the terms, conditions, or requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 218.238 of this chapter.

§ 218.234 Mitigation.

When conducting operations identified in § 218.230, the mitigation measures described in this section and in any Letter of Authorization issued under §§ 216.106 and 218.238 must be implemented.

(a) *Personnel Training—Lookouts:* (1) The Navy shall train the lookouts in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of protective measures if they spot marine mammals.

(2) The Navy will hire one or more marine mammal biologists qualified in conducting at-sea marine mammal visual monitoring from surface vessels to train and qualify designated ship personnel to conduct at-sea visual monitoring.

(b) *General Operating Procedures:* (1) Prior to SURTASS LFA sonar operations, the Navy will promulgate executive guidance for the administration, execution, and compliance with these regulations and any Letters of Authorization issued.

(2) The Holder of a Letter of Authorization will not transmit the SURTASS LFA sonar signal at a frequency greater than 500 Hertz (Hz).

(c) *LFA Sonar Mitigation Zone and 1-km Buffer Zone; Suspension and Delay:* (1) Prior to commencing and during SURTASS LFA sonar transmissions, the Holder of a Letter of Authorization will determine the propagation of LFA sonar signals in the ocean and the distance from the SURTASS LFA sonar source to the 180-decibel (dB) re: 1 μPa isopleth.

(2) The Holder of a Letter of Authorization will establish a 180-dB LFA sonar mitigation zone around the surveillance vessel that is equal in size to the 180-dB re: 1 μPa isopleth (i.e., the volume subjected to sound pressure levels of 180 dB or greater) as well as a one-kilometer (1-km) buffer zone around the LFA sonar mitigation zone.

(3) If a marine mammal is detected, through monitoring required under § 218.235, within or about to enter the LFA sonar mitigation zone plus the 1-km buffer zone, the Holder of the Letter of Authorization will immediately delay or suspend SURTASS LFA sonar transmissions.

(d) *Resumption of SURTASS LFA sonar transmissions:* (1) The Holder of a Letter of Authorization will not resume SURTASS LFA sonar transmissions earlier than 15 minutes after:

(i) All marine mammals have left the area of the SURTASS LFA sonar mitigation and buffer zones; and

(ii) There is no further detection of any marine mammal within the LFA sonar mitigation and buffer zones as determined by the visual, passive, and high frequency monitoring described in § 218.235.

(e) *Ramp-up Procedures for the high-frequency marine mammal monitoring (HF/M3) sonar required under § 218.235:* (1) The Holder of a Letter of Authorization will ramp up the HF/M3 sonar power level beginning at a maximum source sound pressure level of 180 dB re: 1 μPa at 1 meter in 10-dB increments to operating levels over a period of no less than five minutes:

(i) At least 30 minutes prior to any SURTASS LFA sonar transmissions;

(ii) Prior to any SURTASS LFA sonar calibrations or testing that are not part of regular SURTASS LFA sonar transmissions described in § 218.230; and

(iii) Anytime after the HF/M3 active sonar source has been powered down for more than two minutes.

(2) The Holder of a Letter of Authorization will not increase the HF/M3 active sonar system's sound pressure level once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.

(f) *Geographic Restrictions on the SURTASS LFA Sonar Sound Field:* (1) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar such that:

(i) The SURTASS LFA sonar sound field exceeds 180 dB re: 1 μPa (rms) at a distance less than 12 nautical miles (nm) (22 kilometers (km)) from any coastline, including offshore islands;

(ii) The SURTASS LFA sonar sound field exceeds 180 dB re: 1 μPa (rms) at a distance less than 1 km (0.5 nm) seaward of the outer perimeter of any offshore biologically important area designated in § 218.234(f)(2) during the period specified.

(2) The Offshore Biologically Important Areas (OBIAs) for marine mammals (with specified periods) for SURTASS LFA sonar operations are the following:

Name of area	Location of area	Months of importance
(i) Georges Bank	40°00′ N, 72°30′ W; 39°37′ N, 72°09′ W; 39°54′ N, 71°43′ W; 40°02′ N, 71°20′ W; 40°08′ N, 71°01′ W; 40°04′ N, 70°44′ W; 40°00′ N, 69°24′ W; 40°16′ N, 68°27′ W; 40°34′ N, 67°13′ W; 41°00′ N, 66°24′ W; 41°52′ N, 65°47′ W; 42°20′ N, 66°06′ W; 42°18′ N, 67°23′ W.	Year-round.

Name of area	Location of area	Months of importance
(ii) Roseway Basin Right Whale Conservation Area.	43°05′ N, 65°40′ W; 43°05′ N, 65°03′ W; 42°45′ N, 65°40′ W; 42°45′ N, 65°03′ W.	June through December, annually.
(iii) Great South Channel, U.S. Gulf of Maine, and Stellwagen Bank National Marine Sanctuary (NMS).	41°00.000′ N, 69°05.000′ W; 42°09.000′ N, 67°08.400′ W; 42°53.436′ N, 67°43.873′ W; 44°12.541′ N, 67°16.847′ W; 44°14.911′ N, 67°08.936′ W; 44°21.538′ N, 67°03.663′ W; 44°26.736′ N, 67°09.596′ W; 44°16.805′ N, 67°27.394′ W; 44°11.118′ N, 67°56.398′ W; 43°59.240′ N, 68°08.263′ W; 43°36.800′ N, 68°46.496′ W; 43°33.925′ N, 69°19.455′ W; 43°32.008′ N, 69°44.504′ W; 43°21.922′ N, 70°06.257′ W; 43°04.084′ N, 70°21.418′ W; 42°51.982′ N, 70°31.965′ W; 42°45.187′ N, 70°23.396′ W; 42°39.068′ N, 70°30.188′ W; 42°32.892′ N, 70°35.873′ W; 42°07.748′ N, 70°28.257′ W; 42°05.592′ N, 70°02.136′ W; 42°03.664′ N, 69°44.000′ W; 41°40.000′ N, 69°45.000′ W.	January 1 to November 14, annually.
(iv) Southeastern U.S. Right Whale Seasonal Habitat.	Critical Habitat Boundaries are coastal waters between 31°15′ N and 30°15′ N from the coast out 15 nautical miles (nmi); and the coastal waters between 30°15′ N and 28°00″ N from the coast out 5 nmi. (50 CFR § 226.13(c)); OBIA Boundaries are coastal waters between 31°15″ N and 30°15″ N from 12 to 15 nmi..	November 15 to April 15, annually.
(v) North Pacific Right Whale Critical Habitat	57°03′ N, 153°00′ W; 57°18′ N, 151°30′ W; 57°00′ N, 151°30′ W; 56°45′ N, 153°00′ W. (50 CFR § 226.215).	March through August, annually.
(vi) Silver Bank and Navidad Bank	Silver Bank: ..... 20°38.899′ N, 69°23.640′ W; 20°55.706′ N, 69°57.984′ W; 20°25.221′ N, 70°00.387′ W; 20°12.833′ N, 69°40.604′ W; 20°13.918′ N, 69°31.518′ W; 20°28.680′ N, 69°31.900′ W Navidad Bank: 20°15.596′ N, 68°47.967′ W; 20°11.971′ N, 68°54.810′ W; 19°52.514′ N, 69°00.443′ W; 19°54.957′ N, 68°51.430′ W; 19°51.513′ N, 68°41.399′ W.	December through April, annually.
(vii) Coastal waters of Gabon, Congo and Equatorial Guinea.	An exclusion zone following the 500-m isobath extending from 3°31.055′ N, 9°12.226″ E in the north offshore of Malabo southward to 8°57.470″ S, 12°55.873″ E offshore of Luanda	June through October, annually.
(viii) Patagonian Shelf Break	Between 200- and 2000-m isobaths and the following latitudes: 35°00″ S, 39°00″ S, 40°40″ S, 42°30″ S, 46°00″ S, 48°50″ S..	Year-round.
(ix) Southern Right Whale Seasonal Habitat	Coastal waters between 42°00″ S and 43°00″ S from 12 to 15 nm including the enclosed bays of Golfo Nuevo, Golfo San Jose, and San Matias. Golfos San Jose and San Nuevo are within 22 km (14 mi; 12 nm) coastal exclusion zone	May through December, annually.
(x) Central California National Marine Sanctuaries.	Single stratum boundary created from the Cordell Bank (15 CFR 922.10), Gulf of the Farallones (15 CFR 922.80), and Monterey Bay (15 CFR 922.30) NMS legal boundaries. Monterey Bay NMS includes the Davidson Seamount Management Zone	June through November, annually.
(xi) Antarctic Convergence Zone	30° E to 80° E, 45° S; 80° E to 150° E, 55° S; 150° E to 50° W, 60° S; 50° W to 30° E, 50° S.	October through March, annually.

Name of area	Location of area	Months of importance
(xii) Piltun and Chayvo offshore feeding grounds in the Sea of Okhotsk.	54°09.436′ N, 143°47.408′ W; 54°09.436′ N, 143°17.354′ W; 54°01.161′ N, 143°17.354′ W; 53°53.580′ N, 143°13.398′ W; 53°26.963′ N, 143°28.230′ W; 53°07.013′ N, 143°35.481′ W; 52°48.705′ N, 143°38.447′ W; 52°32.077′ N, 143°37.788′ W; 52°21.605′ N, 143°34.163′ W; 52°09.470′ N, 143°26.582′ W; 51°57.686′ N, 143°30.208′ W; 51°36.033′ N, 143°42.794′ W; 51°08.082′ N, 143°51.301′ W; 51°08.082′ N, 144°16.742′ W; 51°24.514′ N, 144°11.139′ W; 51°48.116′ N, 144°10.809′ W; 52°03.194′ N, 144°20.363′ W; 52°23.235′ N, 144°10.150′ W; 52°28.674′ N, 144°12.787′ W; 52°42.523′ N, 144°10.150′ W; 53°12.972′ N, 143°55.648′ W; 53°18.505′ N, 143°56.637′ W; 53°23.041′ N, 143°53.011′ W; 53°28.250′ N, 143°53.341′ W; 53°44.039′ N, 143°49.056′ W; 53°53.207′ N, 143°50.045′ W; 53°59.819′ N, 143°48.067′ W.	June through November, annually.
(xiii) Coastal waters off Madagascar	16°03′55.04″ S, 50°27′12.59″ E; 16°12′23.03″ S, 51°03′37.38″ E; 24°30′45.06″ S, 48°26′00.94″ E; 24°15′28.07″ S, 47°46′51.16″ E; 22°18′00.74″ S, 48°14′13.52″ E; 20°52′24.12″ S, 48°43′13.49″ E; 19°22′33.24″ S, 49°15′45.47″ E; 18°29′46.08″ S, 49°37′32.25″ E; 17°38′27.89″ S, 49°44′27.17″ E; 17°24′39.12″ S, 49°39′17.03″ E; 17°19′35.34″ S, 49°54′23.82″ E; 16°45′41.71″ S, 50°15′56.35″ E.	July through September, annually for humpback whale breeding and November through December, annually for migrating blue whales.
(xiv) Madagascar Plateau, Madagascar Ridge, and Walters Shoal.	25°55′20.00″ S, 44°05′15.45″ E; 25°46′31.36″ S, 47°22′35.90″ E; 27°02′37.71″ S, 48°03′31.08″ E; 35°13′51.37″ S, 46°26′19.98″ E; 35°14′28.59″ S, 42°35′49.20″ E; 31°36′57.96″ S, 42°37′49.35″ E; 27°41'11.21″ S, 44°30′11.01″ E.	November through December, annually.
(xv) Ligurian-Corsican-Provencal Basin and Western Pelagos Sanctuary in the Mediterranean Sea.	42°50.271′ N, 06°31.883″ E; 42°55.603′ N, 06°43.418″ E; 43°04.374′ N, 06°52.165″ E; 43°12.600′ N, 07°10.440″ E; 43°21.720′ N, 07°19.380″ E; 43°30.600′ N, 07°32.220″ E; 43°33.900′ N, 07°49.920″ E; 43°36.420′ N, 08°05.580″ E; 43°42.600′ N, 08°22.140″ E; 43°50.880′ N, 08°34.500″ E; 43°58.560′ N, 08°47.700″ E; 43°59.040′ N, 08°56.040″ E; 43°57.047′ N, 09°03.540″ E; 43°52.260′ N, 09°08.520″ E; 43°47.580′ N, 09°13.500″ E; 43°36.060′ N, 09°16.620″ E; 43°28.440′ N, 09°05.820″ E; 43°21.360′ N, 09°02.100″ E; 43°16.020′ N, 08°57.240″ E; 43°04.440′ N, 08°47.580″ E; 42°54.900′ N, 08°35.400″ E; 42°45.900′ N, 08°27.540″ E; 42°36.060′ N, 08°22.020″ E; 42°22.620′ N, 08°15.849″ E; 42°07.202′ N, 08°17.174″ E; 41°52.800′ N, 08°15.720″ E; 41°39.780′ N, 08°05.280″ E; 41°28.200′ N, 08°51.600″ E; 42°57.060′ N, 06°19.860″ E.	July to August, annually.
(xvi) Hawaiian Islands Humpback Whale NMS and Penguin Bank.	21°10′02.179″ N, 157°30′58.217″ W; 21°09′46.815″ N, 157°30′22.367″ W; 21°06′39.882″ N, 157°31′00.778″ W; 21°02′51.976″ N, 157°30′30.049″ W; 20°59′52.725″ N, 157°29′28.591″ W; 20°58′05.174″ N, 157°27′35.919″ W; 20°55′49.456″ N, 157°30′58.217″ W; 20°50′44.729″ N, 157°42′42.418″ W; 20°51′02.654″ N, 157°44′45.333″ W; 20°53′56.784″ N, 157°46′04.716″ W; 20°56′32.988″ N, 157°45′33.987″ W; 21°01′27.472″ N, 157°43′10.586″ W; 21°05′20.499″ N, 157°39′27.802″ W; 21°10′02.179″ N, 157°30′58.217″ W.	November through April, annually.
(xvii) Costa Rica Dome	Centered at 9°N and 88°W	Year-round.

Name of area	Location of area	Months of importance
(xviii) Great Barrier Reef Between 16° S and 21° S.	16°01.829″ S, 145°38.783″ E; 15°52.215″ S, 146°20.936″ E; 17°28.354″ S, 146°59.392″ E; 20°16.228″ S, 151°39.674″ E; 20°58.381″ S, 150°30.897″ E; 20°17.007″ S, 149°38.247″ E; 20°10.941″ S, 149°18.247″ E; 20°02.403″ S, 149°12.623″ E; 19°53.287″ S, 149°03.986″ E; 19°49.866″ S, 148°52.135″ E; 19°53.287″ S, 148°44.302″ E; 19°47.965″ S, 148°36.870″ E; 19°47.205″ S, 148°26.024″ E; 19°19.978″ S, 147°39.626″ E; 19°14.065″ S, 147°37.014″ E; 19°08.913″ S, 147°31.993″ E; 19°05.667″ S, 147°24.160″ E; 19°07.576″ S, 147°18.134″ E; 18°51.718″ S, 146°51.219″ E; 18°44.258″ S, 146°54.031″ E; 18°37.175″ S, 146°51.420″ E; 18°31.620″ S, 146°43.385″ E; 18°27.595″ S, 146°40.573″ E; 17°36.676″ S, 146°20.488″ E; 17°20.484″ S, 146°16.671″ E; 17°07.745″ S, 146°13.056″ E; 16°49.769″ S, 146°11.047″ E; 16°41.835″ S, 146°03.817″ E; 16°39.706″ S, 145°54.979″ E.	May through September, annually.
(xix) Bonney Upwelling on the south coast of Australia.	37°12′20.036″ S, 139°31′17.703″ E; 37°37′33.815″ S, 139°42′42.508″ E; 38°10′36.144″ S, 140°22′57.345″ E; 38°44′50.558″ S, 141°33′50.342″ E; 39°07′04.125″ S, 141°11′00.733″ E; 37°28′33.179″ S, 139°10′52.263″ E.	December through May, annually.
(xx) Northern Bay of Bengal and Head of Swatch-of-No-Ground.	20°59.735′ N, 89°07.675″ E; 20°55.494′ N, 89°09.484″ E; 20°52.883′ N, 89°12.704″ E; 20°55.275′ N, 89°18.133″ E; 21°04.558′ N, 89°25.294″ E; 21°12.655′ N, 89°25.354″ E; 21°13.279′ N, 89°16.833″ E; 21°06.347′ N, 89°15.011″ E.	Year-round.
(xxi) Olympic Coast NMS and Prairie, Barkley Canyon, and Nitnat Canyon.	Boundaries within 23 nm (26.5 m; 42.6 km) of the coast from 47°07′ N to 48°30′ N latitude. 48°30′01.995″ N, 125°58′38.786″ W; 48°16′55.605″ N, 125°38′52.052″ W; 48°23′07.353″ N, 125°17′10.935″ W; 48°12′38.241″ N, 125°16′42.339″ W; 47°58′20.361″ N, 125°31′14.517″ W; 47°58′20.361″ N, 126°06′16.322″ W; 48°09′46.665″ N, 126°25′48.758″ W.	Olympic NMS: December, January, March, and May, annually. The Prairie, Barkley Canyon, and Nitnat Canyon: June through September, annually.
(xxii) Abrolhos Bank	16°35′34.909″ 38°52′30.455″; 16°35′31.619″ 38°43′41.069″; 16°40′00.131″ 37°23′52.492″; 19°30′59.069″ 37°23′52.446″; 19°30′59.974″ 39°33′38.351″; 19°20′24.752″ 39°30′33.03″; 18°52′16.884″ 39°32′31.789″; 18°45′09.937″ 39°32′27.709″; 18°30′59.345″ 39°30′59.669″; 18°27′28.985″ 39°30′13.453″; 18°17′30.429″ 39°26′21.073″; 18°07′43.518″ 39°19′52.924″; 18°09′24.931″ 39°16′24.913″; 18°10′04.585″ 39°12′30.425″; 18°10′20.682″ 38°39′06.185″; 18°08′50.404″ 38°35′00.059″; 18°06′05.466″ 38°31′41.385″; 18°02′09.399″ 38°29′26.179″; 17°58′01.372″ 38°28′45.409″; 17°53′58.883″ 38°29′34.612″; 16°48′58.768″ 38°55′23.768″; 16°43′15.682″ 38°53′40.007″.	August through November, annually.

(g) *Operational Exception for the SURTASS LFA Sonar Sound Field.* During military operations SURTASS LFA sonar transmissions may exceed 180 dB re: 1 μPa (rms) within the boundaries of a SURTASS LFA sonar OBIA when: operationally necessary to continue tracking an existing underwater contact; or operationally necessary to detect a new underwater contact within the OBIA. This exception does not apply to routine training and testing with the SURTASS LFA sonar systems.

§ 218.235 Requirements for monitoring.

(a) The Holder of a Letter of Authorization issued pursuant to §§ 216.106 and 218.238 must:

(1) Conduct visual monitoring from the ship's bridge during daylight hours (30 minutes before sunrise until 30 minutes after sunset) during operations that employ SURTASS LFA sonar in the active mode. The SURTASS vessels shall have lookouts to maintain a topside watch with standard binoculars (7x) and with the naked eye.

(2) Use low frequency passive SURTASS sonar to listen for vocalizing marine mammals; and

(3) Use the HF/M3 active sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array, subject to the ramp-up requirements in § 216.234(e).

(b) Monitoring under paragraph (a) of this section must:

(1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;

(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise or, if marine mammals are exhibiting unusual changes in behavioral patterns, for a period of time until behavior patterns return to normal or conditions prevent continued observations.

(c) Holders of Letters of Authorization for activities described in § 218.230 are required to cooperate with the National Marine Fisheries Service and any other federal agency for monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization.

(e) Holders of Letters of Authorization will continue to assess data from the Marine Mammal Monitoring Program and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available.

(f) Holders of Letters of Authorization will continue to explore the feasibility of coordinating with other fleet assets and/or range monitoring programs to include the use of SURTASS towed horizontal line arrays to augment the collection of marine mammal vocalizations before, during, and after designated exercises.

(g) Holders of Letters of Authorization will collect ambient noise data and will explore the feasibility of declassifying and archiving the ambient noise data for incorporation into appropriate ocean noise budget efforts.

(h) Holders of Letters of Authorization will convene a Scientific Advisory Group (SAG) to analyze different types of monitoring/research that could increase the understanding of the potential effects of low-frequency active sonar transmissions on beaked whales and/or harbor porpoises.

(i) Holders of Letters of Authorization must conduct all monitoring required under the Letter of Authorization.

§ 218.236 Requirements for reporting.

(a) The Holder of the Letter of Authorization must submit classified and unclassified quarterly mission reports to the Director, Office of Protected Resources, NMFS, no later than 30 days after the end of each quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of each vessel during each mission;

(2) Information on sonar transmissions during each mission;

(3) Results of the marine mammal monitoring program specified in the Letter of Authorization; and

(4) Estimates of the percentages of marine mammal species and stocks affected (both for the quarter and cumulatively for the year) covered by the Letter of Authorization.

(b) The Holder of a Letter of Authorization must submit an unclassified annual report to the Director, Office of Protected Resources, NMFS, no later than 45 days after the expiration of a Letter of Authorization. The reports must contain all the information required by the Letter of Authorization.

(c) A final comprehensive report must be submitted to the Director, Office of Protected Resources, NMFS, at least 240 days prior to expiration of these regulations. In addition to containing all the information required by any final year Letter of Authorization, this report must contain an unclassified analysis of new passive sonar technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar.

(d) The Navy will continue to assess the data collected by its undersea arrays and work toward making some portion of that data, after appropriate security reviews, available to scientists with appropriate clearances. Any portions of the analyses conducted by these scientists based on these data that are determined to be unclassified after appropriate security reviews will be made publically available. The Navy will provide a status update to NMFS when they submit their annual application.

(e) Following the Scientific Advisory Group's (SAG) submission of findings, and assuming the SAG recommends going forward with beaked whale and/or harbor porpoise monitoring/research, the Navy will either:

(1) Draft a plan of action outlining their strategy for implementing the SAG's recommendations; or

(2) Describe in writing why none of the SAG's recommendations are feasible and meet with NMFS to discuss any other potential options.

§ 218.237 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Navy authority conducting the activity identified in § 218.230 must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application for a Letter of Authorization must be submitted to the Director, Office of Protected Resources, NMFS, at least 60 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the area(s) where the vessel's activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each area;

(3) The type of incidental taking authorization requested (i.e., take by Level A and/or Level B harassment);

(4) The estimated percentage and numbers of marine mammal species/stocks potentially affected in each area for the period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, issue a Letter of Authorization.

§ 218.238 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed one year, but may be renewed annually subject to renewal conditions in § 218.239.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental takings;

(3) Means of effecting the least practicable adverse impact on the

species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental take.

(c) Issuance of a letter of authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 218.239 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in § 218.230 may be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.237 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming period;

(2) Notification to NMFS of the information identified in § 218.237(c);

(3) Timely receipt of the monitoring reports required under § 218.236, which have been reviewed by NMFS and determined to be acceptable;

(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 218.234, 218.235, and 218.236 and the previous Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(5) A determination by NMFS that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification to the described work, mitigation, or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 218.240 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization, without modification, except for the period of validity and a listing of planned operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.230(b)(1), (2), or (3), NMFS may modify a Letter of Authorization without prior notice and opportunity for public comment. Notification will be published in the **Federal Register** within 30 days of the action.

§ 218.241 Adaptive Management.

NMFS may modify (including through addition or deletion) or augment the existing mitigation or monitoring measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. NMFS will provide a period of 30 days for public review and comment if such modifications are substantial. NMFS and the Navy will meet annually (if deemed necessary by either agency) to discuss the monitoring reports, Navy research and development outcomes, current science, and determine whether mitigation or monitoring modifications are appropriate. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(a) Results from the Navy's monitoring from the previous year's operation of SURTASS LFA sonar.

(b) Compiled results of Navy-funded research and development studies.

(c) Results from specific stranding investigations.

(d) Results from general marine mammal and sound research funded by the Navy or other sponsors.

(e) Any information that reveals marine mammals may have been taken in a manner, extent or number not anticipated by these regulations or subsequent Letters of Authorization.

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Part V

Department of Transportation

Federal Railroad Administration

49 CFR Part 214

Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions (RRR); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2008–0086]

RIN 2130–AB89

Railroad Workplace Safety; Roadway Worker Protection Miscellaneous Revisions (RRR)

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend its regulations on railroad workplace safety to resolve interpretative issues that have arisen since the 1996 promulgation of the original Roadway Worker Protection (RWP) regulation. In particular, this NPRM proposes to define certain terms, establish new procedures for snow removal and cleaning on passenger station platforms, resolve miscellaneous interpretive issues, codify certain FRA Technical Bulletins, and requests comment on certain training requirements for roadway workers. FRA is also proposing to update three incorporations by reference of industry standards in existing sections of FRA's Bridge Worker Safety Standards.

DATES: (1) Written comments must be received by October 19, 2012. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) FRA anticipates being able to resolve this rulemaking without a public hearing. However, if prior to September 19, 2012, FRA receives a specific request for a public hearing accompanied by a showing that the party is unable to adequately present his or her position by written statement, a hearing will be scheduled and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: You may submit comments identified by the docket number FRA–2008–0086 by any one of the following methods:

- *Fax:* 1–202–493–2251;
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590;
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or
- *Electronically through the Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AB89). 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 in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Rusk, Staff Director, Track Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue SE., RRS–15, Mail Stop 25, Washington, DC 20590 (telephone (202) 493–6236); or Joseph St. Peter, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., RCC–10, Mail Stop 10, Washington, DC 20590 (telephone (202) 493–6047 or 202–493–6052).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

In 2005, the Railroad Safety Advisory Committee (RSAC) accepted a task to review the existing RWP regulation at subpart C of part 214. The RSAC established the RWP Working Group (the ''Working Group'') to recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing regulatory requirements.

The Working Group reached consensus on 32 separate items, which the full RSAC recommended to FRA. FRA drafted this NPRM to address the RSAC consensus recommendations, the issue of electronic display of track authorities, several other items on which the Working Group was unable to reach consensus, and miscellaneous other revisions. FRA is also proposing to update certain incorporations by reference of personal protective equipment standards in FRA's Bridge Worker Safety Standards at subpart B of part 214 by cross referencing the Occupational Safety and Health Administration's (OSHA) regulations on the same point.

Noteworthy consensus recommendations that FRA is addressing in this NPRM include: a job briefing requirement regarding the accessibility of the roadway worker in charge; the adoption of procedures for how roadway workers walk across railroad track; a new allowance for railroad's conducting snow removal and weed spraying operations; a clarification of the existing ''foul time'' provision; a new ''verbal protection'' provision; three new permissible methods of

establishing working limits on non-controlled track; the expanded use of individual train detection at controlled points; an amended provision governing audible warnings by trains for roadway workers; and, a request for further comment on certain training requirements for roadway workers.

As mentioned above, FRA is also addressing other items on which the Working Group was unable to reach consensus and certain miscellaneous other revisions. Noteworthy among these items are: A new provision regarding the removal of objects from railroad track when train approach warning is used as the method of on-track safety; the electronic display of working limits authorities; amendments to the existing provision governing the qualification of roadway workers in charge; a new section addressing passenger station platform snow removal; a new provision governing the use of ''occupancy behind'' or ''conditional'' working limit authorities; the phase-out of the use of definite train location and informational train line-ups, potential amendments to the existing roadway worker protection and blue signal protection requirements for work performed within shop areas, and, the use of other railroad track as a place of safety when train approach warning is used as the method of on-track safety; and, a request for further comment on the use of certain tunnel niches as a place of safety for roadway workers.

FRA has estimated the costs of this proposed rule, evaluated over a 20-year period and using discount rates of 3 and 7 percent. For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals $5,840,921 with a present value of $3,103,980 (PV, 7 percent) and $4,350,537 (PV, 3 percent). FRA also estimates that for the 20-year period analyzed, the estimated quantified benefits total $119,507,405 with a present value of $63,310,902 (PV, 7 percent) and $88,902,763 (PV, 3 percent). This analysis demonstrates that the benefits for this proposed rule would exceed the costs.

TABLE—COSTS AND BENEFITS OF THE PROPOSED RULE

	Year 1	2–20	Total 20 year	7% PV	3% PV
Costs:					
214.315 Job Briefings	$143,055	$143,055	$2,861,100	$1,515,527	$2,128.297
214.339 Audible Warning from Trains	24,796	0	24,796	23,174	24,074
214.345 Training on Safe Crossing of Track	72,250	72,250	1,445,000	765,418	1,074,898
214.347 Training on Access to Manual	10,838	10,838	216,750	114,813	161,235
214.352 Training Platform Work Coordinate	22,759	22,759	455,175	241,107	338,593
214.353 Training RWIC	41,905	41,905	838,100	443,942	623,441
Total	315,602	290,806	5,940,921	3,103,980	4,350,537
Benefits:					
214.307 Plans No Longer Reviewed	19,553	426	27,653	22,392	24,912
214.317 Track Snow Removal	292,613	292,613	5,852,250	3,099,941	4,353,335
214.324 Use of Verbal Protection	5,386,021	5,386,021	107,720,415	57,059,581	80,150,388
214.327 Inaccessible Track	204,016	204,016	4,080,319	2,161,348	3,035,242
214.337 ITD	4,335	4,335	86,700	45,925	64,494
214.338 Platform Snow Removal	87,003	87,003	1,740,069	921,716	1,294,392
Total	5,993,541	5,974,414	119,507,405	63,310,902	88,902,764
NET BENEFITS	5,677,938	5,683,608	113,666,484	60,206,922	84,552,226

** Dollars are discounted over a 20-year period.*

II. Rulemaking Authority and Background of the Existing RWP Rule

The Federal Railroad Safety Act of 1970, as codified at 49 U.S.C. 20103, provides that, ''[t]he Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety supplementing laws and regulations in effect on October 16, 1970''. The Secretary's responsibility under this provision and the balance of the railroad safety laws have been delegated to the Federal Railroad Administrator. 49 CFR 1.49(m). In the field of railroad workplace safety, FRA has traditionally pursued a very conservative course of regulation, relying upon the industry to implement suitable railroad safety rules and mandating in the broadest of ways that employees be ''instructed'' in the requirements of those rules and that railroads create and administer programs of operational tests and inspections to verify rules compliance. This approach is based on several factors, including recognition of the strong interest of railroads in avoiding costly accidents and personal injuries, the limited resources available to FRA to directly enforce railroad safety rules, and the apparent success of management and employees in accomplishing most work in a safe manner.

Over the years, however, it became necessary to codify certain requirements, either to remedy perceived shortcomings in the railroads' rules to emphasize the importance of compliance, or to provide FRA a more direct means of promoting compliance. These actions, which in many cases were preceded or followed by statutory mandates, included adoption of rules governing:

- Bridge Worker Safety Standards (49 CFR part 214 subpart B);
- Roadway Worker Protection (49 CFR part 214 subpart C); and
- On-Track Roadway Maintenance Machines and Hi-Rail Vehicles (49 CFR part 214 subpart D).

In 1990, FRA received a petition to amend its track safety standards from the Brotherhood of Maintenance of Way Employes Division (BMWED), which included issues pertaining to the hazards faced by roadway workers. Subsequently, in response to the Rail Safety Enforcement and Review Act, Public Law 102–365, 106 Stat. 972, enacted September 3, 1992. FRA issued an Advanced Notice of Proposed Rulemaking (ANPRM) on November 16, 1992, announcing the opening of a proceeding to amend the Federal Track Safety Standards to, in part, address hazards faced by roadway workers. 57 FR 54038.

