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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0621; Airspace Docket No. 11–ASO–28]

Amendment of Class D and E Airspace; Tri-Cities, TN; Revocation of Class E Airspace; Tri-City, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D and Class E airspace and removes Class E airspace in the Tri-Cities, TN, area, to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Tri-Cities Regional Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. This action also updates the geographic coordinates, airport name, and airspace designation. Also, this action corrects errors in the Class E descriptor.

DATES: Effective 0901 UTC, May 2, 2013. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On September 28, 2012, the FAA published in the **Federal Register** a supplemental notice of proposed rulemaking (SNPRM) to amend Class D and Class E airspace in the Tri-Cities, TN, area (77 FR 59573). The SNPRM would list Hawkins County Airport and Virginia Highlands Airport under their own designator, and would correct the Tri-Cities Regional Airport city designator from Blountville, TN, to Tri-Cities, TN, as originally proposed in the NPRM of April 28, 2012 (77 FR 21505). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication of the SNPRM, the FAA found errors in the descriptors of the Class E surface airspace and Class E airspace extending upward from 700 feet above the surface. This action makes the corrections. Class D and E airspace designations are published in paragraph 5000, 6002, 6004, and 6005, respectively, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the SNPRM.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class D and Class E surface airspace, removes Class E airspace designated as an extension to Class D, and amends Class E airspace extending upward from 700 feet above the surface at Tri-Cities, TN, to provide the controlled airspace required to accommodate the new RNAV (GPS) Standard Instrument Approach Procedures developed for Tri-Cities Regional Airport. Also, the coordinates of the airport are corrected to be in concert with the FAAs aeronautical database. The city designator for Tri-Cities Regional Airport is changed from Blountville, TN, to Tri-Cities, TN; the current Class E airspace extending upward from 700 feet above the surface for Hawkins County Airport, Rogersville, TN, and Virginia Highlands Airport, VA, is now listed under their own city designator. This action furthers the safety and management of controlled airspace within the National Airspace System.

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, is non-controversial and unlikely to result in adverse or negative comments. 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. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace in the Tri-Cities, TN.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, effective September 15, 2012, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO TN D Tri-Cities, TN [Amended]

Tri-Cities Regional Airport, TN/VA
(Lat. 36°28′31″ N., long. 82°24′27″ W.)
Edwards Heliport, TN
(Lat. 36°25′57″ N., long. 82°17′37″ W.)

That airspace extending upward from the surface to and including 4,000 feet MSL within a 6.8-mile radius of Tri-Cities Regional Airport, excluding the 2.5-mile radius of Edwards Heliport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO TN E2 Tri-Cities, TN [Amended]

Tri-Cities Regional Airport, TN/VA
(Lat. 36°28′31″ N., long. 82°24′27″ W.)

That airspace extending upward from the surface within a 6.8-mile radius of Tri-Cities Regional Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6004 Class E Airspace Designated as an Extension to a Class D Surface Area.

* * * * *

ASO TN E4 Tri-City, TN [Removed]

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO TN E5 Tri-Cities, TN [Amended]

Tri-Cities Regional Airport, TN/VA
(Lat. 36°28′31″ N., long. 82°24′27″ W.)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of Tri-Cities Regional Airport and within 4-miles west and 8-miles east of the 223° bearing from the airport extending from the 9.3-mile radius to 23 miles southwest of the airport, and within 2-miles either side of the 43° bearing from the airport extending from the 9.3-mile radius to 14.5 miles northeast of the airport.

* * * * *

ASO TN E5 Rogersville, TN [New]

Hawkins County Airport, TN
(Lat. 36°27′27″ N., long. 82°53′06″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Hawkins County Airport, and within 7 miles each side of Runway 07/25 centerline, extending from the 7-mile radius to 12 miles east of Hawkins County Airport.

* * * * *

ASO VA E5 Abingdon, VA [New]

Virginia Highlands Airport, VA
(Lat. 36°41′14″ N., long. 82°02′00″ W.)

That airspace extending upward from 700 feet above the surface within a 17-mile radius of Virginia Highlands Airport.

Issued in College Park, Georgia, on January 23, 2013.

Barry A. Knight,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2013–02324 Filed 2–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

RIN 0910–AG67

[Docket No. FDA–2011–N–0197]

Criteria Used To Order Administrative Detention of Food for Human or Animal Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final regulation that adopts, without change, the interim final rule (IFR) entitled ''Criteria Used to Order Administrative Detention of Food for Human or Animal Consumption'' that published in the Federal Register on May 5, 2011, (the 2011 IFR). This final rule affirms the IFR's change to the criteria for ordering administrative detention of human or animal food as required by the FDA Food Safety Modernization Act (FSMA). Under the new criteria, FDA can order an administrative detention if there is reason to believe that an article of food is adulterated or misbranded. This final rule does not make any changes to the regulatory requirements established by the IFR. The final regulation also responds to comments submitted in response to the request for comments in the IFR.

DATES: This final rule is effective February 5, 2013.

FOR FURTHER INFORMATION CONTACT: William A. Correll, Jr., Office of Compliance, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1611.

SUPPLEMENTARY INFORMATION:

I. Background

Each year about 48 million people (1 in 6 Americans) get sick, 128,000 are hospitalized, and 3,000 die from food borne diseases, according to 2011 data from the Centers for Disease Control and Prevention (*http://www.cdc.gov/foodborneburden/2011-foodborne-estimates.html*). This is a significant public health burden that is largely preventable.

FSMA (Pub. L. 111–353), signed into law by President Obama on January 4, 2011, enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur. The law also provides FDA with new enforcement authorities to help it achieve higher rates of compliance with prevention- and risk-based food safety standards and to better respond to and contain problems when they do occur. The law also gives FDA important new tools to better ensure the safety of imported foods and directs FDA to build an integrated national food safety system in partnership with State and local authorities.

Section 207 of FSMA amends the criteria for ordering administrative detention of human or animal food in section 304(h)(1)(A) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 334(h)(1)(A)). Under the new criteria established by FSMA, FDA can order an administrative detention if there is reason to believe that an article of food is adulterated or misbranded. Section 207 of FSMA also requires that the Secretary of Health and Human Services issue an IFR implementing this statutory change no later than 120 days following the date of enactment of FSMA and further specified that the amendment made by section 207 take effect 180 days after the date of FSMA's January 4, 2011, enactment, which was July 3, 2011. On May 5, 2011, FDA issued an IFR (76 FR 25538) that implemented section 207 of FSMA and contained a request for comments. The IFR became effective on July 3, 2011. This final rule adopts, without making any changes, the regulatory requirements established in the IFR.

To the extent that 5 U.S.C. 553 applies to this action, the Agency's implementation of this action with immediate effective date comes within the good cause exception in 5 U.S.C. 553(d)(3) (21 CFR 10.40(c)(4)(ii)). As this final rule imposes no new regulatory requirements, a delayed effective date is unnecessary.

II. Comments on the Interim Final Rule

FDA received 12 responsive comments to the IFR. However, after considering these comments, the Agency is not making any changes to the regulatory language included in the IFR. Relevant portions of the responsive comments are summarized and responded to in this document. The Agency did not consider nonresponsive comments in developing this final rule. To make it easier to identify comments and FDA's responses, the word ''Comment,'' in parenthesis, appears before the comment's description, and the word ''Response,'' in parenthesis, appears before FDA's response. Each comment is numbered to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance.

(Comment 1) Several comments expressed support for the IFR, the food safety principles embodied in the new criteria for administrative detention, and FDA's use of this tool.

(Response) FDA appreciates the sentiments expressed in these comments and intends to use this administrative tool in appropriate situations to temporarily hold food that the Agency has reason to believe is adulterated or misbranded. Administrative detention provides the Agency with a tool that can be used to prevent such articles of food from reaching the marketplace.

(Comment 2) FDA received a number of comments requesting that the Agency clarify the meaning of the new criteria for ordering administrative detention in section 304(h)(1)(A) of the FD&C Act (21 U.S.C. 334(h)(1)(A)), and in particular the phrase ''reason to believe that an article of human or animal food is adulterated or misbranded. ''

(Response) As stated in the IFR (76 FR 25538 at 25539), decisions regarding whether FDA has ''reason to believe'' that food is adulterated or misbranded will be made on a case-by-case basis because such decisions are fact specific. The Agency will consider the individual facts in each particular situation to inform its reason to believe that an article of food is adulterated or misbranded. Because such decisions are fact specific, FDA has not, therefore, amended the regulation to provide additional explanation of the criteria for ordering administrative detention.

(Comment 3) Several comments stated that FDA should implement the new administrative detention criteria in a consistent, judicious way. Other comments stated that the Agency should restrict the use of administrative detention to food that significantly adversely affects human or animal health and that FDA would consider classifying as a Class 1 recall.[1]

(Response) FDA intends to use administrative detention in a manner that is consistent with and furthers the prevention-based goals of FSMA and the Agency's public health mission. The Agency also is aware that the new criteria provide FDA with more flexibility in its use of administrative detention and intends to use this tool as appropriate. The Agency will also continue to use its advisory action tools, such as Warning Letters and untitled letters, to achieve voluntary compliance and voluntary corrective action to address adulteration or misbranding violations, as appropriate.

(Comment 4) Several comments requested that the Agency amend the regulations to restrict the authority to authorize administrative detention to the FDA Commissioner or to the Directors of the Center for Food Safety and Applied Nutrition (CFSAN) or the Center for Veterinary Medicine (CVM). These comments stated that such a restriction was necessary to ensure that the new criteria for ordering administrative detention are applied consistently.

(Response) FDA agrees that the new criteria for ordering administrative detention should be applied carefully and consistently when there is a reason to believe that an article of food is adulterated or misbranded. The Agency does not agree that the only way that goal can be achieved is by limiting the authority to order administrative detention to three Agency officials. FDA has a number of internal mechanisms to ensure that FDA will use administrative detention in a consistent manner across the District Offices. It is, therefore, unnecessary to change the IFR to adopt the restriction suggested by the comments.

(Comment 5) Several comments emphasized the importance of transparency regarding administrative detention, including the need to simplify and streamline the process for appealing administrative detention orders, communicate information about the detention process to importers and exporters, and the suggestion that there be a contact person to provide such information.

(Response) FDA agrees that it is important to be transparent regarding the administrative detention process and thus, the procedures for administrative detention, including the process for appealing and requesting an informal hearing on the matter, are clearly set forth in FDA's regulations in Title 21, Code of Federal Regulations (CFR) part 1, subpart K and part 16. At this time, it is not necessary to make any changes to these procedures. The District Director of the involved FDA District Office serves as the contact for any administrative detention matter in that District Office. Additionally, FDA often makes information about actions taken under this authority publicly available through mechanisms such as press statements on enforcement actions.

(Comment 6) Some comments noted that there could be confusion between the term administrative detention as used under section 304 of the FD&C Act and the term detention as used during the importation process, where a product is often referred to as detained when it appears the product may be subject to refusal of admission and the owner or consignee has been given an opportunity to present testimony regarding admissibility under 21 CFR 1.94.

(Response) Given the procedural and substantive differences between administrative detention and detention that occurs during import admissibility review, confusion between the two is unlikely. Moreover, when the Agency gives written notice in either circumstance, it will make clear which type of detention is involved. For instance, FDA uses ''Form FDA 2289 Detention Order'' for administrative detentions, including administrative detentions brought under section 304(h) of the FD&C Act. On this form FDA will clearly identify under which authority the administrative detention is ordered.

(Comment 7) Two comments asked if FDA would issue a notice of termination of administrative detention on the same day as the decision is made.

(Response) FDA intends to issue a notice of termination of administrative detention on the same day as the decision is made, whenever practicable. The Agency understands the importance of providing notice of a termination decision so that the article of food can reenter the stream of commerce in a timely manner. If FDA fails to issue a detention termination notice and the

[1] See 21 CFR 7.3(m)(1) for definition of a Class I recall.

detention period expires (a maximum of 30 days from the date the detention was ordered), the detention is deemed to be terminated (21 CFR 1.384).

(Comment 8) One comment asked the Agency to clarify which party will be responsible for the costs associated with an administrative detention (e.g., storage or moving costs) or with the disposal of the detained products (e.g., reconditioning, re-export, or destruction).

(Response) As stated in its response to a comment to the 2004 administrative detention final rule (69 FR 31660 at 31690, June 4, 2004), the responsibility for paying the storage costs of administratively detained food is a matter to be resolved between the private parties involved. FDA is not liable for these costs. An owner, operator, or agent in charge of the place where the food is located can request modification of a detention order under 21 CFR 1.381 to allow the food to be moved or destroyed if they do not want to store it.

III. Executive Order 12866 and Executive Order 13563: Cost Benefit Analysis

FDA has examined the impacts of this final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB) has determined that this is a significant regulatory action as defined by the Executive Orders.