FRA held workshops to solicit the views of the railroad industry and representatives of railroad employees on the need for substantive change in the track regulations. The subject of injury and death to roadway workers was of such great concern that FRA received petitions for emergency orders and requests for rulemaking from both the BMWED and the Brotherhood of Railroad Signalmen (BRS). Finding that no imminent hazards existed that would justify issuance of emergency orders at the time, FRA did not issue any emergency orders in response to those petitions, but instead initiated a separate proceeding to consider regulations to eliminate hazards faced by roadway workers.

On August 17, 1994, FRA published its notice of intent to establish a Federal Advisory Committee (FAC) for regulatory negotiation. 59 FR 42200. The FAC was tasked with submitting a report, including proposed regulatory language, containing the FAC's consensus recommendations. On December 27, 1994, the Office of Management and Budget approved the Charter to establish a Roadway Worker Safety Advisory Committee (Advisory Committee) comprised of twenty-five members. The Advisory Committee held seven multiple-day negotiating sessions. An independent task force, comprised of representatives of several railroads and labor organizations, had met during the preceding year and independently analyzed on-track safety practices. This task force presented information at the first Advisory Committee meeting. The Advisory Committee reached consensus on eleven specific recommendations and nine general recommendations. These recommendations served as the basis for FRA's first RWP NPRM, which was published on March 14, 1996. 61 FR 10528. FRA published a final rule establishing the original RWP regulation on December 16, 1996, which became effective on January 15, 1997 (61 FR 65959). The final rule largely incorporated the Advisory Committee's recommendations.

III. RSAC Overview

In March 1996, FRA established the RSAC, which provides a forum for collaborative rulemaking and program development. The RSAC includes representatives from all of the railroad industry's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC members follows:

- American Association of Private Railroad Car Owners (AARPCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association (ATDA);
- Association of American Railroads (AAR);
- Association of Railway Museums (ARM);
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employes Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- The Chlorine Institute, Inc.;
- Federal Transit Administration (FTA);*
- The Fertilizer Institute;
- High Speed Ground Transportation Association (HSGTA);
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers (IBEW);
- Labor Council for Latin American Advancement;*
- League of Railway Industry Women;*
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women;*
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association (NRC);
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB);*
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte;*
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada;*
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA);* and
- United Transportation Union (UTU).

*Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to the RSAC, and after consideration and debate, the RSAC may accept or reject the task. If the task is accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of the RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff plays an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations are noted and explained in the rulemaking document issued by FRA. If the working group or the RSAC is unable to reach consensus on a recommendation for action, FRA may move ahead to resolve the issue through traditional rulemaking proceedings.

IV. RWP RSAC Working Group and Proceedings in This Rulemaking to Date

As discussed above, on January 26, 2005, the RSAC formed the RWP Working Group to consider specific actions to advance the on-track safety of employees of covered railroads and their contractors who are engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. The assigned task was to review the existing RWP regulation, technical bulletins, and a safety advisory dealing with on-track safety for roadway workers, and, as appropriate, consider enhancements to the existing rule which would further reduce the risk of serious injury or death to roadway workers. The Working Group was directed to report

specific actions identified as appropriate, including planned milestones for completion of projects and progress towards completion, to the full RSAC at each scheduled RSAC meeting.

The Working Group was comprised of members from the following organizations:

- Amtrak;
- APTA;
- ASLRRA;
- ATDA;
- AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway, Limited (CP), Consolidated Rail Corporation (Conrail), CSX Transportation, Inc. (CSXT), The Kansas City Southern Railway Company (KCS), Norfolk Southern Corporation railroads (NS), and Union Pacific Railroad Company (UP);
- Belt Railroad of Chicago;
- BLET;
- BMWED;
- BRS;
- FRA;
- Indiana Harbor Belt Railroad (IHB);
- Long Island Rail Road (LIRR);
- Metro-North Commuter Railroad Company (Metro-North);
- Montana Rail Link;
- NRC;
- Northeast Illinois Regional Commuter Railroad Corporation (Metra);
- RailAmerica, Inc.;
- Southeastern Pennsylvania Transportation Authority (SEPTA);
- UTU; and
- Western New York and Pennsylvania Railroad (WNY&P).

The Working Group held 12 multi-day meetings. The Working Group worked diligently and was able to reach consensus on 32 separate items. The Working Group attained consensus to recommend that part 214 [1] be amended to: add two new definitions; revise an existing definition; and, incorporate three other existing definitions from 49 CFR part 236. The Working Group also came to consensus to add or amend various provisions in the following sections in subpart C of part 214:

- § 214.309—revision to address on-track safety manual for lone workers and changes to the manual.
- § 214.315—requirement that information concerning adjacent tracks be included in on-track safety job briefings; accessibility of the roadway worker in charge.
- § 214.317—new paragraph to formalize procedures for roadway workers to walk across tracks; new paragraph for on-track weed spray and snow blowing operations on non-controlled track.
- § 214.321—new paragraph to address the use of work crew numbers.
- § 214.323—clarification of foul time provision whereby roadway worker in charge or train dispatcher may not permit movements into such working limits.
- § 214.324—new section called ''verbal protection'' for abbreviated working limits within manual interlocking and controlled points.
- § 214.327—three new paragraphs to formalize the following instruments to make non-controlled track inaccessible: occupied locomotive as a point of inaccessibility; block register territory; and, the use of track bulletins to make track inaccessible within yard limits.
- § 214.335—complete revision of paragraph (c) concerning on-track safety for tracks adjacent to occupied tracks. Key elements are the elimination of ''large-scale'' and the addition of a new requirement for on-track safety for tracks adjacent to occupied tracks for specific work activities (addressed in separate rulemaking proceeding as discussed further below).
- § 214.337—allowance for the use of individual train detection at controlled points consisting only of signals and a new paragraph limiting equipment/materials that can only be moved by hand by a lone worker.
- § 214.339—complete revision of this section concerning audible warning by trains to address operational considerations.
- § 214.343—new paragraph to ensure contractors receive requisite training/and or qualification before engaged by a railroad.
- § 214.345—lead-in phrase requiring all training to be consistent with initial or recurrent training, as specified in § 214.343(b).
- §§ 214.347, .349, .351, .353, and .355—consistent requirements for various roadway worker qualifications and a maximum 24-month time period between qualifications.

On June 26, 2007, the full RSAC voted to accept the above recommendations presented by the Working Group. In addition to the above, the Working Group worked on a proposal for use of electronic display of authorities as a provision under exclusive track occupancy. The Working Group developed lead-in regulatory text and agreed to some conceptual items. When circulated back to the Working Group prior to the full RSAC vote, however, technical issues were raised that could not be resolved in the time available. Accordingly, in this NPRM, FRA is addressing the electronic display issue, and certain of the other issues that the Working Group was unable to reach consensus on. The other items that the Working Group was unable to reach consensus on were:

- § 214.7—new term and definition for a ''remotely controlled hump yard facility.''
- § 214.7—revision to the definition for the term ''roadway worker.''
- § 214.317—use of tunnel clearing bays.
- § 214.321—track occupancy after passage of a train.
- § 214.329—removal of objects from the track under train approach warning.
- § 214.336—passenger station platform snow removal and cleaning.
- § 214.337—consideration of allowance for the use of individual train detection at certain types of manual interlockings or controlled points.
- § 214.353—qualification of employees other than roadway workers who directly provide for the on-track safety of a roadway work group.

V. Proceedings Concerning On-Track Safety Procedures for Adjacent Tracks

As mentioned above, the Working Group was able to reach consensus on items that dealt specifically with the adjacent-track on-track safety issues. In light of roadway worker fatality trends involving adjacent track protections, and to expedite the lowering of the safety risk associated with roadway workers fouling adjacent tracks, FRA decided to undertake a rulemaking proceeding separately, and in advance of this NPRM, to specifically address adjacent-track safety issues contemplated by the Working Group. As such, FRA published an NPRM addressing adjacent-track on-track safety on July 17, 2008 (73 FR 41214), but formally withdrew the NPRM on August 13, 2008 (73 FR 47124). FRA then issued a revised NPRM, which was published on November 25, 2009 (74 FR 61633), and a final rule was published on November 30, 2011 (76 FR 74586). The provisions contained in that final rule are currently scheduled to become effective on July 1, 2013. Accordingly, as the adjacent track rulemaking was undertaken separately, the subpart C section numbering for the consensus items as agreed upon by the Working Group has changed slightly from that recommended. This NPRM will note any relevant numbering changes in the section-by-section analysis below. FRA acknowledges that it has received petitions for reconsideration of the adjacent track final rule. *See* Docket No. FRA–2008–0059; available online at

[1] All references to the CFR in this document reference Title 49.

www.regulations.gov. There is limited interaction between the provisions of this NPRM and those contained in the final rule in the adjacent track rulemaking. FRA will note any potential changes (specifically with regard to section numbering) in a final rule which result from any FRA response to petitions for reconsideration in the adjacent track rulemaking.

VI. Inclusion and Exclusion of RSAC and Non-RSAC RWP Items

The section-by-section analysis below includes explanations of the proposed revisions to the RWP regulation, including certain consensus items recommended by the Working Group, certain of the non-consensus items listed above, and certain other miscellaneous items being proposed by FRA. FRA notes that the Working Group meetings discussed above took place between 2005 and 2007. In the interim, during FRA's efforts to publish the adjacent track rulemaking discussed above, there have been changes in the railroad industry. Notably, Congress' passage of the Rail Safety Improvement Act of 2008 (Pub. L. 110–432, Division A, 122 Stat. 4848) (RSIA), has required significant new FRA regulatory efforts.

These new efforts include FRA's recently published NPRM addressing minimum training standards and plans. Section 401 of RSIA (codified at 49 U.S.C. 20162) mandates that FRA promulgate a regulation that sets minimum training standards for ''each class and craft of safety-related railroad employee.'' FRA has undertaken this mandated rulemaking via the RSAC process (Task No. 10–01, Training Standards Working Group). The training standards NPRM was published on February 7, 2012 (77 FR 6412), and includes proposed minimum training standards for roadway workers as defined by existing § 214.7

As a result, although in 2007 the full RSAC recommended that FRA adopt the RWP Working Group's proposed consensus training requirements for roadway workers, FRA's training standards NPRM proposes to address training issues pertaining to roadway workers.[2] As such, FRA is not proposing certain of the RWP Working Group's consensus training recommendations in this rulemaking (*e.g.,* the proposed proficiency demonstration for additional roadway worker qualifications required every 24 months), but rather seeks comment below on whether to adopt the training and qualification frequencies prescribed by the minimum training standards NPRM, or those previously recommended by the RWP Working Group. FRA notes that it is not proposing to amend the existing mandatory annual roadway worker training requirements contained in subpart C of part 214.

The Working Group also came to consensus to add a new paragraph (e) to existing § 214.343, which pertains to the training of roadway workers. That recommended paragraph would have required that each railroad require that contractor employees receive the requisite roadway worker training and qualification prior to performing any roadway worker duties. FRA is not including that consensus recommendation in this NPRM. Under the existing RWP regulation, contractor employees are already required to receive roadway worker training prior to performing roadway worker duties. *See* 49 CFR 214.5, 214.7, 214.343 and 214.345; FRA Technical Bulletin G–05–19. Therefore, this recommended paragraph would not actually amend or enhance any existing training requirements, but could require additional costs to be incurred by railroads. Further, the training standards NPRM contains proposed requirements regarding coordination between contractors and railroads pertaining to the training of contractor employees at §§ 243.1(b), 243.101(e)-(f), and 243.209. 77 FR 6453. These proposed requirements are actually more extensive than the ones recommended by the RWP Working Group. For these reasons, FRA is not proposing this consensus recommendation.

The RSAC also recommended that FRA adopt the Working Group consensus language for the definition of the term ''interlocking, automatic'', with that definition mirroring the existing definition of the same term found at 49 CFR 236.750. However, that term is not actually used anywhere in the existing text of part 214, nor is it used in any of the text proposed in this NPRM. The minutes to the Working Group meetings indicate that potentially this definition was recommended in an effort to help the regulated community differentiate between an automatic interlocking and a manual interlocking (within the limits of which individual train detection is not permitted via existing § 214.337). Because the term is not used in the regulation as it exists currently or as proposed in this NPRM, FRA is not proposing to adopt the Working Group's recommended definition. The recommended consensus definition of ''interlocking, manual'', and the accompanying discussion in the section-by-section analysis, should enable differentiation of those terms. Further, FRA and the regulated community can always look to the existing definition of ''interlocking, automatic'' contained in part 236 for additional guidance, if necessary.

There were several items addressed during the Working Group meetings for which no consensus was reached. For most of those items, FRA is proposing rule text in this NPRM and is requesting comment on those proposals. However, for certain of these non-consensus items, FRA is not proposing rule text. For example, the Working Group discussed various potential amendments to the definition of ''roadway worker'' found at 49 CFR 214.7. After consideration, FRA is not proposing an amendment to that definition. FRA believes the meaning of the existing definition is clear. One of the potential recommendations discussed by the Working Group was to specifically add the words ''who fouls a track in connection with'' to the first sentence of the existing definition. FRA, in contemplating such an addition, revisited the preamble to the 1996 final rule promulgating the RWP regulation. In that preamble FRA explained that a proposal for a similar addition of language to the definition of the term ''roadway worker'' was unnecessary and would ''severely limit the application of the rule due to the difficulty in determining when a worker becomes engaged in a task.'' (61 FR 65962). FRA maintains that same position today. The definition for the term ''roadway worker'' describes employees who are covered by this regulation, and not when that coverage begins or ends. As is explained in FRA Technical Bulletin G–05–13, the existing provisions of § 214.313 already require that when a roadway worker fouls a track, including when performing preparatory activities to make such track inaccessible to establish working limits, that on-track safety is required. FRA disagrees that an amendment to the definition of the term ''roadway worker'', as discussed during the Working Group meetings, would make the established RWP on-track safety requirements any more clear.

The Working Group also discussed the potential addition of a definition to existing § 214.7 for the term ''remotely controlled hump yard facility.'' That term is used in existing § 214.337(c)(3), which prohibits the use of individual

[2] These consensus recommendations were meant, in part, to eliminate confusion in the railroad industry regarding the requirements of the roadway worker protection training provisions and also to provide uniformity, particularly with regard to additional roadway worker qualifications (*e.g.,* lone worker and roadway worker in charge qualifications, which currently only require ''periodic'' requalification with no specified interval).

train detection inside the limits of a remotely controlled hump yard facility. There was agreement among the Working Group that a remotely controlled hump yard facility began at the crest of a hump. The segment of a hump yard from the crest, through the retarders, and to the end of classification tracks would clearly be within the limits of a remotely controlled hump yard facility. However, there was no consensus in the Working Group as to the limit of such a facility at the far pull-out end, in part due the myriad of physical layouts in existing hump yards. Unlike the voluminous number of manual interlockings and controlled points that exist (the other two locations in which the use of individual train detection is prohibited by § 214.337), there are a limited number of remotely controlled hump yard facilities in the United States, and enforcement problems for FRA have not been noteworthy to date. Also, the varying physical layouts for these facilities would make it difficult to attempt to propose language defining the limits of the pull-out ends of such facilities which could reasonably apply to all existing layouts. Finally, if a lone worker is unsure whether the track he or she needs to foul is within the limits of a remotely controlled hump yard facility, or if there is any question regarding the safety of fouling any track, the existing individual train detection regulation already contains an absolute right for a lone worker to utilize an on-track safety procedure other than individual train detection.

For these reasons, FRA is not proposing a definition for the term ''remotely controlled hump yard facility'' in this NPRM. If a dispute regarding the limits of a remotely controlled hump yard facility arises, FRA will, on a case-by-case basis, provide assistance in identifying that facility's limits based on the particular physical layout of the facility.

The Working Group also addressed the use of tunnel niches or clearing bays as a place of safety for roadway workers when such niches are outside the clearance envelope but, by design, may be less than four feet from the field side of the rail. The Working Group discussed this issue at length, but no consensus was reached. FRA is not proposing regulatory text regarding this issue in this NPRM. Instead, FRA is requesting further comment below on how to best address the use of such tunnel niches in a final rule.

For the remaining non-consensus items listed in Section IV above, FRA is proposing regulatory text in this NPRM. FRA is also proposing other miscellaneous revisions to the existing RWP rule that were not addressed by the Working Group; some of which codify existing guidance and interpretations and some of which are intended to merely clean-up or clarify existing requirements. FRA's rationale for these proposed revisions is contained in the relevant section-by-section analysis below. Upon issuance of a final rule in this proceeding, FRA intends to supplant, as appropriate, technical bulletins concerning the existing RWP regulation.

VII. Request for Comment on NTSB Recommendation R–08–06

On January 9, 2007, two Massachusetts Bay Transportation Authority (MBTA) maintenance-of way employees were killed in an accident that occurred near Woburn, Massachusetts. The incident occurred when a passenger train struck a roadway maintenance machine that was on the track. The NTSB found the probable cause of that accident was ''the failure of the train dispatcher to maintain blocking that provided signal protection for the track segment occupied by the maintenance-of-way work crew, and the failure of the work crew to apply a shunting device that would have provided redundant signal protection for their track segment.'' (*See* NTSB Accident Report NTSB/RAR–0801, Collision of Massachusetts Bay Transportation Authority Train 322 and Track Maintenance Equipment near Woburn, Massachusetts, January 9, 2007; available online at *http://www.ntsb.gov/doclib/reports/2008/RAR0801.pdf*).

The MBTA had a rule in effect at the time of the accident which required that roadway workers shunt track circuits in order to provide additional signal protections to prevent trains or other rolling equipment from entering working limits. The NTSB found that the roadway work group involved in the incident did not comply with that rule. The NTSB made several recommendations in response to that accident, including Recommendation R–08–06. That recommendation states FRA should ''[r]equire redundant signal protection, such as shunting, for maintenance of way work crews who depend on the train dispatcher to provide signal protection.''

This incident occurred near the end of the Working Group's work in 2007, and the Working Group did not consider the use of shunting devices in conjunction with the applicable controlled track ''working limits'' requirements of the RWP regulation (exclusive track occupancy (§ 214.321), foul time (§ 214.323), or verbal protection (§ 214.324)). While the mandatory use of shunts as an additional measure of safety when establishing working limits had not previously been considered, FRA wishes to analyze available options for redundant forms of working limits protection. FRA understands that shunting procedures can be disruptive to signal systems, and, in some circumstances, might not be permissible under FRA's signal system regulations at 49 CFR part 236. However, if safe and cost-effective procedures can be implemented, FRA may add a provision in the final rule or proceed with an additional rulemaking in the future to require the use of redundant forms of protection. FRA specifically invites comment on this issue from the railroad industry and other interested parties, to include potential costs of implementing various redundant measures. The RWP regulation does not currently prescribe the use of every device or procedure that may be used by a railroad to supplement the establishment of working limits. However, FRA notes that roadway workers are already required by existing § 214.313(a) to follow all on-track safety rules and procedures of a railroad, including those such as the MBTA redundant protection requirement discussed above, even if such rules are not enumerated in Federal regulation.

VIII. Additional Items for Comment

FRA is requesting comment on several requirements or amendments for which regulatory text is not being proposed in this NPRM, but which FRA is considering adopting in a final rule in this proceeding. FRA specifically requests comment on these additional items, and also discusses some of them further in the section-by-section analysis below.

A. RWP and Blue Signal Protections in Shop Areas

Under the existing roadway worker and blue signal protection requirements, any roadway workers performing work that involves fouling track within locomotive servicing track areas or car shop repair track areas (or performing work on structures within those areas that involves fouling a track) are required to utilize on-track safety procedures via the requirements of part 214. Any ''workers'', as defined by § 218.5, performing work on, under, or between rolling equipment within such facilities are required to do so via the blue signal protection requirements of subpart B of part 218. Since the promulgation of the RWP regulation, there has been confusion in the railroad

industry over what protections are appropriate within such shop facilities for certain types of work activities (*e.g.,* performing work on the overhead doors of a locomotive maintenance building when such work involves fouling a track). FRA issued Technical Bulletin G–08–03 to help clarify the issue, and explained that whether or not employees are working in a shop area, it is always the type of work being performed that dictates which type of protection is required, roadway worker protection or blue signal protection. Technical Bulletin G–08–03 also explained that FRA would not take exception to any work being performed that appeared to be more akin to roadway worker duties, but that was of an ''incidental'' nature to the larger job of mechanical personnel performing work on rolling equipment, *e.g.,* sweeping a shop floor or changing a light bulb in an inspection pit.

Railroads have argued that FRA should exempt certain maintenance of way work within shop areas from the on-track safety requirements of part 214, as the employees within the limits of the shop areas may perform such work safely while utilizing the blue signal protections that they have been trained on the requirements of and are familiar with. Railroads have also argued that training shop personnel on two different protection regimes is costly, and is also confusing for employees that actually have to apply those two different types of protection, and, thus, detrimental to safety.

FRA is not proposing any specific rule text regarding this issue in this NPRM, but is contemplating amending the existing blue signal protection and/or roadway worker protection regulations in a final rule to make additional allowances for certain maintenance work performed within the limits of locomotive and car shops. FRA would only make such amendments if they provided for at least an equivalent level of employee safety to that which exists via the existing Federal regulations governing this issue. FRA is requesting comment on this issue, and specifically requests comment on how the issue of contractor employees would best be addressed, as contractor employees are subject to the requirements of part 214, but are not considered ''workers'' via existing part 218's blue signal protection requirements. As throughout the history of the blue signal regulation it has only governed work being performed on, under, or between rolling equipment, FRA also specifically requests comment on how an amendment to the existing regulations could best accommodate the protection of additional work activities within shop areas. Among other amendments, FRA anticipates existing § 218.29(a)(7) would be required to be amended to require that workers clear any shop track on which a locomotive is to be repositioned on. If in a final rule FRA decides to forego making any amendments to the current roadway worker and blue signal protection regulations within shop areas, FRA may utilize the comments received on this issue in a future rulemaking proceeding.

B. Frequency of Qualification and Training for Additional Roadway Worker Qualifications

The existing sections in part 214 that govern the training and qualification requirements for additional roadway worker qualifications (§§ 214.347 (lone worker), 214.349 (watchman/lookout), 214.351 (flagman), 214.353 (roadway worker in charge), and 214.255 (roadway maintenance machine operator)) do not expressly specify an interval for refresher training and qualification. Those existing sections currently only state that ''[i]nitial and periodic qualification of [additional roadway worker qualification] shall be evidenced by'' either demonstrated proficiency or a recorded examination, depending on section. The Working Group made the consensus recommendation that FRA propose regulatory text expressly requiring initial training and qualification before a roadway worker is assigned to perform duties involving that qualification, and also recommended requiring refresher training annually and qualification every 24-months. The requirement that initial training and qualification must be provided before assigning a roadway worker duties involving an additional qualification is required by the current regulation. The consensus recommendation would only more clearly state such if adopted in a final rule.

With regard to the refresher training and qualification consensus recommendations, however, in the time period that has passed since the Working Group proposed consensus text for this section, RSIA 2008 mandated that FRA undertake a rulemaking to set minimum training standards for ''each class and craft of safety-related employee,'' to include training standards for roadway workers. That rulemaking was undertaken by the RSAC and FRA recently published an NPRM proposing such minimum training standards. 77 FR 6412. The training standards NPRM contains an extensive proposal for refresher training and qualification requirements for roadway workers, and would require such refresher training and qualification every three years, to include for the additional roadway worker qualifications in part 214.

As the consensus recommendation made by the RWP Working Group and those proposed by the minimum training standards rulemaking do not parallel one another with regard to frequency of refresher qualification and training, FRA is requesting comment on the best manner to proceed in setting refresher qualification and training intervals for the additional roadway worker qualifications in a final rule. FRA specifically requests comment on the costs and/or potential benefits of the two different approaches.

FRA notes that the existing RWP regulation requires that each roadway worker be trained each calendar year on the items listed in § 214.345, and on the on-track safety rules and procedures they are required to follow via § 214.343. FRA is not proposing to amend those existing annual basic roadway worker training requirements. Rather, FRA is only seeking comment on the appropriate interval of refresher qualification and training requirements for additional roadway worker qualifications found in existing §§ 214.347, 214.349, 214.351, 214.353, and 214.255. FRA would also apply the interval adopted in a final rule to proposed § 214.352.

C. Physical Characteristics Qualification for Lone Workers and Watchmen/Lookouts

Existing § 214.353 governs qualification and training for roadway workers in charge that provide for on-track safety, and paragraph (a)(4) of that section requires that such training include the ''relevant physical characteristics of the territory of the railroad upon which the roadway worker is qualified.'' However, such a qualification is absent from existing § 214.347, which governs training for lone workers, and also from existing § 214.349, which governs training for watchmen/lookouts. FRA is currently considering amending §§ 214.347 and 214.349 to include a requirement for such training.

Existing § 214.349(a)(3) requires that watchmen/lookouts receive training and qualification on the ''[d]etermination of the distance along the track at which trains must be visible in order to provide the prescribed warning time.'' FRA believes that requiring qualification on the physical characteristics could potentially aid a watchman/lookout in making the safe distance determination to identify an appropriate location to give train

approach warning. Such a qualification could be important in areas where curves, the possible presence of trains on adjacent tracks, and other unique physical layouts or situations exist. In addition, lone workers often essentially act as roadway workers in charge when performing work on their own. FRA believes that a requirement to be qualified on the physical characteristics at a location where a lone worker fouls track to perform work could similarly improve safety. Qualification on the physical characteristics at a particular location could aid in a lone worker's ability to be able to safely detect approaching trains and similarly make the appropriate distance determination as required by existing § 214.337(a). A discussion of the level of qualification required by a lone worker, to include qualification on physical characteristics, was undertaken in FRA Technical Bulletin G–05–03 (January 10, 2005).[3] This proposed requirement, if adopted in a final rule, would codify the substance of that technical bulletin discussion.

To clarify, FRA does not believe that a watchman/lookout or a lone worker would need to be versed in the physical characteristics of an entire territory in the same manner as a roadway worker in charge, and is aware of the challenges such a broad requirement could present to system-wide roadway work gangs on larger railroads. However, FRA seeks comment on its potential inclusion of a provision in a final rule that would require an abbreviated physical characteristics qualification at a particular location where train approach warning is to be given by a watchman/lookout, or at a particular location where a lone worker is to perform work. FRA is considering the inclusion of such a requirement in the final rule issued in this rulemaking. FRA also specifically requests comment on the potential costs that could be associated with this requirement, and the factual basis of any such costs.

D. Use of Tunnel Niches as a Place of Safety

Some railroad tunnels have niches or clearing bays built into their sidewalls that permit roadway workers to occupy a place of safety while performing work in tunnels (typically inspection work). However, some of these niches that are outside the clearance envelope may, by design, be slightly less than four feet from the field side of the rail. Technically, the use of such niches as a place of safety would be a violation of the existing RWP regulation, as a roadway worker occupying such a niche could be ''fouling a track'' per the existing definition for that term in § 214.7. The Working Group discussed this issue at length, but no consensus solution was reached. The Working Group did, however, decide against modifying the definition of ''fouling a track'' to accommodate such niches or bays. Working Group discussions indicated that such niches that were outside the clearance envelope but less than four feet from the field side of the rail existed on a small number of railroads, and were located primarily in the Eastern United States. Amtrak indicated that its tunnel niches have been used for 100 years, and are essential to protecting roadway workers in high traffic areas. The BMWED indicated during Working Group discussions that its membership largely did not utilize clearing bays, but rather primarily obtained working limits while fouling track within tunnels.

FRA is not proposing specific text regarding this issue in the NPRM, but is contemplating whether to adopt regulatory text in a final rule that would permit the use of these structures as a place of safety by roadway workers, provided certain safety requirements are complied with. FRA requests further comment on this issue.

FRA anticipates that if the use of such tunnel niches and clearing bays were permitted, that railroads would be required to designate in their on-track safety programs which niches or clearing bays could be used as places of safety. In making such designations, railroads would have to take into account the time it may take an individual to move into such niches or bays when departing a track upon the approach of a train (to ensure that a roadway worker could occupy a designated niche as a place of safety at least 15 seconds before a train would pass the location of the bay, in accordance with the existing requirements of §§ 214.329(a) or 214.337(c)(4)). Requirements that such niches be free from any type of debris or supplies and also be of an adequate size to safely accommodate a roadway worker would also likely be necessary.

E. Highly Visible Protective Equipment for Roadway Workers on Station Platforms

FRA is considering adding a requirement in a final rule in this proceeding to the proposed station platform snow removal and cleaning section (proposed § 214.338) that would require roadway workers performing duties under the procedures proposed in that section to wear highly visible protective equipment (vest or other outer garment) which would meet a standard of the American National Standards Institute/International Safety Equipment Association. The request for comment regarding this item is also discussed further in the section-by-section analysis below.

F. Splitting of Roadway Worker in Charge Qualifications

FRA is considering adopting a requirement in a final rule in this proceeding that would only permit the splitting of roadway worker in charge qualifications to occur in situations where a conductor or other railroad employee serves as a pilot to a roadway worker in charge who is not qualified on the physical characteristics of a particular territory. FRA is considering such, as every roadway work group is already required to have a roadway worker in charge, and if the proposed amendment to paragraph (a) of existing § 214.353 is adopted in a final rule in this proceeding, any employee acting as a roadway worker in charge would be required to be trained on the substantive requirements listed in § 214.353. This issue is detailed further in the section-by-section analysis for § 214.353 below, and FRA specifically requests comment on this issue.

G. Effective Date of Final Rule

FRA currently anticipates that the effective date of a final rule in this proceeding would be 180 days from the date of publication of the final rule in the **Federal Register**. However, FRA is cognizant that depending on when a final rule is published, the training schedules of railroads may have to be taken into account when establishing the implementation schedule. FRA welcomes comment on an appropriate effective or applicability date for a final rule in this matter.

IX. Executive Order 13563 Retrospective Review

In accordance with the requirements of Executive Order 13563, this NPRM proposes to modify the existing RWP requirements, in part, based on what has been learned from FRA's retrospective review of the existing regulation.

[3] Effective January 10, 2005, RWP technical bulletins WPS–99–01 through 99–09 were reissued and designated as technical bulletins G–05–02 through G–05–10. New RWP bulletins G–05–11 through G–05–30, most of which are discussed below, were also issued on that date. These technical bulletins are all available on FRA's internet site at: *http://www.fra.dot.gov/rrs/pages/fp_1532.shtml.* FRA plans, as appropriate, to supplant the majority of these technical bulletins based on changes made to the RWP regulation in any final rule in this proceeding.

Executive Order 13563 requires agencies to review existing regulations ''* * * that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.''[4] As a result of its retrospective review, FRA is proposing to reduce burdens on the industry by no longer requiring that railroads submit their on-track safety programs to FRA for review and approval before such programs become effective and when any subsequent changes are made to such programs (§ 214.307). FRA is also proposing to delete several sections of the existing RWP regulation it believes to be outmoded or superfluous (§§ 214.302, 214.305, 214.331 and 214.333), and has also proposed to allow for greater industry flexibility in several other sections (§§ 214.317, 214.324, 214.327, 214.337 and 213.338). FRA does not believe that these proposals will reduce safety.

X. Section-by-Section Analysis

FRA seeks comments on all proposals made in this NPRM. Proposed Amendments to 49 CFR part 214 (Part 214).

Section 214.7 Definitions

FRA proposes to amend the existing definitions section for Part 214 by both adding new definitions and amending existing definitions. FRA proposes to add new definitions for the following terms: controlled point; interlocking, manual; maximum authorized speed; on-track safety manual; roadway worker in charge; station platform work coordinator; and verbal protection. FRA also proposes to amend Part 214's existing definitions for the terms effective securing device and watchman/lookout.

The proposed definition of the term ''controlled point'' was a consensus recommendation agreed to by the Working Group. This new definition is being proposed because existing § 214.337 prohibits the use of individual train detection by a lone worker inside the limits of a ''controlled point.'' *See* § 214.337(c)(3). However, that term is not defined in the existing RWP regulation and over the years interpretive issues have arisen. In response, FRA issued Technical Bulletin G–05–29. The Working Group discussed this topic, and decided to recommend the incorporation of the existing definition for the same term found in FRA's signal and train control regulations (§ 236.782), along with the definition of ''interlocking, manual'' (the definition for the term automatic interlocking was also adopted as consensus language by the Working Group, but as explained above, is not being proposed by FRA in this NPRM). If definitions for the terms ''controlled point'' and ''interlocking, manual'' are adopted in a final rule, those definitions will supplant FRA Technical Bulletins G–05–29 and G–05–11, as discussed further below.

FRA is proposing to amend the definition for existing term ''effective securing device'' as recommended by the Working Group. The term ''effective securing device'' is intended to describe an appurtenance preventing the operation of mechanisms that make non-controlled track inaccessible. Since promulgation of the original RWP regulation, a number of interpretive questions have arisen about this definition. In response, FRA issued Technical Bulletin G–05–20 to provide clarity. This new proposed definition incorporates the contents of that technical bulletin in order to clarify what constitutes an ''effective securing device.''

The proposed amendment would require that locks used to lock switches or derails for the purpose of providing on-track safety for roadway workers must be keyed to allow for removal by only the roadway workers for whom protection is being provided. In the absence of a lock, the definition would allow a spike to be driven into a switch tie to secure a switch, so long as the spike cannot be removed without the use of railroad track tools. Clamps and metal wedges (solidly driven on a derail securing it to the rail) without a lock would also be acceptable if they cannot be removed without the use of railroad track tools. For example, a clamp that could be removed with an ordinary adjustable wrench would need to be locked. This is to ensure that other employees, such as transportation employees who may attempt to access a track with rolling equipment, could not readily remove such on-track safety protections applied by roadway workers to establish on-track safety.

To clearly identify effective securing devices, and thus, to prevent railroad employees from being injured by attempts to operate a secured device, the throwing handle, hasp, or keeper of the switch or derail shall have a unique tag which is clearly displayed. The unique tag must clearly indicate to other railroad employees, such as trainmen, who may attempt to operate a switch that such switch is secured. If there is no throwing handle, this proposed definition would require that the securing device itself shall be tagged. Regardless of the type of securing device used, each tag must be clearly marked to indicate that it is securing an entrance into inaccessible track.

Members of the Working Group had the opportunity to make comments on a draft of the consensus language after the close of the Working Group meetings. One of those comments, made by the AAR, requested that the consensus language be amended to allow a generic tag, rather than a unique tag, be applied to the throwing handle or hasp of a switch or derail being secured. FRA acknowledges this comment, but has chosen to propose the consensus language as agreed to by the Working Group. However, FRA requests comment by AAR and other interested parties further explaining their request, and will consider amending the wording in the final rule, if appropriate.

FRA has made a minor amendment to the language of the Working Group's consensus recommendation for the definition of this term. FRA removed the phrase ''when used in relation to on-track safety'' from the first sentence of the proposed definition. FRA removed the phrase because it is unnecessary, as anytime that term appears in part 214 the proposed definition would apply. This change is not substantive in nature, and is intended to reflect conformance with the structure for defining regulatory terms.

FRA is also proposing to adopt the Working Group's recommended definition for the new term ''interlocking, manual'' (as discussed in Section VI above, FRA is not proposing the consensus definition for the term ''interlocking, automatic'', as that term is not actually used in either the proposed or existing regulatory text). As recommended by the Working Group, this definition mirrors the existing definition for the same term in FRA's signal and train control regulation (§ 236.751). Existing § 214.337 prohibits the use of individual train detection at manual interlockings. However, the term ''manual interlocking'' is not defined. As such, inquiries have arisen regarding what does, or does not, constitute a manual interlocking. In response, FRA issued Technical Bulletins G–05–11 and G–05–29. The following table incorporates the

[4] Exec. Order No. 13563, 76 FR 3821 (Jan. 21, 2011); available online at *http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf.*

substance of those technical bulletins and summarizes the applicability of individual train detection on various types of track arrangements:

Track arrangement	Individual train detection permitted
Controlled point/manual interlocking with switches, crossings (diamonds), or moveable bridges	No.
Controlled point with signals only—see proposed text of § 214.337(c)(3)	Yes.
Manual interlocking	No.
Automatic interlocking	Yes.
Power operated switch installations	See discussion below.

Power operated switch installations are included in the table above because FRA has received many questions regarding whether certain power operated switch installations, which are operated by train crews to manipulate switch position and have wayside indication devices that convey the position of a switch, are considered to be manual interlockings. Typically, they are not. The use of individual train detection by a lone worker at power operated switch installation locations is permitted if:

- The signals at these installations do not convey train movement authority.
- The switch installation is not controlled by a train dispatcher or control operator, and is not part of a manual interlocking or controlled point.

FRA notes again that lone workers performing work at these installations, or any other locations where the use of individual train detection is permitted, have the absolute right to use a form of on-track safety other than individual train detection. *See* § 214.337(b). Also, regardless of the type of on-track safety being utilized, FRA notes that all roadway workers should be cognizant of potential pinching hazards associated with performing work on such power-operated switches. FRA further notes that switches which can either be manipulated by hand or by a train dispatcher or control operator, typically referred to as ''dual control switches'', are located within manual interlockings or controlled points and the use of individual train detection within these installations is prohibited.

Existing § 214.329(a) requires that train approach warning be given in sufficient time for a roadway worker to ''occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum speed authorized on that track can pass the location of the roadway worker.'' Existing § 214.337(c) contains a similar requirement for lone workers. However, no definition for such maximum speed authorized exists in the current RWP regulation. Accordingly, the Working Group addressed this issue and reached consensus on a definition of the term ''maximum authorized speed.'' [5] FRA proposes to largely adopt the Working Group's consensus definition, which, for purposes of part 214, is the permanent speed designated for a track in a railroad's timetable, special instructions, or bulletin. The Working Group agreed that using a temporary speed restriction as the basis for determining the appropriate train approach warning distance could pose inherent dangers. That danger occurs in situations where a party might remove a temporary restriction from a particular segment of track without notifying the roadway work group or lone worker using that temporary speed restriction to determine the appropriate train approach warning distance. FRA notes that this new definition would also apply in the context of certain new RWP requirements promulgated in the adjacent track final rule discussed above. Similar to the proposed definition for the term ''effective securing device'' discussed above, FRA has made a minor amendment to the language of the Working Group's consensus recommendation for the definition of this term. FRA removed the phrase ''for on-track safety purposes'' from the proposed definition. FRA removed that phrase because it is unnecessary, as anytime this term appears in part 214, the proposed definition would apply. This change is not substantive in nature, and is only intended to conform with regulatory drafting practices.

FRA is also proposing a definition for the term ''on-track safety manual.'' Existing § 214.309 requires each roadway worker in charge and lone worker to have with them a manual containing the rules and operating procedures governing track occupancy and protection. The Working Group agreed to recommend consensus amendments to that existing section, where such manual is referred to as an ''on-track safety manual.'' As such, the Working Group also came to consensus on a recommended definition for this new term. This proposed definition is intended to provide clarity regarding the materials that must be included in the on-track safety manual, as the manual is a critical element of any on-track safety program. FRA previously issued Technical Bulletins G–05–12 and G–05–25, both of which addressed concerns regarding the requirement regarding such manuals. The following is a general discussion of on-track safety manual requirements.

First, via existing §§ 214.311(b)–(c) and 214.313(d), roadway workers have the right to challenge in good faith whether the on-track safety procedures to be applied at a job location comply with the operating rules of the railroad. Thus, the good faith challenge procedures must be included in a railroad's on-track safety manual, as roadway workers at a work site may require access to the procedures for making such a challenge. FRA has left to a railroad's discretion how to best fulfill this requirement. The documents fulfilling the requirement could take many forms, including a simple set of instructions explaining the good faith challenge procedures, a flow chart that roadway workers could follow when invoking a challenge, or even a form for a roadway worker to fill out when making such a challenge that explains the challenge procedures.

FRA Technical Bulletin G–05–12 explains that the on-track safety manual could take the form of: (1) One document containing on-track safety procedures, good faith challenge procedures, and on-track safety operating rules of a railroad (absent operating rules not pertaining on-track safety); or (2) a binder system holding together separate documents such as the on-track safety procedures, on-track safety operating rules, and all operating rules/procedures, with the on-track safety procedures and good faith challenge procedures composing tabs or sections of that binder. The RWP regulation does not specify that a

[5] The difference in word order between the proposed definition and the wording as it appears in existing § 214.329(a) is addressed in the section-by-section analysis for § 214.329 below.

roadway worker in charge must have the railroad's timetable and/or special instructions readily available along with the on-track safety manual. However, if the timetable and/or special instructions contain operating rules or instructions that affect the on-track safety procedures of roadway workers, those documents must also be available with the on-track safety manual.

If a railroad chooses not to use certain methods of establishing working limits or on-track safety, it is not necessary to include procedures for establishing those types of on-track safety in its on-track safety manual. For example, if a railroad chooses not to use ''foul time'' via § 214.323 as a method of establishing working limits, ''foul time'' procedures do not need to be included in that railroad's on-track safety manual. Likewise, a short line railroad that does not have any controlled track would only utilize § 214.327 (inaccessible track) as a form of working limits, and would not need to include procedures governing the establishment of other forms of working limits.

If a railroad uses electronic display of authorities to establish working limits, as is proposed in new § 214.322 below, the use of such display would also need to be addressed in the on-track safety manual. Also, FRA notes that part 214 does not prohibit the use of an electronic device that can display the contents of an on-track safety manual as an alternative to a written copy (hard copy) of an on-track safety manual. So long as the contents of the on-track safety manual are readily viewable via an electronic device, FRA would not take exception to the use of such device. However, if a device malfunctions such that the contents of the on-track safety manual could not be retrieved and viewed, a printed copy of the on-track safety manual must be readily available for a roadway work group to continue its work. If no alternative on-track safety manual is available, the roadway work group must cease its work and occupy a place of safety.

FRA also notes that the general procedures applicable to all machines and roadway workers must be included in the on-track safety manual (*e.g.,* machine-to-machine spacing and space between roadway workers and machines as established by existing § 214.341). However, § 214.341 requires that unique instructions for the safe operation of roadway maintenance machines must be provided and maintained with each machine if such machine is large enough to carry the instruction document. If feasible, FRA recommends that these machine-specific instructions be incorporated into the on-track safety manual as well.

Finally, FRA has amended the proposed definition for the term ''on-track safety manual'' slightly from that as recommended by the Working Group. FRA inserted the words ''designed to'' into the first sentence of the proposed definition. This change is to reflect that the instructions in the manual, if followed, are designed to prevent roadway workers from being struck by trains, rather than the instructions themselves preventing such collisions. This amendment is intended to be clarifying in nature, not substantive.

FRA is also proposing a definition for the existing term ''roadway worker in charge.'' The term is used in existing § 214.321, and is also described interchangeably throughout the existing regulation as the ''roadway worker responsible for the on-track safety of others'', the ''roadway worker designated by the employer to provide for on-track safety for all members of the group'', the ''roadway workers in charge of the working limits'', as well as by other similarly descriptive terms. The Working Group recommended consensus language for this rulemaking which also uses the term ''roadway worker in charge'' in several places. However, that term is not defined in the existing regulation, and the Working Group did not reach agreement on a recommended definition of the term.

As such, FRA is proposing a definition for the term ''roadway worker in charge.'' The proposed definition mirrors the existing definition for the term found in FRA's Railroad Operating Practices Regulation (see § 218.93). FRA is also proposing amending numerous sections of part 214 to substitute the term ''roadway worker in charge'' for the wide variety of different terms listed above which are currently used to describe the roadway worker who is in charge of a roadway work group and establishes on-track safety for that group.

Regarding the ''roadway worker in charge'' definition, FRA wishes to address a related issue. Inquiries are often made regarding whether a roadway worker in charge is simultaneously allowed to provide train approach warning under existing § 214.329 as a watchman/lookout. A roadway worker in charge may only perform watchman/lookout duties so long as the requirements of § 214.329 are met. Section 214.329(b) requires that watchmen/lookouts ''shall devote full attention to detecting the approach of trains and communicating warning thereof, and shall not be assigned any other duties while functioning as watchmen/lookouts.'' Thus, a roadway worker in charge could not perform any other duties, such as providing direction to a roadway work group, while simultaneously serving as a watchmen/lookout. The limitation on performing other tasks while simultaneously serving as a watchman/lookout severely limits the instances in which a roadway worker in charge may permissibly fill both roles. Also, if a roadway worker in charge also intends to serve as a watchman/lookout for a roadway work group, a discussion of such would have to take place during the job briefing as required by existing § 214.315(a), and would be subject to the good faith challenge provisions of part 214. FRA stresses that it is extremely safety-critical that a watchman/lookout devote full attention to detecting trains and not perform any other tasks while providing on-track safety for a roadway work group.

FRA is also proposing a definition for the new term ''station platform work coordinator'' in this NPRM, because FRA is also proposing new procedures for ''station platform work coordinators'' to oversee snow removal and light cleaning on passenger station platforms. See discussion of proposed § 214.338 below. This topic was discussed at length during the Working Group meetings, but no consensus was reached. A ''station platform work coordinator'' refers to a roadway worker who coordinates the on-track safety for a roadway work group performing snow removal or cleaning activities on a passenger station platform, and who is qualified in accordance with new proposed training § 214.352.

FRA is also proposing a definition for the new term ''verbal protection'' in this NPRM. Similar to ''foul time'', ''verbal protection'' is a proposed method of establishing working limits within an interlocking or controlled point via new proposed § 214.324. This new proposed § 214.324 is a Working Group consensus item, and is meant to accommodate the method of establishing working limits utilized by railroads in the western portion of the United States. This new § 214.324 is discussed at length further below in the section-by-section analysis. The Working Group did not contemplate a definition for this new term, but FRA has proposed one that is similar to the existing definition of ''foul time'', except that it refers to establishing working limits within an interlocking or a controlled point, rather than on controlled track outside the limits of those configurations.

Finally, FRA is proposing to amend the existing definition for the term ''watchman/lookout''. The only

proposed change to the definition is to account for the proposed new § 214.338 regarding the use of station platform work coordinators, as discussed further below. Section 214.338(a)(2) of the proposed station platform work coordinator provision requires train approach warning be given that would require roadway workers to withdraw hand-held, non-powered tools from the edge of a passenger station platform upon the approach of a train. However, that section states such warning may be based on available sight distance at the platform and may give less than the 15 seconds notice prescribed by existing § 214.329(a). The proposed amendment to the definition of ''watchman/lookout'' acknowledges this difference.

FRA is also requesting comment on whether the existing definition of the term ''watchman/lookout'' should be further amended in a final rule in this proceeding. The existing definition states, in part, that a watchman/lookout ''means an employee who has been annually trained and qualified to provide train approach warning to roadway workers of approaching trains or equipment.* * * '' However, as discussed below, the frequency of refresher training and qualification requirements for additional roadway worker qualifications (*e.g.,* for a lone worker, watchman/lookout, flagman, or roadway worker in charge qualification) is not currently specified. Existing § 214.349(b) only currently states that ''[i]nitial and periodic qualification of a watchman/lookout shall be evidence by demonstrated proficiency,'' mirroring the other existing additional roadway worker qualification sections. As discussed both above and below, FRA is requesting comment on the refresher training and qualification requirements for the additional roadway worker qualifications. Thus, FRA requests comment on whether the word ''annually'' should be removed from existing definition of ''watchman/lookout'' in order that the definition more accurately reflect both the current and any future RWP refresher qualification and training requirements, and also for purposes of consistency with the other existing additional roadway worker qualification definitions.

Subpart B—Bridge Worker Safety Standards

Section 214.113 Head Protection

FRA proposes to amend three existing sections in subpart B (Bridge Worker Protection) to delete the existing incorporations by reference to certain outdated industry standards for personal protective equipment (PPE). Specifically, §§ 214.113, 214.115, and 214.117, contain incorporations by reference to certain standards governing head, foot, eye, and face protection, respectively. Those sections were originally promulgated in 1992 when an FRA final rule establishing subpart B was published and reference standards dating back to 1986. 57 FR 28116 (June 24, 1992). Although the regulatory requirements have not been substantively updated in some time, the standards themselves have been updated. Employers and employees may currently have difficulty obtaining PPE manufactured in accordance with the standards currently incorporated by reference. As such, FRA is proposing to amend these existing sections to reflect that the standards incorporated by reference have been updated. In doing so, FRA wishes to allow for the continued use of any existing equipment which meets the standards currently incorporated by reference, as well as for the use of equipment meeting updated versions of those standards.

FRA's incorporations by reference of PPE standards in subpart B were initially patterned after certain OSHA general industry PPE standards located in Title 29 of the Code of Federal regulations. OSHA faced a situation similar to that FRA currently faces with regard to updating its PPE incorporations by reference. As such, OSHA updated those standards in a 2009 final rule. 74 FR 46350 (Sept. 9, 2009). OSHA's updates to the PPE regulations that correspond to FRA's subpart B PPE regulations (29 CFR 1910.133(b), 1910.135(b), and 1910.136(b)) allow for the continued use of PPE meeting older standards which had previously been incorporated by reference, as well as the use of PPE meeting updated versions of those same standards. OSHA's corresponding regulation also permits ''employers to use subsequent national consensus standards that they can demonstrate provide the requisite level of employee protection.'' 74 FR 46353. OSHA has indicated that that agency will update the standards referenced in its PPE regulations via direct final rulemaking as new editions of those standards become available. *Id.*

As such, FRA has decided to propose deleting its existing subpart B incorporations by reference. FRA proposes to replace those incorporations by reference by requiring that PPE comply with OSHA's corresponding general industry regulations. FRA has also decided to propose such because the setting of PPE standards falls more appropriately within OSHA's area of expertise, and that agency is better suited to update these standards as appropriate. As explained in the preamble to the 1992 FRA final rule promulgating the subpart B PPE regulations, ''[m]any federal agencies and manufacturers rely on OSHA's research abilities and expertise in formulating procedural guidelines and performance criteria that reduce exposure to the risk of injury. FRA is relying on OSHA's greater expertise in occupational health and safety.'' 57 FR 28116.

FRA's proposal is illustrated as follows. Section 214.113 governs head protection for railroad bridge workers. FRA proposes to update this section by deleting the existing incorporation by reference to American National Standards Institute (ANSI), Z89.1–1986, Protective Headwear for Industrial Workers. In its place, FRA proposes to reference the requirements of 29 CFR 1910.135(b), OSHA's general industry head protection PPE regulation. Section 1910.135(b) not only permits the use of head protection meeting ANSI standard Z89.1–1986 (FRA's current standard incorporated by reference), but also incorporates two updated versions of that standard as well. Under this proposal, equipment meeting the standard currently incorporated by reference in existing § 214.113 would be permitted to be used indefinitely, and equipment meeting more updated versions of that standard would also be permitted to be used. Adoption of this proposal would help facilitate compliance with Federal regulation, and would also eliminate any economic concerns associated with updating PPE standards, as equipment currently in use which conforms to the requirements of existing 49 CFR 214.113(b) would be permitted to continue in use indefinitely. FRA acknowledges that the most recent ANSI standard listed in OSHA's updated Section 1910.135(b) is the 2003 standard. FRA has learned that, in the interim, between the time of publication of OSHA's 2009 final rulemaking to present, that another updated ANSI head protection standard has been released. However, as mentioned above, 29 CFR 1910.135(b)(2) provides that head protection that an employer demonstrates is ''at least as effective as head protection devices that are constructed in accordance with '' the consensus standards ''will be deemed to be in compliance with the requirements of [1910.135(b)].'' Therefore, in interim time periods between when updated versions of the standards incorporated by reference are introduced and OSHA decides to adopt those standards in a

direct final rulemaking, PPE acquired by railroads or employers that conforms to an updated version of the standards incorporated by reference may still comply with the requirements of OSHA's regulation. However, FRA requests comment on this particular point, both with regard to this section and to the parallel proposed amendments to §§ 214.115 and 214.117 below.

Section 214.115 Foot Protection

Section 214.115, governs foot protection for bridge workers. Similar to the proposed amendments to § 214.113 discussed above, FRA proposes to update this section by deleting the existing incorporation by reference to ANSI American National Standard Z41–1991, Standard for Personal Protective Equipment Footwear. In its place, FRA proposes to reference OSHA's general industry foot protection regulation at 29 CFR 1910.136(b). Section 1910.136(b) permits the use of foot protection meeting ANSI standard Z41–1991, and also permits the use of PPE meeting updated versions of that standard. Section 1910.136(b) also reflects that ANSI Z41 was withdrawn and replaced by two ASTM standards in 2005. Adoption of this approach would help eliminate any potential costs associated with the continual updating of PPE standards, while also facilitating compliance with Federal regulation.

Section 214.117 Eye and Face Protection

Finally, § 214.117, governs eye and face protection for bridge workers. Similar to the proposed amendments to §§ 214.113 and 214.115 discussed above, FRA proposes to update this section by deleting the existing incorporation by reference to ANSI Standard Z87.1–1989, Practice for Occupational and Educational Eye and Face Protection. In its place, FRA proposes to cross reference OSHA's general industry foot protection regulation at 29 CFR 1910.133(b). Section 1910.133(b) permits the continued use of eye and face protection meeting ANSI standard Z87.1–1989, and also permits the use of PPE meeting two updated versions of that standard. Adoption of this approach would help eliminate any potential costs associated with the continual updating of PPE standards, while also facilitating compliance with Federal regulation.

Subpart C—Roadway Worker Protection

Section 214.301 Purpose and Scope

Section 214.301 sets forth the purpose and scope of subpart C of part 214. FRA is proposing to amend only paragraph (c) of this section. FRA is proposing regulatory text to clarify existing paragraph (c)'s meaning and also to address a certain situation that has arisen since the 1996 promulgation of the RWP regulation. Specifically, the second sentence of existing paragraph (c) permits the movement of roadway maintenance machines to be conducted under the authority of a train dispatcher, a control operator, or the operating rules of a railroad. As such, FRA Technical Bulletin G–05–14 explained that under existing paragraph (c) ''[r]oadway maintenance machines operating/traveling over non-controlled track do so under the operating rules of the railroad.'' When these machines are actually conducting work, however, on-track safety must first be established (*e.g.,* if working on non-controlled track, working limits must be established via the inaccessible track working limits procedures of § 214.327). FRA is proposing regulatory text that explicitly states that while roadway maintenance machines are traveling under the authority of a train dispatcher, a control operator, or the operating rules of the railroad, on-track safety in accordance with part 214 is not required to be established for such movements. This amendment is not substantive in nature and is only intended to clarify the existing meaning of this paragraph. An example of a roadway maintenance machine movement permitted to be conducted under this section would be the movement of a roadway maintenance machine between two separate work locations. Another example would be when traveling to or from a work location, or traveling between a worksite and a repair or storage facility.[6]

FRA wishes to discuss another situation that often occurs with regard to this topic. Railroad officials (such as transportation superintendents) often travel their territories in hi-rail vehicles for a variety of purposes. Because a railroad official such as a transportation superintendent would not typically be a ''roadway worker'' under that term's definition at § 214.7, such movements are not subject to the requirements of subpart C. However, most roadway maintenance machine operators are roadway workers as their duties include the inspection, construction, maintenance, or repair of railroad track, bridges, roadway, signal and communication systems, electric tractions systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track. Any roadway maintenance machine movements made by roadway workers are required to comply with the requirements of subpart C, and part 214 generally (*i.e.,* if a roadway maintenance machine is merely ''traveling'' it may be moved in accordance with paragraph (c) of this section without the establishment of working limits, but if a roadway maintenance machine is actually conducting work, working limits must be established, unless part 214 contains an exception for a particular type of operation).

FRA is also proposing an amendment to paragraph (c) to address a potential safety issue that has arisen when roadway maintenance machine movements are made on non-controlled track under this section. Movements on non-controlled track may be made without authorization from a train dispatcher or control operator, per the definition of the term ''non-controlled track'' at § 214.7. Thus, such movements have traditionally been made under railroad operating rules requiring that they be made at speeds not exceeding restricted speed. Restricted speed rules require that trains or other on-track equipment be able to stop within one-half the operator's range of vision. The requirement to stop within one-half the range of vision prevents collisions between any equipment that may be operating on the same non-controlled track. As such, under existing § 214.301(c), operations at restricted speed allow for roadway maintenance machines to safely travel over non-controlled track without having to establish working limits. FRA is aware, however, that some stretches of non-controlled track have been equipped with automatic block signal (ABS) systems. ABS systems are designed to prevent collisions while allowing for trains to operate at speeds greater than restricted speed. This scenario is problematic for purposes of the movement of roadway maintenance machines on non-controlled track under existing paragraph (c) because roadway maintenance machines do not all shunt ABS signal systems. Absent the establishment of inaccessible track working limits or other protections, nothing prevents a train operating on non-controlled ABS-signaled track at a speed greater than restricted speed from colliding with roadway maintenance machines traveling on the same track

[6] FRA is also proposing an RSAC consensus recommendation at § 214.317 below, whereby roadway workers conducting snow blowing and weed spraying operations on non-controlled track would be permitted to conduct such operations under this existing section rather than being required to establish working limits in all circumstances.

that do not shunt the signal system (no authority is needed to occupy such track and trains are not required to stop within one-half their operator's range of vision).

Based on the above-described situation, FRA is proposing that roadway maintenance machine movements on non-controlled track may only be made under paragraph (c) (*e.g.,* without establishing working limits) if train and locomotive speeds on such track are required to be made at restricted speed. Because such situations have arisen in the past, FRA is proposing regulatory text to prevent future occurrences.[7] As explained above, FRA believes that most non-controlled track is already limited to restricted speed operations (with one exception being block register territories, which are addressed further in proposed § 214.327(a)(7) below). Thus, this proposed requirement should not represent a cost burden to the industry. However, in order to provide additional flexibility on this point, FRA is proposing that railroads may also utilize other operating rules that provide a level of protection equivalent to that provided by the provisions of restricted speed rules on non-controlled track. As proposed, such other operating rules must first be approved by FRA in writing if they are intended to be used to satisfy this requirement.

FRA notes that this proposed provision only refers to train and locomotive speeds on non-controlled track. This provision would not affect the speeds that roadway maintenance machines are authorized to travel over non-controlled track. Existing § 214.341 already requires each railroad's on-track safety program address the spacing between machines and the maximum working and travel speeds for machines depending on weather, visibility, and stopping capabilities. Roadway maintenance machines typically have stopping capabilities far in excess of that of trains. The intent of this provision is to address situations where trains and locomotives are not required to stop within one-half the range of vision on non-controlled track, and could collide with roadway maintenance machines that do not shunt signal systems.

Section 214.302 Information Collection Requirements

FRA is proposing to remove this existing section from part 214. This section is both outdated and superfluous, as the Paperwork Reduction Act section below lists all of the information collection requirements pertaining to each section of part 214 as proposed in this NPRM. The Paperwork Reduction Act discussion that will be published in a final rule in this proceeding will also list all final information collection requirements. For a detailed summary of the information collection requirements, please see the Paperwork Reduction Act discussion in Section XI of the preamble below.

Section 214.305 Compliance Dates

FRA is proposing to delete existing § 214.305, as that section is now obsolete. Section 214.305 only references the phase-in dates by which a railroad's on-track safety program was required to comply with the original 1996 RWP rulemaking. Those dates are no longer applicable, and existing railroads' programs have been required to comply with the RWP regulation since those dates in 1997. Further, if a new railroad that is subject to part 214 is formed, that railroad's program is required to comply with the requirements of the existing RWP regulation upon commencing operations, as already established by existing §§ 214.301, 214.303, 214.317, and 214.335. Currently, the relevant date by which a railroad's on-track safety program will be required to comply with any changes or additions to the RWP regulation that are adopted by FRA in this rulemaking will be the effective date of any final rule issued.

Section 214.307 Review of Individual On-Track Safety Programs by FRA

Existing § 214.307 requires railroads to notify FRA in writing at least one month in advance of its on-track safety program becoming effective and sets forth FRA's formal review and approval process for such plans. FRA is proposing to amend this section to modify the existing on-track safety program approval process. This proposed revision was not contemplated by the Working Group, but parallels similar updated requirements in recent FRA rulemakings and is intended to ease burdens imposed under the existing section.

First, the proposed text would rescind the current requirement in this section that railroads notify FRA not less than one month before the effective date of their on-track safety programs. The proposed text also modifies the existing requirement that FRA review and approve every railroad's program. The proposed text would instead only require that FRA be permitted to review a railroad's on-track safety program upon request. This proposed change reflects that, generally, the railroad industry now has much experience with this regulation, as the regulation has been in effect for approximately 15 years. As such, the wholesale review of every aspect of a railroad's program that took place when the original rule was promulgated is not warranted. The approach as proposed in this section recognizes that typically FRA would review a railroad's program during audits or investigations. Upon review of a program, the proposed text would provide FRA's Associate Administrator for Railroad Safety/Chief Safety Officer with the authority to disapprove a program if it does not meet the requirements of part 214.

If the FRA Associate Administrator for Railroad Safety/Chief Safety Officer disapproves a program, proposed paragraph (b)(1) provides that a railroad would be required to respond within 35 days by either amending its program and submitting those proposed amendments for approval, or by providing a written response in support of its program. FRA's Associate Administrator for Railroad Safety/Chief Safety Officer would subsequently render a decision in writing either approving or disapproving the program. Paragraph (b)(2) provides that FRA would consider a failure to submit an amended program or provide a written response as required by the section to be a failure to implement a program under this part.

The proposed amendments to this section also ease the burden on both railroads and FRA as railroads would no longer be required to notify FRA of changes to their on-track safety programs, and FRA would be able to better utilize its limited resources to address legitimate safety concerns brought to its attention, rather than conducting mandatory reviews of on-track safety programs, the bulk of whose contents have already been established and approved by FRA for many years. Finally, the proposed text would also eliminate reference to the compliance dates in § 214.305, because as explained above, those dates are obsolete.

[7] One Class I railroad had a significant stretch of ABS non-controlled track (within yard limits) where such a situation did exist, and an incident occurred where a hi-rail machine was struck by a train. FRA is aware that this railroad has since required movements over this track to be made at restricted speed. Another Class I railroad has such a situation involving non-controlled signaled track, but while moving roadway maintenance machines over such track, FRA understands that the railroad creates working limits via a dispatcher controlling the signals at either end of the non-controlled limits to make such limits inaccessible.

Section 214.309 On-Track Safety Manual

Existing § 214.309, titled ''On-track safety program documents,'' mandates, in part, that rules and operating procedures governing track occupancy and protection be maintained together in one manual and be readily available to all roadway workers. With minor exceptions (discussed below), FRA is proposing amendments to this section consisting of consensus language recommended by the Working Group. As explained above in the section-by-section analysis for the definitions section, the proposed revisions to this section incorporate the definition for the new term ''on-track safety manual.'' That definition and the discussion above establish the minimum contents such manual should include. FRA is also proposing to amend the title of this section, to more accurately reflect the proposals to update this section.

Proposed paragraph (a) of this section incorporates the new proposed term ''on-track safety manual.'' Other than that change, the Working Group's consensus recommendation language for the first sentence of this paragraph then only repeated the text of the section as it currently exists. However, that existing language describes the ''[r]ules and operating procedures governing track occupancy and protection,'' which is the language that described what is now being proposed to be expressly defined as the ''on-track safety manual.'' As there is now a proposed definition for that term which describes what must be included in the on-track safety manual, the description of those items as it exists in the current regulation text is no longer necessary. Thus, FRA has proposed to amend the first sentence of the Working Group's recommended paragraph (a) to state ''[t]he applicable on-track safety manual (as defined by § 214.7) shall be readily available to roadway workers.''