The Regulatory Flexibility Act requires Agencies to determine whether a final rule will have a significant impact on small entities when an Agency issues a final rule ''after being required * * * to publish a general notice of proposed rulemaking.'' Although we are not required to perform a regulatory flexibility analysis because we were not required to publish a proposed rule prior to this final rule, we have nonetheless conducted a regulatory flexibility analysis for this final rule. Because the additional costs per entity of this rule are negligible if any, the Agency also concludes that this final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the 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 one year.'' The current threshold after adjustment for inflation is $139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

In 2003 FDA issued a proposed rule on administrative detention (2003 proposed rule) (68 FR 25242 at 25250, May 9, 2003), in which the Agency analyzed the economic impact of the proposed procedures for administrative detention of food for human or animal consumption which were established to implement changes to the FD&C Act made by section 303 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188). When FDA issued the administrative detention final rule in 2004 (2004 final rule) (69 FR 31660 at 31685), the Agency revised the economic analysis set forth in the 2003 proposed rule. The analysis in the 2004 final rule explained that any costs and/or benefits of the rule can be generated only in those circumstances in which FDA would choose to order administrative detention instead of using other enforcement tools available to the Agency, such as requesting voluntary recall, instituting a seizure action, or referring the matter to State authorities. In this analysis, FDA noted that because administrative detention was a new enforcement tool, the Agency was not able to directly estimate how often it would be used. FDA indirectly estimated the number of potential events that would trigger an administrative detention as a subset of other existing enforcement actions at the time. The analysis assumed that FDA would likely choose administrative detention only if it were the most effective enforcement tool available in a particular situation.

In 2011, FDA issued the IFR amending the criteria for ordering administrative detention. This final rule adopts, without making any changes, the regulatory requirements established in the IFR. The economic impact analysis of the IFR (76 FR 25538 at 25539) explained and further revised the analysis set forth in the 2004 final rule by addressing the economic impact of the new criteria in section 304(h)(1)(A) of the FD&C Act.

FDA did not receive any comments that would warrant further revising the economic analysis of the IFR. Thus, this economic analysis confirms the economic impact analysis of the IFR. For a full explanation of the economic impact analysis of this final rule, interested persons are directed to the text of the economic impact analyses in the IFR (76 FR 25538 at 25539) and the 2004 final rule (69 FR 31660 at 31685).

IV. Small Entity Analysis (or Final Regulatory Flexibility Analysis)

A regulatory flexibility analysis is required only when an Agency must publish a notice of proposed rulemaking (5 U.S.C. 603 and 604). Section 207 of FSMA directed us to issue an IFR implementing that statutory provision, and FDA published the IFR and this final rule without a notice of proposed rulemaking. Although FDA was not required to publish a notice of proposed rulemaking and, therefore, no regulatory flexibility analysis is required, FDA has nonetheless conducted such an analysis and examined the economic implications of this final rule on small entities. Although this final rule is a significant regulatory action as defined by Executive Order 12866, FDA also concludes that this final rule will not have a significant impact on a substantial number of small businesses.

V. Paperwork Reduction Act of 1995

FDA concludes that the requirements of this final rule are not subject to review by OMB because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3220).

VI. Analysis of Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the Agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 1

Cosmetics, Drugs, Exports, Food labeling, Imports, Labeling, Reporting and recordkeeping requirements.

PART 1—GENERAL ENFORCEMENT REGULATIONS

■ Accordingly, the interim rule amending 21 CFR part 1 which was published at 76 FR 25538 on May 5, 2011, is adopted as a final rule without change.

Dated: January 31, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–02497 Filed 2–4–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9612]

RIN 1545–BA53

Noncompensatory Partnership Options

AGENCY: Internal Revenue Service (IRS), Department of the Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership. The final regulations generally provide that the exercise of a noncompensatory option does not cause the recognition of immediate income or loss by either the issuing partnership or the option holder. The final regulations also modify the regulations under section 704(b) regarding the maintenance of the partners' capital accounts and the determination of the partners' distributive shares of partnership items. The final regulations also contain a characterization rule providing that the holder of a noncompensatory option is treated as a partner under certain circumstances. The final regulations will affect partnerships that issue noncompensatory options, the partners of such partnerships, and the holders of such options.

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

Applicability Date: These regulations apply to noncompensatory options (as defined in § 1.721–2(f)) that are issued on or after February 5, 2013.

FOR FURTHER INFORMATION CONTACT: Benjamin Weaver at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under sections 171, 704, 721, 761, 1272, 1273, and 1275 of the Internal Revenue Code (Code). On January 22, 2003, proposed regulations (REG–103580–02) relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership were published in the **Federal Register** (68 FR 2930). On March 28, 2003, corrections to the proposed regulations were published in the **Federal Register** (68 FR 15118). Because no requests to speak were submitted by April 29, 2003, the public hearing scheduled for Tuesday, May 20, 2003, was cancelled (see 68 FR 24903). The Treasury Department and the IRS received a number of comments in response to the proposed regulations. After consideration of the comments, the proposed regulations are adopted as revised by this Treasury decision. The final regulations apply to certain call options, warrants, convertible debt, and convertible equity that are not issued in connection with the performance of services (noncompensatory options). All comments are available at *www.regulations.gov* or upon request.

Summary of Comments and Explanation of Provisions

The final regulations describe certain of the income tax consequences of issuing, transferring, and exercising noncompensatory partnership options. The final regulations apply only if the call option, warrant, or conversion right grants the holder the right to acquire an interest in the issuer (or cash measured by the value of the interest). The final regulations generally provide that the exercise of a noncompensatory option does not cause recognition of gain or loss to either the issuing partnership or the option holder. In addition, the final regulations modify the regulations under section 704(b) regarding the maintenance of the partners' capital accounts and the determination of the partners' distributive shares of partnership items. Finally, the final regulations contain a characterization rule providing that the holder of a call option, warrant, convertible debt, or convertible equity issued by a partnership (or an eligible entity, as defined in § 301.7701–3(a), that would become a partnership if the option holder were treated as a partner) is treated as a partner under certain circumstances.

A number of comments were received regarding the proposed regulations. The comments included requests for clarification and recommendations relating to (1) the issuance and exercise of noncompensatory options; (2) accounting for noncompensatory options; (3) the characterization rule; (4) the convertible bond provision; and (5) the application of the original issue discount provisions. Significant comments are further discussed in this preamble.

1. Issuance, Exercise, Lapse, Repurchase, and Other Terminations of a Noncompensatory Option

Like the proposed regulations, the final regulations under section 721 define a noncompensatory option as an option issued by a partnership, other than an option issued in connection with the performance of services. For this purpose, an option is defined as a call option or warrant to acquire an interest in the issuing partnership, the conversion feature of convertible debt, or the conversion feature of convertible equity.

A. Application of Section 721 on Issuance of a Noncompensatory Option

The proposed regulations provide that section 721 does not apply to a transfer of property to a partnership in exchange for a noncompensatory option. Several commenters observed that the proposed regulations do not exclude options issued in satisfaction of interest or similar items, such as unpaid rent or royalties. Accordingly, the final regulations provide that section 721 does not apply to the transfer of property to a partnership in exchange for a noncompensatory option, or to the satisfaction of a partnership obligation with a noncompensatory option. The final regulations contain an example illustrating that a transfer of appreciated or depreciated property to a partnership in exchange for a noncompensatory option generally will result in the recognition of gain or loss by the option recipient. Under open transaction principles applicable to noncompensatory options, the partnership will not recognize income for receipt of the property while the

option is outstanding. Notwithstanding the general rule, the Treasury Department and IRS believe it is appropriate to take into account the conversion right embedded in convertible equity as part of the underlying partnership interest. Accordingly, the final regulations provide that section 721 does apply to a contribution of property to a partnership in exchange for convertible equity in a partnership.

B. Application of Section 721 on Exercise of a Noncompensatory Option

i. Payment of the Exercise Price With Property or Cash

The proposed regulations provide that section 721 applies to the holder and the partnership upon the exercise of a noncompensatory option issued by the partnership. The final regulations generally adopt this rule. However, in response to comments requesting clarification, the final regulations also provide that section 721 generally applies to the exercise of a noncompensatory option when the exercise price is satisfied with property or cash contributed to the partnership, regardless of whether the terms of the option require or permit a cash payment.

ii. Exercise of a Noncompensatory Option in Satisfaction of a Partnership Obligation

The proposed regulations under section 721 do not apply to any interest on convertible debt that has been accrued by the partnership (including accrued original issue discount). A number of comments were received requesting clarification on the proper treatment of accrued but unpaid interest. Since the proposed regulations were issued and the comments received, final regulations under section 721 were published on November 17, 2011 (TD 9557) addressing certain partnership debt-for-equity exchanges. Section 1.721–1(d)(2) provides:

> Section 721 does not apply to a debt-for-equity exchange to the extent the transfer of the partnership interest to the creditor is in exchange for the partnership's indebtedness for unpaid rent, royalties, or interest (including accrued original issue discount) that accrued on or after the beginning of the creditor's holding period for the indebtedness. The debtor partnership will not recognize gain or loss upon the transfer of a partnership interest to a creditor in a debt-for-equity exchange for unpaid rent, royalties, or interest (including accrued original issue discount).

The preamble to TD 9557 explains this provision as follows: ''The IRS and the Treasury Department believe that the exception to section 721 for these items is necessary to prevent the conversion of ordinary income into capital gain.''

The Treasury Department and the IRS believe that similar considerations arise in the context of the exercise of noncompensatory options. Accordingly, the final regulations provide that section 721 does not apply to the transfer of a partnership interest to a noncompensatory option holder upon conversion of convertible debt in the partnership to the extent that the transfer is in satisfaction of the partnership's indebtedness for unpaid interest (including accrued original issue discount) on convertible debt that accrued on or after the beginning of the convertible debt holder's holding period for the indebtedness. Additionally, the final regulations provide that section 721 does not apply to the extent that the exercise price is satisfied with the partnership's obligation to the option holder for unpaid rent, royalties, or interest (including accrued original issue discount) that accrued on or after the beginning of the option holder's holding period for the obligation.

The proposed regulations do not specify whether, upon conversion of convertible debt in the partnership, the partnership is treated as satisfying its obligation for unpaid interest with a fractional interest in each partnership property. Under this ''vertical slice'' approach, the partnership could recognize gain or loss equal to the difference between the fair market value of each partial property deemed transferred to the creditor and the partnership's adjusted basis in that partial property. The Treasury Department and the IRS believe that approach would be difficult to administer and may inappropriately accelerate gain or loss recognition. Therefore, the final regulations provide that the partnership will not recognize gain or loss upon the transfer of a partnership interest to a noncompensatory option holder upon conversion of convertible debt in the partnership to the extent that the transfer is in satisfaction of the partnership's indebtedness for unpaid interest (including accrued original issue discount) on convertible debt that accrued on or after the beginning of the convertible debt holder's holding period for the indebtedness. Additionally, the final regulations also provide that the issuing partnership will not recognize gain or loss upon the transfer of a partnership interest to an exercising option holder in satisfaction of the partnership's obligation to the option holder for unpaid rent, royalties, or interest (including accrued original issue discount) that accrued on or after the beginning of the option holder's holding period for the obligation. This treatment is consistent with the rules under § 1.721–1(d)(2).

iii. Options Issued by Disregarded Entities

The rule in the proposed regulations providing for nonrecognition of gain or loss on the exercise of a noncompensatory option does not apply to any call option, warrant, or convertible debt issued by an eligible entity, as defined in § 301.7701–3(a), that would become a partnership under § 301.7701–3(f)(2) if the option, warrant, or conversion right were exercised. The Treasury Department and the IRS requested and received comments on whether the nonrecognition rule should be extended to such instruments. Commenters recommended that the nonrecognition rule should be extended to such instruments. However, some commenters noted that the extension of the proposed regulations to include a noncompensatory option issued by an eligible entity that would become a partnership under § 301.7701–3(f)(2) upon exercise of the option would necessitate adjustments to the capital accounting requirements of the regulations, as applied to these entities. Without these adjustments, upon exercise of the option, the owner of the eligible entity would be treated as contributing all property owned by the eligible entity prior to exercise of the option to the new partnership, while the option holder would be treated as contributing only the exercise price and premium to the new partnership. The new partnership would have no unbooked unrealized gain in its property that it could allocate to the exercising option holder. Accordingly, the Treasury Department and the IRS have decided not to apply the rules of the final regulations to these instruments.

iv. Application of Section 721(b)

One commenter requested clarification of whether section 721(b) could apply to the exercise of a noncompensatory option under the regulations. Section 721(b) provides that section 721(a) does not apply to gain realized on a transfer of property to a partnership that would be treated as an investment company (within the meaning of section 351) if the partnership were incorporated. The Treasury Department and the IRS believe that section 721, including the provisions of section 721(b) and § 1.721–1(a), applies to the exercise of noncompensatory options.

v. Cash Settled Options

Several commenters requested guidance on the treatment of cash-settled options, particularly regarding whether the cash settlement of an option is treated as a sale or exchange of the option or as an exercise of the option followed by an immediate redemption of the newly-issued partnership interest. The Treasury Department and the IRS believe that the cash settlement of a noncompensatory option should be treated as a sale or exchange of the option and taxed under the rules of section 1234, rather than as a contribution to the partnership under section 721, followed by an immediate redemption (although the latter may, in certain instances, be treated as a sale of the option under the disguised sale rules). The final regulations provide that the settlement of a noncompensatory option in cash or property other than an interest in the issuing partnership is not a transaction to which section 721 applies.

C. Lapse, Repurchase, Sale, or Exchange of a Noncompensatory Option

The proposed regulations provide that section 721 does not apply to the lapse of a noncompensatory option. Accordingly, the lapse of a noncompensatory option generally results in the recognition of income by the partnership and loss by the holder of the lapsed option in an amount equal to the option premium. However, the proposed regulations do not address the character of the gain or loss recognized upon lapse, repurchase, sale, or exchange of the option.

While section 1234(b) provides that gain or loss from any closing transaction generally is treated as short term capital gain or loss to the grantor of an option, commenters were uncertain whether section 1234(b) applies to partnership interests because it is unclear whether partnership interests qualified as ''securities'' for purposes of section 1234(b). To eliminate this uncertainty, proposed regulations under section 1234(b) (REG–106918–08) are being published concurrently with these final regulations, which treat partnership interests as securities for this purpose. The preamble to those proposed regulations also addresses, and seeks comments on, the character of gain or loss to the option holder on the sale or exchange of, or loss on failure to exercise, an option.

D. Application of General Tax Principles in Certain Situations

In the event that the exercise of a noncompensatory option is followed by a redemption of the exercising option holder's partnership interest, general tax principles, including the disguised sale rules of section 707(a)(2)(B), will apply in determining whether the transaction is actually a cash settlement of the noncompensatory option by the partnership.

The proposed regulations provide that if the exercise price of a noncompensatory option exceeds the capital account received by the option holder on the exercise of the noncompensatory option, the transaction will be given tax effect in accordance with its true nature. Similarly, the final regulations provide that, if the exercise price of a noncompensatory option exceeds the capital account received by the option holder on the exercise of the option, then general tax principles will apply to determine the tax consequences of the transaction. The final regulations are based on the premise that the partnership and the option holder will act in an economically rational way, such that an option holder generally will not exercise the option unless the capital account received will equal or exceed the exercise price. It should be noted that a noncompensatory option could be economically viable to exercise when the option holder receives a right to share in partnership capital that is less than the sum of the premium paid for the option and the exercise price of the option, provided that the exercise price alone does not exceed the capital account received. This simply reflects the fact that the premium is a sunk cost at the time the option holder exercises the option.

2. Accounting for Noncompensatory Options

A. Accounting for the Issuance of a Noncompensatory Option

Under the proposed regulations, issuance of a noncompensatory option is not a permissive or mandatory revaluation event under Treas. Reg. § 1.704–1(b)(2)(iv). One commenter noted that, as a result, unrealized gain in partnership property arising prior to the issuance of the option could be inappropriately shifted to the option holder upon exercise. The Treasury Department and the IRS agree. Therefore, the final regulations provide that the issuance by a partnership of a noncompensatory option (other than an option for a de minimis partnership interest) is a permissible revaluation event.

B. Revaluations While a Noncompensatory Option is Outstanding

Under the proposed regulations, any revaluation during the period in which there are outstanding noncompensatory options generally must take into account the fair market value of any outstanding noncompensatory options. If the fair market value of outstanding noncompensatory options as of the date of the adjustment exceeds the consideration paid by the option holders to acquire the options, then the value of partnership property reflected on the partnership's books must be reduced by that excess to the extent of the unrealized income or gain in partnership property (that has not been reflected in the capital accounts previously). This reduction is allocated only to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation. Conversely, if the price paid by the option holders to acquire the outstanding noncompensatory options exceeds the fair market value of the options as of the date of the adjustment, then the value of partnership property reflected on the partnership's books must be increased by that excess to the extent of the unrealized deduction or loss in partnership property (that has not been reflected in the capital accounts previously). This increase is allocated only to properties with unrealized depreciation in proportion to their respective amounts of unrealized depreciation.

The Treasury Department and the IRS have decided to retain these rules with certain modifications. The final regulations continue to provide that the adjustments to the value of partnership property reflected on the partnership's books should generally be made to partnership properties on a pro rata basis. Several comments were received requesting additional guidance when certain properties are subject to special allocations to existing partners. The Treasury Department and the IRS agree that the final regulations should take into account the economic arrangement of the parties. Therefore, the final regulations provide that the adjustments must take into account the economic arrangement of the partners with respect to the property.

One commenter noted that, while the proposed regulations do not state how the fair market value of the outstanding option should be computed, the value that is consistently used in the examples in the proposed regulations is the liquidation value of the option assuming

exercise. The commenter requested additional guidance on the determination of the fair market value of outstanding options. The Treasury Department and the IRS believe that additional guidance on the determination of fair market value is unnecessary and believe that the examples sufficiently illustrate that the fair market value of an outstanding option may be based on the liquidation value of the option assuming exercise.

C. Accounting for the Exercise of a Noncompensatory Option

The proposed regulations provide that an exercising noncompensatory option holder's initial capital account is equal to the consideration paid to the partnership to acquire the noncompensatory option and the fair market value of any property (other than the option) contributed to the partnership upon the exercise of the noncompensatory option. The proposed regulations provide that upon the conversion of convertible equity, the fair market value of property contributed to the partnership includes the converting partner's capital account immediately before the conversion. Because the converting partner's pre-conversion capital account will not be eliminated because of the conversion, the Treasury Department and the IRS believe that this provision from the proposed regulations is unnecessary and could cause confusion. Therefore, the Treasury Department and the IRS have decided to remove this provision to eliminate confusion; no substantive change is intended by this revision.

Additionally, the proposed regulations provide that the capital account of a holder of convertible debt is credited with the adjusted basis of the debt and the accrued but unpaid qualified stated interest on the debt immediately before the conversion of the debt. One commenter noted that the regulations should credit the debt holder's capital account with the adjusted issue price rather than the adjusted basis of the debt. Using adjusted issue price avoids creating a different tax result in cases in which the debt is converted by the original debt holder versus cases in which the debt is converted after a transfer of the debt at a price that reflected unrealized gain or loss attributable to the conversion right and/or changes in market interest rates. The Treasury Department and the IRS agree with this comment and, therefore, the final regulations credit the capital account of a convertible debt holder with the adjusted issue price of the debt and the accrued but unpaid qualified stated interest on the debt immediately before the conversion of the debt.

The proposed regulations require a partnership to revalue its property immediately following the exercise of a noncompensatory option, after the option holder has become a partner. The partnership must allocate the unrealized income, gain, loss, and deduction from this revaluation, first, to the noncompensatory option holder on exercise to the extent necessary to reflect the option holder's right to share in partnership capital under the partnership agreement and, then, to the historic partners, to reflect the manner in which the unrealized income, gain, loss, or deduction in partnership property would be allocated among those partners if there were a taxable disposition of the property for its fair market value on that date. To the extent that unrealized appreciation or depreciation in the partnership's property has been allocated to the capital account of the noncompensatory option holder on exercise, the holder will, under section 704(c) principles, recognize any income or loss attributable to that appreciation or depreciation as the underlying properties are sold, depreciated, or amortized. The final regulations adopt these provisions with some modifications.

Under the current section 704(b) regulations, a revaluation of partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*) is based on the fair market value of partnership property as of the date of the revaluation, as determined under § 1.704–1(b)(2)(iv)(*h*). Several commenters to the proposed regulations recommended that the section 704(b) regulations be revised to permit revaluations of partnership property based on the fair market value of the partnership interest, rather than the fair market value of the partnership's property. These values may differ because of restrictions on the transferability or liquidity of the partnership interest or other factors. The Treasury Department and the IRS have decided to continue requiring that revaluations be based on the fair market value of the partnership's property. The Treasury Department and the IRS believe that changing the rules for all revaluations is beyond the scope of these final regulations.

Several comments were received requesting additional guidance on adjusting capital accounts upon exercise of an option when certain partnership properties are subject to special allocations to existing partners. The final regulations clarify that the allocations must take into account the economic arrangement of the partners with respect to the property.

Furthermore, several commenters requested additional guidance on how to adjust capital accounts upon exercise when the partnership owns multiple properties with unrealized income, gain, loss, or deduction. The final regulations clarify that allocations should be made on a pro rata basis from partnership property, subject to the requirement that the allocations take into account the economic arrangement of the partners. Thus, if the exercising partner's right to share in partnership capital under the partnership agreement exceeds the sum of the premium and exercise price, then only income or gain may be allocated to the exercising partner from partnership properties with unrealized appreciation, in proportion to their respective amounts of unrealized appreciation (subject to the requirement that the allocations take into account the economic arrangement of the partners). Conversely, if the exercising partner's right to share in partnership capital under the partnership agreement is less than the premium and exercise price, then only loss may be allocated to the exercising partner from partnership properties with unrealized loss, in proportion to their respective amounts of unrealized loss (subject to the requirement that the allocations take into account the economic arrangement of the partners).

One commenter recommended that the final regulations provide that the partnership may revalue its assets immediately before the exercise of the option (in addition to the revaluation that occurs immediately following the exercise of the option). This comment was made in response to one issue that arises when a revaluation event under § 1.704–1(b)(2)(iv)(*f*) or (*s*) occurs while a noncompensatory option is outstanding and certain partnership property has increased in value. If, following the revaluation, but prior to the exercise of the option, the same property declines in value before the option is exercised, there may be insufficient unrealized income or gain in partnership property (that has not been allocated to the capital accounts of other partners) to allocate to the option holder's capital account upon exercise. To address this issue, one commenter recommended that, for purposes of partnership property revaluations, the portion of the unrealized gain that is treated as ''reflected in the capital accounts previously'' be reduced by the historic partners' share of the decline in asset value. The Treasury Department and the IRS have decided not to adopt these changes because the increased

complexity that these new rules would add to the regulations outweighs the potential benefit.

Under the proposed regulations, if, after the allocations of unrealized gain and loss items to an exercising option holder, the exercising option holder's capital account still does not reflect his right to share in partnership capital under the partnership agreement, the partnership must reallocate capital between the existing partners and the exercising option holder (a ''capital account reallocation''). This capital account reallocation provision has been retained from the proposed regulations.

D. Corrective Allocations

The proposed regulations require the partnership to make corrective allocations of gross income or loss to the partners in the year in which the option is exercised so as to take into account any shift in the partners' capital accounts that occurs as a result of a capital account reallocation pursuant to the exercise of a noncompensatory option. Corrective allocations are allocations of tax items that differ from the partnership's allocations of book items. If there are not sufficient actual partnership items in the year of exercise to conform the partnership's tax allocations to the capital account reallocation, additional corrective allocations are required in succeeding taxable years until the capital account reallocation has been fully taken into account.

A number of comments were received regarding the requirement of corrective allocations in the proposed regulations. Some commenters recommended eliminating or substantially limiting the scope of corrective allocations. The Treasury Department and the IRS considered other alternatives but believe that corrective allocations are the most administrable alternative means to address the potential problem of income shifting when, prior to the exercise of a noncompensatory option, a partnership recognizes gain or loss that is, in part, economically attributable to the option holder, but is allocated entirely to the existing partners. Therefore, the final regulations retain the requirement for corrective allocations in certain circumstances.

i. Corrective Allocations When Historic Partners Depart

The final regulations require corrective allocations to be made so as to take into account any capital account reallocation upon exercise of a noncompensatory option. Therefore, partnership items may be correctively allocated to the exercising option holder only of items properly allocable to a partner that suffered a capital account reduction and only to the extent such partner suffered a capital account reduction. This approach may result in corrective allocations not being fully made if a partner that suffered a capital account reduction on exercise is no longer a partner in the issuing partnership at the time a corrective allocation would otherwise be made.

ii. Character Matching for Corrective Allocations

The proposed regulations provide that corrective allocations are pro rata allocations of gross income and gain or gross loss and deduction. The proposed regulations do not require any matching of character between the income or loss that is correctively allocated, and gains or losses that were allocated to existing partners prior to the option's exercise, but that were economically attributable to the option holder. Several commenters recommended that the regulations provide some type of matching requirement. The Treasury Department and the IRS believe that the complexity that could arise from a character matching requirement would outweigh the potential benefit of obtaining a more precise tax result for corrective allocations in some cases. Accordingly, the final regulations do not provide for a character matching requirement.

iii. Corrective Allocations Using Combinations of Income and Loss

Additionally, some commenters requested guidance on making corrective allocations in a year in which the partnership has both gross income and gain and gross loss and deduction. In some cases, a corrective allocation that completely takes into account the capital shift may not be possible in a given year if only gross income and gain, or gross loss and deduction, are used. However, commenters noted that it may be possible to more fully take into account the capital shift if corrective allocations are made using a combination of gross income and gain and gross loss and deduction. The Treasury Department and IRS agree that combinations of gross income and gain and gross loss and deduction should be available for corrective allocations.