Proposed paragraph (b) addresses the difficulty that a lone worker, such as a signal maintainer or a walking track inspector, might experience in carrying a large on-track safety manual. Paragraph (b) proposes that a railroad must provide for an alternate process for such a lone worker to obtain on-track safety information. The alternate process may include the use of a phone or radio for the lone worker to contact an employee who has the contents of the on-track safety manual readily accessible. FRA has added the words ''on-track safety'' before the word ''manual,'' which appears twice in this proposed paragraph. This amendment to the consensus recommendation is to consistently and accurately refer to the newly proposed term ''on-track safety manual'' throughout this section.

Although FRA is adopting the Working Group's consensus language recommended to be included in the last sentence of proposed paragraph (b) (which read ''[s]uch provisions for alternative access shall be addressed and included in the training provisions of § 214.347''), FRA is moving that language to § 214.347, which is discussed further below. FRA decided to make this change in the interests of simplicity and ease of use of the regulations. By putting the consensus language recommended by the Working Group setting forth this substantive training requirement in the lone worker training section itself (§ 214.347), FRA eliminates an unnecessary cross reference to another section of the RWP regulation, and thus keeps the applicable training requirements in the actual training sections.

Proposed paragraph (c) recognizes that in practice changes often occur to on-track safety rules and procedures. Often, it is necessary for a railroad to publish and distribute new or revised on-track safety measures or protection rules on an as-needed basis before those documents can be permanently incorporated into a revised manual, or to sometimes publish temporary changes to a program via bulletin or notice. While these amendments to an on-track safety program must be incorporated into an on-track safety manual, existing § 214.309 does not include any allowance for the temporary nature of some documents or the practical difficulties with incorporating such changes immediately after issuance. This proposed text would account for updates or changes to the on-track safety manual.

Section 214.315 Supervision and Communication

Existing § 214.315 mandates that job briefings be provided to roadway workers assigned duties that require the fouling of track and sets forth certain communication requirements between members of a roadway work group, and, in the case of a lone worker, between that lone worker and his or her supervisor or other designated employee. The Working Group recommended that FRA add new requirements to existing § 214.315. Those items largely govern the substance of job briefings performed prior to roadway workers fouling track, and also change reference to these job briefings to ''on track safety job briefing[s].'' Most of those consensus recommendations were addressed in FRA's adjacent track rulemaking. 74 FR 74614. However, one item that was not included in the adjacent track rulemaking involves information during the on-track safety job briefing regarding the accessibility of the roadway worker in charge and alternative procedures in the event the roadway worker in charge is not accessible to the members of the roadway work group. FRA is now proposing the recommended consensus language addressing this issue.

As a roadway worker in charge is the person who establishes and directs the on-track safety for a roadway work group, it is critical that each roadway worker in a roadway work group have access to the roadway worker in charge. Access is necessary where a member of the group invokes a good faith challenge, or where he or she has other questions concerning the established on-track safety protection. Thus, a roadway worker in charge must be located in the immediate vicinity of the work activity. As discussed in FRA Technical Bulletin G–05–07, sometimes it may be necessary for a roadway worker in charge to depart a work location for a short period to travel to another area encompassing the same work activity (*e.g.,* to conduct on-track safety checks throughout a large mechanized production activity). During such periods where the roadway worker in charge may be away from a work site for a short period, it is imperative the roadway work group have a readily available means to communicate with this employee. When a roadway worker in charge departs a work site for an extended period, a substitute employee with the relevant qualifications must be designated. If any exclusive track occupancy authorities are involved, the change in the roadway worker in charge designation must be formally addressed in the railroad operating rule. To eliminate confusion, FRA notes that this recommended consensus item regarding the accessibility of the roadway worker in charge was initially listed by the Working Group as new paragraph (a)(3) of § 214.315. However, after numbering and other minor changes as promulgated in the adjacent track rulemaking, FRA is proposing to include this provision as new § 214.315(a)(5). In the regulation text as proposed below, new paragraphs (a)(3) and (a)(4) of this section, as promulgated in the adjacent track rulemaking, also appear again. This is to reflect that FRA has to remove the ''and'' from the end of paragraph (a)(3) and move it to the end of paragraph (a)(4). This change is necessary as the

newly proposed (a)(5) would be the new last paragraph under (a).

FRA is also proposing a minor change to existing § 214.315(b). FRA is proposing to replace the word ''worker'' in the first sentence of that paragraph with the word ''worker(s)'', merely to reflect that roadway work groups often include multiple roadway workers. In addition, FRA is proposing to slightly amend existing paragraphs (c) and (d) of this section, by adding the new term ''roadway worker in charge'' to the first sentence of each of those paragraphs. The new term replaces the existing language in those paragraphs that generically refers to the person or roadway worker designated to provide on-track safety for a roadway work group. It is generally understood by the industry that this person is the ''roadway worker in charge.'' This change, along with the new definition for that term, only acknowledge this understanding and provide uniformity of reference to ''roadway worker[s] in charge'' in the regulation text. Finally, FRA is proposing to amend the first sentence of paragraph (e) of this section to replace the words ''job briefing'' with ''on-track safety job briefing'', merely for uniformity to reflect the Working Group's consensus recommendation regarding job briefings as referred to in paragraph (a) of this section.

Section 214.317 On-Track Safety Procedures, Generally

Currently, § 214.317 generally requires employers to provide on-track safety for roadway workers by adopting on-track safety programs compliant with §§ 214.319 through 214.337. FRA is proposing two substantive amendments to this existing section. These two proposed amendments are consensus recommendations of the Working Group and would impose requirements for roadway workers who walk across railroad track and provide for new allowances when snow removal or weed spraying operations are conducted on non-controlled tracks.

FRA is proposing to redesignate the existing text of § 214.317 as paragraph (a) of this section in order to account for the additional proposed amendments. In that existing text, FRA is proposing to amend the reference to § 214.337 to instead refer to proposed § 214.338. This change is to acknowledge that if proposed § 214.338 is adopted in a final rule, § 214.337 would no longer chronologically be the last section in this part governing on-track safety procedures, but rather the last section would be § 214.338.

Consistent with the consensus recommendation of the Working Group, FRA is proposing a new paragraph (b) regarding procedures for roadway workers to walk across railroad track. This section addresses the practical reality that roadway workers often have to walk across tracks while not directly engaged in activities covered by the existing RWP regulation. For example, a roadway worker might incidentally walk from a work site on a track in which working limits are in effect to a vehicle adjacent to the right of way. While walking to a vehicle, a roadway worker may have to cross over other ''live'' tracks where working limits or another form of on-track safety is not in effect. This proposed section, a consensus recommendation of the Working Group, is intended to prevent roadway workers from being struck by trains while incidentally crossing track, while at the same time recognizing the need for procedures enabling roadway workers to cross tracks safely without the need for formal on-track safety to be in place.

Proposed paragraph (b) would require that if roadway workers walk across track they must first stop and look in all directions from which a train or other on-track equipment could approach before starting across, in order to ensure they may safely clear the track before the arrival of any train or other on-track equipment. The proposal to require roadway workers to stop and look before crossing a track would provide an opportunity for roadway workers to physically stop what they are doing and consider the on-track circumstances before proceeding across live track. Although the Working Group recommended that roadway workers ''look in both directions'' before crossing any track, FRA has amended that consensus language to require roadway workers look in ''all directions from which a train or other on-track equipment could approach.'' FRA understands the Working Group's recommendation, but to require roadway workers to look in ''both directions'' without providing further context is ambiguous. FRA believes it is more precise to require roadway workers to first look in all directions from which a train could approach before crossing track. This proposed amendment also acknowledges that varying physical layouts could allow for trains to approach from more than two directions (a diamond, certain turnouts, etc.).

Next, asserting that depending on the sight distances groups of tracks may be safely crossed without stopping between each track, in post-Working Group comments on the consensus recommendations, AAR requested that FRA amend the language to permit roadway workers to walk across more than one track at a time without stopping and looking before crossing each track. FRA agrees that in certain instances, where sight distance allows, multiple tracks may be crossed safely without stopping and looking between each track. FRA is concerned, however, that incorporating such a change into the regulatory text with no limiting language could potentially be unsafe in certain circumstances (*e.g.*, walking across tracks in a hump yard where there may be limited sight distance and the constant potential for rolling equipment to simultaneously be moving on many tracks exists). Accordingly, FRA is not proposing to deviate from the recommended consensus language in this regard, but requests additional comment on whether a roadway worker should be required to look in all directions before crossing each track.

Paragraph (b)(1) proposes to require that railroads adopt rules governing how roadway workers determine that it is safe to cross track, and that employees comply with those rules. FRA is modifying the language recommended by the Working Group by inserting the words ''governing how to'' into the lone sentence in this paragraph, as the rules themselves do not determine that it is safe to cross the track, but they govern the conduct of the person making that determination. This change is not substantive, and is intended for clarity only. Paragraph (b)(2) proposes to require that roadway workers move directly and promptly across tracks. Again, FRA modified the Working Group's recommended language by adding the word ''shall'' into the consensus language of that paragraph. FRA added ''shall'' in order to clearly indicate that this would be a mandatory requirement. Proposed paragraph (b)(3) would establish that § 214.317(b) would not substitute for the on-track safety that is required when roadway workers are required to foul a track while actually engaged in roadway worker duties.

FRA notes, as discussed in relation to the definition of the term ''roadway worker'' above, that when a roadway worker fouls track to install a device such as a portable derail or temporary sign to delineate working limits, on-track safety is required to be established. This proposed paragraph would not amend that existing requirement. FRA is also removing the words ''as defined in the rule'' from the language recommended by the Working Group, as neither the existing RWP regulation nor this NPRM define on-track equipment. In the context of this section, FRA would interpret roadway maintenance

machines, hi-rail vehicles, or any other on-track equipment with the capability to strike a roadway worker as on-track equipment.

FRA does not intend for this new paragraph (b) to apply to what is commonly referred to as ''casual fouling.'' For example, if a track inspector is conducting a track inspection on No. 1 track from a hi-rail vehicle and on-track safety is provided for on No. 1 track (*e.g.*, by exclusive track occupancy), typically no occupancy authority exists on the adjacent No. 2 track. If the track inspector departs the hi-rail vehicle on the same side as the adjacent track, and the centerline distance is insufficient to enable the employee to remain clear of the adjacent track as the inspector walks along the hi-rail vehicle to reach the front or rear of the vehicle, such fouling of the adjacent track would not be considered a ''track crossing'' under paragraph (b).

As a related matter, proposed paragraph (b) is not intended to affect how roadway workers move over highway-rail grade crossings. The movement of workers or equipment over designated public or private highway-rail grade crossings should occur in accordance with traffic laws and railroad safety rules (*e.g.*, adherence to active and passive warning devices). Trains always have the right-of-way at highway-rail grade crossings. FRA notes that if any type of work activity as regulated under existing part 214 occurs at a highway-rail grade crossing, such an activity would require that an appropriate form of on-track safety be established.

The Working Group also recommended language for a new paragraph (b)(4) of this section, which would require that a railroad's safety rules governing walking across railroad tracks be included in all roadway worker training. FRA is proposing this recommended training requirement, but in order to eliminate unnecessary cross references and for the regulation's ease of use, FRA is proposing to include it in proposed § 214.345. Section 214.345 contains the mandatory items on which roadway workers must be annually trained and, as discussed in the section-by-section analysis for proposed § 214.309 above, FRA believes that all training requirements should be contained in the actual training sections.

The Working Group also provided recommended consensus language pertaining to on-track snow removal and weed spraying on non-controlled track. FRA proposes to include this recommended language in § 214.317(c). The proposed language would permit on-track snow removal and weed spraying operations on non-controlled track without requiring that such track first be made inaccessible. This proposed provision was crafted due to the difficulty of establishing working limits on non-controlled track for the operation of equipment that moves over long distances, and where there are limited to no on-ground work activities being conducted by roadway workers. FRA notes that this proposed language is specific to weed spraying and snow removal operations being conducted with on-track roadway maintenance machines, including on-track snow removal equipment, such as jet snow blowers. This provision is not intended to apply to situations where equipment, such as a front-end-loader, fouls track when being used to plow or scoop snow off of track or railroad right-of-way. This provision would also not apply to controlled track, where some form of working limits would still be required to be established. In addition, this provision would only apply where on-track snow removal and weed spraying operations are actually being conducted. Roadway maintenance machines not engaged in that work, but rather just traveling over non-controlled track, would still do so under the operating rules of the railroad as established in existing § 214.301(c) of the RWP regulation.

This proposed provision contains many requirements. First, before machines could operate under this provision in remotely controlled hump yard facilities, the recommended consensus introductory text of paragraph (c) would require that remotely controlled hump yard operations be suspended. FRA has proposed this requirement regarding the suspension of hump operations, but has moved it to proposed paragraph (c)(1)(iv) of this section. FRA made this amendment to the recommended consensus language only for purposes of organizing the regulatory text. The introductory text of paragraph (c) contains the permissive language which would allow weed spraying and snow removal operations to proceed under the provisions of § 214.301, with the limitations and/or conditions for utilizing that permissive provision listed in paragraphs (c)(1)–(c)(4). As the requirement to suspend hump operations is also a limitation on when the permissive provision may be utilized, FRA believed that requirement would be more appropriately listed with all of the other requirements in paragraphs (c)(1)–(c)(4).

In a post-Working Group consensus language draft that was circulated for comment, the BMWED noted that the language regarding the status of hump operations in the first sentence of proposed paragraph (c) initially read ''in effect'', rather than ''in progress''. AAR's post-RSAC recommendation indicated that it favored the words ''in progress'', but did not explain the reason for favoring such. The BMWED's post-RSAC comment indicated it favored ''in effect'', as that term is more inclusive as hump operations might be ''in effect'' but not actually ''in progress'' (*e.g.*, cars not literally being humped right at the moment that weed spraying operations begin). FRA agrees with the BMWED's position and is proposing the initial Working Group's consensus wording of ''in effect'', but also requests further comment on this issue from all interested parties.

Proposed paragraph (c)(1) would require that each railroad adopt and comply with a procedure for on-track snow removal and weed spraying operations. Proposed paragraph (c)(1)(i) would require the procedure to ensure that all other persons conducting on-track movements in the affected area are informed of the snow removal or weed spraying operations. FRA has slightly amended the RSAC's recommended consensus language for proposed paragraph (c)(1)(i) by adding the words ''in the affected area''. This change is only intended to clarify that on-track movements in the affected area must be informed of the snow removal or weed spraying operations, as otherwise there would be no limiting descriptor as to which operations must be notified. For consistency purposes, FRA has also amended all references to ''movements'' throughout paragraph (c)(1) to instead refer to ''on-track movements'', because the consensus text for paragraph (c)(1)(i) (and for paragraph (c) in its entirety) specifically refers only to on-track movements. Proposed paragraph (c)(1)(ii) would require that the adopted procedure ensure that all such weed spraying and snow removal operations operate at a speed not greater than restricted speed as currently defined in § 214.7, except on other than yard tracks and yard switching leads, where movements may operate at no more than 25 miles-per-hour (mph) and be prepared to stop within one-half the range of vision. In its post-Working Group comments on the consensus language recommended by the Working Group, AAR suggested minor changes to the wording of this paragraph, including removal of the reference to the existing § 214.7 definition of ''restricted speed.''

Because FRA believes that the reference to the § 214.7 definition of ''restricted speed'' is necessary, as that term defines restricted speed for the purposes of part 214 (a railroad's ''restricted speed'' for purposes of weed spraying could be more permissible than that of the existing § 214.7 definition and of that proposed in the consensus language, which for safety reasons FRA would seek to avoid). The other minor AAR-suggested changes do not alter the substance of the consensus language, but also do not seem to clearly enhance its utility or clarity. Therefore, FRA is proposing the consensus language contained in the Working Group's recommendation in this paragraph.

Proposed paragraph (c)(1)(iii) would require that the procedure adopted by a railroad ensures there is a means of communication between on-track equipment conducting snow removal and weed spraying operations and any other on-track movements in the area (which FRA anticipates would be via radio communication). Proposed paragraph (c)(1)(iv) prohibits remotely controlled hump yard facility operations from being in effect while snow removal or weed spraying operations are in progress, and also prohibits the kicking of cars unless agreed to by the roadway worker in charge of the snow removal or weed spraying operation. This last requirement is intended to help ensure that there is no free rolling equipment in the vicinity of on-track snow removal or weed spraying operations. As discussed above, FRA has amended the consensus language to list the proposed requirement that hump operations be suspended to this paragraph (c)(1)(iv). As such, the text as recommended by the RSAC has been slightly modified for organization purposes, and is not substantive in nature.

Proposed paragraph (c)(2) would provide that roadway workers engaged in snow removal or weed spraying operations retain an absolute right to utilize the provisions of § 214.327 (inaccessible track). This proposal parallels existing § 214.337(b), which governs on-track safety procedures for lone workers, and would permit a roadway worker to establish on-track safety by making the track inaccessible in accordance with § 214.327. FRA has slightly amended this proposed paragraph as recommended by the RSAC. FRA added the words ''subject to this section'' to the proposed language. This amendment is only intended for clarity purposes. This amendment would make clear that if snow removal operations not subject to this section were taking place that on-track safety would obviously be required to be established, regardless of the absolute right to make track inaccessible under this provision.

Proposed paragraph (c)(3) would provide that roadway workers engaged in snow removal or weed spraying operations subject to § 214.317, are permitted to line switches for the machine's movement without establishing a form of on-track safety in accordance with §§ 214.319 through 214.337, but may not engage in any roadway work activity. For example, if a roadway worker needs to clean the snow from a switch with tools, or adjust a switch, a method of on-track safety compliant with §§ 214.319 through 214.337 would be required prior to conducting such activities. Notwithstanding the above, FRA notes that existing § 214.313(b) requires that roadway workers shall not foul any track unless necessary for the performance of their duties. FRA notes this proposed provision would extend to roadway workers other than the actual operator of a roadway maintenance machine, as roadway workers other than the machine operator may be assigned to throw switches in order to facilitate a machine's movement.

Finally, proposed paragraph (c)(4) contains the consensus recommendation of the Working Group for the roadway equipment utilized under this provision. Proposed paragraph (c)(4) would require that each machine engaged in snow removal or weed spraying operations under proposed § 214.317(c) be equipped with: (1) An operative 360-degree intermittent warning light or beacon; (2) an illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions; (3) a brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions; and, (4) a rearward viewing device, such as a rearview mirror. If a machine is utilized in snow removal or weed spraying operations conducted during the period between one-half hour after sunset and one-half hour before sunrise, or in dark areas such as tunnels, that machine would also be required to be equipped with work lights, unless equivalent lighting is otherwise provided. Equivalent lighting refers to situations where a rail facility might already be equipped with appropriate lighting or where lighting is installed in a tunnel. These proposed requirements which would apply to snow blowing or weed spraying operations conducted pursuant to the operating rules of a railroad, would be in addition to any applicable existing requirements for such machines found in subpart D of part 214, which governs roadway maintenance machine requirements. These proposed requirements would help ensure that persons operating such machines during snow removal and weed spraying operations and relying on railroad operating rules and procedures for safety have appropriate lighting and sight distance to perform their duties, while also ensuring that such machines are clearly visible to others in the vicinity of such operations in all lighting conditions.

Section 214.319 Working Limits, Generally

Section 214.319 sets forth the requirements for establishing working limits in accordance with part 214. FRA is proposing a minor amendment to this section. The existing first sentence in the introductory paragraph of that section states, in part, that ''[w]orking limits established on controlled track shall conform to the provisions of'' §§ 214.321 Exclusive track occupany, or 214.323, Foul time, or 214.325, Train coordination.'' Each of these sections explain the requirements for establishing working limits through the various methods recognized by part 214. As discussed in the section-by-section analysis of proposed § 214.324 below, however, FRA is proposing to add a new section setting forth a new method of establishing working limits on controlled track (verbal protection). Thus, FRA is simply proposing to revise the introductory paragraph of § 214.319 to reference proposed § 214.324.

FRA is also proposing to replace the words ''roadway worker'' in existing paragraphs (a) and (b) with the words ''roadway worker in charge.'' As discussed above, this proposed change is to provide uniformity of reference throughout the RWP regulation to the roadway worker who establishes and controls working limits. This proposed change is also to reflect that under existing paragraph (a) of this section only a ''roadway worker who is qualified in accordance with § 214.353 of this part shall establish or have control over working limits for the purpose of establishing on-track safety.'' As previously discussed, FRA is proposing to refer to a roadway worker qualified in accordance with § 214.353 as a ''roadway worker in charge.''

Section 214.321 Exclusive Track Occupancy

Section 214.321 generally sets forth the requirements for establishing working limits on controlled track through the use of exclusive track occupancy procedures. FRA is proposing several amendments to this section, including both Working Group consensus items and non-consensus items. First, FRA is proposing to replace the words ''roadway worker'' in existing paragraph (a) with ''roadway worker in charge.'' This proposed change is to consistently refer to the ''roadway worker in charge'' as appropriate throughout the RWP regulation, in order to clarify the existing variety of generic references to that position. Also, this change is appropriate because only a ''roadway worker in charge'' (or a lone worker who is also a roadway worker in charge) can establish working limits via § 214.321. FRA is also proposing to make this same change to the latter half of existing paragraph (b), which would be amended to specify that an authority for exclusive track occupancy must be communicated to the ''roadway worker in charge,'' as opposed to the existing reference to ''roadway worker''.

Existing paragraph (b) states that a ''data transmission'' may be used to transmit an exclusive track occupancy authority to a roadway worker (*i.e.,* a roadway worker in charge). However, existing paragraph (b)(2) states only that the roadway worker in charge must maintain possession of a ''written or printed authority'' while the authority for working limits is in effect, and does not currently account for authorities conveyed via data transmission that may be displayed on the screen of an electronic device. Thus, FRA is proposing to amend paragraph (b)(2) to state that an authority displayed on an electronic screen may be used in place of the ''written or printed'' authority required by existing § 214.321(b)(2). Electronic authorities would also be required to comply with the requirements of proposed § 214.322, which is discussed in the section-by-section analysis for that section below. As electronic devices are already currently used to display authorities in the railroad industry, this proposed paragraph is intended to help clarify that such use is permissible.

Existing § 214.321(b)(3) requires that the train dispatcher or control operator in charge of track make a ''written or electronic'' record of all authorities issued to establish exclusive track occupancy. In post-Working Group comments on the recommended consensus items, AAR commented that in addition to proposing consensus paragraph (b)(4) of § 214.321, FRA should also amend existing paragraph (b)(3) by removing the words ''written or electronic record'', and just generically refer to ''records,'' in order to accommodate the display of an authority via the use of an electronic device. However, as explained above and below, FRA is proposing a new § 214.322, which would govern the use of authorities transmitted via electronic display. Accordingly, FRA believes that differentiating between written or electronic records is appropriate.

The Working Group recommended consensus language that would require that an exclusive track occupancy authority specify a unique roadway work group number, an employee name, or other unique identifier. The Working Group recommended that this language be included as a new paragraph (b)(4) to § 214.321. FRA agrees with this recommendation and has incorporated language consistent with the Working Group's recommendation into proposed paragraph (b)(4) of this section. This requirement would simply codify what is already common practice in the railroad industry; a practice that helps ensure the ability of trains, dispatchers, and other employees to differentiate between roadway workers in charge/roadway work groups who may be performing work at various locations along the right-of-way. The use of a unique identifier or roadway work group number should reduce the chance for potential confusion if a railroad has multiple employees with the same or similar names. This proposed paragraph would also require that a railroad's procedures establish guidelines for communication between trains or other on-track equipment and the roadway worker in charge (or lone worker), in accordance with existing § 214.319(c). This requirement refers to effective procedures for trains or other on-track equipment to contact the roadway worker in charge to receive permission through working limits when appropriate. In post-RSAC comments, AAR requested that FRA remove the reference to lone workers in this recommended consensus section as per existing § 214.337, lone workers are traditionally only used in conjunction with individual train detection. However, lone workers who are qualified to act as roadway workers in charge may establish working limits in order to perform their work. As such, FRA has decided to retain the recommended reference to lone workers in this proposed paragraph.

For clarity purposes FRA amended the language from that contained in the recommended consensus language for this paragraph. The second sentence of the recommend language read that ''[t]he railroad's procedures shall include precise communication to ensure trains and other on-track equipment communicate, either directly or through the dispatcher, with the roadway worker in charge or lone worker controlling the working limits in accordance with § 214.319.'' FRA is proposing that the second sentence of this paragraph instead read, ''[a] railroad shall adopt procedures that require precise communication between trains and other on-track equipment and the roadway worker in charge or lone worker controlling the working limits in accordance with § 214.319. The procedures may permit communications to be made directly between a train or other on-track equipment and a roadway worker in charge or lone worker, or through a train dispatcher or control operator.'' This proposed change to the recommendation is not intended to be substantive in nature, but is being made because a railroad's procedures obviously cannot contain the precise ''communication'' between a train and a roadway worker in charge, but instead, would include the guidance or instructions on the *requirements of* such communications. Thus, FRA is proposing this language to clarify that a railroad's procedures under this section would have to govern the necessary communications between trains and roadway workers in charge when exclusive track occupancy working limits are in effect. FRA is also adding the words ''train'' and ''or control operator'' directly before and after reference to the ''dispatcher'' that was contained in the RSAC recommendation because throughout the controlled track working limits sections, the words ''train dispatcher or control operator'' are used interchangeably.

Existing paragraph (d) of this section requires that the movement of trains and other on-track equipment within exclusive track occupancy working limits may only be made under the direction of the ''roadway worker having control over the working limits.'' Although FRA is proposing no substantive revision to this paragraph, FRA is proposing to amend the paragraph to refer to the ''roadway worker in charge.'' As noted previously, this change is being proposed in multiple locations in this NPRM in order to replace the varying existing language that generically refers to the ''roadway worker in charge'' throughout the regulation text. FRA previously issued Technical Bulletin G–05–22 that

addresses existing paragraph (d). That technical bulletin recognized that there may be times, such as during an emergency, when a roadway worker in charge cannot be contacted by a train or other on-track equipment wishing to make a movement. The bulletin explained that ''in extraordinary circumstances trains must be authorized to move despite lack of permission from the RWIC. The present regulation does not address this irregular situation and thus, FRA's enforcement action under these circumstances will be determined on a case-by-case basis.'' FRA is not proposing language in this NPRM which would address such extraordinary circumstances, and FRA's enforcement action in such instances will still be determined on a case-by-case basis. However, FRA intends proposed paragraph (b)(4) to work in conjunction with the requirements of existing paragraph (d). Proposed paragraph (b)(4) would require procedures governing communications between trains and roadway workers in charge be adopted by railroads. FRA would expect that railroads would adopt procedures that would address what actions should be taken in the event a roadway worker in charge cannot be contacted by a train crew or the operator of other on-track equipment.

Also, the existing text of the beginning of the second sentence of paragraph (d) currently reads that ''[s]uch movements shall be restricted speed * * * .'' FRA has proposed to amend that text to instead read that ''[s]such movements shall be made *at* restricted speed * * * .'' (emphasis added). This minor amendment is only for purposes of reading clarity and is not intended to be substantive.

FRA is also proposing to add a new paragraph (e) to this section. This paragraph would establish minimum requirements when an exclusive track occupancy authority is given to a roadway worker in charge (or lone worker) ahead of the time working limits are to be occupied, or when train(s) may be occupying the same limits. These authorities are sometimes referred to as ''occupancy behind'', ''conditional'', or ''do not foul the limits ahead of'' authorities.[8] Occupancy behind procedures enable a train dispatcher or control operator to issue an authority which would permit a roadway work group to occupy a track, provided such occupancy only occurred after the passage of certain trains or other on-track equipment. When occupancy behind authorities are issued, trains may still be ahead of the point to be occupied by the roadway work group, or in some cases may be past the point to be occupied but still within the working limits. Such occupancy behind authorities have long been in use in the railroad industry. Due to the volume of train operations in certain areas, and the corresponding time demands on train dispatchers, railroads have expressed to FRA that the use of such authorities is crucial to their ability to be able to efficiently conduct train operations.

For example, a track inspector (a roadway worker in charge/lone worker) in centralized traffic control territory may be called on to use a hi-rail vehicle to inspect a track. In order to more efficiently utilize time and available track, a dispatcher may issue the track inspector an exclusive track occupancy working limits authority, often referred to as ''track and time'', to occupy such track while a train or trains are still within the working limits to be occupied by the track inspector. This procedure does not first require the dispatcher to wait until all trains have entirely cleared the working limits before issuing the authority to the roadway worker in charge, or require that all trains have passed the point to be occupied. This procedure also allows the roadway worker in charge/lone worker to occupy such limits behind a train movement while a train is still within the working limits (much sooner chronologically than if required to first wait for all trains to clear the entire working limits track segment). This procedure enables the hypothetical track inspector to begin his or her work sooner, and correspondingly, to relinquish such limits sooner to allow for the passage of trains again.

One of the concerns with the use of such authorities focuses on the fact that trains that are already within the same limits of an authority that is being issued to a roadway worker in charge may not have a copy of such authority or otherwise be aware of it. This situation differs from those when track maintenance activities are planned in advance, where all trains would typically have a copy of a track bulletin denoting the existence of working limits at a particular location. Another concern involves miscommunications occurring and roadway workers potentially fouling tracks before the last affected train passes the point to be occupied.

The Working Group discussed the problems of miscommunication with the use of ''occupancy behind'' authorities, but did not achieve consensus on recommended regulatory text. However, FRA believes it necessary to propose minimum safety requirements regarding the use of such authorities by roadway workers in charge to establish exclusive track occupancy working limits. FRA believes this proposal largely codifies current industry best practices and would help ensure safety, and also seeks comment on the costs and benefits of this proposal.

Proposed paragraph (e)(1) states that an authority would only be considered to be in effect after the roadway worker in charge or lone worker confirmed that the affected train(s) had passed the point to be occupied or fouled by the roadway work group or lone worker. This proposed provision is necessary as the train(s) listed in the authority may still be ahead of (*i.e.,* may have not yet reached and traveled past) the point to be occupied or fouled. The proposed text would permit such confirmation to be made in three manners. Confirmation could be made by visually identifying the affected train(s), via direct radio contact with a crew member of the affected train(s), or by receiving information about the affected train(s) from the dispatcher or control operator.

Proposed paragraph (e)(2) states that when such confirmation is made by the roadway worker in charge visually identifying the affected train(s), the railroad's operating rules must include procedures to prohibit such trains from making a reverse movement into the limits being fouled or occupied (this provision, in addition to the requirements of proposed § 214.321(e)(4) below, would provide protection for roadway worker(s) located ahead of the point to be occupied who intend to ''piggyback'' on a roadway worker in charge's exclusive track occupancy authority). FRA believes this provision is necessary, as this method of making confirmation would not require the roadway worker in charge to actually talk to the crew of the affected train(s) (or for the train dispatcher to talk with the crew or verify that that train is beyond the point to be occupied), such that the crew might not be cognizant of the working limits or point to be occupied.

Proposed paragraph (e)(3) would require that after confirmation of the passage of affected train(s) is made, the roadway worker in charge shall record on the authority document (or display)

[8] FRA notes that 49 CFR 220.61 contains requirements for the issuance of ''mandatory directives'' via radio transmission for both trains and on-track equipment. Exclusive track occupancy authority to establish working limits granted by a train dispatcher or control operator to a roadway worker in charge are in some instances also considered ''mandatory directives'' under that section. The existing requirements in § 214.321 are considered to be in addition to the requirements of existing § 220.61.

both the time of passage and the engine (locomotive) numbers of the affected train(s). If passage confirmation is made via radio communication with the train crew, the time of that communication along with the engine numbers must be recorded on the authority. When confirmation of the passage of the affected train(s) is made via the train dispatcher or control operator, the time of such confirmation and the engine numbers must be recorded on the authority. If the time and engine numbers are not recorded on the authority itself, FRA would consider a separate written document used to record information regarding passing trains to be a component of the authority, and that document would be required to be maintained along with the authority while it is in effect.