Accordingly, the final regulations provide a mechanism for making corrective allocations using combinations of gross income and gain and gross loss and deduction in certain circumstances. If the capital account reallocation is from the historic partners to the exercising option holder, then the corrective allocations must first be made with gross income and gain. If an allocation of gross income and gain alone does not completely take into account the capital account reallocation in a given year, then the partnership must also make corrective allocations using a pro rata portion of items of gross loss and deduction as to further take into account the capital account reallocation. Conversely, if the capital account reallocation is from the exercising option holder to the historic partners, then the corrective allocations must first be made with gross loss and deduction. If an allocation of gross loss and deduction alone does not completely take into account the capital account reallocation in a given year, then the partnership must also make corrective allocations using a pro rata portion of items of gross income and gain as to further take into account the capital account reallocation.

iv. Application of Section 706 to Corrective Allocations

One commenter requested clarification on the application of section 706 to the corrective allocation provisions. Because the exercise of a noncompensatory option may cause the partners' interests in the partnership to vary, the Treasury Department and the IRS believe that section 706 should apply in determining which items may be used for corrective allocations. Therefore, the final regulations also clarify that section 706 and its regulations and principles apply in determining the items of income, gain, loss, and deduction that may be subject to corrective allocation.

E. The Impact of Partnership Mergers, Divisions, and Terminations on Outstanding Noncompensatory Options

The proposed regulations do not address the impact of partnership mergers, divisions, and section 708 technical terminations on outstanding noncompensatory options. Some commenters requested guidance on these situations. The Treasury Department and the IRS believe that these issues are beyond the scope of these final regulations.

3. Characterization Rule

The proposed regulations generally respect noncompensatory options as such and do not characterize them as partnership equity. However, the proposed regulations characterize the holder of a noncompensatory option as a partner if the option holder's rights are substantially similar to the rights afforded to a partner. This rule under the proposed regulations applies only if, as of the date that the noncompensatory

option is issued, transferred, or modified, there is a strong likelihood that the failure to treat the option holder as a partner would result in a substantial reduction in the present value of the partners' and the option holder's aggregate Federal tax liabilities. The proposed regulations use a facts and circumstances test to determine whether a noncompensatory option holder's rights are substantially similar to the rights afforded to a partner. The facts and circumstances for making this determination under the proposed regulations include, but are not limited to, whether the option is reasonably certain to be exercised and whether the option holder has partner attributes. The Treasury Department and the IRS have decided to retain these rules with certain modifications.

A. The ''Substantially Similar'' Test

Some commenters criticized the breadth of the language in the proposed regulations that provides that all facts and circumstances will be considered in determining whether a noncompensatory option provides the holder with rights that are substantially similar to the rights afforded to a partner, suggesting instead that an exclusive list of factors be used. The Treasury Department and the IRS agree that the regulations should more specifically describe the circumstances in which an option holder will be considered to possess these rights. Therefore, the final regulations provide that a noncompensatory option provides its holder with rights that are substantially similar to the rights afforded to a partner if the option is reasonably certain to be exercised or if the option holder possesses partner attributes.

I. The ''Reasonably Certain To Be Exercised'' Test

The proposed regulations list a number of non-exclusive factors that are used to determine whether a noncompensatory option is reasonably certain to be exercised, including the fair market value of the partnership interest that is the subject of the option, the exercise price of the option, the term of the option, the predictability and stability of the value of the underlying partnership interest, the fact that the option premium and exercise price (if the option is exercised) will become property of the partnership, and whether the partnership is expected to make distributions during the term of the option. With one exception, the final regulations adopt these factors and clarify that any other arrangements affecting or undertaken with a principal purpose of affecting the likelihood that the noncompensatory option will be exercised will be considered a factor in determining whether an option is reasonably certain to be exercised. Because the option premium represents a sunk cost to the option holder, and because the fact that the exercise price becomes property of the partnership is already reflected in the value of the partnership interest subject to the option, the final regulations do not include as a factor in the reasonable certainty test the fact that the option premium and exercise price will become property of the partnership.

Some commenters suggested that the characterization rule in the regulations adopt standards similar to those found in § 1.1361–1(l) for determining whether there is a second class of stock in an S corporation, or those found in § 1.1504–4 for determining whether a corporation is a member of an affiliated group. Commenters also recommended that the regulations provide for certain safe harbors and bright line tests for determining whether an option holder's rights are substantially similar to the rights afforded to a partner, and whether there is a strong likelihood that the failure to treat the holder as a partner would result in a substantial reduction in the present value of the partners' and the holder's aggregate tax liabilities. After careful consideration of these comments, the Treasury Department and the IRS believe that limited safe harbors should be provided to limit the administrative burdens of the characterization rule. Accordingly, the final regulations provide two objective safe harbors, which are similar to two of the safe harbors in § 1.1504–4 and § 1.1361–1(l). However, these safe harbors apply only to the determination of whether a noncompensatory option is reasonably certain to be exercised, and not to the determination of whether a noncompensatory option holder possesses partner attributes.

The first safe harbor provides that a noncompensatory option is not considered reasonably certain to be exercised if it may be exercised no more than 24 months after the date of the applicable measurement event and it has a strike price equal to or greater than 110 percent of the fair market value of the underlying partnership interest on the date of the measurement event. The second safe harbor provides that a noncompensatory option is not considered reasonably certain to be exercised if the terms of the option provide that the strike price of the option is equal to or greater than the fair market value of the underlying partnership interest on the exercise date. For purposes of these safe harbors, an option whose strike price is determined by a formula is considered to have a strike price equal to or greater than the fair market value of the underlying partnership interest on the exercise date if the formula is agreed upon by the parties when the option is issued in a bona fide attempt to arrive at the fair market value on the exercise date and is to be applied based on the facts and circumstances in existence on the exercise date.

The safe harbors do not apply, however, if the parties to the noncompensatory option had a principal purpose of substantially reducing the present value of the aggregate Federal tax liabilities of the partners and the noncompensatory option holder.

The final regulations provide that failure of an option to satisfy one of these safe harbors does not affect the determination of whether the option is treated as reasonably certain to be exercised. Thus, options that do not satisfy the safe harbors may still be treated as not reasonably certain to be exercised under the facts and circumstances. Notwithstanding that an option is treated as not reasonably certain to be exercised on the date of one measurement event under either the safe harbors or the facts and circumstances test, the option may be treated as reasonably certain to be exercised at the time of a subsequent measurement event if the safe harbors and facts and circumstances test are no longer satisfied. Furthermore, even if an option is not reasonably certain to be exercised under either the safe harbors or the facts and circumstances test, the noncompensatory option may still be found to provide its holder with rights substantially similar to those afforded a partner under the partner attributes test.

The proposed regulations contain an example describing an option issued by a partnership with reasonably predictable earnings and concluding, based on the facts of the example, that the option described is reasonably certain to be exercised. Commenters stated that the example involved unrealistic facts demonstrating reasonably predictable earnings, and that the example wrongly implied that low volatility suggests a reasonable certainty of exercise. Upon further consideration of this example, the Treasury Department and the IRS have decided to delete the example from the final regulations.

ii. The ''Partner Attributes'' Test

The proposed regulations provide that partner attributes include the extent to

which the option holder shares in the economic benefit and detriment of partnership income and loss and the extent to which the option holder has the right to control or restrict the activities of the partnership. Some commenters requested clarification of this definition of partner attributes. Because all options issued by a partnership allow the holder to share, to some extent, in the economic benefit and detriment of partnership income and loss, the Treasury Department and the IRS agree that this language should be clarified.

The final regulations provide that the determination of whether a noncompensatory option holder possesses partner attributes is based on all the facts and circumstances, including whether the option holder, directly or indirectly, through the option agreement or a related agreement, is provided with voting or managerial rights in the partnership. Additionally, the final regulations provide that an option holder has partner attributes if, based on all the facts and circumstances, (1) the option holder is provided with rights (through the option agreement or a related agreement) that are similar to rights ordinarily afforded to a partner to participate in partnership profits through present possessory rights to share in current operating or liquidating distributions with respect to the underlying partnership interest; or (2) the option holder, directly or indirectly, undertakes obligations (through the option agreement or a related agreement) that are similar to obligations undertaken by a partner to bear partnership losses. In this way, the Treasury Department and the IRS believe that the final regulations clarify that the economic benefits and burdens relevant to the partner attributes test are those beyond the economic benefits and burdens inherent in basic option transactions.

As to an option holder's ability to control or restrict the activities of the partnership, some commenters stated that an option holder should not be considered to possess partner attributes solely because the holder has the ability to restrict partnership distributions or dilutive issuances of partnership equity while the option is outstanding. Option holders often are given such rights as a means of protecting the value of the option holder's potential future partnership interest. The Treasury Department and the IRS agree that such rights are reasonable restrictions that, by themselves, should not automatically lead to a conclusion that the option holder possesses partner attributes. Accordingly, the final regulations provide that a noncompensatory option holder will not ordinarily be considered to possess partner attributes solely because the noncompensatory option agreement significantly controls or restricts, or the noncompensatory option holder has the right to significantly control or restrict, a partnership decision that could substantially affect the value of the underlying partnership interest. In particular, the following rights of the option holder will not be treated as partner attributes: (1) the ability to impose reasonable restrictions on partnership distributions or dilutive issuances of partnership equity or options while the noncompensatory option is outstanding; and (2) the ability to choose the partnership's section 704(c) method for partnership properties.

Some commenters requested clarification on the analysis of partner attributes for an option holder who is also a partner in the issuing partnership. The proposed regulations provide that rights possessed by an option holder solely by virtue of owning a partnership interest and not by virtue of holding a noncompensatory option are not taken into account in determining whether the option holder has partner attributes, provided those rights are no greater than those held by other partners owning substantially similar interests. Commenters noted that, in some cases, there may be partners, such as managing or general partners, with unique interests that are not comparable to the interests of any other partners. The Treasury Department and the IRS agree that the regulations should address these situations. Accordingly, the final regulations provide that rights in the issuing partnership possessed by a noncompensatory option holder solely by virtue of owning an interest in the issuing partnership are not taken into account, provided that those rights are no greater than the rights granted to other partners owning substantially similar interests in the partnership and who do not hold noncompensatory options in the partnership. Additionally, the final regulations provide that if all of the partners owning substantially similar interests in the issuing partnership also hold noncompensatory options in the partnership, or if none of the other partners owns substantially similar interests in the partnership, then all facts and circumstances will be considered in determining whether the rights in the partnership possessed by the option holder are possessed solely by virtue of owning a partnership interest. If those rights are possessed solely by virtue of owning a partnership interest, the final regulations provide that they are not taken into account.

Additionally, in response to comments, the final regulations provide that for purposes of determining whether an option holder has partner attributes, the option holder will be treated as owning all partnership interests and noncompensatory options issued by the partnership that are owned by any person related to the option holder. For example, if the holder of a noncompensatory option is related to a person that owns an interest in the issuing partnership, and the interest provides the related person with partner attributes that are greater than the rights granted to other partners owning substantially similar interests in the partnership, the option will be characterized as a partnership interest under the final regulations if the strong likelihood test is satisfied. This provision is intended to prevent avoidance of the partner attributes test by planning among related parties. The Treasury Department and the IRS continue to study the extent to which financial instruments and partnership interests owned by related persons should be taken into account under the reasonable certainty test.

The proposed regulations contain an example describing a deep in the money option and concluding, based on the facts of the example, that the option holder possesses partner attributes. Commenters stated that the example added little to the existing guidance provided by the common law rule. Upon further consideration of this example, the Treasury Department and the IRS have decided to delete the example from the final regulations.

B. The ''Strong Likelihood'' Test

The Treasury Department and the IRS received a number of comments regarding the provision in the proposed regulations that the characterization rule applies only if there is a strong likelihood that the failure to treat the option holder as a partner would result in a substantial reduction in the present value of the partners' and the holder's aggregate tax liabilities. Some commenters recommended that the regulations adopt language similar to that contained in § 1.704–1(b)(2)(iii)(*b*)(*2*) and (*c*)(*2*), which provides that, in determining whether there is a reduction in the partners' total tax liability, tax consequences that result from the interaction of the allocation(s) with partner tax attributes that are unrelated to the partnership are taken into account. Similarly, in

determining whether there would be a substantial reduction in the present value of the partners' and option holder's aggregate tax liabilities, commenters noted that it is appropriate to consider partner and option holder tax attributes that are unrelated to the partnership, and the interaction of those attributes with the option.

The Treasury Department and the IRS agree that it would be helpful for the regulations to specify certain factors that are considered in determining whether there is a strong likelihood that the failure to treat a noncompensatory option holder as a partner would result in a substantial reduction in the present value of the partners' and the option holder's aggregate Federal tax liabilities. The final regulations provide that all facts and circumstances should be considered in making this determination, including: (1) The interaction of the allocations of the issuing partnership and the partners' and noncompensatory option holder's Federal tax attributes (taking into account tax consequences that result from the interaction of the allocations with the partners' and noncompensatory option holder's Federal tax attributes that are unrelated to the partnership); (2) the absolute amount of the Federal tax reduction; (3) the amount of the reduction relative to overall Federal tax liability; and (4) the timing of items of income and deductions.