Proposed paragraph (e)(4) would require that roadway workers (who are afforded on-track safety by the roadway worker in charge) who are located between the rear end of the last affected train and the roadway worker in charge, or who are still located ahead of the last affected train, may only foul track after receiving permission to do so from the roadway worker in charge and after the roadway worker in charge had fulfilled the provisions of proposed §§ 214.321(e)(1) & (e)(3). In addition, each group of roadway workers being provided on-track safety by the roadway worker in charge must be accompanied by an employee qualified to the level of a roadway worker in charge, who would also be required to have a copy of such authority and fulfill the requirements of §§ 214.321(e)(1) & (e)(3) before working limits could be occupied or fouled at that particular location. The authority information may be verbally transmitted by the roadway worker in charge to the additional person utilizing the working limits. The cumulative effect of this proposed provision is that roadway workers located between the rear end of any affected train and the roadway worker in charge would not be permitted to foul track until all of the same procedures the roadway worker in charge was initially required to comply with were also accomplished at the actual location of the roadway workers. FRA has included this proposed requirement to address situations where a roadway worker in charge permits another roadway work group or another roadway worker to foul the track between his or her occupancy point and the rear end of affected train(s). Because FRA agrees with the Working Group's concerns and recognizes that in this context, miscommunication can have serious safety consequences, FRA is proposing to require these additional measures.

Under proposed paragraph (e)(5), each lone worker subject to this proposed paragraph would also be required to have a copy of the authority and to comply with all of the communications requirements of this section. Proposed paragraph (e)(6) would establish that train movements within working limits where roadway workers were otherwise located (not ahead of the last affected train and not between the rear end of the last affected train and the roadway worker in charge) would continue to be governed by existing § 214.321(d), or under the direction of the roadway worker in charge.

Finally, with regard to exclusive track occupancy, FRA often receives inquiries regarding multiple roadway work groups working within the limits of one authority. FRA notes that while there may be multiple roadway work groups performing work within one set of working limits, existing § 214.319 requires that only one roadway worker in charge can have control over working limits on any one segment of track, and that all roadway workers shall be notified before working limits are released for the operation of trains. Further, existing § 214.319(c) states that ''[w]orking limits shall not be released until all affected roadway workers have either left the track or have been afforded on-track safety through train approach warning in accordance with § 214.329 of this subpart.'' FRA is not proposing any change to these existing requirements with regard to multiple roadway work groups working within the limits of one authority. FRA believes the current regulation is clear on this point, and FRA does not believe that considering permitting more than one roadway worker in charge to have control of working limits would be conducive to safety. FRA believes doing so would promote confusion among roadway workers and work groups. If further guidance on situations where multiple roadway work groups may conduct work within the limits of one authority is desired, existing FRA Technical Bulletins G–05–02 and G–05–17 address those issues.

Section 214.322 Exclusive Track Occupancy, Electronic Display

Existing § 214.321(b)(3) permits an exclusive track occupancy authority to be issued via data transmission from the train dispatcher or control operator to the roadway worker in charge. Currently, FRA is aware that some railroads utilize electronic devices to display such authorities received via data transmission. With the current Positive Train Control system requirements and other technological developments in the railroad industry, FRA anticipates that the use of such electronic devices to display working limits authorities will continue to grow. As such, the Working Group considered this topic, and contemplated minimum requirements concerning the use of such electronic displays. The Working Group agreed in principle to basic concepts concerning the use of electronic display for working limits. However, the Working Group did not agree to overall consensus language. As such, FRA is proposing § 214.322 to address the use of such electronic displays. This proposed section incorporates those concepts agreed to in principle by the Working Group, as well as additional minimum operating and technical attributes of such electronic displays.

Proposed paragraph (a) contains the items agreed to in principle by the Working Group, and would establish that an electronically displayed authority must be readily viewable by the roadway worker in charge while such authority is in effect. Proposed paragraph (a)(1) would require that when a device malfunction or fails, or cannot otherwise display an authority in effect (*e.g.,* batteries powering the electronic device displaying the authority lose charge), the roadway worker in charge must instruct all roadway workers to stop and occupy a place of safety until a written or printed copy of the authority can be obtained, or another form of on-track safety can be established. FRA requests comment on whether a better approach, if a device fails, is to first allow the roadway worker in charge the opportunity to immediately obtain a written copy of an authority before requiring the members of the roadway work group to stop work and occupy a place of safety (and if a written authority could not immediately be obtained, then requiring the work group to occupy a place of safety).

If a copy of the authority cannot be obtained and no other form of on-track safety can be established, proposed paragraph (a)(2) would require that the roadway worker in charge conduct an on-track job safety briefing to determine the safe course of action with the roadway work group. Proposed paragraph (a)(2) attempts to provide flexibility in situations where an electronic display fails and the roadway worker in charge cannot communicate with the train dispatcher via radio, which might occur in a deep rock cut or a tunnel, and a roadway work group may have to move within established working limits to a location where they are able to occupy a place of safety and/

or re-establish communication with the dispatcher.

Proposed paragraphs (b)-(g) would address the technical attributes of the electronic display of exclusive track occupancy authorities. FRA requests comment on this proposal, specifically regarding whether electronic display systems currently in use comply, or are capable of complying, with these proposed requirements. The proposed requirements are safety and security-related. While the contents of an exclusive track occupancy authority transmitted to a roadway worker in charge are not typically confidential in nature, the integrity of such information is vitally important to the safety of roadway workers and trains. FRA proposes these requirements to take a proactive approach with regard to the integrity of data transmissions of electronic authorities.

Proposed paragraphs (b) and (c) provide for the identification and authentication of users. A user would typically refer to the roadway worker in charge and train dispatcher or control operator, as they are the persons who are most often involved in an exclusive track occupancy authority transaction. A user could also be a process or a system that accesses or attempts to access an electronic display system to perform tasks or process an authority. Identification is the process through which a user presents an identifier that is uniquely associated with that user, in order to gain access to an electronic authority display system.

Authentication is the process through which an individual user's identity is validated. Most authentication techniques follow the ''challenge-response'' model by prompting the user (the challenge) to provide some private information (the response). Basic authentication factors for individual users could involve information an individual knows, something an individual possesses, or something an individual is (*e.g.,* personal characteristics or ''biometrics'', such as a fingerprint or voice pattern).

Proposed paragraph (c) would require that any authentication scheme utilized ensures the confidentiality of authentication data and protects that data from unauthorized access. Such schemes would be required to utilize algorithms approved by the Federal government's National Institute of Standards and Technology (NIST), or any similarly recognized standards body. This requirement parallels a similar requirement for Positive Train Control systems found at 49 CFR 236.1033(b),[9] and is proposed to help prevent deliberate ''spoofing'' or ''man in the middle'' attacks on exclusive track occupancy authority information communicated and displayed via electronic device. NIST is the agency responsible for defining cryptographic algorithms for non-Department of Defense entities.

Proposed paragraph (d) would address the transmission, reception, processing, and storage of exclusive track occupancy authority data, and is proposed to help ensure the integrity of such data. Data integrity is the property of data not being altered since the time data was created, transmitted, or stored, and generally refers to the validity of the data. This paragraph proposes that new electronic authority display systems placed into service after the effective date of a final rule in this rulemaking would be required to utilize message authentication codes (MAC) to ensure data integrity. Similar to the proposed requirements of paragraph (c), MAC's would be required to utilize algorithms approved by NIST or a similarly recognized standards body. Unlike cyclical redundancy codes (CRC), MAC's provide protection against malicious interference. Proposed paragraph (d) would permit the use of systems implemented prior to the date of a final rule in this rulemaking to utilize CRC's, but would require that the collision rate for the CRC checks utilized be less than or equal to 1 in 2^{32}. This proposed collision rate would help provide reasonable protection against accidental or non-malicious errors on channels that are subject to transmission errors, and is based on a Department of Defense standard. Existing systems utilizing CRC's that do not meet this minimum standard would be required to be retired and replaced with systems that utilize MAC's not later than one year after the effective date of a final rule. Proposed paragraph (d)(2) would require that MAC or CRC checks only be used to verify the accuracy of a message, and that an authority must fail if the checks do not match.

Proposed paragraph (e) would also require that the actual electronic device used to display an authority issued via data transmission retain any authorities issued for a minimum of 72-hours after expiration of such authority. This minimum proposed requirement is primarily for investigation purposes, as it would give investigating bodies such as FRA or the NTSB an opportunity to study authority data in non-reportable accident/incident situations, and to compare it to a dispatcher or control operator's corresponding electronic authority transmission records. This requirement could also be helpful in compliance audit situations.

Proposed paragraph (f) mirrors the language found in 49 CFR 229.135(e) of FRA's Railroad Locomotive Safety Standards. Section 229.135(e) governs the preservation of data from locomotive event recorders or other locomotive mounted recorders in the event of an accident. This proposed paragraph uses the same language as found in existing § 229.135(e), and would require that railroads preserve data from any electronic device used to display an authority for one year from the date of a reportable accident/incident under 49 CFR part 225, unless FRA or the NTSB notifies the railroad in writing that the data are desired for analysis.

Proposed paragraph (g) would require that new electronic display systems implemented after the effective date of a final rule, would provide Level 3 assurance as defined by the December 2011, version of NIST Special Publication 800–63–1, ''Electronic Authentication Guideline.'' NIST Special Publication 800–63–1 provides technical guidelines for widely used methods of electronic authentication, and is publicly available online at *http://csrc.nist.gov/publications/nistpubs/800–63–1/SP–800–63–1.pdf.* Systems that were implemented prior to the effective date of a final rule in this rulemaking would be required to provide at least Level 2 assurance as described in NIST Special Publication 800–63–1, and systems that do not provide Level 2 assurance or higher would be required to be retired or updated to provide such assurance no later than one year after the effective date of a final rule. These assurance levels govern the elements of the authentication process. Level 2 assurance requires some identity proofing, and passwords are accepted (but not PINS). Level 3 assurance requires more stringent identity proofing and multi-factor authentication, typically a password or a biometric factor used in combination with a software or hardware token.

FRA acknowledges that if this proposed paragraph (g) were included in a final rule in this rulemaking, that FRA must first gain approval to do so from the Director of the Federal Register in accordance with 5 USC 552(a) and 1 CFR part 51. If interested parties do not have a copy of this document to be incorporated by reference, FRA can make a copy available for review upon request. FRA notes that this document is publicly available online at the web

[9] 75 FR 2598, 2676 (Jan. 15, 2010).

site address listed in the discussion above.

FRA has limited information regarding whether existing electronic display systems in use already comply with the above requirements. FRA requests comment, to include potential cost information, on this proposal. As stated above, FRA proposes these requirements in an effort to be proactive. FRA is coordinating these proposed requirements with the U.S. Department of Homeland Security.

FRA notes that a portable device used to display an authority can be a laptop computer or hand held device. Because of continuous improvement in technology, FRA is not proposing any technical specifications for the physical attributes of a display device. Nevertheless, FRA expects railroads to take into account the environment that such devices will be subject to during use. Finally, FRA notes that railroads are always allowed to implement more restrictive security requirements provided the requirements do not conflict with Federal regulation.

Section 214.323 Foul Time

Section 214.323 generally sets forth the requirements for establishing working limits on controlled track through the use of foul time. FRA is proposing to make several amendments to existing § 214.323. FRA is proposing to adopt the Working Group's recommended consensus language, as well as certain other amendments. First, FRA is proposing to add the words ''or other on track equipment'' to existing paragraph (a) which currently provides that foul time may be provided only after the relevant train dispatcher or control operator has withheld authority ''of all trains'' to move into or within the working limits. This change is only for consistency purposes within this existing section, as existing paragraph (c) prohibits the movement of both trains and on-track equipment from moving into working limits while foul time is in effect. This proposed revision also acknowledges that the incursion of on-track equipment into or within working limits while foul time is in effect presents the same type of safety concern to roadway workers as would train movements.

Next, FRA is proposing to amend reference to ''roadway worker'' in existing paragraph (b) to ''roadway worker in charge.'' This proposed change is only to reflect that a new definition for that term is being proposed in this NPRM, and is being proposed to replace the varying generic references to that roadway worker position that are currently located throughout the existing RWP regulation. FRA also intends this change to make it clear that roadway workers in charge are the only employees who may establish working limits, which the RWP regulation has always required at § 214.319(a). FRA is also proposing to make this same change to existing § 214.323(c).

FRA is also proposing to add a new paragraph (d) to this section. Paragraph (d) would expressly state that the roadway worker in charge would be prohibited from permitting the movement of trains or other on-track equipment into or within working limits protected by foul time. As background, foul time is a more abbreviated form of establishing working limits than that of exclusive track occupancy, and has its historical roots in the Northeast United States. Foul time was typically for short-duration work activities with limited to no disturbance of the track structure. Foul time is a form of working limits under the control of a roadway worker in charge, it does not provide for the same flexibility as does exclusive track occupancy (*i.e.,* movement into or through the foul time limits under the direction of the roadway worker in charge). The original RWP regulation and accompanying section-by-section analysis did not describe what type of activities could occur under foul time procedures, or expressly state that the roadway worker in charge was not permitted to allow the movement of trains or equipment into or within working limits. As such, foul time in some locations is not being used as was originally intended. Proposed paragraph (d) is intended to address this issue, and proposed § 214.324 below would provide for added flexibility in establishing working limits within manual interlocking and controlled points.

In post-Working Group comments on a draft of the consensus items, AAR raised the issue of a railroad's rules referring to a form of on-track safety as ''foul time'', when in actuality the form of protection meets the requirements of § 214.321 (exclusive track occupancy). In response, FRA recognizes that some railroads may refer to a form of on-track safety as ''foul time'' when they are actually using exclusive track occupancy procedures. FRA notes that for enforcement purposes, the agency looks to how a railroad's form of on-track safety protection actually functions, rather than what name is used for such protection.

Section 214.324 Verbal Protection

The Working Group recommended a new proposed § 214.324, which would enable the establishment of working limits through the use of ''verbal protection.'' FRA is proposing this recommendation, which helps to address a discrepancy discussed during the Working Group process regarding how on-track safety is used in the Western portion of the United States. Verbal protection is similar to foul time, but would be a permitted method to establish working limits specifically within manual interlockings or controlled points. Verbal protection differs from foul time in that on-track equipment and trains would be permitted to move into and within working limits after receiving permission to do so from the roadway worker in charge and after receiving authority from the train dispatcher or control operator. Since controlled points and manual interlockings generally encompass a relatively small area, roadway workers in charge would encounter reduced instances of other employees, who might be some distance away, requesting to use the roadway worker in charge's established working limits for a separate task. Also, such locations typically provide an additional level of protection because the dispatcher or control operator would be required to apply blocking devices to govern the signals and/or switches at the limits of a manual interlocking or controlled point to prevent movement into working limits (in accordance with the requirement in proposed paragraph (a) that dispatchers and control operators would be required to withhold authority for trains to move into working limits). It is important that when verbal protection is used to establish working limits, there is a clear understanding of which track(s) are being protected. For example, if the verbal protection only applies to one track inside an interlocking containing multiple tracks, the roadway workers utilizing that verbal protection would be required to establish an alternate method of on-track safety on any other tracks they may need to foul while performing their work.

The following table provides a comparative reference between the use of foul time and verbal protection:

Type working limits	Permissible locations		On-track occupancy	
	Controlled track outside manual interlockings and controlled points	Manual interlocking and controlled points	Trains	On-track equipment
Foul time	Yes	Yes	No	No.
Verbal protection	No	Yes	Yes, movement permitted with permission of roadway worker in charge and permission by dispatcher/control operator to pass stop signal at entrance to control point/manual interlocking.	Yes.

The proposed introductory text of this new section specifically states that verbal protection may only be used within manual interlockings or controlled points (as the chart above denotes, foul time may also still be used within the limits of a manual interlocking subject to the requirements of § 214.323). Proposed paragraph (a) mimics the corresponding paragraph in the foul time provision (§ 214.323(a)), including the reference to movement of ''other on-track equipment'' as well as train movements. As explained above, this is to acknowledge that the unauthorized or inadvertent incursion of on-track equipment into or within working limits presents the same type of safety concern to roadway workers as do train movements.

Proposed paragraph (b) mirrors the text of § 214.323(b) regarding foul time and proposes to require each RWIC to whom verbal protection is transmitted repeat the track number, track limits and time limits of the verbal protection to the issuing employee for verification. In post-RSAC comments on the recommended consensus language for this paragraph, AAR suggested that the phrase ''track number'' be amended to refer instead to ''track identifier.'' AAR suggested such to allow for commonly used descriptions for certain tracks (such as ''westward main track'' or where tracks may not be numbered). FRA notes that the phrase ''track number'' is also used in the existing foul time section. While FRA may consider revising this term in a final rule, such revision may not be necessary. FRA believes it is understood, and has been permissible under the existing RWP regulation, that where applicable, a track identifier may be used to positively identify the track(s) on which working limits are being established.

Proposed paragraph (c) differs from its corresponding paragraph under foul time, in that it would permit movements into and within working limits if both the roadway worker in charge and train dispatcher or control operator give permission for such movements. In post-Working Group comments on the recommended consensus language, AAR noted that the words ''control operator'' were omitted from the consensus language at the end of this proposed paragraph. As the words ''train dispatcher'' and ''control operator'' are used in tandem for purposes of both this section and the foul time section, FRA believes these words were inadvertently omitted. Therefore, in this proposal, FRA has included the words ''or control operator'' after the words ''train dispatcher'' in this proposed paragraph.

Like foul time, under verbal protection the roadway worker in charge would not be required to copy a written authority and maintain possession of it while working limits were in effect. The roadway worker in charge would only be required to correctly repeat back the applicable working limits information to the train dispatcher or control operator. However, because verbal protection differs from foul time in that the roadway worker in charge may permit trains or other on-track equipment to move through the working limits, FRA requests comment on whether a roadway worker in charge should be required to make and maintain a copy of the working limits information. This requirement would ensure that a roadway worker in charge could reference a written document if questions regarding the working limits arose, but FRA also recognizes such a requirement could potentially mitigate the utility of this proposed RSAC consensus recommendation.

Section 214.325 Train Coordination

FRA is proposing a minor amendment to existing § 214.325. As established by existing § 214.319, § 214.325 governs the establishment of working limits on controlled track via train coordination. However, unlike the other controlled track working limits provision (§§ 214.321, 214.323, and proposed § 214.324), the existing text of § 214.325 does not actually state that is applies to working limits established on controlled tracks. Therefore, FRA is proposing to add the words ''on controlled tracks'' to the first sentence of the introductory paragraph of § 214.325. This amendment is proposed simply for consistency and clarity purposes. FRA is also proposing to add the words ''in charge'' after the existing words ''roadway worker'' in the first sentence of the introductory paragraph. This proposed change would help provide uniformity of reference to ''roadway worker[s] in charge'' at various locations in the RWP regulation text, and is also to reflect that under existing § 214.319, that only a roadway worker in charge may establish working limits.

Section 214.327 Inaccessible Track

FRA is proposing to add three new provisions to § 214.327, all of which are consensus items recommended by the Working Group. Existing § 214.327 governs the establishment of working limits on non-controlled track. As explained in the preamble to the final rule which promulgated the original RWP regulation, trains can operate on non-controlled track without first having to receive specific authority to do so. 61 FR 65791. Unlike in an exclusive track occupancy situation on controlled track governed by § 214.321, a dispatcher or control operator cannot withhold a train's movement authority to enter a specified set of working limits on non-controlled track. Thus, in order to establish working limits on non-controlled track, the track must be rendered inaccessible. These three new proposed consensus provisions would expand the number of available methods to make such non-controlled track inaccessible.

First, proposed paragraph (a)(6) would permit what informally may be referred to as an ''iron flagman'' to render non-controlled track inaccessible. This provision would permit the use of a manned locomotive as a point of inaccessibility. This procedure mimics some of the provisions of train coordination under existing § 214.325, which is a method of establishing working limits on controlled track. However, it is critical that this provision not be confused with train coordination. When train coordination is used, on-track safety is derived through the use of a train's occupancy authority. On non-controlled

track, no occupancy authority exists and additional trains could move into the same segment of track at any time.

Proposed paragraph (a)(6) anticipates locations where a locomotive with or without cars may be used as a physical feature at multiple points of entry into working limits. For example, if a locomotive with cars coupled to it is located on a ladder track in a yard, that train could be used to block the entrance to all the tracks connected to the switches under the train.

Proposed paragraph (a)(6) would require that to establish a locomotive as a point of inaccessibility, the roadway worker in charge would first have to communicate with the train crew in control of the such locomotive and determine that the locomotive was visible to the roadway worker in charge. Next, the locomotive would be required to be stopped, and any further movements of the locomotive would only be made as permitted by the roadway worker in charge. These requirements all parallel existing requirements in the train coordination provision at § 214.325. FRA has amended the recommended consensus language for this paragraph for purposes of clarity. The introductory text of existing paragraph (a) of this section states that ''[w]orking limits on non-controlled track shall be established by rendering the track within working limits physically inaccessible to trains at each possible point of entry by one of the following features:'' and then goes on to list what features may be used to render track inaccessible in existing paragraphs (a)(1)–(a)(5). The recommended consensus text of paragraph (a)(6) reads that a ''[t]rain crew directly in control of a locomotive with or without cars may be considered a physical feature at one or more points of entry to working limits.'' However, as the train crew is not the physical feature being used to block access to the track, but rather the locomotive that the crew is in control of is, FRA has amended the first sentence to reflect such. FRA has also replaced the words ''roadway worker'' with ''roadway worker in charge who is responsible for establishing working limits.'' This change is intended to reflect that, as discussed throughout this document, only a roadway worker in charge can establish working limits, and also for uniformity of reference throughout the regulations. FRA has also proposed this change as it wishes to emphasize that if this method of establishing working limits is utilized, that it is important that the roadway worker in charge of the working limits and the train crew assigned to the locomotive communicate directly with one another and have a clear understanding of the procedures to be followed. FRA has also slightly amended the numbering of the requirements from that as originally recommended. The amendments to the consensus language are not intended to be substantive, but only to try to better organize the text into final regulatory format.

In addition, proposed paragraph (a)(6) of this section would require that the crew of the locomotive shall not leave the locomotive unattended or go off duty unless communication occurs with the roadway worker in charge, and an alternate means of on-track safety protection is established. The last requirement of this paragraph would address the concern of movement of any cars that may be coupled to the locomotive were those cars to be uncoupled. Cars coupled to the end of the locomotive where roadway workers are being protected (nearest to the roadway workers) would be required to be connected to the train's air brake system, and such system would be required to be charged with compressed air in order to initiate an emergency brake application in case of unintended uncoupling. Cars coupled to the locomotive on the same track on the opposite end of the roadway workers would be required to have sufficient braking capability to control movement.

Proposed paragraph (a)(7) addresses the use of block register territory rules as a method to render track inaccessible. FRA notes that while block register territory is generally considered non-controlled track, where a train dispatcher or other employee must authorize occupancy or movement on a track in block register territory, this proposed section would not apply. FRA considers such track controlled track, and the permissible on-track safety methods for controlled track under the RWP regulation would apply.

Generally, in block register territory trains can only occupy a block of track after viewing a log book or register sheet to ensure no other trains or equipment are occupying that block. After making such verification, the train crew wishing to occupy that block would then make an entry into the log book indicating the block was occupied by their train. Upon exiting a block, the crew would make an entry noting that the block was cleared. Typically, only one train can occupy a block of track in block register territory at one time. The verifications and entries discussed above can be made in a variety of different manners, to include via radio to an employee who keeps the log book.

Under the existing RWP regulation, it is necessary to utilize one of the existing methods of making track inaccessible under § 214.327 in order to establish working limits on non-controlled track. The rules governing block register territory are not currently included. Railroads expressed concern to FRA about having to use portable derails to render a segment of track inaccessible in block register territory under existing § 214.327, especially because track in a block register territory can be main track.

The Working Group addressed this issue and recommended consensus language, which would permit a roadway worker in charge or lone worker to utilize the procedures governing block register territory to establish working limits within such territory. Under this proposed section, working limits will have been permissibly established if a roadway worker in charge or lone worker complies with the applicable railroad procedures for occupying a block register territory and makes the required log entries to indicate the block is occupied. By doing so, no trains or other on-track equipment would be permitted to enter such block under a railroad's operating rules. However, under this provision the lone worker or roadway worker in charge would have the absolute right to render such track in a block register territory inaccessible via the existing inaccessible track provisions at paragraphs (a)(1)–(a)(5) of this section if they chose to do so for any reason. In order to conform to regulatory text drafting practices, FRA has varied from the recommended consensus language slightly and is proposing to the words ''under the provisions of paragraphs (a)(1) through (a)(6) of this section'' in the last sentence of paragraph (a)(7). This language is being proposed in place of the recommended Working Group language that read ''under the provisions of §§ 214.327(a)(1) through 214.327(a)(5).'' This change to reference that newly proposed paragraph (a)(6), rather than existing paragraph (a)(5), would be the last paragraph in this section that could be used to physically render track inaccessible. FRA requests comment on whether newly proposed paragraph (a)(8) should also be included in that list.

FRA notes that roadway workers are already required by existing § 214.313(a) of the RWP regulation to follow all on-track safety rules and procedures of a railroad. Thus, in complying with proposed paragraph (a)(7), roadway workers would be required to comply with all applicable rules governing the

occupation of track in a block register territory. FRA also notes that it has slightly amended the recommended consensus text at the beginning of the first sentence of proposed paragraph (a)(7), to read ''[a] railroad's procedures governing block register territory.'' The recommended consensus text initially contained reference to ''[t]he provisions of a block register territory * * *.'' FRA has made this slight change only for purposes of reading clarity. While there can be no provisions of a block register territory, there can be provisions or procedures which govern the use of such a territory. This change is not intended to be substantive in nature.

New proposed paragraph (a)(8) would address the establishment of working limits on non-controlled main tracks within yard limits via the use of a bulletin. This provision was a Working Group consensus item and would permit working limits to be established whereby trains are issued bulletins in advance of occupying such main track which would notify them of such working limits.

As background, while FRA believes the definitions of controlled track and non-controlled track to be clear, FRA has received past inquiries regarding the differences. This is partly due to a misconception that the term ''main track'' is synonymous with ''controlled track.'' In fact, a main track is often a non-controlled track, which typically is the case within yard limits or restricted limits. Restricted limits generally refer to main track where trains may only proceed at restricted speed, even if operating on a clear signal indication. In yard limits, trains or other on-track equipment can occupy the main track in most instances without obtaining authorization from a train dispatcher or control operator. Where this is the case, and trains or other on-track equipment derive their authority to occupy the main track in yard limits from the railroad's operating rules, such track is considered non-controlled track. In some cases, a non-controlled main track through yard limits may even be equipped with a signal system as discussed in the analysis for § 214.301 above, and when trains are operating on a signal indication more favorable than ''restricting'' they may be permitted to move at greater than restricted speed. However, if via railroad operating rules there is a control operator or dispatcher in control of all occupancy by trains, engines, and on-track equipment within yard limits, such track would be considered controlled track. FRA notes that trains may be required by railroad rules to contact a yardmaster before entering main track in yard limits. Where this mandatory contact is not authoritative in nature, and occupancy authority is still gained via railroad operating rules, such track would still be considered non-controlled track.

Since main track within yard limits is generally non-controlled track, the Working Group addressed this issue and came to consensus to recommend allowing working limits to be established via the use of track bulletins. Under proposed paragraph (a)(8), railroad operating rules would be required to prohibit movements on main track within yard limits unless the train or engine crew or operator of on-track equipment was first required to receive notification of any working limits in effect. Before occupying such main track where the notification denoted that working limits were in effect, the crews or operators would first be required to receive permission from the roadway worker in charge to enter the working limits. Working limits established in this manner would be issued by a railroad for planned work activities, such that bulletins or other forms of notification would be prepared ahead of the work to be performed in time to be issued to train crews or operators (unplanned work that would not allow notifications to be issued appropriately ahead of time would still require that another form of working limits or on-track safety be established).

This provision would also require, where the maximum authorized speed was restricted speed, that red flags or signs be displayed at the limits of the authority. This requirement would provide an extra measure of safety by providing train crews notice that, unless they had received permission through working limits, they must stop their movement. Where restricted speed is in effect, train crews or operators are required to stop their movement within one-half the range of vision. Therefore, crews who had not received permission into working limits from the roadway worker in charge, and who came upon such a red flag, would be required to stop their movement within one-half the distance to the flag, which would be short of working limits.

Where the maximum authorized speed is in excess of restricted speed, advance warning flags or signs must be displayed, such that a crew would have an opportunity to stop their train short of working limits if they had not received permission to enter the limits from the roadway worker in charge. The proposed language states that advance flags must be used ''where physical characteristics permit.'' This could refer to locations where entrances exist within the working limits (other than main tracks connected to the main track within the working limits) and only red flags would be necessary. Otherwise, where speeds within yard limits are in excess of restricted speed, FRA would expect every reasonable effort that advance flags be placed far enough out to provide advance warning such that a train crew could stop an on-track movement short of entering working limits. Railroad operating rules in effect would govern the use of such advance flags.

FRA has slightly amended the language of this paragraph as recommended by the RSAC. The first sentence of the recommended text read ''[r]ailroad operating rules that require train or engine movements to be prohibited on a main track within yard limits or restricted limits until the train or engine receives notification of any working limits in effect and do not enter working limits until permission is received by the roadway worker in charge.'' For purposes of reading clarity only, FRA has instead proposed that the first sentence read ''[r]ailroad operating rules that prohibit train or engine movements on a main track within yard limits or restricted limits until the train or engine receives notification of any working limits in effect and prohibit the train or engine from entering any working limits until permission is received by the roadway worker in charge.'' This amendment is not intended to be substantive in nature.

FRA is proposing this paragraph (a)(8), as it was a Working Group consensus recommendation and because it has the potential to provide more flexibility for the industry in yard limits operating situations. However, requests comment on whether this provision has the potential to cause confusion over whether track is controlled track or non-controlled track, as in some respects it mixes aspects of both (train crews need a bulletin and may be required to contact a dispatcher or yardmaster to enter yard limits, but at the same time do not technically need ''permission'' to occupy such track).[10] Further, FRA requests comment on the last sentence of the consensus text recommended by the Working Group. Paragraph (a)(8) would require advance flags to be placed out to protect working limits when speeds greater than restricted

[10] As background, the Northeast Operating Rules Advisory Committee (NORAC, the operating rules adopted by many railroads in the northeast United States) has treated main track within yard limits as controlled track, while the General Code of Operating Rules (GCOR, the operating rules primarily used by many railroads in the western United States) treats such track as non-controlled track.

speed are authorized, and where physical characteristics permit such placement of flags. As mentioned above, FRA is aware it is not possible (or necessary) to always place advance flags out under this proposed provision. However, FRA is contemplating whether, if this provision was adopted in a final rule, more specific rule text is needed to govern the use of advance flags where speeds greater than restricted speed are authorized within yard limits. FRA wishes to avoid any situation where, at the discretion of a roadway worker in charge, advance flags are not placed out in situations where they necessarily should be and whereby a risk of train incursion into working limits is created.

Section 214.329 Train Approach Warning Provided by Watchmen/Lookouts

Section 214.329 addresses the use of watchmen/lookouts to provide warning of approaching trains to roadway workers in a roadway work group who foul any track outside of working limits. FRA is proposing four amendments to this section. The first proposed amendment is to accommodate one item being proposed in the passenger station platform snow removal section, as discussed at length below. Specifically, proposed § 214.338(a)(2)(iii) provides that during snow removal operations being performed under that section, that train approach warning may be based on available sight distance, which in some geographical circumstances may provide for less warning time than prescribed by existing § 214.329(a). In order to account for that proposed provision, FRA is proposing to amend the first sentence of § 214.329 by inserting the words ''[e]xcept as provided for in § 214.338(a)(2)(iii) '' at the beginning of the sentence.

FRA is also proposing to amend paragraph (a) to change reference to ''maximum speed authorized'' to instead read ''maximum authorized speed.'' During the Working Group meetings, consensus was reached to define the term ''maximum authorized speed'' for purposes of providing clarity to existing sections §§ 214.329(a) and 214.337(c)(4), as discussed above in the section-by-section analysis for § 214.7, the definitions section. However, the Working Group recommended adding a definition for the term ''maximum authorized speed'' rather than adopting the wording as it currently exists in §§ 214.329 and 214.337. As the term ''maximum authorized speed'' is the more commonly used word order in the railroad industry, FRA is proposing to amend those two sections to reflect the new consensus term recommended by the Working Group. FRA is proposing this for both accuracy and consistency purposes. FRA is not proposing to amend the substance of these regulations with this proposal.

FRA is also proposing to amend paragraph (a) of this section by adding a sentence to the end of the paragraph that reads ''[t]he place of safety to be occupied upon the approach of a train may not be on a track, unless working limits are established on that track.'' This exact language is already included in existing § 214.337(d), which governs on-track safety procedures for lone workers. This requirement is also the subject of FRA Technical Bulletin G–05–10. As explained in that Technical Bulletin, it is expected that roadway workers clear all tracks upon being given train approach warning, as by clearing onto another track where only train approach warning (or no form on-track safety) is being provided presents an extremely dangerous situation which may potentially trap workers if multiple train movements occur simultaneously. FRA has long interpreted existing § 214.329 to already largely prohibit the use of another track as a place of safety, and this proposed amendment would merely codify that interpretation.

FRA is also proposing to add a new paragraph (h) to this section. This paragraph would prohibit the use of train approach warning as an acceptable form of on-track safety for a roadway work group using equipment or material that cannot be readily removed by hand from the track to be cleared. The existing RWP regulation is silent on this point, and FRA wished to establish minimum safety standards governing this issue. The Working Group discussed this provision and agreed in concept with the prohibition, but was unable to reach a consensus recommendation concerning the mobility of equipment on the track and three variations of its removal. The three variations of removal discussed were equipment that was readily removable: (1) By hand; (2) by hand by one employee; or, (3) by hand by two employees. FRA is proposing that the new paragraph (h) indicate that train approach warning may be used when the equipment or material used by the workers fouling the track can be removed ''by hand'' upon the notification of the approach of a train. By stating only ''by hand,'' and not specifying the number of persons, the proposed amendment still allows for flexibility for railroads in various operating situations. Where only one roadway worker is performing work, and he or she is being provided train approach warning by another roadway worker, this would necessitate that the equipment being used is of the nature that it can be removed from the track by hand by one person. Where additional roadway workers are present and in the immediate work area, this would allow for multiple roadway workers to remove a piece of equipment by hand upon being given train approach warning, so long as all roadway workers are able to remove the equipment and occupy a place of safety not less than 15 seconds before a train passes, as required by existing paragraph (a). An example of an activity that would be prohibited by proposed paragraph (h) would be the use of train approach warning as the method of on-track safety to place a crane boom into the foul of a track. However, on non-controlled track at location where it is feasible to stop a train, such as yard track, the use of a flagman via existing § 214.327(a)(1) might be appropriate. In that example, it may be practical during the on-track safety briefing to reassign a watchman/lookout to instead serve as a flagman (if so qualified and equipped) to stop trains short of any equipment fouling the track. On controlled track it would be appropriate to establish working limits.

During the Working Group discussion on this topic, a representative of a labor organization stressed that § 214.329 was promulgated in order to provide protection for roadway workers, and not for equipment. FRA agrees, but feels this requirement, if complied with appropriately, will advance railroad safety. Roadway workers who are unable to remove equipment from a track and occupy a place of safety prior to the arrival of a train place themselves at risk, amongst other things, of being struck by objects that are hit by trains. They also may obviously be at risk if they have to struggle to try to remove heavy equipment from a track on which a train is approaching and do not occupy a place of safety before the train's arrival. Train crews and passengers and the general public are also placed at risk if equipment left on the tracks is struck and the train derails as a result. Therefore, FRA feels it is necessary to propose an amendment expressly limiting when train approach warning may be used based on the type of equipment that is fouling a track. FRA is also proposing a similar requirement in the lone worker section, as discussed further in the section-by-section analysis for § 214.337 below. FRA requests additional comment on these proposals.

FRA wishes to address a question regarding existing § 214.329 that often arises. FRA is often asked whether the

use of a portable radio or a cell phone may be used as the sole method used to provide train approach warning to roadway workers. As explained in FRA Technical Bulletin G–05–28, portable radios and cell phones cannot be used as the sole communication to provide train approach warning. FRA believes this practice to be dangerous; especially should these devices fail in any manner as a train approaches a roadway work group. Further, these devices are not among those expressly listed in the existing watchman/lookout definition in § 214.7. While FRA has no objection to a radio or a cell phone being used to supplement the equipment issued to a watchman/lookout to provide train approach warning, FRA does not consider them to be proper equipment to provide sole auditory warning in accordance with this section.

Section 214.331 Definite Train Location

FRA is proposing to require that the use of definite train location as a form of on-track safety be discontinued one year after publication of a final rule in this rulemaking. Railroads were permitted to use this form of on-track safety if they already had such procedures in effect as of January 15, 1997, as established by existing §§ 214.331(a) & (c)(1). Class I and commuter railroads that were grandfathered in by that date were required to schedule a phase-out of the use of definite train location by a definite date, as more positive forms of on-track safety are now available. As it has been over 15 years since the scheduled phase-out requirement was promulgated, FRA is proposing to end the use of this method of providing on-track safety. The use of this method of providing on-track safety is not common, and FRA staff is currently unaware of any railroads that are using this form of on-track safety. However, FRA requests comment on this proposal.

Section 214.333 Informational Line-Ups of Trains

FRA is proposing to require that the use of informational line-ups of trains as a form of on-track safety be discontinued one year after publication of a final rule in this rulemaking. Railroads were permitted to use this form of on-track safety if they already had such procedures in effect as of March 14, 1996, as established by existing § 214.333(a). Railroads that were grandfathered in by that date were required by paragraph (c) to schedule a phase-out of the use of information line-ups of trains, as more positive forms of on-track safety are now available. As it has been over 15 years since the scheduled phase-out requirement was promulgated, FRA is proposing to end the use of this form of on-track safety. As discussed in the preamble to the final rule which promulgated this section, the Advisory Committee involved in creating the original RWP regulation stated that the use of train line-ups was not common at that time, and recommended that such use be further reduced and discontinued. 61 FR 65971. FRA staff is currently unaware of any railroads that are using this form of on-track safety. FRA requests comment on this proposal.

Section 214.335 On-Track Safety Procedures for Roadway Work Groups, General

Section 214.335 sets forth the general on-track safety procedures for roadway work groups and, in part, requires that before a member of a roadway work group fouls a track, on-track safety must be established in accordance with part 214. This NPRM reflects that the adjacent track rulemaking slightly amended the title of this existing section by adding the word ''general.'' FRA is proposing four amendments to this section. First, FRA is proposing to amend existing paragraph (a) of this section in order to include reference to proposed § 214.324 (verbal protection) and to § 214.336 (adjacent track protections) in the sections listed. This proposal is simply to update that list should proposed § 214.324 be adopted in a final rule in this rulemaking, and should § 214.336 of the adjacent track rulemaking go into effect as planned on July 1, 2013.

Next, similar to the proposed amendment to § 214.329(a), FRA is proposing to add the words ''except as provided for in § 214.338'' to the beginning of paragraph (a). This proposed amendment is intended to acknowledge the new station platform snow removal section, proposed in § 214.338 below, represents an exception from (or is a hybrid form of) the typical methods of providing on-track safety. Work performed under proposed § 214.338 would be governed by the requirements of that section.

FRA is also proposing to replace the word ''and'' from the existing text of paragraph (a) between reference to § 214.329 and § 214.331, and to replace it with the word ''or''. The word ''and'' has appeared in the text of this section since the RWP regulation's inception in 1996. However, FRA noticed that, as written, the word ''and'' could imply that all of the on-track safety/working limits sections listed would have to be provided when a roadway worker fouls a track. This is obviously not what was intended when this section was promulgated, nor is it how this section has been applied. FRA believes the use of the word ''or'' is more appropriate when listing the various sections that may be utilized to provide on-track safety for roadway workers.

Finally, for consistency purposes, FRA is proposing to incorporate the new term ''roadway worker in charge'' into existing paragraph (b) of this section. That new proposed term would replace the existing language in paragraph (b) that generically refers to the ''roadway worker responsible for the on-track safety of the roadway work group.'' This proposed change would help provide uniformity of reference to ''roadway worker[s] in charge'' at various locations in the RWP regulation text.

Section 214.337 On-Track Safety Procedures for Lone Workers

Section 214.337 governs the on-track safety procedures for lone workers. FRA is proposing two changes to this section, both of which are Working Group consensus recommendations. First, existing § 214.337 prohibits lone workers from using individual train detection (ITD) as the method of establishing on-track safety in certain locations. Specifically, existing paragraph (c)(3) prohibits the use of ITD within the limits of a manual interlocking, a controlled point, or a remotely controlled hump yard facility. In a hump yard, equipment can simultaneously move in either direction on a multitude of tracks. Similarly, within the limits of a manual interlocking or a controlled point, a particular physical layout may contain multiple switches, tracks, diamonds, or a movable bridge(s). As such, the prohibition on using ITD in those locations recognized that it would be difficult for a lone worker to perform work while safely detecting trains that could be approaching from multiple directions on multiple tracks.

The Working Group did address expanding the use of ITD in certain instances in those prohibited locations where the safety concerns discussed above are not implicated. Specifically, the Working Group came to consensus to recommend the allowance of ITD at controlled points that consist of signals only. The use of ITD at a controlled point consisting of signals only presents no more danger than using ITD for on-track safety on any track within a traffic control system. There is no additional risk to lone worker safety because if a controlled point consists of signals only, there are no switches, diamonds, or movable bridges that the lone worker

needs to monitor for purposes of train detection on multiple tracks.

Based on the above, FRA is proposing to amend existing paragraph (c)(3) to incorporate this consensus recommendation which states that ITD can only be used ''outside the limits of a manual interlocking, a controlled point (except those consisting of signals only), or a remotely controlled hump yard facility.'' The Working Group discussed potentially recommending expansion of this exception by adding additional manual interlockings and controlled point locations where ITD could be used by lone workers. However, no consensus recommendation on those additional locations was reached. FRA recognizes that expanding the number of locations where ITD is permitted to be used could represent a cost-savings to the railroad industry. For example, if the use of ITD were expanded to encompass more physical layouts, there would then be additional locations where lone workers would not have to establish working limits or a roadway worker would not have to utilize an additional employee in the form of a watchman/lookout to perform his or her work.

However, the nature of the work performed in interlockings and controlled points is often complicated, and the simultaneous detection of trains via ITD might not be safe. For example, signal maintainers often perform intricate work inside the limits of a manual interlocking or controlled point that requires great attention to detail. A failure to properly perform such work could result in signal or switch malfunctions, and resultant train accidents. While engaged in such intricate work at locations where the physical layout potentially permits the approach of trains from a multitude of tracks or directions, a lone worker may not be able to devote the vigilant attention necessary to detect approaching trains. Therefore, due to safety concerns, FRA is not proposing to expand the use of ITD beyond that of the Working Group consensus recommendation.

Next, FRA is proposing to add a new paragraph (g) to this section. This new paragraph would prohibit the use of ITD as an acceptable form of on-track safety for a lone worker using equipment or material that cannot be readily removed from a track by hand. This new consensus paragraph was recommended by the Working Group in part to address concerns that a lone worker might not be able to remove a piece of equipment he or she is using before the arrival of an approaching train, making a track unsafe for the passage of the train. This proposed paragraph is also intended to help ensure a lone worker does not have to struggle to remove a piece of equipment located on a track such that the lone worker is not able to remove the equipment from the track and occupy a place of safety in the time specified by existing paragraph (c)(4) of this section. This requirement parallels a similar requirement discussed above that is being proposed in § 214.329. However, the requirement being proposed in § 214.329 permits the use of equipment that might have to be removed by hand by more than one roadway worker. Because § 214.337 is specific to lone workers, the proposal in this section obviously requires a lone worker to be able to remove such equipment by hand by his or herself, as lone workers work independently from other roadway workers.

Section 214.338 Passenger Station Platform Snow Removal and Cleaning

The proposal contained in this new section was discussed extensively by the Working Group, but no consensus recommendation was made to FRA. FRA recognizes that certain activities, such as janitorial work in a passenger station away from the edge of a passenger platform, under limited circumstances, can occur safely without on-track safety being established in accordance with part 214. However, work at the edge of a station platform, including snow removal with hand tools within the four-foot fouling zone, requires that a form of on-track safety be established in order to ensure the worker's safety. While such work may not be of the same intensity as maintenance or construction of track or structures that is typically associated with roadway worker activities, such activities are governed by the existing RWP regulation.

Regarding work such as passenger station platform snow removal, railroads have traditionally expressed concern about their inability to provide roadway workers in charge for each work group (often consisting of contractors) at a large number of locations to remove snow from passenger station platforms when snowstorms occur. It can be extremely difficult to provide on-track safety for platform snow removal due to the transitory nature of such work. Railroads' concerns on this issue are heightened because such work might not typically involve fouling a track, except for the use of hand tools in the same area where passengers typically stand to wait for, and to enter and exit, trains. Also, accident data does not point to a significant number of incidents or any pattern of problems at passenger platforms. However, FRA recognizes that roadway workers performing snow removal duties on passenger station platforms are exposed to the risks associated with moving trains. FRA also recognizes that while roadway workers performing snow removal duties might occupy the same place on a platform as rail passengers do, they would actually be conducting work, which increases risk exposure.

In order to address this issue, FRA is proposing a new § 214.338, which would permit, under certain enumerated circumstances, a single roadway worker in charge to oversee several station platform work coordinators. Such station platform work coordinators could supervise roadway workers using hand tools to remove snow from passenger platforms or performing light duty cleaning, such as picking up trash or mopping. A station platform work coordinator would not replace, but would supplement the duties of a roadway worker in charge. Either a railroad employee or a contractor employee may be trained and qualified to hold this position. A station platform work coordinator would be required to be trained and qualified in accordance with the specific requirements of proposed § 214.352, which is discussed further below. In proposing this section, FRA has attempted to balance the necessity for railroads to timely provide a safe environment for their passengers while also providing for the safety of roadway workers who perform snow removal or cleaning work.

Proposed paragraph (a) of this section states that snow removal or cleaning activities on passenger station platforms may be performed without establishing working limits in accordance with part 214 provided that numerous conditions are met. Paragraph (a)(1) would require that the railroad designate a station platform work coordinator responsible for directing the on-track safety of the roadway worker or roadway work group performing the snow removal or cleaning. Paragraph (a)(2) would require that the railroad ensure that the fouling areas in which only non-powered hand tools may be used are clearly delineated, and are no less than four feet from the field side of the nearest rail. Such delineations could be made via a tactile strip, via temporary safety cones, or even by printed diagrams being provided to affected roadway workers. Proposed paragraph (a)(3) would require that a station platform work coordinator must also have access to either a landline or wireless communication device (cell phone, railroad radio, or other radio) that would permit him or

her to communicate with the roadway worker in charge, and, in emergencies, to communicate with the train dispatcher or control operator in charge of train and on-track equipment movements on the track(s) at the station. The railroad must provide to the work coordinator the contact information and instructions for reaching both the designated roadway worker in charge and the train dispatcher or control operator.

In accordance with proposed paragraph (a)(4), prior to beginning work, the station platform work coordinator must inform the designated roadway worker in charge of the work to be performed, and the work coordinator must also remain at the station platform the entire time the work is being performed. The station platform work coordinator must also conduct an on-track job safety briefing with the roadway worker or roadway work group performing such work in accordance with the requirements of existing § 214.315. The station platform work coordinator must also establish train approach warning that requires a watchman/lookout to warn of the approach of any train or on-track equipment. When such train approach warning is given, affected roadway workers would be required to withdraw hand-held non-powered tools from the delineated fouling area. Due to the myriad of physical layouts that may exist and the unobtrusive nature of the work being performed, FRA proposes that this warning may be based on available sight distance and may give less timely notice than that prescribed by § 214.329(a). To require the full regime of sight and clearing time under train approach warning could require advance watchmen be placed along the right-of-way during inclement weather, creating an unnecessary dangerous situation. Also, the establishment of a significant number of simultaneous working limits in inclement weather could potentially affect the safe movement of trains. The station platform work coordinator may provide the train approach warning as long as he or she is not engaged in or distracted by any other activities. As such, the station platform work coordinator must inform workers to cease work at the edge of a station platform whenever he is unable to devote full attention to his or her train approach warning task. In any case, each employee providing train approach warning services must be trained in accordance with the requirements of § 214.349.

Proposed paragraph (a)(5) would establish that roadway workers conducting snow removal or cleaning in accordance with § 214.338 must position themselves on the station platform outside the delineated fouling area, and may only use hand-held, non-powered tools to perform such duties. FRA has not proposed rule text requiring workers to wear highly visible garments while performing work subject to this section. FRA is, however, considering adopting a provision in a final rule requiring workers performing work subject to this section to wear highly visible garments that would meet existing American National Standards Institute/International Safety Equipment Association 107–2010, American National Standard for High-Visibility Safety Apparel and Headwear. FRA requests comment on this issue, and is specifically interested in comment on whether this requirement would enhance safety by helping to clearly identify which persons on a passenger station platform were engaged in such snow removal or cleaning work. FRA also requests comment regarding whether such a requirement would be cost effective, and the basis for the content of comments on that point.

Proposed paragraph (a)(6) would only permit this section to be utilized if the maximum authorized speed on the track adjacent to the platform does not exceed 79 mph. Finally proposed paragraph (b) requires that if any of the conditions in paragraph (a) are no longer be met during the course of the work (*e.g.,* if the provided wireless communication device or landline is no longer functioning, or if the designated roadway worker in charge is no longer accessible), all work that would require a roadway worker to encroach the delineated fouling area shall cease. Work in the delineated fouling area may resume only after all the requirements of this proposed section are met, or if a roadway worker in charge arrives at the work site to provide on-track safety consistent with the requirements of this proposed section, or consistent with other part 214 on-track safety procedures.

FRA notes that the following activities would not be governed by this proposed section, but would continue to be governed by the existing on-track safety requirements subpart C: (1) When a roadway worker actually positions him or herself within the delineated fouling space; (2) when a roadway worker places a power tool of any type (*e.g.,* a snow blower) in the delineated fouling space; or, (3) when a roadway worker performs work of any nature in a crosswalk spanning the track(s) at station platforms.

In proposing this section, FRA recognizes that there are differences in the work environment on high versus low-level station platforms. In addition, railroads vary with respect to their established clearance dimensions. Therefore, FRA is proposing that each railroad specifically delineate the fouling point on such platforms at which roadway workers must position themselves clear of while performing work under this section. With respect to enforcement activities associated with this section, FRA intends to use the railroad's designated delineation to identify the fouling area, provided the area delinated is at least four feet from the field side of the rail nearest the station platform.

Finally, this proposed section does not contemplate the use of ITD. As such, if a lone worker is performing work at the edge of a station platform, regardless of the nature of the work being performed, all of the requirements of § 214.337 would apply.

Section 214.339 Audible Warning From Trains

The Working Group recommended language that would replace the existing text of § 214.339. Since promulgation of the original RWP regulation, enforcement issues have arisen regarding whether an audible warning must be sounded in accordance with existing § 214.339 when roadway workers are not fouling track but are in the vicinity, and also regarding the required frequency of such warning while trains pass large roadway work groups. There are currently four FRA Technical Bulletins, G–05–08, G–05–15, G–05–26, and G–05–27, which provide guidance to the railroad industry on the requirements of § 214.339. As discussed further below, those technical bulletins would be supplanted upon adoption of any revision to the audible warning requirement in a final rule in this rulemaking. The proposed consensus text significantly modifies existing § 214.339 in order to provide more clarity, and also provides discretion for railroads to develop audible warning procedures to address various operating situations.

Proposed paragraph (a) states that each railroad shall have in effect and comply with written procedures which govern the audible warning to be given by trains or locomotives. Such procedures must require an audible warning be given when approaching roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or are about the track if at the risk of fouling. For example, if roadway workers are engaged in work on a track adjacent to a track upon which a train

is approaching, such procedures must require that an audible warning be given. The same would apply to roadway maintenance machines that are moving or are in use on a track adjacent to an approaching locomotive. Roadway machines might obscure the locomotive engineer's view of roadway workers on the ground in the vicinity of a machine. While these two examples focus on roadway workers and roadway maintenance machines located on a track adjacent to the track occupied by an approaching train, it is not FRA's intent to limit the adoption of procedures which require an audible warning be given for workers or equipment located further than the adjacent track.

FRA has slightly amended the introductory text of proposed paragraph (a) as recommended by the RSAC. The recommended consensus text of the first sentence read that ''[e]ach railroad shall have in effect and comply with written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains and locomotives approaching any roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or about the track if at risk of fouling.'' FRA has proposed replacing the recommended words ''or about the track at risk of fouling'' with the words ''or about the track if the roadway workers or roadway maintenance machines are at risk of fouling the track.'' This proposed amendment is not substantive in nature, but is only intended for clarity.

Proposed paragraph (a) would also specifically require the procedures adopted by a railroad address both the initial horn warning to be given, and subsequent warnings. FRA notes that an audible warning consisting only of the locomotive horn being blown for one sequence by a train or locomotive upon the approach and passage of a large roadway work group, such as a tie and surfacing production crew that is spaced out over a long distance, would violate this proposed regulation. At a minimum in such situations, the governing procedures must require that the locomotive horn be sounded and bell be rung upon the approach of each unit of such a work crew. However, FRA is cognizant of the sensitivity of residents who live in close proximity to railroad tracks. As such, when maintenance equipment is obviously just being stored on siding tracks adjacent to a main track, FRA would generally not take exception to a train that does not sound its horn for equipment that is clearly not in use.

Proposed paragraph (a) would also require that the procedures adopted by a railroad address alternative warnings in areas where sounding the horn adversely affects roadway workers. Such alternative warnings may be provided for in locations such as tunnels or passenger terminals, where a train horn could create a hearing hazard for roadway workers and other people. Alternative warning procedures could also be implemented in yards, where a locomotive might frequently pass roadway workers due to the back and forth movement cycles that are common in switching and classification operations. The frequent sounding of horns in such situations can defeat the effectiveness of the warning.

If proposed paragraph (a) is adopted in a final rule in this rulemaking, FRA Technical Bulletins G–05–08, G–05–15 and G–05–27 would be supplanted. Technical Bulletins G–05–08 and G–05–15 addressed audible warnings over a large work area and duration of warnings, respectively, while G–05–27 addressed when an audible warning was required. These technical bulletins would be supplanted as this section would require that a railroad's procedures prescribe when an audible warning is required when roadway workers or roadway maintenance machines are on or about tracks, and also requires that such procedures address both initial and subsequent warnings.

Proposed paragraph (b) reiterates an existing requirement of § 214.339, and states that required audible warnings cannot substitute for on-track safety procedures prescribed in part 214. The on-track safety must be one of the forms of protection prescribed by the RWP regulation. The audible warning requirement is only intended to provide an additional measure of safety in the event that roadway workers might be fouling the track upon which a train or locomotive is approaching.

Next, FRA has received inquiries regarding audible warnings during shoving movements, and also regarding multiple-unit (MU) passenger train equipment not equipped with a bell. With regard to MU equipment not equipped with a bell, FRA Technical Bulletin G–05–26 stated that such equipment would still be in compliance with existing § 214.339 so long as the horn was sounded to provide an audible warning when necessary. The proposed amendments to § 214.339 are still consistent with the guidance in Technical Bulletin G–05–26, and if such amendments are adopted in a final rule, the technical bulletin would be supplanted. With regard to audible warnings during shoving movements, the requirement to provide an audible warning is predicated on the locomotive engineer or train operator being able to see roadway workers ahead of his or her movement. Therefore, if a locomotive engineer does not have the capability to see roadway workers ahead of his or her movement (*e.g.,* a significant number of cars ahead of the locomotive), and does not sound the horn, the engineer would not be considered to be in violation of this section. However, with increased remote control operations in the railroad industry, in which a large percentage of moves are considered shoving movements, FRA would encourage railroads' to address remote control operations with respect to this proposed section in their adopted procedures.

FRA notes that it encourages the use of highly visible reflective clothing and personal protective equipment to help provide clear indication to locomotive engineers and train operators that roadway workers are present in the vicinity of railroad tracks. The current RWP regulation does not require such equipment, but as discussed in the analysis of § 214.338 above, FRA is requesting comment on such a requirement for roadway workers who perform certain duties. Finally, FRA notes that railroads would be required to comply with the requirements of this section even within highway-rail grade crossing quiet zones.

§ 214.343 Training and Qualification, General

Existing § 214.343 sets forth the general training and qualification requirements for roadway workers. Specifically, paragraphs (a), (b), and (d) of this section prohibit an employer from assigning an employee the duties of a roadway worker (and prohibits an employee from accepting such an assignment), until that employee has received training in the on-track safety procedures associated with the assignment, and also require that roadway workers receive initial and recurrent training once every calendar year on the on-track safety rules and procedures they are required to follow, and requires employers of roadway workers to maintain records of each roadway worker qualification in effect.

Paragraph (c) of existing § 214.343 requires that railroad employees other than roadway workers who are associated with on-track safety procedures, and whose primary duties involve the movement and protection of trains, be trained ''to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating

railroad for the primary position of the employee.

FRA is proposing one amendment to this existing section. That proposed amendment is to add the words ''[e]xcept as provided for in § 214.353 * * *'' to the beginning of paragraph (c). This change is to reflect that FRA is proposing to amend the existing rule text of § 214.353 to also expressly govern the training of employees other than ''roadway workers'' (typically transportation employees such as conductors) who act as roadway workers in charge. FRA's explanation of this change is contained in the section-by-section analysis for § 214.353 below.

§ 214.345 Training for All Roadway Workers

Existing § 214.345 sets forth the minimum content of training provided to roadway workers in accordance with part 214. As recommended by the Working Group, FRA is proposing to amend this section by adding the words ''[c]onsistent with § 214.343(b)'' to the beginning of the first sentence of the existing introductory paragraph of that section. This amendment is proposed for clarity, and reinforces that the existing RWP regulation requires that each roadway worker must be trained, at a minimum, on the items listed in this section both initially and once every calendar year. FRA also notes that per existing § 214.343(b), roadway workers must also be trained once every calendar year on the on-track safety rules and procedures they are required to follow. Existing FRA Technical Bulletin G–05–16 previously provided guidance on these existing requirements.

FRA is also proposing to amend this section by adding a new paragraph (f). As discussed above in the section-by-section analysis for proposed § 214.317(b), the Working Group recommended a consensus requirement that all roadway worker training include instruction on an employer's procedures governing the determination of whether it is safe to walk across railroad tracks. FRA removed that consensus item from § 214.317(b), and has proposed to insert it into this section with the other existing roadway worker training requirements, where it is more appropriately located. This proposed requirement is intended to help enable roadway workers safely traverse tracks they may need to cross while not directly engaged in their roadway worker duties when no formal on-track safety is in place on the tracks to be crossed (*e.g.,* when crossing tracks to retrieve a tool or to reach a work area). Fatalities have occurred when roadway workers walked across tracks and were struck by rolling equipment, and this proposal is intended to help prevent similar incidents from occurring in the future.

§ 214.347 Training and Qualification for Lone Workers

Section 214.347 sets forth the training and qualification requirements applicable to lone workers. FRA is proposing one change to this existing section, and is requesting further comment on whether to make additional amendments in a final rule. First, as discussed above, the Working Group's consensus recommendation for the proposed amendments to § 214.309 contained a requirement that lone workers receive instruction on the alternative means to access the information in a railroad's on-track safety manual when his or her duties make it impracticable to carry the manual. FRA removed that consensus recommendation from § 214.309, and has proposed to insert it here with the other existing lone worker training requirements, where FRA believes it is more appropriately located. The alternate means to access the information by a lone worker could include the use of a phone or radio for the lone worker to contact an employee who has the contents of the on-track safety manual readily accessible. This provision would require an employer to train lone workers on the alternative means of access that the employer adopts.

Next, as discussed in the preamble above, the Working Group recommended consensus amendments that would have expressly required recurrent qualification every 24 months and recurrent lone worker training every calendar year (for all of the additional roadway worker qualifications in part 214, *e.g.,* lone worker, watchman/lookout, flagman, roadway worker in charge, and roadway maintenance machine operator). However, in the time period that has passed since the Working Group proposed consensus text for this section, RSIA 2008 mandated that FRA undertake a rulemaking to set minimum training standards for ''each class and craft of safety-related railroad employee,'' to include training standards for roadway workers. That rulemaking was undertaken by the RSAC, and FRA recently published an NPRM proposing such minimum training standards. 77 FR 6412. The training standards NPRM contains an extensive proposal for refresher training and qualification requirements for roadway workers. Because the consensus recommendation of the RSAC do not parallel the proposed refresher training and qualification requirements in the statutorily mandated training standards rulemaking, FRA is not proposing specific rule text pertaining to additional roadway worker recurrent training and qualification requirements, but rather is requesting further comment on how to proceed in a final rule.

Finally, as also discussed in the preamble above, FRA is contemplating adding a requirement to a final rule in this rulemaking that lone workers be qualified on the physical characteristics at locations where the lone worker fouls track to perform work. FRA believes that such qualification on the physical characteristics at a particular location could aid in a lone worker's ability to be able to safely detect approaching trains and make the appropriate distance determination as required by existing § 214.337(a). FRA is not, however, proposing rule text for this potential requirement, and requests further comment.

Section 214.352 Training and Qualification of Station Platform Work Coordinators

FRA is proposing a new § 214.352 that would address training requirements for station platform work coordinators. As new proposed § 214.338 would establish procedures allowing multiple station platform work coordinators to oversee snow removal or light cleaning work under the direction of one roadway worker in charge, minimum training and qualification requirements need to be established for such coordinators.

As a station platform snow removal coordinator would for practical purposes be an ''assistant'' roadway worker in charge, FRA is proposing training requirements that closely mirror the existing training requirements for a roadway worker in charge, with two exceptions. First, a station platform work coordinator would not be required to be trained on the application of the operating rules pertaining to the establishment of working limits, but only on their content. FRA believes that with training on the rules governing working limits, the coordinator could ensure work remained within the limited scope of that proposed in § 214.338, and be cognizant of when it may be necessary to contact the roadway worker in charge to establish working limits. As the station platform work coordinator would never actually be establishing working limits, training on how to do so would be unnecessary. Second, FRA is not proposing to require that station platform work coordinators be trained on the relevant physical characteristics

of the territory upon which work was being performed. As work could only be performed on a station platform under limited circumstances, such training would not be necessary. This training is also not necessary because if working limits or another form of on-track safety needed to be established, a roadway worker in charge who is qualified on the physical characteristics would first be required to be present. Instead, FRA is proposing that station platform work coordinators would have to receive training on the procedures to access the roadway worker in charge, or the train dispatcher or control operator in an emergency, per the requirements of proposed § 214.338.