Additionally, to more specifically address the application of the strong likelihood test when a look-through entity (as defined in § 1.704–1(b)(2)(iii)(*d*)(*2*)) is a party, the final regulations provide that if a partner or option holder is a look-through entity, such as a partnership or an S corporation, then the tax attributes of that entity's ultimate owners (that are not look-through entities) will be taken into account in determining whether there is a strong likelihood of a substantial tax reduction. The final regulations also provide that, if a partner is a member of a consolidated group, then tax attributes of the consolidated group and of another member with respect to a separate return year will be taken into account in determining whether there is a strong likelihood of a substantial tax reduction.

C. Events That Trigger Testing Under the Characterization Rule

The proposed regulations test a noncompensatory option under the characterization rule upon issuance, transfer, or modification of the option. A number of comments were received recommending clarification, or narrowing of the list, of events that will trigger a testing of the option after original issuance. Several commenters argued that only material modifications of an option should lead to re-testing under the characterization rule. Several commenters also recommended restricting the types of transfers that will trigger testing of the option under the characterization rule, or removing the requirement to test upon transfer entirely. In response to these comments, the final regulations provide a more detailed description of the events that will trigger application of the characterization rule to a noncompensatory option.

The final regulations provide that the characterization rule will be applied upon the occurrence of a measurement event with respect to the noncompensatory option. The final regulations define a measurement event as: (1) Issuance of the noncompensatory option; (2) an adjustment of the terms (modification) of the noncompensatory option or of the underlying partnership interest (including an adjustment pursuant to the terms of the noncompensatory option or the underlying partnership interest); or (3) transfer of the noncompensatory option if either (A) the term of the option exceeds 12 months, or (B) the transfer is pursuant to a plan in existence at the time of the issuance or modification of the noncompensatory option that has as a principal purpose the substantial reduction of the present value of the aggregate Federal tax liabilities of the partners and the noncompensatory option holder.

Additionally, in response to the comments, the Treasury Department and the IRS believe that it is appropriate to limit testing under the characterization rule to provide certainty for both taxpayers and the IRS, particularly in circumstances in which there is little potential for abuse. Therefore, the final regulations do not treat the following events as measurement events: (1) A transfer of the noncompensatory option that would otherwise be a measurement event if the transfer is at death or between spouses or former spouses under section 1041, or in a transaction that is disregarded for Federal tax purposes; (2) a modification that neither materially increases the likelihood that the option will be exercised nor provides the option holder with partner attributes; (3) a change in the strike price of a noncompensatory option, or in the interests in the issuing partnership that may be issued or transferred pursuant to the option, made pursuant to a bona fide, reasonable adjustment formula that has the intended effect of preventing dilution of the interests of the option holder; and (4) any other event as provided in guidance published in the Internal Revenue Bulletin. The Treasury Department and the IRS believe that these limitations will minimize the burden on taxpayers that could arise from frequent testings under the characterization rule in many situations, while preserving the ability of the IRS to enforce the characterization rule in appropriate circumstances.

Some commenters also requested that the regulations clarify whether the issuance, transfer, or modification of one noncompensatory option would trigger testing under the characterization rule of all other outstanding noncompensatory options issued by the same partnership. Under the final regulations, testing under the characterization rule occurs only on the date a measurement event occurs with respect to a particular noncompensatory option. Measurement events should be determined individually for each noncompensatory option issued by a partnership. For example, the modification of one noncompensatory option generally would be a measurement event for that particular option, and it would not be a measurement event for all other noncompensatory options issued by the partnership.

In addition, to address transfers of interests in the issuing partnership and situations involving look-through entities, proposed regulations under section 761 (REG–106918–08) are being published concurrently with these final regulations. Those proposed regulations would add three measurement events to the list above, but apply only if those measurement events are pursuant to a plan in existence at the time of the issuance or modification of the noncompensatory option that has as a principal purpose the substantial reduction of the present value of the aggregate Federal tax liabilities of the partners and the noncompensatory option holder. The proposed measurement events are: (1) Issuance, transfer, or modification of an interest in, or liquidation of, the issuing partnership; (2) issuance, transfer, or modification of an interest in any look-through entity that directly, or indirectly through one or more look-through entities, owns the noncompensatory option; and (3) issuance, transfer, or modification of an interest in any look-through entity that directly, or indirectly through one or more look-through entities, owns an interest in the issuing partnership. The Treasury Department and the IRS believe that the first of these proposed

measurement events is necessary because it is inconsistent to test a noncompensatory option under the characterization rule upon transfer of the noncompensatory option, but not upon transfer of an interest in the issuing partnership, because either type of transfer may change the analysis of whether there is a strong likelihood that the failure to treat the option holder as a partner would result in a substantial reduction in the present value of the partners' and option holder's aggregate tax liabilities. The Treasury Department and the IRS believe that the second and third proposed measurement events are necessary to prevent avoidance of the characterization rule through the use of look-through entities.

D. Timing of Characterization

Some commenters requested clarification regarding the timing of the characterization of a noncompensatory option as a partnership interest under the regulations. For example, some commenters questioned whether an option that was characterized as a partnership interest upon transfer would be treated as transferred and then exercised by the transferee or exercised by the transferor and then transferred. The Treasury Department and the IRS believe that the tax consequences to the transferor and transferee upon a transfer of the option should be similar to the tax consequences upon a transfer of the underlying partnership interest. Accordingly, the final regulations provide that characterization of an option as a partnership interest under the regulations applies upon the issuance of the option, or immediately before any other measurement event that gave rise to the characterization. Under this approach, if the characterization rule applied upon a transfer of a noncompensatory option, a section 743 adjustment for the benefit of the transferee would be made if the issuing partnership had a section 754 election in effect.

E. Effect of Characterization

Some commenters questioned whether, once a noncompensatory option was characterized as a partnership interest under the characterization rule, the characterization rule could ever operate to re-characterize the interest as a noncompensatory option once again. The Treasury Department and the IRS believe that the characterization rule operates to treat noncompensatory options as partnerships interests in appropriate circumstances, and it should not be interpreted to treat partners as noncompensatory option holders. Accordingly, the final regulations provide that once a noncompensatory option is treated as a partnership interest, in no event may it be characterized as an option thereafter.

F. Continuing Applicability of General Tax Principles

Finally, some commenters questioned whether general tax principles would continue to apply to the characterization of a noncompensatory option that, in substance, represents a current partnership interest. Because these rules in the final regulations are intended to supplement rather than supplant general tax principles, the Treasury Department and the IRS believe it is appropriate for general tax principles to continue to apply, in addition to the characterization rule of the regulations. Thus, the final regulations clarify that an option that is not treated as a partnership interest under the regulations may still be treated as a partnership interest under general principles of law. For example, if upon the issuance of a noncompensatory option, the option in substance constitutes a partnership interest under general tax principles, then the option will be treated as a partnership interest for Federal tax purposes, even if it is unlikely that the aggregate tax liabilities of the option holder and partners would be substantially reduced by the failure to treat the option holder as a partner. For this purpose, general tax principles include principles of tax law derived from the Internal Revenue Code, Treasury Regulations, case law, and administrative guidance issued by the IRS.

4. Convertible Bond Provision

Section 171(b)(1) provides that the amount of bond premium on a convertible bond does not include any amount attributable to the conversion features of the bond. A holder of partnership convertible debt who purchases the debt at a premium would generally be subject to the section 171 bond premium amortization rules. One commenter suggested that the regulations under § 1.171–1(e)(1)(iii) be clarified to state that such regulations apply to debt that is convertible into an interest in the partnership issuing the debt. The final regulations adopt this comment.

5. Original Issue Discount Provisions

The original issue discount (OID) provisions provide special rules for debt instruments convertible into the stock of the issuer or a party related to the issuer. See §§ 1.1272–1(e), 1.1273–2(j), and 1.1275–4(a)(4). The proposed regulations proposed to apply these special rules to debt instruments convertible into partnership interests. These final regulations adopt these proposed amendments. Accordingly, the final regulations amend the OID provisions to treat partnership interests as stock for purposes of the special rules for convertible debt instruments. Treating convertible debt issued by partnerships and corporations differently for purposes of these special rules could create unjustified distinctions between the taxation of instruments that are economically equivalent.

Effective/Applicability Date

These final regulations apply to noncompensatory options that are issued on or after February 5, 2013.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses, and no comments were received.

Drafting Information

The principal author of these regulations is Benjamin Weaver of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of the Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.171–1 is amended by adding a sentence at the end of paragraph (e)(1)(iii)(C) to read as follows:

§ 1.171–1 Bond premium.

* * * * *

(e) * * *

(1) * * *

(iii) * * *

(C) * * * For bonds issued on or after February 5, 2013, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

■ **Par. 3.** Section 1.704–1 is amended as follows:

■ 1. Paragraph (b)(0) is amended by adding entries to the table in numerical order for paragraphs (b)(2)(iv)(*d*)(*4*), (b)(2)(iv)(*h*)(*1*), (b)(2)(iv)(*h*)(*2*), (b)(2)(iv)(*s*), (b)(4)(ix), and (b)(4)(x).

■ 2. The paragraph heading for paragraph (b)(1)(ii) is revised and a sentence is added at the end of the paragraph.

■ 3. Paragraph (b)(2)(iv)(*d*)(*4*) is added.

■ 4. Paragraph (b)(2)(iv)(*f*)(*1*) is revised.

■ 5. Paragraph (b)(2)(iv)(*f*)(*5*)(*iii*) is amended by removing the ''.'' at the end of the paragraph and adding in its place '', or''.

■ 6. Paragraph (b)(2)(iv)(*f*)(*5*)(*iv*) is redesignated as paragraph (b)(2)(iv)(*f*)(*5*)(*v*).

■ 7. New paragraph (b)(2)(iv)(*f*)(*5*)(*iv*) is added.

■ 8. Paragraph (b)(2)(iv)(*h*) is redesignated as (b)(2)(iv)(*h*)(*1*) and a new paragraph heading is added for paragraph (b)(2)(iv)(*h*)(*1*).

■ 9. Paragraph (b)(2)(iv)(*h*)(*2*) is added.

■ 10. The undesignated text following paragraph (b)(2)(iv)(*r*)(*2*) is designated as paragraph (b)(2)(iv)(*r*)(*3*), and a paragraph (b)(2)(iv)(*s*) is added after the newly designated paragraph (b)(2)(iv)(*r*)(*3*).

■ 11. Paragraphs (b)(4)(ix) and (b)(4)(x) are added.

■ 12. Paragraph (b)(5) is amended by adding *Examples 31* through *35.*

The additions and revisions read as follows:

§ 1.704–1 Partner's distributive share.

* * * * *

(b) * * *

(0) * * *

Heading	Section
* * * * *	* *
Exercise of noncompensatory options	1.704–1(b)(2)(iv)(*d*)(*4*).
* * * * *	* *
In general	1.704–1(b)(2)(iv)(*h*)(*1*).
Adjustments for noncompensatory options	1.704–1(b)(2)(iv)(*h*)(*2*).
* * * * *	* *
Adjustments on the exercise of a noncompensatory option	1.704–1(b)(2)(iv)(*s*).
* * * * *	* *
Allocations with respect to noncompensatory options	1.704–1(b)(4)(ix).
Corrective allocations	1.704–1(b)(4)(x).
* * * * *	* *

(1) * * *

(ii) *Effective/applicability date.* * * * In addition, paragraph (b)(2)(iv)(*d*)(*4*), paragraph (b)(2)(iv)(*f*)(*1*), paragraph (b)(2)(iv)(*f*)(*5*)(*iv*), paragraph (b)(2)(iv)(*h*)(*2*), paragraph (b)(2)(iv)(*s*), paragraph (b)(4)(ix), paragraph (b)(4)(x), and *Examples 31* through *35* in paragraph (b)(5) of this section apply to noncompensatory options (as defined in § 1.721–2(f)) that are issued on or after February 5, 2013.

* * * * *

(2) * * *

(iv) * * *

(*d*) * * *

(*4*) *Exercise of noncompensatory options.* Solely for purposes of paragraph (b)(2)(iv)(*b*)(*2*) of this section, the fair market value of the property contributed on the exercise of a noncompensatory option (as defined in § 1.721–2(f)) does not include the fair market value of the option privilege, but does include the consideration paid to the partnership to acquire the option and the fair market value of any property (other than the option) contributed to the partnership on the exercise of the option. With respect to convertible debt, the fair market value of the property contributed on the exercise of the option is the adjusted issue price of the debt and the accrued but unpaid qualified stated interest (as defined in § 1.1273–1(c)) on the debt immediately before the conversion, plus the fair market value of any property (other than the convertible debt) contributed to the partnership on the exercise of the option. See *Examples 31* through *35* of paragraph (b)(5) of this section.

* * * * *

(*f*) * * *

(*1*) The adjustments are based on the fair market value of partnership property (taking section 7701(g) into account) on the date of adjustment, as determined under paragraph (b)(2)(iv)(*h*) of this section. See *Example 33* of paragraph (b)(5) of this section.

* * * * *

(*5*) * * *

(*iv*) In connection with the issuance by the partnership of a noncompensatory option (other than an option for a de minimis partnership interest), or

* * * * *

(*h*) *Determinations of fair market value*—(*1*) *In general.* * * *

(*2*) *Adjustments for noncompensatory options.* The value of partnership property as reflected on the books of the partnership must be adjusted to account for any outstanding noncompensatory options (as defined in § 1.721–2(f)) at the time of a revaluation of partnership property under paragraph (b)(2)(iv)(*f*) or (*s*) of this section. If the fair market value of outstanding noncompensatory options (as defined in § 1.721–2(f)) as of the date of the adjustment exceeds the consideration paid to the partnership to acquire the options, then the value of partnership property as reflected on the books of the partnership must be reduced by that excess to the extent of the unrealized income or gain in partnership property (that has not been

reflected in the capital accounts previously). This reduction is allocated only to properties with unrealized appreciation in proportion to their respective amounts of unrealized appreciation. If the consideration paid to the partnership to acquire the outstanding noncompensatory options (as defined in § 1.721–2(f)) exceeds the fair market value of such options as of the date of the adjustment, then the value of partnership property as reflected on the books of the partnership must be increased by that excess to the extent of the unrealized loss in partnership property (that has not been reflected in the capital accounts previously). This increase is allocated only to properties with unrealized loss in proportion to their respective amounts of unrealized loss. However, any reduction or increase shall take into account the economic arrangement of the partners with respect to the property.

* * * * *

(*s*) *Adjustments on the exercise of a noncompensatory option.* A partnership agreement may grant a partner, on the exercise of a noncompensatory option (as defined in § 1.721–2(f)), a right to share in partnership capital that exceeds (or is less than) the sum of the consideration paid to the partnership to acquire and exercise such option. Where such an agreement exists, capital accounts will not be considered to be determined and maintained in accordance with the rules of this paragraph (b)(2)(iv) unless the following requirements are met:

(*1*) In lieu of revaluing partnership property under paragraph (b)(2)(iv)(*f*) of this section immediately before the exercise of the option, the partnership revalues partnership property in accordance with the provisions of paragraphs (b)(2)(iv)(*f*)(*1*) through (*f*)(*4*) of this section immediately after the exercise of the option.

(*2*) In determining the capital accounts of the partners (including the exercising partner) under paragraph (b)(2)(iv)(*s*)(*1*) of this section, the partnership first allocates any unrealized income, gain, or loss in partnership property (that has not been reflected in the capital accounts previously) to the exercising partner to the extent necessary to reflect that partner's right to share in partnership capital under the partnership agreement, and then allocates any remaining unrealized income, gain, or loss (that has not been reflected in the capital accounts previously) to the existing partners, to reflect the manner in which the unrealized income, gain, or loss in partnership property would be allocated among those partners if there were a taxable disposition of such property for its fair market value on that date. For purposes of the preceding sentence, if the exercising partner's initial capital account as determined under § 1.704–1(b)(2)(iv)(*b*) and (*d*)(*4*) of this section would be less than the amount that reflects the exercising partner's right to share in partnership capital under the partnership agreement, then only income or gain may be allocated to the exercising partner from partnership properties with unrealized appreciation, in proportion to their respective amounts of unrealized appreciation. If the exercising partner's initial capital account, as determined under § 1.704–1(b)(2)(iv)(*b*) and (*d*)(*4*) of this section, would be greater than the amount that reflects the exercising partner's right to share in partnership capital under the partnership agreement, then only loss may be allocated to the exercising partner from partnership properties with unrealized loss, in proportion to their respective amounts of unrealized loss. However, any allocation must take into account the economic arrangement of the partners with respect to the property.

(*3*) If, after making the allocations described in paragraph (b)(2)(iv)(*s*)(*2*) of this section, the exercising partner's capital account does not reflect that partner's right to share in partnership capital under the partnership agreement, then the partnership reallocates partnership capital between the existing partners and the exercising partner so that the exercising partner's capital account reflects the exercising partner's right to share in partnership capital under the partnership agreement (a capital account reallocation). Any increase or decrease in the capital accounts of existing partners that occurs as a result of a capital account reallocation under this paragraph (b)(2)(iv)(*s*)(*3*) must be allocated among the existing partners in accordance with the principles of this section. See *Example 32* of paragraph (b)(5) of this section.

(*4*) The partnership agreement requires corrective allocations so as to take into account all capital account reallocations made under paragraph (b)(2)(iv)(*s*)(*3*) of this section (see paragraph (b)(4)(x) of this section). See *Example 32* of paragraph (b)(5) of this section.

* * * * *

(4) * * *

(ix) *Allocations with respect to noncompensatory options*—(*a*) *In general.* A partnership agreement may grant to a partner that exercises a noncompensatory option (as defined in § 1.721–2(f)) a right to share in partnership capital that exceeds (or is less than) the sum of the amounts paid to the partnership to acquire and exercise the option. In such a case, allocations of income, gain, loss, and deduction to the partners while the noncompensatory option is outstanding cannot have economic effect because, if the noncompensatory option is exercised, the exercising partner, rather than the existing partners, may receive the economic benefit or bear the economic detriment associated with that income, gain, loss, or deduction. However, allocations of partnership income, gain, loss, and deduction to the partners while the noncompensatory option is outstanding will be deemed to be in accordance with the partners' interests in the partnership only if—

(*1*) The holder of the noncompensatory option is not treated as a partner under § 1.761–3;

(*2*) The partnership agreement requires that, while a noncompensatory option is outstanding, the partnership comply with the rules of paragraph (b)(2)(iv)(*f*) of this section and that, on the exercise of the noncompensatory option, the partnership comply with the rules of paragraph (b)(2)(iv)(*s*) of this section; and

(*3*) All material allocations and capital account adjustments under the partnership agreement would be respected under section 704(b) if there were no outstanding noncompensatory options issued by the partnership. See *Examples 31* through *35* of paragraph (b)(5) of this section.

(*b*) *Substantial economic effect under sections 168(h) and 514(c)(9)(E)(i)(ll).* An allocation of partnership income, gain, loss, or deduction to the partners will be deemed to have substantial economic effect for purposes of sections 168(h) and 514(c)(9)(E)(i)(ll) if—

(*1*) The allocation would meet the substantial economic effect requirements of paragraph (b)(2) of this section if there were no outstanding noncompensatory options issued by the partnership; and

(2) The partnership satisfies the requirements of paragraph (b)(4)(ix)(*a*)(*1*), (*2*), and (*3*) of this section.

(x) *Corrective allocations*—(*a*)—*In general.* If partnership capital is reallocated between existing partners and a partner exercising a noncompensatory option under paragraph (b)(2)(iv)(*s*)(*3*) of this section (a capital account reallocation), then the partnership must, beginning with the

taxable year of the exercise and in all succeeding taxable years until the required allocations are fully taken into account, make corrective allocations so as to take into account the capital account reallocation. A corrective allocation is an allocation (consisting of a pro rata portion of each item) for tax purposes of gross income and gain, or gross loss and deduction, that differs from the partnership's allocation of the corresponding book item. See *Example 32* of paragraph (b)(5) of this section.

(*b*) *Timing.* Section 706 and the regulations and principles thereunder apply in determining the items of income, gain, loss, and deduction that may be subject to corrective allocation.

(*c*) *Allocation of gross income and gain and gross loss and deduction.* If the capital account reallocation is from the historic partners to the exercising option holder, then the corrective allocations must first be made with gross income and gain. If an allocation of gross income and gain alone does not completely take into account the capital account reallocation in a given year, then the partnership must also make corrective allocations using a pro rata portion of items of gross loss and deduction as to further take into account the capital account reallocation. Conversely, if the capital account reallocation is from the exercising option holder to the historic partners, then the corrective allocations must first be made with gross loss and deduction. If an allocation of gross loss and deduction alone does not completely take into account the capital account reallocation in a given year, then the partnership must also make corrective allocations using a pro rata portion of items of gross income and gain as to further take into account the capital account reallocation.

(5) * * *

Example 31. (i) In Year 1, A and B each contribute cash of $9,000 to LLC, a newly formed limited liability company classified as a partnership for Federal tax purposes, in exchange for 100 units in LLC. Under the LLC agreement, each unit is entitled to participate equally in the profits and losses of LLC. LLC uses the cash contributions to purchase a nondepreciable property, Property A, for $18,000. Later in Year 1, at a time when Property A is valued at $20,000, LLC issues an option to C. The option allows C to buy 100 units in LLC for an exercise price of $15,000 in Year 2. C pays $1,000 to LLC to purchase the option. Assume that the LLC agreement satisfies the requirements of paragraph (b)(2) of this section and requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section. Also assume that C's option is a noncompensatory option under § 1.721–2(f), and that C is not treated as a partner with respect to the option. Under paragraph (b)(2)(iv)(*f*)(*5*)(*iv*) of this section, LLC revalues its property in connection with the issuance of the option. The $2,000 unrealized gain in Property A is allocated equally to A and B under the LLC agreement. In Year 2, C exercises the option, contributing the $15,000 exercise price to the partnership. At the time the option is exercised, the value of Property A is $35,000.

	Basis	Value
Year 1 After Issuance of the Option		
Assets:		
Cash Premium	$1,000	$1,000
Property A	18,000	20,000
Total	19,000	21,000
Liabilities and Capital:		
Cash Premium	1,000	1,000
A	9,000	10,000
B	9,000	10,000
Total	19,000	21,000
Year 2 After Exercise of the Option		
.		
Assets:		
Property A Cash	18,000	35,000
Premium	1,000	1,000
Exercise Price	15,000	15,000
Total	34,000	51,000
Liabilities and Capital:		
A	9,000	17,000
B	9,000	17,000
C	16,000	17,000
Total	34,000	51,000

(ii) In lieu of revaluing LLC's property under paragraph (b)(2)(iv)(*f*) of this section immediately before the option is exercised, under paragraph (b)(2)(iv)(*s*)(*1*) of this section LLC must revalue its property under the principles of paragraph (b)(2)(iv)(*f*) of this section immediately after the exercise of the option. Under paragraphs (b)(2)(iv)(*b*) and (b)(2)(iv)(*d*)(*4*) of this section, C's capital account is credited with the amount paid for the option ($1,000) and the exercise price of the option ($15,000). Under the LLC agreement, however, C is entitled to LLC capital corresponding to 100 units of LLC (⅓ of LLC's capital). Immediately after the exercise of the option, LLC's properties are cash of $16,000 ($1,000 premium and $15,000 exercise price contributed by C) and Property A, which has a value of $35,000. Thus, the total value of LLC's property is $51,000. C is entitled to LLC capital equal to ⅓ of this value, or $17,000. As C is entitled to $1,000 more LLC capital than C's capital contributions to LLC, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

(iii) Under paragraph (b)(2)(iv)(*s*)(*2*) of this section, LLC must increase C's capital account from $16,000 to $17,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section. The unrealized gain in LLC's property (Property A) which has not been reflected in the capital accounts previously is $15,000 ($35,000 value less $20,000 book value). Under paragraph (b)(2)(iv)(*s*)(*2*) of this section, the first $1,000 of this gain must be allocated to C, and the remaining $14,000 of this gain is allocated equally to A and B in accordance with the LLC agreement. Because the revaluation of LLC property under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases C's capital account to the amount agreed on by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. The $17,000 of unrealized booked gain in Property A ($35,000 value less $18,000 basis) is shared $8,000 to each A and B, and $1,000 to C. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from the revalued property must be allocated in accordance with section 704(c) principles.

	A		B		C	
	Tax	Book	Tax	Book	Tax	Book
Capital account after exercise	$9,000	$10,000	$9,000	$10,000	$16,000	$16,000
Revaluation amount	0	7,000	0	7,000	0	1,000
Capital account after revaluation	9,000	17,000	9,000	17,000	16,000	17,000

Example 32. (i) Assume the same facts as in *Example 31,* except that, in Year 2, before the exercise of the option, LLC sells Property A for $40,000, recognizing gain of $22,000. LLC does not distribute the sale proceeds to its partners and it has no other earnings in Year 2. With the proceeds ($40,000), LLC purchases Property B, a nondepreciable property. Also assume that C exercises the noncompensatory option at the beginning of Year 3 and that, at the time C exercises the option, the value of Property B is $41,000. In Year 3, LLC has gross income of $3,000 and deductions of $1,500.