Such training would be required to be given initially before an employee may perform work as a station platform work coordinator. Refresher training and qualification for each station platform work coordinator would be required to be evidenced by a recorded examination, at the frequency dictated by the existing additional roadway worker qualification sections. This proposed requirement is in addition to the once each calendar year roadway worker training requirements established by existing §§ 214.343 and 214.345. The approach that FRA ultimately adopts in a final rule with regard to qualification and training frequencies for additional roadway worker qualifications will also be adopted here.

FRA notes that under this proposed section, station platform work coordinators would necessarily be required to understand the procedures for, and be able to address, a good faith challenge. They would also necessarily be required to provide a safety briefing as prescribed by the roadway worker in charge and be qualified to provide train approach warning.

Section 214.353 Training and Qualification of Each Roadway Worker in Charge

Existing § 214.353 is titled ''[t]raining and qualification of roadway workers who provide on-track safety for roadway work groups'' and sets forth the general training and qualification requirements for roadway workers who are responsible for the on-track safety of groups of roadway workers through the establishment of working limits. FRA is proposing several changes to this existing section, including both recommended consensus items and non-consensus amendments. First, FRA is proposing to change the title of this section to ''[t]raining and qualification of each roadway worker in charge.'' This change is to reflect FRA's proposal to adopt this new term, and is in accordance with the proposals to use that new term to replace the varying generic references to that position that appear throughout the existing RWP regulation.

FRA is also proposing to add a new paragraph (a)(5) to this section. Proposed paragraph (a)(5) is a Working Group consensus recommendation that would require roadway workers in charge to be trained on procedures ensuring they remain immediately accessible to the roadway workers being protected by the on-track safety they are responsible for establishing. This new proposed paragraph would parallel the proposed requirement in § 214.315(a)(5) that the on-track safety job briefing given by a roadway worker in charge to a roadway worker include information on the accessibility of the roadway worker in charge, and on alternate procedures in the event the roadway worker in charge is no longer accessible to members of the roadway work group.

FRA is also proposing an additional amendment to existing paragraph (a) of this section. This proposed amendment to the existing rule text addresses situations where employees other than roadway workers act as roadway workers in charge. There was much discussion by the Working Group regarding conductors providing for the protection of roadway work groups, but no consensus recommendation regarding this issue was proposed for this NPRM.

As background, existing § 214.343(c) states that railroad employees other than roadway workers (often conductors or brakemen) ''who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating rules for the primary position of the employee.'' This means that when a non-roadway worker employee (such as a conductor) is involved in providing for the on-track safety of a roadway work group (such as by serving as a flagmen for a roadway work group), that the non-roadway worker employee does not necessarily have to receive training to perform such task in accordance with the existing RWP regulation training section, but rather may receive the relevant training to be able to proficiently perform such function via his or her railroad's conductor training procedures.[11] FRA Technical Bulletin G–05–18 discussed § 214.343(c), and explained that the interval of such training may be permitted to occur on an alternate basis from that required for a roadway worker in the RWP regulation (according to a railroad's training frequency procedures prescribed for a conductor in the above example, rather than for a roadway worker). Regardless of the employee's traditional craft, it is essential that any employee associated with on-track safety have sufficient knowledge to assure that protection is properly applied.

Next, existing § 214.315(c) provides that one roadway worker in charge must be designated to provide on-track safety for a roadway work group. Sometimes, non-roadway worker employees may be called upon to act as roadway workers in charge for roadway work groups. FRA Technical Bulletin G–05–04 provides guidance regarding the use of employees other than roadway workers who act as roadway workers in charge. That bulletin explains that when transportation employees, such as conductors, are assigned to provide on-track safety for roadway workers, that those employees must have received the relevant training to assume those responsibilities. The role of a roadway worker in charge is a critical one, as a roadway worker in charge is responsible for establishing and maintaining the appropriate form of on-track safety upon which the safety of an entire roadway work group often depends. Roadway workers in charge must also be capable of conducting the on-track safety job briefings required by the RWP regulation, of handling a good faith challenge that may arise at a work site, and of locating relevant guidance in an on-track safety manual. Because the role of the roadway worker in charge is so important, it is imperative that any employee, whether considered a roadway worker or not, acting in the role of the roadway worker in charge have the required training and the capability to fulfill those functions safely. Simply, Technical Bulletin G–05–04 explained that any employee acting in the role of a roadway worker in charge must be trained as such. That technical bulletin also provided a table which, in part, helped illustrate the items that a conductor acting as a roadway worker in charge must be

[11] FRA notes that employees of some smaller railroads may perform work in a variety of crafts. An employee may perform track maintenance work as a ''roadway worker'' one day, while then working as a certified locomotive engineer the next day. FRA is not attempting to describe such a situation in this section, but rather is referring to situations where dedicated transportation employees do not actually perform ''roadway worker'' duties, but are called on to provide on-track safety for a roadway work group.

trained and qualified on. Those items are the same items that a roadway worker in charge is required to be trained and qualified on. That chart is reproduced here, with new proposed § 214.324 included:

Section	Description	Train and engine (T&E) service employees (1)
309	On-track safety manual at work site	A
311	Good faith challenge and written procedures	A
315	On-track safety job briefing	A
321	Exclusive track occupancy	D
323	Foul time	A
324	Verbal protection	A
325	Train coordination	R
327	Inaccessible track	A (2)
329	Train approach warning	A
335	Adjacent track on-track safety	A
339	Train audible warning	R
341	Roadway maintenance machine procedures	A (3)
351	Flagmen	D
353	Physical characteristics	D

D Default training received through craft training.
R On-track training received in addition to craft qualification as required by § 214.343.
A Additional qualification of employee providing on-track safety for roadway workers. Qualifications may be limited to those required for a specific situation. For example, a T&E employee providing on-track safety for a railroad contractor working on a single controlled main track with exclusive track occupancy without roadway maintenance machines. The employee in such scenario will not need to be qualified on roadway maintenance machine on-track safety procedures, train approach warning, or inaccessible track (only the elements that are utilized are applicable). Regardless of the frequency of general T&E training of such an employee, the applicable elements must comply with § 214.353. In addition, it is important to note that if trains operate while the work disturbs the track, a person qualified under § 213.7(a) must be present.
(1) A T&E employee who is qualified to obtain a track permit (exclusive track occupancy), but not otherwise qualified/trained in the necessary roadway worker protection elements, may be directed by another person so qualified. In such a case, the T&E employee is in ''pilot service'' for another person who must fulfill the roadway worker in charge role (and trained/qualified as appropriate under § 214.353). A common example would be where a T&E employee pilots a roadway maintenance machine over the track that the roadway worker in charge may not have the physical characteristic qualification but otherwise has the requisite qualifications.
(2) Railroad operating rule that would prohibit conductor from pulling spike in a switch used to make the track inaccessible.
(3) An employee providing on-track safety is not required to be fully qualified to operate every roadway maintenance machine but must have knowledge of the general and specific on-track safety procedures for each machine.

Per the above discussion, under the existing RWP regulation, a conductor (or other employee) acting as a roadway worker in charge is currently required to be trained on the same items as a traditional roadway worker in charge. However, existing § 213.353 only currently governs training and qualification requirements for ''roadway workers'' who provide for the establishment of on-track safety for roadway work groups. Conductors and other transportation employees have not been considered to be ''roadway workers''. While by its terms existing § 214.343(c) requires such other employees to still be trained and qualified to perform their functions related to on-track safety, FRA is proposing to expressly state such with regard to roadway worker in charge duties by amending § 214.353. FRA's proposed amendment would expressly state that roadway workers, or any other employee acting in the role of a roadway worker in charge, would have to be trained and qualified in accordance with § 213.353. While FRA does not believe this to be a substantive amendment, this proposal is to reflect that the role of a roadway worker in charge is different than that implicated by other levels of roadway worker qualification, due to both the many responsibilities involved and safety critical role such employees play.

This proposed amendment, for example, would still permit a conductor to receive training relevant to fulfilling the requirements to act as a roadway worker in charge ''through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee.'' *See* § 214.343(c). The only differences between FRA's proposed amendment to paragraph (a) and existing § 214.343(c) relate to the requirement for a recorded examination for a roadway worker in charge and to the frequency of training required. By expressly proposing to include employees other than roadway workers who act as roadway workers in charge under § 214.353, a recorded examination would be required to evidence such employee's qualification. Under existing § 213.343, while many railroads may already give a recorded examination under their procedures for qualifying non-roadway workers on the functions related to on-track safety, some may not. If this proposed requirement were included in a final rule in this rulemaking, a recorded examination would be required for qualification of any employee acting in the capacity of a roadway worker in charge.

With regard to the frequency of training and qualification, FRA has chosen to proceed in the same manner as discussed above for the proposed amendments to §§ 214.347 through 214.352. FRA is requesting comment on whether to adopt the consensus recommendation of the Working Group as discussed above (qualification every 24 months and annual refresher training) or the proposals in the training standards rulemaking (refresher training and qualification be performed every three calendar years). Existing § 214.343(c) currently controls on this point for non-roadway workers who serve as roadway workers in charge, and only specifies that training and qualification may be performed according to the frequency of training ''prescribed by the operating railroad for the primary position of the employee.'' The proposed training standards rulemaking would also apply to these other ''safety related employees,'' and proposed § 243.201 of that rule would already require that those employees be trained and qualified every three calendar years. If FRA adopted the training and qualification interval as proposed by the training standards rulemaking in a final rule, conductors or other employees who act as roadway workers in charge would be required to be trained and qualified at the same

interval as would a roadway worker. If FRA adopts an approach requiring a more frequent training and qualification interval for roadway workers in charge, there could be additional costs with regard to training conductors or other non-roadway worker employees who serve in such positions.

Next, FRA wishes to address what has been referred to as the bifurcation, or the splitting, of roadway worker in charge duties. FRA refers to scenarios where a roadway worker in charge may not be qualified on the physical characteristics of a territory, and a conductor who is qualified on the physical characteristics is assigned to serve as a pilot for the roadway worker in charge (analogous to a locomotive engineer being unfamiliar with the physical characteristics who is provided a pilot in accordance with § 240.231). While this situation is not currently addressed by the RWP regulation, Technical Bulletin G–05–04 notes that FRA does not currently object to the splitting of on-track safety qualification elements, and provided the example of a conductor obtaining an exclusive track occupancy work permit (authority) for a roadway work group while a roadway worker fulfilled the other duties of a roadway worker in charge, such as performing the on-track safety job briefing. However, in a final rule in this rulemaking, FRA is considering adopting a requirement that would only permit the splitting of qualifications to occur in situations where a conductor or other railroad employee serves as a pilot to a roadway worker in charge (or employee acting as a roadway worker in charge) who was not qualified on the physical characteristics of a particular territory where work was being performed. FRA is considering such, as every roadway work group is already required to have a roadway worker in charge, and if the proposed amendment to paragraph (a) is adopted in a final rule in this rulemaking, any employee acting as a roadway worker in charge would be required to be trained on the substantive requirements listed in § 214.353. FRA believes this would alleviate most instances where there would be any need for the splitting of qualifications, except with regard to qualification on the physical characteristics of a territory. FRA recognizes that when roadway work groups perform system-wide work on a large railroad, that it may not be possible for each roadway worker who is qualified as a roadway worker in charge to be qualified on the physical characteristics of each territory on which the group performs work. Thus, as similarly recognized by FRA in parts 240 and 242 (FRA's new Conductor Certification regulation, promulgated via a final rule published on November 9, 2011 (76 FR 69802)), the use of pilots is often necessary in order to efficiently conduct railroad operations, and the use of such pilots is recognized to be an acceptably safe practice in the industry (the use of pilots in the industry pre-dates the Federal regulations on the subject). FRA requests additional comment on this issue.

As also noted in Technical Bulletin G–05–04, FRA would not take exception to providing a ''limited'' qualification for a roadway worker in charge who would only perform such duties in certain situations. For example, a roadway worker in charge who was performing such duties on a railroad consisting entirely of non-controlled track would be permitted to have a limited qualification which would only involve the roadway worker in charge's being trained and qualified to establish working limits via the inaccessible track procedures (in addition to being trained on all other §§ 214.343, 214.345, and 214.353 requirements). However, FRA would take exception to a limited roadway worker in charge qualification where work was being performed on controlled track and where such limited qualification did not include the ability to use all of a railroad's controlled track working limits procedures. For example, limiting qualification to use of foul time only, when exclusive track occupancy is also an integral part of a railroads' on-track safety program, would not be permissible. FRA requests comment on this point, and whether additional forms of bifurcation of roadway worker in charge duties should continue to be permitted, such as where one employee obtains a track permit for another employee who is acting as the roadway worker in charge.

XI. Regulatory Impact and Notices

A. Executive Order 12866, Executive Order 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant under Executive Orders 12866 and 13563, and DOT policies and procedures. See 44 FR 11034, Feb. 26, 1979. FRA has prepared and placed a regulatory impact analysis (RIA) addressing the economic impact of this proposed rule in the Docket (No. FRA–2008–0086). Document inspection and copying facilities are available at Room W12–140 on the Ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

As part of the RIA, FRA has assessed quantitative measurements of the cost and benefit streams expected to result from the implementation of the proposed rule. Overall, the proposed rule would result in safety benefits and potential business benefits for the railroad industry. It would also, however, generate an additional burden on railroads mainly due to the additional requirements for job briefing under certain circumstances, as well as various training requirements.

Table 1 summarizes the quantified costs and benefits expected to accrue over a 20-year period. It presents costs associated with expanded job briefing requirements under § 214.315 Supervision and Communication, railroad policy change under § 214.339 Audible Warning from Trains, and training of various types of employees under §§ 214.345, 214.347, 214.352 and 214.353.

The RIA also presents the quantified benefits expected to accrue over a 20-year period. These benefits are primarily cost savings or business benefits. They largely accrue due to time savings because of the proposed amendments, including no longer having to submit plans to FRA for review under § 214.307, being able to more expeditiously remove snow from track and platforms under §§ 214.317 and 214.338, using inaccessible track under § 214.327, and using individual train detection under § 214.337. The largest benefit from this proposed rule is the new provision for using verbal protection under § 214.324. The use of verbal protection would provide greater flexibility and would create a time savings because the cycle of getting foul time and having to release it in between trains is very time consuming. All other proposed amendments result in no cost or benefits because they represent current industry practice and/or the adoption of current FRA Technical Bulletins.

For the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals $5,840,921 with a present value of $3,103,980 (PV, 7 percent) and $4,350,537 (PV, 3 percent). FRA also estimates that for the 20-year period analyzed, the estimated quantified benefits total $119,507,405 with a present value of $63,310,902 (PV, 7 percent) and $88,902,763 (PV, 3 percent). This analysis demonstrates that the benefits for this proposed rule would exceed the costs.

TABLE 1—COSTS AND BENEFITS OF THE PROPOSED RULE

	Year 1	2–20	Total 20 year	7% PV	3% PV
Costs:					
214.315 Job Briefings	$143,055	$143,055	$2,861,100	$1,515,527	$2,128,297
214.339 Audible Warning from Trains	24,976	0	24,796	23,174	24,074
214.345 Training on Safe Crossing of Track	72,250	72,250	1,445,000	765,418	1,074,898
214.347 Training on Access to Manual	10,838	10,838	216,750	114,813	161,235
214.352 Training Platform Work Coordinate	22,759	22,759	455,175	241,107	338,593
214.353 Training RWIC	41,905	41,905	838,100	443,942	623,441
Total	315,602	290,806	5,840,921	3,103,980	4,350,537
Benefits:					
214.307 Plans No Longer Reviewed	$19,553	$426	$27,653	$22,392	$24,912
214.317 Track Snow Removal	292,613	292,613	5,852,250	3,099,941	4,353,335
214.324 Use of Verbal Protection	5,386,021	5,386,021	107,720,415	57,059,581	80,130,388
214.327 Inaccessible Track	204,016	204,016	4,080,319	2,161,348	3,035,242
214.337 ITD	4,335	4,335	86,700	45,925	64,494
214.338 Platform Snow Removal	87,003	87,003	1,740,069	921,716	1,294,392
Total	5,993,541	5,974,414	119,507,405	63,310,902	88,902,763
NET BENEFITS	5,677,938	5,683,608	113,666,484	60,206,922	84,552,226

Dollars are discounted over a 20-year period.

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461; August 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. FRA developed the proposed rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to ensure potential impacts of rules on small entities are properly considered.

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a threshold analysis to determine if the proposed rule will or may have a significant economic impact on a substantial number of small entities (SEISNOSE) or not. Then it must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule is not expected to have a SEISNOSE.

As discussed earlier, FRA proposes to amend its regulations on railroad workplace safety to resolve interpretative issues that have arisen since the 1996 promulgation of the original Roadway Worker Protection (RWP) regulation. Specifically, this Notice of Proposed Rulemaking (NPRM) proposes to define certain terms, establish new procedures for the removal of snow from passenger station platforms, amend certain training requirements for roadway workers, resolve interpretive issues, and codify certain of FRA's Technical Bulletins. FRA is also proposing to update three incorporations by reference of industry standards in existing sections of Subpart B of Part 214 that address Bridge Worker Safety Standards

The small entity segment of the railroad industry faces little in the way of intramodal competition. Small railroads generally serve as ''feeders'' to the larger railroads, collecting carloads in smaller numbers and at lower densities than would be economical for the larger railroads. They transport those cars over relatively short distances and then turn them over to the larger systems which transport them relatively long distances to their ultimate destination, or for handoff back to a smaller railroad for final delivery. Although the relative interests of various railroads may not always coincide, the relationship between the large and small entity segments of the railroad industry are more supportive and co-dependent than competitive.

It is also extremely rare for small railroads to compete with each other. Small railroads generally serve smaller, lower-density markets and customers. They exist, and often thrive, doing business in markets where there is not enough traffic to attract the larger carriers that are designed to handle large volumes over distance at a profit. As there is usually not enough traffic to attract service by a large carrier, there is also not enough traffic to sustain more than one smaller carrier. In combination with the huge barriers to entry in the railroad industry (*e.g.,* due to the need to own the right-of-way, build track, purchase a fleet, etc.), small railroads rarely find themselves in competition with each other. Thus, even to the extent that the proposed rule may have an economic impact, it should have no impact on the intramodal competitive position of small railroads.

1. Description of Regulated Entities and Impacts

The ''universe'' of the entities under consideration includes only those small entities that can reasonably be expected to be directly affected by the provisions of this rule. For the rule there is only one type of small entity that is affected: small railroads.

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under § 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operations.

The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than seven million dollars. *See* ''Size Eligibility Provisions

and Standards,'' 13 CFR part 121 subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. *See* 68 FR 24891 (May 9, 2003), codified at Appendix C to 49 CFR part 209. The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR part 1201–1. The same dollar limit on revenues is established to determine whether a railroad shipper or contractor is a small entity. FRA is proposing to use this definition for this rulemaking. Any comments received pertinent to its use will be addressed in the final rule.

Included in the entities impacted by the proposed rule are governmental jurisdictions or transit authorities—most of which are not small for purposes of this certification. There are two commuter railroads that are privately owned and would be considered small entities. However, both of these entities are owned by Class III freight railroads and therefore are already considered to be small entities for purposes of this certification.

Railroads

There are approximately 708 small railroads.[12] Class III railroads do not report to the STB, and the precise number of Class III railroads is difficult to ascertain due to conflicting definitions, conglomerates, and even seasonal operations. Potentially all small railroads (a substantial number) could be impacted by this proposed regulation. However, because of certain characteristics that these railroads typically have, there should be very little impact on most, if not all of them. A large number of these small railroads only have single-track operations. Some small railroads, such as the tourist and historic railroads, operate on the lines of other railroads that would bear the burden or impact of the proposed rules requirements. Finally, other small railroads, if they do have more than a single track, typically have operations that are infrequent enough such that the railroads have generally always performed the pertinent trackside work with the track and right-of-way taken out of service, or conducted during hours that the track is not used.

Almost all commuter railroads do not qualify as small entities. This is likely because almost passenger/commuter railroad operations in the United States are part of larger governmental entities whose jurisdictions exceed 50,000 in population. As noted above two of these commuter railroads are privately owned and would be considered small. However, they are already considered to be small because of being owned by a Class III freight railroad. FRA is uncertain as to how many contractor companies would be involved with this issue. FRA is aware that some railroads hire contractors to conduct some of the functions of roadway workers on their properties. However, the costs for the burdens associated with the proposed requirements of this rulemaking would get passed on to the pertinent railroad. Most likely the contracts would be written to reflect that, and the contractor would bear no additional burden for the proposed requirements. Since contractors would not be the entities directly impacted by any burdens, it is not necessary to assess them in the certification.

No other small businesses (non-railroads) are expected to be impacted by this proposed rulemaking.

The process used to develop most of this proposed rule provided outreach to small entities in two ways. First, the RSAC Working Group had at least one representative from a small railroad association, the American Short Line and Regional Railroad Association (ASLRRA). Second, members of the RSAC itself include the ASLRRA and other organizations that represent small entities. Thus, it is possible to conclude that small entities had an opportunity for input as part of the process to develop a consensus-based RSAC recommendation made to the FRA Administrator.

Impacts

The impacts from this regulation are primarily a result of the proposed requirements for certain changes to the existing roadway worker protection regulations, particularly regarding job briefings and training of roadway workers.

The Regulatory Impact Analysis for this rulemaking estimates that for the 20-year period analyzed, the estimated quantified cost that would be imposed on industry totals $5,840,921, discounted to $3,103,980 (PV, 7 percent) and $4,350, 537 (PV, 3 percent). FRA believes nearly all of this cost will fall to railroads other than small railroads. Short line railroads, the vast majority of which are Class III railroads, represent an estimated 8 percent of the railroad industry. Since small railroads generally collect carloads in such small numbers and low densities, at low speeds, they require much less track maintenance. Furthermore, generally small railroads have single tracks that are not active around the clock. As such, road work can be done when the track is not active, greatly reducing the burden of having to provide roadway worker protection. As such, the cost of this rulemaking is very minimal to the small railroad segment of the industry. Eight percent of the total 20-year cost is $467,274. That is an average annual cost of $33 per small railroad.[13] Although the rule may impact a substantial number of small entities, FRA is confident that this proposed rulemaking does not impose a significant burden.

This proposed rule would produce very large benefits (or cost savings) for railroads with the addition of Section 214.324 and the provision of verbal protection. However, most small railroads would not be impacted by these cost savings because of the size of these railroads and the nature of their operations. Most small railroads would already be able to utilize other forms of protection, such and individual train detection, which are in the current regulation.

2. Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Furthermore, FRA expects that any impact on small entities would be favorable by providing time savings. FRA invites all interested parties to submit data and information regarding this certification. FRA will consider all comments received in the public comment process when making a final determination for certification of the final rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are

[12] FRA data for 2010 indicates that there are 754 railroads. Thus, 754 Total Railroads—7 Class I Railroads—12 Class II Railroads (Includes Alaska RR)—27 Commuter/Amtrak (non-small) = 708 Small Railroads.

[13] $5,840,921 * .08 = $467,274/20 years/708 small railroads = $33 per year per small railroad.

being submitted upon publication in the **Federal Register** for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements, and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
Form FRA F 6180.119—Part 214 Railroad Workplace Safety Violation Report.	350 Safety Inspectors	150 forms	4 hours	600
214.301—Purpose and Scope	60 Railroads	60 operating rule documents.	8 hours	480
—Written Approval by FRA of Equivalent Level of Protection in RR Operating Rules for Roadway Maintenance Machines on Non-Controlled Track (New Requirement).				
214.303—Railroad On-Track Safety Programs—(Current Requirement) (New Requirements).	15 New Railroads	15 programs	30 minutes	8
—Provisions by RR for Lone Worker to Have Alternative Access to Information in On-Track Safety Manual.	754 Railroads	754 provisions	60 minutes	754
—Publication of Bulletins by RRs Reflecting Changes in On-Track Safety Manual.	754 Railroads	100 bulletins	60 minutes	100
214.313—Good Faith Challenges to On-Track Safety Rules.	20 Railroads	80 challenges	8 hours per challenge	640
214.315/335—Supervision +communication	50,000 Rdwy Workers	16,350,000 brf.	2 minutes	545,000
—Job Briefings				
—Adjacent-Track Safety Briefings	24,500 Rdwy Workers	2,403,450 brf.	30 seconds	20,029
—Information on Accessibility of Roadway Worker in Charge (RWIC) and Alternative Procedures in Event RWIC is No Longer Accessible to Work Gang (New Requirement).	300 Roadway Work Gangs (10 Employees in Each Gang).	59,400 briefings	20 seconds	3,267
214.317—On-Track Procedures (New Requirements)—For Snow Removal.	20 Railroads	20 operating procedures	60 minutes	20
On-Track Procedures for Weed Spray Equipment.	754 Railroads	754 operating procedures	60 minutes	754
214.322—Exclusive Track Occupancy, Electronic Display (New Requirements).	754 Railroads	100 written Authorities	10 minutes	17
—Written Authorities/Printed Authority Copy If Electronic Display Fails or Malfunctions.				
On-Track Safety Briefings in Event Written Authority/Printed Authority Copy Cannot Be Obtained.	754 Railroads	100 briefings	2 minutes	3
—Data File Records Relating to Electronic Display Device Involved in Part 225 Reportable Accident/Incident.	25 Railroads	380 data file records	2 hours	760
214.324—Verbal Protection (New Requirement)—Working Limits Established Through Verbal Protection Within Manual Interlockings/Controlled Points.	150 Railroads	2,623,500 verbal protection messages.	5 minutes	218,625
214.325—Train Coordination	50,00 Roadway Workers	36,500 comm.	15 seconds	152
—Establishing Working Limits through Communication.				
214.327—Inaccessible Track	10 Railroads	9,125 talks/communications.	10 minutes	1,521
—Working Limits Established by Locomotive With/Without Cars to Prevent Access—Communication by RWIC with Locomotive Crew Member (New Requirement).				
—Notification to Train or Engine on Any Working Limits in Effect That Prohibit Train Movement Until RWIC Gives Permission to Enter Working Limits (New Requirement).	10 Railroads	1,750 notifications	10 minutes	292
—Working Limits on Non-controlled Track: Notifications.	754 Railroads	50,000 notifications	10 minutes	8,333
214.329—Train Approach Warning Provided by Watchmen/Lookouts—Communications.	754 Railroads	795,000 messages/communic.	30 seconds	6,625
—Written Designation of Watchmen/Lookouts.	754 Railroads	26,250 designations	30 seconds	219

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
214.336—*Procedures for Adjacent-Track Movements Over 25 mph*—Notifications/Watchmen/Lookout Warnings.	100 Railroads	10,000 notific.	15 seconds	42
—Roadway Worker Communication with Train Engineers or Equipment Operators.	100 Railroads	3,000 comm.	1 minute	50
—*Procedures for Adjacent-Track Movements 25 mph or less*—Notifications/Watchmen/Lookout Warnings.	100 Railroads	3,000 notific.	15 seconds	13
—Roadway Worker Communication with Train Engineers or Equipment Operators.	100 Railroads	1,500 comm	1 minutes	25
—Exceptions to the requirements in paragraphs (a), (b), and (c) for adjacent-controlled-track on-track safety: Work activities involving certain equipment and purposes—On-Track Job Safety Briefings.	100 Railroads	1,030,050 briefings	15 seconds	4,292
214.337—On-Track Safety Procedures for Lone Workers: Statements by Lone Workers.	754 Railroads	2,080,000 statements	30 seconds	17,333
—Statement of On-Track Safety Using Individual Train Detection on Track Outside Manual Interlocking, a Controlled Point, or a Remotely Controlled Hump Yard Facility (New Requirement).	754 Railroads	200 statements	30 seconds	21
214.338—Passenger Station Platform Snow Removal and Cleaning (New Requirements)—Designation of a Station Work Platform Coordinator.	15 Railroads	1,115 designations	1 minute	19
—Communication of Contact Information/Instructions to Station Platform Work Coordinator for Reaching Both RWIC and Train Dispatcher or Control Operator.	15 Railroads	223 messages/communications.	5 minutes	19
—Communication by Station Platform Work Coordinator to RWIC of Work to Be Performed.	15 Railroads	223 messages/communications.	5 minutes	19
—Station Platform Work Coordinator Conduct of an Initial On-Track Safety Briefing.	15 Railroads	1,115 briefings	2 minutes	37
—Briefing by Station Platform Work Coordinator to Establish Train Approach Warning.	15 Railroads	16,725 briefings	30 minutes	139
214.339—Audible Warning from Trains (Revised Requirement)—Written Procedures That Prescribe Effective Requirements for Audible Warning by Horn and/or Bell for Trains.	25 Railroads	25 written procedures	12 hours + 2 hours	120
214.343/345/347/349/351/353/355—Annual Training for All Roadway Workers (RWs).	50,000 Rdwy Workers	50,000 tr. RW	4.5 hours	225,000
—Additional Training for All RWs Resulting from Proposed Rule (New/Revised Requirements).	50,000 Rdwy Workers	50,000 tr. RW	30 minutes	25,000
—Training of Trainmen (Conductors & Brakemen) to Act as RWIC and Training of Station Platform Work Coordinators (New Requirement).	22,150 RR Workers	22,150 tr Workers	5 minutes + 10 minutes.	2,108
—Additional adjacent on-track safety training for Roadway Workers.	35,000 Rdwy Workers	35,000 tr. RW	5 min.	2,917
—Records of Training	50,000 Roadway Workers	50,000 records	2 min.	1,667
214.503—Good Faith Challenges; Procedures for Notification and Resolution.	50,000 Rdwy Workers	125 notific.	10 minutes	21
—Notifications for Non-Compliant Roadway Maintenance Machines or Unsafe Condition.				
—Resolution Procedures	644 Railroads	10 procedures	2 hours	20
214.505—Required Environmental Control and Protection Systems For New On-Track Roadway Maintenance Machines with Enclosed Cabs.	644 Railroads/200 contractors.	500 lists	1 hour	500
—Designations/Additions to List	644 Railroads/200 contractors.	150 additions/designations	5 mintues	13
214.507—A-Built Light Weight on New Roadway Maintenance Machines.	644 Railroads	1,000 stickers	5 minutes	83
214.511—Required Audible Warning Devices For New On-Track Roadway Maintenance Machines.	644 Railroads	3,700 identified mechanisms.	5 minutes	308

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
214.513—Retrofitting of Existing On-Track Roadway Maintenance Machines—Identification of Triggering Mechanism—Horns.	703 Railroads	200 mechanisms	5 minutes	17
214.515—Overhead Covers For Existing On-Track Roadway Maintenance Machines.	644 Railroads	500 requests + 500 responses.	100 minutes; 20 minutes.	250
214.517—Retrofitting of Existing On-Track Roadway Maintenance Machines Manufactured On or After Jan. 1, 1991.	644 Railroads	500 stencils	5 minutes	42
214.518—Safe and Secure Position for riders.	644 Railroads	1,000 stencils	5 minutes	83
—Positions idenified by stencilings/markings/notices.				
214.523—Hi-Rail Vehicles	644 Railroads	2,000 records	60 minutes	2,000
—Non-Complying Conditions	644 Railroads	500 tags + 500 reports	10 min.; 15 min.	208
214.527—Inspection for Compliance; Repair Schedules.	644 Railroads	550 tags + 550 reports	5 min.; 15 min.	184
214.533—Schedule of Repairs; Subject to availability of Parts.	644 Railroads	250 records	15 minutes	63

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Kimberly Toone at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan or Ms. Toone at the following address: *Robert.Brogan@dot.gov; Kimberly.Toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule would not have a substantial effect on the States or their political subdivisions; it would not impose any compliance costs; and it would not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. As explained

above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

E. Environmental Impact

FRA has evaluated this rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999).

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The proposed rule will not result in the expenditure, in the aggregate, of $140,800,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a ''significant energy action'' within the meaning of Executive Order 13211.