Year 2 After Purchase of Property B		
Assets:		
Cash Premium	$1,000	$1,000
Property B	40,000	40,000
Total	41,000	41,000
Liabilities and Capital:		
Cash Premium	1,000	1,000
A	20,000	20,000
B	20,000	20,000
Total	41,000	41,000
Year 3 After Exercise of the Option		
Assets:		
Property B	40,000	41,000
Cash	16,000	16,000
Total	56,000	57,000
Liabilities and Capital:		
A	20,000	19,000
B	20,000	19,000
C	16,000	19,000
Total	56,000	57,000

(ii) Under paragraphs (b)(2)(iv)(*b*) and (b)(2)(iv)(*d*)(*4*) of this section, C's capital account is credited with the amount paid for the option ($1,000) and the exercise price of the option ($15,000). Under the LLC agreement, however, C is entitled to LLC capital corresponding to 100 units of LLC (⅓ of LLC's capital). Immediately after the exercise of the option, LLC's properties are $16,000 cash ($1,000 option premium and $15,000 exercise price contributed by C) and Property B, which has a value of $41,000. Thus, the total value of LLC's property is $57,000. C is entitled to LLC capital equal to ⅓ of this amount, or $19,000. As C is entitled to $3,000 more LLC capital than C's capital contributions to LLC, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

(iii) In lieu of revaluing LLC's property under paragraph (b)(2)(iv)(*f*) of this section immediately before the option is exercised, under paragraph (b)(2)(iv)(*s*)(*1*) of this section LLC must revalue its property under the principles of paragraph (b)(2)(iv)(*f*) of this section immediately after the exercise of the option. Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase C's capital account from $16,000 to $19,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section, and allocating all $1,000 of unrealized gain from the revaluation to C under paragraph (b)(2)(iv)(*s*)(*2*). This brings C's capital account to $17,000.

(iv) Next, under paragraph (b)(2)(iv)(*s*)(*3*) of this section, LLC must reallocate $2,000 of capital from the existing partners (A and B) to C to bring C's capital account to $19,000 (the capital account reallocation). As A and B shared equally in all items from Property A, whose sale gave rise to the need for the capital account reallocation, each member's capital account is reduced by ½ of the $2,000 reduction ($1,000).

(v) Under paragraph (b)(2)(iv)(*s*)(*4*) of this section, beginning in the year in which the option is exercised, LLC must make corrective allocations so as to take into account the capital account reallocation. In Year 3, LLC has gross income of $3,000 and deductions of $1,500. Under paragraph (b)(2)(x)(*c*), LLC must allocate the book gross income of $3,000 equally among A, B, and C, but for tax purposes, however, LLC must allocate all of its gross income ($3,000) to C. LLC's book and tax deductions ($1,500) will then be allocated equally among A, B, and C. The $1,000 unrealized booked gain in Property B has been allocated entirely to C. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from Property B must be allocated in accordance with section 704(c) principles.

	A		B		C	
	Tax	Book	Tax	Book	Tax	Book
Capital account after exercise	$20,000	$20,000	$20,000	$20,000	$16,000	$16,000
Revaluation	0	0	0	0	0	1,000
Capital account after revaluation	20,000	20,000	20,000	20,000	16,000	17,000
Capital account reallocation	0	(1,000)	0	(1,000)	0	2,000
Capital account after capital account reallocation	20,000	19,000	20,000	19,000	16,000	19,000
Income allocation (Yr. 3)	0	1,000	0	1,000	3,000	1,000
Deduction allocation (Yr. 3)	(500)	(500)	(500)	(500)	(500)	(500)
Capital account at end of year 3	19,500	19,500	19,500	19,500	18,500	19,500

Example 33. (i) In Year 1, D and E each contribute cash of $10,000 to LLC, a newly formed limited liability company classified as a partnership for Federal tax purposes, in exchange for 100 units in LLC. Under the LLC agreement, each unit is entitled to participate equally in the profits and losses of LLC. LLC uses the cash contributions to purchase two nondepreciable properties, Property A and Property B, for $10,000 each. Also in Year 1, at a time when Property A and Property B are still valued at $10,000 each, LLC issues an option to F. The option allows F to buy 100 units in LLC for an exercise price of $15,000 in Year 2. F pays $2,000 to LLC to purchase the option. Assume that the LLC agreement satisfies the requirements of paragraph (b)(2) of this section and requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section. Also assume that F's option is a noncompensatory option under § 1.721–2(f), and that F is not treated as a partner with respect to the option.

	Basis	Value
End of Year 1		
Assets:		
Cash.		
Premium	$2,000	$2,000
Property A	10,000	10,000
Property B	10,000	10,000
Total	22,000	22,000
Liabilities and Capital:		
Cash.		
Premium	2,000	2,000
D	10,000	10,000
E	10,000	10,000
Total	22,000	22,000

(ii) In year 2, prior to the exercise of F's option, G contributes $18,000 to LLC for 100 units in LLC. At the time of G's contribution, Property A has a value of $32,000 and a basis of $10,000, Property B has a value of $5,000 and a basis of $10,000, and the fair market value of F's option is $3,000. In year 2, LLC has no item of income, gain, loss, deduction, or credit.

(iii) Upon G's admission to the partnership, the capital accounts of D and E (which were $10,000 each prior to G's admission) are, in accordance with paragraph (b)(2)(iv)(*f*) of this section, adjusted upward to reflect their shares of the unrealized appreciation in the partnership's property. Property A has $22,000 of unrealized gain and Property B has $5,000 of unrealized loss. Under paragraph (b)(2)(iv)(*f*)(*1*) of this section, the adjustments must be based on the fair market value of LLC property (taking section 7701(g) into account) on the date of the adjustment, as determined under paragraph (b)(2)(iv)(*h*) of this section. The fair market value of partnership property must be reduced by the

excess of the fair market value of the option as of the date of the adjustment over the consideration paid by F to acquire the option ($3,000 − $2,000 = $1,000) (under paragraph (b)(2)(iv)(*h*)(*2*) of this section), but only to the extent of the unrealized appreciation in LLC property that has not been reflected in the capital accounts previously ($22,000). This $1,000 reduction is allocated entirely to Property A, the only asset having unrealized appreciation not reflected in the capital accounts previously. Therefore, the book value of Property A is $31,000. Accordingly, the revaluation adjustments must reflect only $16,000 of the net appreciation in LLC's property ($21,000 of unrealized gain in Property A and $5,000 of unrealized loss in Property B). Thus, D's and E's capital accounts (which were $10,000 each prior to G's admission) must be adjusted upward (by $8,000) to $18,000 each. The $21,000 of built-in gain in Property A and the $5,000 of built-in loss in Property B must be allocated equally between D and E in accordance with section 704(c) principles.

	Basis	Value	Option adjustment	704(b) Book
Assets:				
Property A	$10,000	$32,000	($1,000)	$31,000
Property B	10,000	5,000	0	5,000
Cash	2,000	2,000	0	2,000
Subtotal	22,000	39,000	(1,000)	38,000
Cash Contributed by G	18,000	18,000	0	18,000
Total	40,000	57,000	(1,000)	56,000

	Tax	Value	704(b) Book
Liabilities and Capital:			
Cash Premium (option value)	$ 2,000	$ 3,000	$ 2,000
D	10,000	18,000	18,000
E	10,000	18,000	18,000
G	18,000	18,000	18,000
Total	40,000	57,000	56,000

(iv) In year 2, after the admission of G, when Property A still has a value of $32,000 and a basis of $10,000 and Property B still has a value of $5,000 and a basis of $10,000, F exercises the option. On the exercise of the option, F's capital account is credited with the amount paid for the option ($2,000) and the exercise price of the option ($15,000). Under the LLC agreement, however, F is entitled to LLC capital corresponding to 100 units of LLC (1/4 of LLC's capital). Immediately after the exercise of the option, LLC's properties are worth $72,000 ($15,000 contributed by F, plus the value of LLC property prior to the exercise of the option, $57,000). F is entitled to LLC capital equal to 1/4 of this value, or $18,000. As F is entitled to $1,000 more LLC capital than F's capital contributions to LLC, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

(v) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase F's capital account from $17,000 to $18,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section and allocating the first $1,000 of unrealized gain to F. The total unrealized gain which has not been reflected in the capital accounts previously is $1,000 (the difference between the actual value of Property A, $32,000, and the book value of Property A, $31,000). The entire $1,000 of book gain is allocated to F under paragraph (b)(2)(iv)(*s*)(*2*) of this section. Because the revaluation of LLC property under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases F's capital account to the amount agreed on by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. The ($5,000) of unrealized booked loss in Property B has been allocated ($2,500) to each D and E, and the $22,000 of unrealized booked gain in Property A has been allocated $10,500 to each D and E, and $1,000 to F. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from Properties A and B must be allocated in accordance with section 704(c) principles.

	D		E		G		F	
	Tax	Book	Tax	Book	Tax	Book	Tax	Book
Capital account after admission of G	$10,000	$18,000	$10,000	$18,000	$18,000	$18,000	0	0
Capital account after exercise of F's option	10,000	18,000	10,000	18,000	18,000	18,000	17,000	17,000
Revaluation	0	0	0	0	0	0	0	1,000
Capital account after revaluation	10,000	18,000	10,000	18,000	18,000	18,000	17,000	18,000

Example 34. (i) On the first day of Year 1, H, I, and J form LLC, a limited liability company classified as a partnership for Federal tax purposes. H and I each contribute $10,000 cash to LLC for 100 units of common interest in LLC. J contributes $10,000 cash for a convertible preferred interest in LLC. J's convertible preferred interest entitles J to receive an annual allocation and distribution of cumulative LLC net profits in an amount equal to 10 percent of J's unreturned capital. J's convertible preferred interest also entitles J to convert, in Year 3, J's preferred interest into 100 units of common interest. If J converts, J has the right to the same share of LLC capital as J would have had if J had held the 100 units of common interest since the formation of LLC. Under the LLC agreement, each unit of common interest has an equal right to share in any LLC net profits that remain after payment of the preferred return. Assume that the LLC agreement satisfies the requirements of paragraph (b)(2) of this section and requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section. Also assume that J's right to convert the preferred interest into a common interest qualifies as a noncompensatory option under § 1.721–2(f), and that, prior to the exercise of

the conversion right, the conversion right is not treated as a partnership interest.

(ii) LLC uses the $30,000 to purchase Property Z, a property that is depreciable on a straight-line basis over 15 years. In each of Years 1 and 2, LLC has net income of $2,500, comprised of $4,500 of gross income and $2,000 of depreciation. It allocates $1,000 of net income to J and distributes $1,000 to J in each year. LLC allocates the remaining $1,500 of net income equally to H and I in each year but makes no distributions to H and I.

	H		I		J	
	Tax	Book	Tax	Book	Tax	Book
Capital account upon formation	$10,000	$10,000	$10,000	$10,000	$10,000	$10,000
Allocation of income Years 1 and 2	1,500	1,500	1,500	1,500	2,000	2,000
Distributions Years 1 and 2	0	0	0	0	(2,000)	(2,000)
Capital account at end of Year 2	11,500	11,500	11,500	11,500	10,000	10,000

(iii) At the beginning of Year 3, when Property Z has a value of $38,000 and a basis of $26,000 ($30,000 original basis less $4,000 of depreciation) and LLC has accumulated undistributed cash of $7,000 ($9,000 gross receipts less $2,000 distributions), J converts J's preferred interest into a common interest. Under paragraphs (b)(2)(iv)(*b*) and (b)(2)(iv)(*d*)(*4*) of this section, J's capital account after the conversion equals J's capital account before the conversion, $10,000. On the conversion of the preferred interest, however, J is entitled to LLC capital corresponding to 100 units of common interest in LLC (⅓ of LLC's capital). At the time of the conversion, the total value of LLC property is $45,000. J is entitled to LLC capital equal to ⅓ of this value, or $15,000. As J is entitled to $5,000 more LLC capital than J's capital account immediately after the conversion, the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

	Basis	Value
Assets:		
Property Z	$26,000	$38,000
Undistributed Income	7,000	7,000
Total	33,000	45,000
Liabilities and Capital:		
H	11,500	15,000
I	11,500	15,000
J	10,500	15,000
Total	33,000	45,000

(iv) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase J's capital account from $10,000 to $15,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section, and allocating the first $5,000 of unrealized gain from that revaluation to J. The unrealized gain in Property Z is $12,000 ($38,000 value less $26,000 basis). The first $5,000 of this unrealized gain must be allocated to J under paragraph (b)(2)(iv)(*s*)(*2*) of this section. The remaining $7,000 of the unrealized gain must be allocated equally to H and I in accordance with the LLC agreement. Because the revaluation of LLC property under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases J's capital account to the amount agreed on by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. The $12,000 of unrealized booked gain in Property Z has been allocated $3,500 to each H and I, and $5,000 to J. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from the revalued property must be allocated in accordance with section 704(c) principles.