H. Trade Impact

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 *et seq.*) prohibits Federal agencies from engaging in any standards setting or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FRA has assessed the potential effect of this NPRM on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act of 1979. The requirements imposed are safety standards, which, as noted, are not considered unnecessary obstacles to trade.

I. Privacy Act

Interested parties should be aware that anyone is able to search the electronic form of all written comments received into any agency docket by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

List of Subjects in 49 CFR Part 214

Occupational safety and health, Penalties, Railroad safety.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend Part 214 of Chapter II, Subtitle B of Title 49, Code of Federal Regulations, as follows:

PART 214—[AMENDED]

1. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

2. Amend § 214.7 by adding definitions for controlled point; interlocking, manual; maximum authorized speed; on-track safety manual; roadway worker in charge; station platform work coordinator; verbal protection; and revising the definitions for effective securing device and watchman/lookout to read as follows:

Subpart A—General

§ 214.7 Definitions.

* * * * *

Controlled point means a location where signals and/or other functions of a traffic control system are controlled from the control machine.

* * * * *

Effective securing device means a vandal and tamper resistant lock, keyed for application and removal only by the roadway worker(s) for whom the protection is provided. In the absence of a lock, it is acceptable to use a spike driven firmly into a switch tie or a switch point clamp to prevent the use of a manually operated switch. It is also acceptable to use portable derails secured with specifically designed metal wedges. Securing devices without a specially keyed lock shall be designed in such a manner that they require railroad track tools for installation and removal and the operating rules of the railroad must prohibit removal by employees other than the class, craft, or group of employees for whom the protection is being provided. Regardless of the type of securing device, the throwing handle or hasp of the switch or derail shall be uniquely tagged. If

there is no throwing handle, the securing device shall be tagged.

* * * * *

Interlocking, manual means an arrangement of signals and signal appliances operated from an interlocking machine and so interconnected by means of mechanical and/or electric locking that their movements must succeed each other in proper sequence, train movements over all routes being governed by signal indication.

* * * * *

Maximum authorized speed means the highest speed permitted for the movement of trains permanently established by timetable/special instructions, general order, or track bulletin.

* * * * *

On-track safety manual means the entire set of instructions designed to prevent roadway workers from being struck by trains or other on-track equipment. These instructions include operating rules and other procedures concerning on-track safety protection and on-track safety measures.

* * * * *

Roadway worker in charge means a roadway worker who is qualified in accordance with § 214.353 of this part for the purposes of establishing on-track safety for roadway work groups.

* * * * *

Station platform work coordinator means a roadway worker who is qualified in accordance with § 214.352 of this part for the purpose of coordinating, with a designated roadway worker in charge, the on-track safety of a roadway worker or roadway work group performing snow removal or general cleaning on a passenger station platform.

* * * * *

Verbal protection means the method of establishing working limits within an interlocking or controlled point whereby upon request by the roadway worker in charge the train dispatcher or control operator withholds authority for movements into the working limits. Operating rules shall prohibit further movements into the working limits except as permitted by the roadway worker in charge as prescribed in § 214.324 of this part.

Watchman/lookout means an employee who has been annually trained and qualified to provide warning to roadway workers of approaching trains or on-track equipment. Watchmen/lookouts shall be properly equipped to provide visual and auditory warning such as whistle, air horn, white disk, red flag, lantern, or fusee. A watchman/lookout's sole duty is to look out for approaching trains/on-track equipment and provide at least fifteen seconds advanced warning, except as provided for in § 214.338(a)(2)(iii), to employees before arrival of trains/on-track equipment.

* * * * *

3. Amend § 214.113 by revising paragraph (b) to read as follows:

§ 214.113 Head protection.

* * * * *

(b) Helmets required by this section shall conform to the requirements of 29 CFR 1910.135(b), as established by the U.S. Department of Labor, Occupational Safety and Health Administration.

4. Amend § 214.115 by revising paragraph (b) to read as follows:

§ 214.115 Foot protection.

* * * * *

(b) Foot protection equipment required by this section shall conform to the requirements of 29 CFR 1910.136(b), as established by the U.S. Department of Labor, Occupational Safety and Health Administration.

5. Amend § 214.117 by revising paragraph (b) to read as follows:

§ 214.117 Eye and face protection.

* * * * *

(b) Eye and face protection equipment required by this section shall conform to the requirements of 29 CFR 1910.133(b), as established by the U.S. Department of Labor, Occupational Safety and Health Administration.

* * * * *

Subpart C—Roadway Worker Protection

6. Amend § 214.301 by revising paragraph (c) to read as follows:

§ 214.301 Purpose and scope.

* * * * *

(c) This subpart prescribes safety standards related to the movement of roadway maintenance machines where such movements affect the safety of roadway workers. Movements of roadway maintenance machines between work locations or to or from work locations that are conducted under the authority of a train dispatcher or a control operator are not required to be made in accordance with the on-track safety procedures described in §§ 214.319 through 214.338 of this subpart. Movements of roadway maintenance machines between work locations or to or from work locations on non-controlled track must comply with the on-track safety procedures described in §§ 214.319 through 214.327 of this subpart, unless:

(1) All train and locomotive movements on such non-controlled track are required to be made at speeds not exceeding restricted speed; or

(2) the railroad's operating rules protect the movements of roadway maintenance machines in a manner equivalent to that provided for by limiting all train and locomotive movements to restricted speed, and such equivalent level of protection is first approved in writing by FRA's Associate Administrator for Railroad Safety/Chief Safety Officer.

§ 214.302 [Removed and reserved]

7. Remove and reserve § 214.302.

§ 214.305 [Removed and reserved]

8. Remove and reserve § 214.305.

9. Amend § 214.307 by revising to read as follows:

§ 214.307 Review of individual on-track safety programs by FRA.

(a) *Program.* Each railroad subject to this part shall maintain and have in effect an on-track safety program which complies with the requirements of this subpart. The on-track safety program shall be retained at a railroad's system headquarters and division headquarters, and shall be made available to representatives of the FRA for inspection and copying during normal business hours. Each railroad to which this part applies is authorized to retain its program by electronic recordkeeping in accordance with §§ 217.9(g) and 217.11(c) of this chapter.

(b) *Approval process.* Upon review of a railroad's on-track safety program, the FRA Associate Administrator for Railroad Safety/Chief Safety Officer may, for cause stated, disapprove the program. Notification of such disapproval shall be made in writing and specify the basis for the disapproval decision. If the Associate Administrator for Railroad Safety/Chief Safety Officer disapproves the program,

(1) The railroad has 35 days from the date of the written notification of such disapproval to:

(i) Amend its program and submit it to the Associate Administrator for Railroad Safety/Chief Safety Officer for approval; or

(ii) Provide a written response in support of its program to the Associate Administrator for Railroad Safety/Chief Safety Officer.

(2) FRA's Associate Administrator for Railroad Safety/Chief Safety Officer will subsequently issue a written decision either approving or disapproving the railroad's program.

(3) Failure to submit to FRA an amended program or provide a written response in accordance with this paragraph will be considered a failure to implement an on-track safety program under this subpart.

10. Amend § 214.309 by revising to read as follows:

§ 214.309 On-track safety manual.

(a) The applicable on track safety manual (as defined by § 214.7) shall be readily available to all roadway workers. Each roadway worker responsible for the on-track safety of others, and each lone worker, shall be provided with and shall maintain a copy of the on-track safety manual.

(b) When it is impracticable for a lone worker to carry the on-track safety manual, the employer shall establish provisions for such worker to have alternative access to the information in the manual.

(c) Changes to the on-track safety manual may be temporarily published in bulletins or notices. Such publications shall be carried along with the on-track safety manual until fully incorporated into the manual.

11. Amend § 214.315 by revising paragraphs (a)(3), (a)(4), (b), the first sentence of paragraphs (c)-(e) and adding paragraph (a)(5) to read as follows:

§ 214.315 Supervision and communication.

(a) * * *

(3) Information about any adjacent tracks, on-track safety for such tracks, if required by this subpart or deemed necessary by the roadway worker in charge, and identification of any roadway maintenance machines that will foul such tracks;

(4) A discussion of the nature of the work to be performed and the characteristics of the work location to ensure compliance with this subpart; and

(5) Information on the accessibility of the roadway worker in charge and alternative procedures in the event the roadway worker in charge is no longer accessible to the members of the roadway work group.

(b) A job briefing for on-track safety shall be deemed complete only after the roadway worker(s) has acknowledged understanding of the on-track safety procedures and instructions presented.

(c) Every roadway work group whose duties require fouling a track shall have one roadway worker in charge designated by the employer to provide on-track safety for all members of the group. * * *

(d) Before any member of a roadway work group fouls a track, the roadway worker in charge designated under paragraph (c) of this section shall inform each roadway worker of the on-track safety procedures to be used and followed during the performance of the work at that time and location. * * *

(e) Each lone worker shall communicate at the beginning of each duty period with a supervisor or another designated employee to receive an on-track safety job briefing and to advise of his or her planned itinerary and the procedures that he or she intends to use for on-track safety. * * *

12. Amend § 214.317 by revising it to read as follows:

§ 214.317 On-track safety procedures, generally.

(a) Each employer subject to the provisions of this part shall provide on-track safety for roadway workers by adopting a program that contains specific rules for protecting roadway workers that comply with the provisions of §§ 214.319 through 214.338 of this part.

(b) Roadway workers may walk across any track provided each roadway worker shall stop and look in all directions from which a train or other on-track equipment could approach before starting across the track to ensure that they can safely be across and clear of the track before a train or other on-track equipment would arrive at the crossing point under the following circumstances:

(1) Employers shall adopt and roadway workers shall comply with applicable railroad safety rules governing how to determine that it is safe to cross the track before starting across;

(2) Roadway workers shall move directly and promptly across the track; and

(3) On-track safety protection is in place for all roadway workers who are actually engaged in work, including inspection, construction, maintenance or repair, and extending to carrying tools or material that restricts motion, impairs sight or hearing, or prevents an employee from detecting and moving rapidly away from an approaching train or other on-track equipment.

(c) On non-controlled track, on-track roadway maintenance machines engaged in weed spraying or snow removal may proceed under the provisions of § 214.301(c), under the following conditions:

(1) Each railroad shall establish and comply with an operating procedure for on-track snow removal and weed spray equipment to ensure that:

(i) All on-track movements in the affected area are informed of such operations;

(ii) All on-track movements shall operate at restricted speed as defined in § 214.7, except on other than yard tracks and yard switching leads, where all on-track movements shall operate prepared to stop within one-half the range of vision but not exceeding 25 mph;

(iii) A means for communication between the on-track equipment and other on-track movements is provided; and

(iv) Remotely controlled hump yard facility operations are not in effect, and kicking of cars is prohibited unless agreed to by the roadway worker in charge.

(2) Roadway workers engaged in such snow removal or weed spraying operations subject to this section shall retain an absolute right to use the provisions of § 214.327 (inaccessible track).

(3) Roadway workers assigned to work with this equipment may line switches for the machine's movement but shall not engage in any roadway work activity unless protected by another form of on-track safety.

(4) Each roadway maintenance machine engaged in snow removal or weed spraying under this provision shall be equipped with and utilize:

(i) An operative 360-degree intermittent warning light or beacon;

(ii) Work lights, if the machine is operated during the period between one-half hour after sunset and one-half hour before sunrise or in dark areas such as tunnels, unless equivalent lighting is otherwise provided;

(iii) An illumination device, such as a headlight, capable of illuminating obstructions on the track ahead in the direction of travel for a distance of 300 feet under normal weather and atmospheric conditions;

(iv) A brake light activated by the application of the machine braking system, and designed to be visible for a distance of 300 feet under normal weather and atmospheric conditions; and

(v) A rearward viewing device, such as a rearview mirror.

13. Amend § 214.319 the first sentence of the introductory paragraph, and paragraphs (a) and (b) by revising to read as follows:

§ 214.319 Working limits, generally.

Working limits established on controlled track shall conform to the provisions of § 214.321 Exclusive track occupancy, or § 214.323 Foul time, or § 214.324 Verbal protection, or § 214.325 Train coordination. * * *

(a) Only a roadway worker in charge who is qualified in accordance with § 214.353 of this part shall establish or have control over working limits for the purpose of establishing on-track safety.

(b) Only one roadway worker in charge shall have control over working limits on any one segment of track.

* * * * *

14. Amend § 214.321 by revising paragraphs (a), (b), (b)(2), and (d), and adding paragraphs (b)(4) and (e), to read as follows:

§ 214.321 Exclusive track occupancy.

* * * * *

(a) The track within working limits shall be placed under the control of one roadway worker in charge by either:

* * *

(b) An authority for exclusive track occupancy given to the roadway worker in charge of the working limits shall be transmitted on a written or printed document directly, by relay through a designated employee, in a data transmission, or by oral communication, to the roadway worker in charge by the train dispatcher or control operator in charge of the track.

(1) * * *

(2) The roadway worker in charge of the working limits shall maintain possession of the written or printed authority for exclusive track occupancy while the authority for the working limits is in effect. A data transmission of an authority displayed on an electronic screen may be used as a substitute for a written or printed document required under this paragraph. Electronic displays of authority shall comply with the requirements of § 214.322.

* * * * *

(4) An authority shall specify a unique roadway work group number, an employee name, or a unique identifier. A railroad shall adopt procedures that require precise communication between trains and other on-track equipment and the roadway worker in charge or lone worker controlling the working limits in accordance with § 214.319. The procedures may permit communications to be made directly between a train or other on-track equipment and a roadway worker in charge or lone worker, or through a train dispatcher or control operator.

* * * * *

(d) Movements of trains and roadway maintenance machines within working limits established through exclusive track occupancy shall be made only under the direction of the roadway worker in charge of the working limits. Such movements shall be at restricted speed unless a higher authorized speed has been specifically authorized by the roadway worker in charge of the working limits.

(e) Working limits established by exclusive track occupancy authority may occur behind designated trains moving through the same limits in accordance with the following provisions:

(1) The authority establishing working limits will only be considered to be in effect after it is confirmed by the roadway worker in charge or lone worker that the affected train(s) have passed the point to be occupied or fouled by:

(i) Visually identifying the affected train(s); or

(ii) Direct radio contact with a crew member of the affected train(s); or

(iii) Receiving information about the affected train from the train dispatcher or control operator.

(2) When utilizing the provisions of paragraph (e)(1)(i) of this section, a railroad's operating rules shall include procedures to prohibit the affected train(s) from making a reverse movement into the limits being fouled or occupied.

(3) After the roadway worker in charge or lone worker has confirmed that the affected train(s) have passed the point to be occupied or fouled, the roadway worker in charge shall record on the authority the time of passage and engine number(s) of the affected train(s). If the confirmation is by direct communication with the train(s), or through confirmation by the train dispatcher or control operator, the roadway worker in charge shall record the time of such confirmation and the engine number(s) of the affected trains on the authority.

(4) Roadway workers afforded on-track safety by the roadway worker in charge and located between the rear end of affected train(s) and the roadway worker in charge, or ahead of the rear end of any affected train, shall:

(i) Occupy or foul the track only after receiving permission from the roadway worker in charge to occupy the working limits after the roadway worker charge has fulfilled the provisions of paragraph (e)(1) of this section; and

(ii) Be accompanied by an employee qualified to the level of a roadway worker in charge who shall also have a copy of the authority and who shall independently execute the required communication requirements of paragraphs (e)(1) and (e)(3) of this section.

(5) Each lone worker subject to this paragraph shall have a copy of the authority and shall comply with the communication requirements of paragraphs (e)(1) and (e)(3) of this section.

(6) Any subsequent train or on-track equipment movements within working limits after the passage of the affected train(s) shall be governed by paragraph (d) of this section.

15. Add § 214.322 to read as follows:

§ 214.322 Exclusive track occupancy, electronic display.

(a) While it is in effect, all the contents of an authority electronically displayed shall be readily viewable by the roadway worker in charge that is using the authority to provide on-track safety for a roadway work group.

(1) If the electronic display device malfunctions, fails, or cannot display an authority while it is in effect, the roadway worker in charge shall instruct all roadway workers to stop work and occupy a place of safety until either a written or printed copy of the authority can be obtained in accordance with § 214.321(b)(1), or another form of on-track safety can be established.

(2) In the event that a written or printed copy of the authority cannot be obtained, or another form of on-track safety cannot be established after failure of an electronic display device, the roadway worker in charge shall conduct an on-track safety job briefing to determine the safe course of action with the roadway work group.

(b) All authorized users of an electronic display system shall be uniquely identified to support individual accountability. A user may be a person, a process, or some other system that accesses or attempts to access an electronic display system to perform tasks or process an authority.

(c) All authorized users of an electronic display system must be authenticated prior to being granted access to such system. The system shall ensure the confidentiality and integrity of all internally stored authentication data and protect it from access by unauthorized users. The authentication scheme shall utilize algorithms approved by the National Institute of Standards and Technology (NIST), or any similarly recognized and FRA approved standards body.

(d) The integrity of all data must be ensured during transmission/reception, processing, and storage. All new electronic display systems implemented after (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) shall utilize a Message Authentication Code (MAC) to ensure that all data is error free. The MAC shall utilize algorithms approved by NIST, or any similarly recognized and FRA approved standards body.

Systems implemented prior to (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) may utilize a Cyclical Redundancy Code (CRC) to ensure that all data is error free provided:

(1) The collision rate for the CRC check utilized shall be less than or equal to 1 in 2^{32}. Systems implemented prior to (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) that do not utilize a CRC with a collision rate less than or equal to 1 in 2^{32} must be retired or updated to utilize a MAC no later than (A DATE ONE YEAR FROM PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER** TO BE INSERTED).

(2) MAC and CRC checks shall only be used to verify the accuracy of an electronic authority data message and shall not be used in an error correction reconstruction of the data. An authority must fail if the MAC or CRC checks do not match.

(e) Authorities transmitted to each electronic display device shall be retained in the device's non-volatile memory for not less than 72 hours.

(f) If any electronic display device used to obtain an authority is involved in an accident/incident that is required to be reported to FRA under part 225 of this chapter, the railroad or employer that was using the device at the time of the accident shall, to the extent possible, and to the extent consistent with the safety of life and property, preserve the data recorded by each such device for analysis by FRA. This preservation requirement permits the railroad or employer to extract and analyze such data, provided the original downloaded data file, or an unanalyzed exact copy of it, shall be retained in secure custody and shall not be utilized for analysis or any other purpose except by direction of FRA or the National Transportation Safety Board. This preservation requirement shall expire one (1) year after the date of the accident unless FRA or the National Transportation Safety Board notifies the railroad in writing that the data are desired for analysis.

(g) New electronic display systems implemented after (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) shall provide Level 3 assurance as defined by NIST Special Publication 800–63–1, ''Electronic Authentication Guideline.'' Systems implemented prior to (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) shall provide Level 2 assurance. Systems implemented prior to (EFFECTIVE DATE OF THE FINAL RULE TO BE INSERTED) that do not provide Level 2 or higher assurance must be retired, or updated to provide Level 2 assurance, no later than (A DATE ONE YEAR FROM PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER** TO BE INSERTED). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the National Institute of Standards and Technology, 100 Bureau Drive, Stop 2300, Gaithersburg, MD 20899–2300. Copies may be inspected at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE., Washington, DC, or at the National Archives and Records Administration (NARA). A copy is also publicly available online at: *http://csrc.nist.gov/publicat ions/nistpubs/800-63-1/SP-800-63-1.pdf.* 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.*

16. Amend § 214.323 by revising to read as follows:

§ 214.323 Foul time.

Working limits established on controlled track through the use of foul time procedures shall comply with the following requirements:

(a) Foul time may be given orally or in writing by the train dispatcher or control operator only after that employee has withheld the authority of all trains or other on-track equipment to move into or within the working limits during the foul time period.

(b) Each roadway worker in charge to whom foul time is transmitted orally shall repeat the track number, track limits and time limits of the foul time to the issuing employee for verification before the foul time becomes effective.

(c) The train dispatcher or control operator shall not permit the movement of trains or other on-track equipment into working limits protected by foul time until the roadway worker in charge who obtained the foul time has reported clear of the track.

(d) The roadway worker in charge shall not permit the movement of trains or other on-track equipment into or within working limits protected by foul time.

17. Add § 214.324 to read as follows:

§ 214.324 Verbal Protection.

Working limits established through verbal protection may only occur within manual interlockings or within controlled points and shall comply with the following requirements:

(a) Verbal protection shall be communicated to the roadway worker in charge by the train dispatcher or control operator only after that employee has withheld the authority of all trains or other on-track equipment to move into or within the limits to be protected.

(b) Each roadway worker in charge to whom verbal protection is transmitted shall repeat the track number, track limits and time limits of the verbal protection to the issuing employee for verification before the verbal protection becomes effective.

(c) No train or on-track equipment may move into working limits protected by verbal protection until permission has been received from the roadway worker in charge and authority has been given by the train dispatcher or control operator.

18. Amend § 214.325 by revising the introductory sentence to read as follows:

§ 214.325 Train coordination.

Working limits established on controlled track by a roadway worker in charge through the use of train coordination shall comply with the following requirements:

* * * * *

19. Amend § 214.327 by adding paragraphs (a)(6), (a)(7), and (a)(8) to read as follows:

§ 214.327 Inaccessible track.

(a) * * *

(6) A locomotive with or without cars placed to prevent access to the working limits at one or more points of entry to the working limits, provided the following conditions are met:

(i) The roadway worker in charge who is responsible for establishing working limits communicates with a member of the crew assigned to the locomotive and determines that:

(A) The locomotive is visible to the roadway worker in charge that is establishing the working limits; and

(B) The locomotive is stopped.

(ii) Further movements of the locomotive shall be made only as permitted by the roadway worker in charge controlling the working limits;

(iii) The crew of the locomotive shall not leave the locomotive unattended or go off-duty unless communication occurs with the roadway worker in charge and an alternate means of on-track safety protection has been established by the roadway worker in charge; and

(iv) Cars coupled to the locomotive on the same end and on the same track as the roadway workers shall be connected to the train line air brake and such system shall be charged with compressed air to initiate an emergency

brake application in case of unintended uncoupling. Cars coupled to the locomotive on the same track on the opposite end of the roadway workers shall have sufficient braking capability to control their movement.

(7) A railroad's procedure governing block register territory that prevents trains and other on-track equipment from occupying the track when the territory is under the control of a lone worker or roadway worker in charge. The roadway worker in charge or lone worker shall have the absolute right to render such block register territory inaccessible under the provisions of paragraphs (a)(1) through (a)(6) of this section.

(8) Railroad operating rules that prohibit train or engine movements on a main track within yard limits or restricted limits until the train or engine receives notification of any working limits in effect and prohibit the train or engine from entering working limits until permission is received by the roadway worker in charge. Such working limits shall be delineated with stop signs (flags), and where speeds are in excess of restricted speed and physical characteristics permit, advance signs (flags).

* * * * *

20. Amend § 214.329 by revising paragraph (a), and adding paragraph (h) to read as follows:

§ 214.329 Train approach warning provided by watchmen/lookouts.

* * * * *

(a) Except as provided for in § 214.338(a)(2)(iii), train approach warning shall be given in sufficient time to enable each roadway worker to move to and occupy a previously arranged place of safety not less than 15 seconds before a train moving at the maximum authorized speed on that track can pass the location of the roadway worker. The place of safety to be occupied upon the approach of a train may not be on a track, unless working limits are established on that track.

* * * * *

(h) Train approach warning shall not be used to provide on-track safety for a roadway work group using a roadway maintenance machine, equipment, or material that cannot be readily removed by hand.

21. Amend § 214.331 by adding paragraph (e) to read as follows:

§ 214.331 Definite train location.

* * * * *

(e) Each on track safety program that provides for the use of definite train location shall discontinue such use by (A DATE 1 YEAR FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER TO BE INSERTED).

22. Amend § 214.333 by revising paragraph (c) to read as follows:

§ 214.333 Informational line-ups of trains.

* * * * *

(c) Each on track safety program that provides for the use of informational line-ups shall discontinue such use by (A DATE 1 YEAR FROM THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER TO BE INSERTED).

23. Amend § 214.335 by revising to read as follows:

§ 214.335 On-track safety procedures for roadway work groups, general.

(a) Except as provided for in § 214.338 of this part, no employer subject to the provisions of this part shall require or permit a roadway worker who is a member of a roadway work group to foul a track unless on-track safety is provided by either working limits, train approach warning, or definite train location in accordance with the applicable provisions of §§ 214.319, 214.321, 213.323, 214.324, 214.325, 214.327, 214.329, 214.331 or 214.336 of this part.

(b) No roadway worker who is a member of a roadway work group shall foul a track without having been informed by the roadway worker in charge of the roadway work group that on-track safety is provided.

24. Amend § 214.337 by revising paragraph (c)(3) and adding paragraph (g) to read as follows:

§ 214.337 On-track safety procedures for lone workers.

* * * * *

(c) * * *

(3) On track outside the limits of a manual interlocking, a controlled point (except those consisting of signals only), or a remotely controlled hump yard facility.

* * * * *

(g) Individual train detection shall not be used to provide on-track safety for a lone worker using a roadway maintenance machine, equipment, or material that cannot be readily removed by hand.

25. Add § 214.338 to read as follows:

§ 214.338 Passenger station platform snow removal and cleaning.

(a) A roadway worker or roadway work group assigned to perform snow removal or cleaning on a passenger station platform, whose duties would require a roadway worker to foul a track with a hand-held, non-powered tool, may conduct such activities without establishing working limits, provided the following conditions are met:

(1) The railroad has designated a station platform work coordinator who is responsible for directing the on-track safety of the roadway worker or roadway work group performing the snow removal or cleaning.

(2) The fouling area in which only hand-held, non-powered tools may be used has been clearly delineated and is no less than four feet from the field side of the near rail of the track. For purposes of this section, delineation may consist of permanent markings (*e.g.*, tactile strips or signs), a temporary marking system (*e.g.*, safety cones), or a printed diagram showing measurements from the edge of the platform that has been provided to the affected roadway workers.

(3) The station platform work coordinator has ready access to a landline or wireless communication device that would permit immediate access to the designated roadway worker in charge and, in case of an emergency, the train dispatcher or control operator controlling on-track movements. The contact information and instructions for reaching both the designated roadway worker in charge and the train dispatcher or control operator shall also be provided to the station platform work coordinator prior to the commencement of any work pursuant to this section.

(4) The station platform work coordinator must be present at the station platform at all times work is being performed pursuant to this section and take the following actions:

(i) Inform the designated roadway worker in charge of the work to be performed;

(ii) Conduct an initial on-track safety briefing with the roadway worker or roadway work group pursuant to § 214.315 of this part; and

(iii) Establish train approach warning that requires a watchman/lookout to warn of the approach of any train or on-track equipment and requires roadway worker(s) to withdraw hand-held, non-powered tools from the delineated fouling area upon receiving such warning. Such warning may be based on available sight distance and may give less timely notice than that prescribed by § 214.329(a) of this part.

(5) Each roadway worker conducting such work under train approach warning shall:

(i) Position himself or herself on the station platform with his or her body entirely outside of the delineated fouling area as described in paragraph (a)(2) of this section; and

(ii) Only use hand-held, non-powered tools to perform such duties.

(6) The maximum authorized speed of the track immediately adjacent to the platform does not exceed 79 mph.

(b) If any of the conditions in paragraphs (a)(1) through (6) of this section are no longer met during the course of the work (*e.g.,* if the available communication device(s) is no longer functioning, or if the designated roadway worker in charge is no longer accessible), all work that would require a roadway worker to encroach the delineated fouling area with a tool shall cease. Work in the delineated fouling area may resume only after the requirements of this section are met or a roadway worker in charge arrives at the work site to provide on-track safety consistent with this part.

26. Amend § 214.339 by revising to read as follows:

§ 214.339 Audible warning from trains.

(a) Each railroad shall have in effect and comply with written procedures that prescribe effective requirements for audible warning by horn and/or bell for trains and locomotives approaching any roadway workers or roadway maintenance machines that are either on the track on which the movement is occurring, or about the track if the roadway workers or roadway maintenance machines are at risk of fouling the track. At a minimum, such written procedures shall address:

(1) Initial horn warning;

(2) Subsequent warning(s); and

(3) Alternative warnings in areas where sounding the horn adversely affects roadway workers (*e.g.*, in tunnels and terminals).

(b) Such audible warning shall not substitute for on-track safety procedures prescribed in this part.

27. Amend § 214.343 by revising the first sentence of paragraph (c) to read as follows:

§ 214.343 Training and qualification, general.

* * * * *

(c) Except as provided for in § 214.353, railroad employees other than roadway workers, who are associated with on-track safety procedures, and whose primary duties are concerned with the movement and protection of trains, shall be trained to perform their functions related to on-track safety through the training and qualification procedures prescribed by the operating railroad for the primary position of the employee, including maintenance of records and frequency of training.

* * * * *

28. Amend § 214.345 by revising the introductory text and adding paragraph (f) to read as follows:

§ 214.345 Training for all roadway workers.

Consistent with § 214.343(b), the training of all roadway workers shall include, as a minimum, the following:

* * * * *

(f) Instruction on railroad safety rules adopted to comply with § 214.317(b) of this subpart.

29. Amend § 214.347 by adding paragraph (a)(5) to read as follows:

§ 214.347 Training and qualification for lone workers.

* * * * *

(a) * * *

(5) Alternative means to access to the information in a railroad's on-track safety manual when a lone worker's duties make it impracticable to carry the manual.

* * * * *

30. Add § 214.352 to read as follows:

§ 214.352 Training and qualification of station platform work coordinator.

(a) The training and qualification of each station platform work coordinator shall include, as a minimum:

(1) All the on-track safety training and qualification required of the roadway workers to be supervised and protected;

(2) The content of the operating rules of the railroad pertaining to the establishment of working limits;

(3) The content and application of the rules of the railroad pertaining to the establishment of train approach warning; and

(4) The procedures required to ensure that the station platform work coordinator has immediate access to contact the roadway worker in charge, and in case of an emergency, the procedures to contact the train dispatcher or control operator.

(b) Initial and periodic qualification of a station platform work coordinator shall be evidenced by a recorded examination.

31. Amend 214.353 by revising the section heading and paragraph (a) and adding paragraph (a)(5) to read as follows:

§ 214.353 Training and qualification of each roadway worker in charge.

(a) The training and qualification of each roadway worker in charge, or any other employee acting as a roadway worker in charge (*e.g.*, a conductor or a brakeman), who provides for the on-track safety of roadway workers through establishment of working limits or the assignment and supervision of watchmen/lookouts or flagmen shall include, at a minimum:

* * * * *

(5) The procedures required to ensure that the roadway worker in charge of the on-track safety a group(s) of roadway workers remains immediately accessible and available to all roadway workers being protected under the working limits or other provisions of on-track safety established by the roadway worker in charge.

* * * * *

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Joseph C. Szabo,

Administrator, Federal Railroad Administration.

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H.R. 1402/P.L. 112–170

To authorize the Architect of the Capitol to establish battery recharging stations for privately owned vehicles in parking areas under the jurisdiction of the House of Representatives at no net cost to the Federal Government. (Aug. 16, 2012; 126 Stat. 1303)

H.R. 3670/P.L. 112–171

To require the Transportation Security Administration to comply with the Uniformed Services Employment and Reemployment Rights Act. (Aug. 16, 2012; 126 Stat. 1306)

H.R. 4240/P.L. 112–172

Ambassador James R. Lilley and Congressman Stephen J. Solarz North Korea Human Rights Reauthorization Act of 2012 (Aug. 16, 2012; 126 Stat. 1307)

S. 3510/P.L. 112–173

To prevent harm to the national security or endangering the military officers and civilian employees to whom internet publication of certain information applies, and for other purposes. (Aug. 16, 2012; 126 Stat. 1310)

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