	H		I		J	
	Tax	Book	Tax	Book	Tax	Book
Capital account prior to conversion	$11,500	$11,500	$11,500	$11,500	$10,000	$10,000
Revaluation on conversion	0	3,500	0	3,500	0	5,000
Capital account after conversion	11,500	15,000	11,500	15,000	10,000	15,000

Example 35. (i) On the first day of Year 1, K and L each contribute cash of $10,000 to LLC, a newly formed limited liability company classified as a partnership for Federal tax purposes, in exchange for 100 units in LLC. Immediately after its formation, LLC borrows $10,000 from M. Under the terms of the debt instrument, interest of $1,000 is unconditionally payable at the end of each year and the $10,000 stated principal is repayable in five years. Throughout the term of the indebtedness, M has the right to convert the debt instrument into 100 units in LLC. If M converts, M has the right to the same share of LLC capital as M would have had if M had held 100 units in LLC since the formation of LLC. Under the LLC agreement, each unit participates equally in the profits and losses of LLC and has an equal right to share in LLC capital. Assume that the LLC agreement satisfies the requirements of paragraph (b)(2) of this section and requires that, on the exercise of a noncompensatory option, LLC comply with the rules of paragraph (b)(2)(iv)(*s*) of this section. Also assume that M's right to convert the debt into an interest in LLC qualifies as a noncompensatory option under § 1.721–2(f), and that, prior to the exercise of the conversion right, M is not treated as a partner with respect to the convertible debt.

(ii) LLC uses the $30,000 to purchase Property D, property that is depreciable on a straight-line basis over 15 years. In each of Years 1, 2, and 3, LLC has net income of $2,000, comprised of $5,000 of gross income, $2,000 of depreciation, and interest expense (representing payments of interest on the loan from M) of $1,000. LLC allocates this income equally to K and L but makes no distributions to either K or L.

	K		L		M	
	Tax	Book	Tax	Book	Tax	Book
Initial capital account	$10,000	$10,000	$10,000	$10,000	0	0
Year 1 net income	1,000	1,000	1,000	1,000	0	0
Years 2 net income	1,000	1,000	1,000	1,000	0	0
Years 3 net income	1,000	1,000	1,000	1,000	0	0

	K		L		M	
	Tax	Book	Tax	Book	Tax	Book
Year 4 initial capital account	13,000	13,000	13,000	13,000	0	0

(iii) At the beginning of year 4, at a time when Property D, LLC's only asset, has a value of $33,000 and basis of $24,000 ($30,000 original basis less $6,000 depreciation in Years 1 through 3), and LLC has accumulated undistributed cash of $12,000 ($15,000 gross income less $3,000 of interest payments) in LLC, M converts the debt into a ⅓ interest in LLC. Under paragraphs (b)(2)(iv)(*b*) and (b)(2)(iv)(*d*)(*4*) of this section, M's capital account after the conversion is the adjusted issue price of the debt immediately before M's conversion of the debt, $10,000, plus any accrued but unpaid qualified stated interest on the debt, $0. On the conversion of the debt, however, M is entitled to receive LLC capital corresponding to 100 units of LLC (⅓ of LLC's capital). At the time of the conversion, the total value of LLC's property is $45,000. M is entitled to LLC capital equal to ⅓ of this value, or $15,000. As M is entitled to $5,000 more LLC capital than M's capital contribution to LLC ($10,000), the provisions of paragraph (b)(2)(iv)(*s*) of this section apply.

	Basis	Value
Assets: Liabilities and Capital		
Property D	$24,000	$33,000
Cash	12,000	12,000
Total	36,000	45,000
Liabilities and Capital:		
K	$13,000	$15,000
L	13,000	15,000
M	10,000	15,000
Total	36,000	45,000

(iv) Under paragraph (b)(2)(iv)(*s*) of this section, LLC must increase M's capital account from $10,000 to $15,000 by, first, revaluing LLC property in accordance with the principles of paragraph (b)(2)(iv)(*f*) of this section, and allocating the first $5,000 of unrealized gain from that revaluation to M. The unrealized gain in Property D is $9,000 ($33,000 value less $24,000 basis). The first $5,000 of this unrealized gain must be allocated to M under paragraph (b)(2)(iv)(*s*)(*2*) of this section, and the remaining $4,000 of the unrealized gain must be allocated equally to K and L in accordance with the LLC agreement. Because the revaluation of LLC property under paragraph (b)(2)(iv)(*s*)(*2*) of this section increases M's capital account to the amount agreed upon by the members, LLC is not required to make a capital account reallocation under paragraph (b)(2)(iv)(*s*)(*3*) of this section. The $9,000 unrealized booked gain in property D has been allocated $2,000 to each K and L, and $5,000 to M. Under paragraph (b)(2)(iv)(*f*)(*4*) of this section, the tax items from the revalued property must be allocated in accordance with section 704(c) principles.

	K		L		M	
	Tax	Book	Tax	Book	Tax	Book
Year 4 capital account prior to exercise	$13,000	$13,000	$13,000	$13,000	0	0
Capital account after exercise	13,000	13,000	13,000	13,000	10,000	10,000
Revaluation	0	2,000	0	2,000	0	5,000
Capital account after revaluation	13,000	15,000	13,000	15,000	10,000	15,000

■ **Par. 4.** Section 1.704–3 is amended by revising the first sentence of paragraph (a)(6)(i) to read as follows:

§ 1.704–3 Contributed property.

(a) * * *

(6) * * *

(i) * * * The principles of this section apply to allocations with respect to property for which differences between book value and adjusted tax basis are created when a partnership revalues partnership property pursuant to § 1.704–1(b)(2)(iv)(*f*) or 1.704–1(b)(2)(iv)(*s*) (reverse section 704(c) allocations). * * *

* * * * *

■ **Par. 5.** Section 1.721–2 is added to read as follows:

§ 1.721–2 Noncompensatory options.

(a) *Exercise of a noncompensatory option*—(1) *In general.* Notwithstanding § 1.721–1(b)(1), section 721 applies to the exercise (as defined in paragraph (g)(4) of this section) of a noncompensatory option (as defined in paragraph (f) of this section). Except as provided in paragraph (a)(2) of this section, section 721 applies to the exercise of a noncompensatory option when the holder pays the exercise price with either property or cash, regardless of whether the terms of the option require or permit cash payment. However, if the exercise price (as defined in paragraph (g)(5) of this section) of a noncompensatory option exceeds the capital account received by the option holder on the exercise of the option, then general tax principles will apply to determine the tax consequences of the transaction.

(2) *Exception.* Section 721 does not apply to the exercise of a noncompensatory option to the extent that the exercise price is satisfied with the partnership's obligation to the option holder for unpaid rent, royalties, or interest (including accrued original issue discount) that accrued on or after the beginning of the option holder's holding period for the obligation. The issuing partnership will not recognize gain or loss upon the transfer of a partnership interest to an exercising option holder in satisfaction of such unpaid rent, royalties, or interest (including accrued original issue discount).

(b) *Transfer of property or satisfaction of an obligation in exchange for a noncompensatory option*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, section 721 does not apply to a transfer of property to a partnership in exchange for a noncompensatory option, or to the satisfaction of a partnership obligation with a noncompensatory option.

(2) *Exception.* Section 721 does apply to a transfer of property to a partnership in exchange for convertible equity (as defined in paragraph (g)(3) of this section).

(c) *Lapse of a noncompensatory option.* Section 721 does not apply to the lapse of a noncompensatory option.

(d) *Cash settlement of a noncompensatory option.* Section 721 does not apply to the settlement of a noncompensatory option in cash or property other than a partnership interest in the issuing partnership.

(e) *Issuance of a partnership interest in satisfaction of indebtedness for interest on convertible debt.* Section 721 does not apply to the transfer of a partnership interest to a noncompensatory option holder upon conversion of convertible debt in the partnership to the extent that the transfer is in satisfaction of the partnership's indebtedness for unpaid interest (including accrued original issue discount) on the convertible debt that accrued on or after the beginning of the convertible debt holder's holding period for the indebtedness. The debtor partnership will not, however, recognize gain or loss upon such conversion. For rules in determining whether a partnership interest transferred to a creditor is treated as payment of interest or accrued original issue discount, see §§ 1.446–2 and 1.1275–2, respectively.

(f) *Scope.* The provisions of this section apply only to noncompensatory options. For purposes of this section, the term *noncompensatory option* means an option (as defined in paragraph (g)(1) of this section) issued by a partnership (the issuing partnership), other than an option issued in connection with the performance of services.

(g) *Definitions.* The following definitions apply for the purposes of this section:

(1) *Option* means a contractual right to acquire an interest in the issuing partnership, including a call option, warrant, or other similar arrangement, the conversion feature of convertible debt (as defined in paragraph (g)(2) of this section), or the conversion feature of convertible equity (as defined in paragraph (g)(3) of this section). To achieve the purposes of this section, the Commissioner can treat other contractual agreements, including a futures contract, a forward contract, or a notional principal contract, as an option. A contract that otherwise constitutes an option will not fail to be treated as an option for purposes of this section merely because it may or must be settled in cash or property other than a partnership interest.

(2) *Convertible debt* is any indebtedness of a partnership that is convertible into an interest in the partnership that issued the debt.

(3) *Convertible equity* is equity in a partnership that is convertible into a different equity interest in the partnership that issued the convertible equity.

(4) *Exercise* means the exercise of an option in exchange for an interest in the issuing partnership or the conversion of convertible debt or convertible equity into an interest in the issuing partnership.

(5) *Exercise price* means, in the case of a call option, the exercise price of the call option; in the case of convertible equity, the converting partner's capital account with respect to that convertible equity, increased by the fair market value of cash or other property contributed to the partnership in connection with the conversion; and, in the case of convertible debt, the adjusted issue price (within the meaning of § 1.1275–1(b)) of the debt converted, increased by accrued but unpaid qualified stated interest on the debt and by the fair market value of cash or other property contributed to the partnership in connection with the conversion.

(h) *Example.* The following example illustrates the provisions of this section:

Example. In Year 1, L and M form general partnership LM with cash contributions of $5,000 each, which are used to purchase land, Property D, for $10,000. In that same year, LM issues an option to N to buy a one-third interest in LM at any time before the end of Year 3. The exercise price of the option is $5,000, payable in either cash or property. N transfers Property E with a basis of $600 and a value of $1,000 to the partnership in exchange for the option. N provides no other consideration for the option. Assume that N's option is a noncompensatory option under paragraph (f) of this section and that N is not treated as a partner with respect to the option. Under paragraph (b) of this section, section 721(a) does not apply to N's transfer of Property E to LM in exchange for the option. In accordance with § 1.1001–1, upon N's transfer of Property E to the partnership in exchange for the option, N recognizes $400 of gain. Under open transaction principles applicable to noncompensatory options, the partnership does not recognize any income for the premium (the property received in exchange for the option). The partnership has a basis of $1,000 in Property E. In Year 3, when the partnership property is valued at $16,000, N exercises the option, contributing Property F with a basis of $3,000 and a fair market value of $5,000 to the partnership. Under paragraph (a) of this section, neither the partnership nor N recognizes gain upon N's contribution of property to the partnership upon the exercise of the option. Under section 723, the partnership has a basis of $3,000 in Property F. The partnership does not recognize income for the premium (Property E) upon exercise of the option. See § 1.704–1(b)(2)(iv)(*d*)(*4*) and (*s*) for special rules applicable to capital account adjustments on the exercise of a noncompensatory option.

(i) *Effective/applicability date.* This section applies to noncompensatory options that are issued on or after February 5, 2013.

■ **Par. 6.** Section 1.761–3 is added to read as follows:

§ 1.761–3 Certain option holders treated as partners.

(a) *Noncompensatory option treated as a partnership interest*—(1) *General rule.* A noncompensatory option (as defined in paragraph (b)(2) of this section) is treated as a partnership interest for all Federal tax purposes if, on the date of a measurement event (as defined in paragraph (c) of this section) with respect to the option—

(i) The noncompensatory option (and any agreements associated with it) provides the option holder with rights that are substantially similar to the rights afforded a partner (as determined under paragraph (d) of this section); and

(ii) There is a strong likelihood that the failure to treat the holder of the noncompensatory option as a partner would result in a substantial reduction in the present value of the partners' and noncompensatory option holder's aggregate Federal tax liabilities (as determined under paragraph (e) of this section).

(2) *Continuing applicability of general principles of law.* The fact that an option is not treated as a partnership interest under this section does not prevent the option from being treated as a partnership interest under general principles of Federal tax law.

(3) *Timing of characterization.* If a noncompensatory option is treated under this section as a partnership interest, that treatment applies, as the case may be, upon the issuance of the option, or immediately before any other measurement event that gave rise to the characterization under paragraph (a)(1) of this section.

(4) *Effect of characterization.* If a noncompensatory option is treated as a partnership interest under this section

or under general principles of law, the option holder will be treated as a partner with respect to the partnership interest and will receive a distributive share of the partnership's income, gain, loss, deduction, or credit (or items thereof), as determined in accordance with that partner's interest in the partnership (taking into account all facts and circumstances) in accordance with § 1.704–1(b)(3). Once a noncompensatory option is treated as a partnership interest, in no event may it be characterized as an option thereafter.

(b) *Definitions.* For purposes of this section:

(1) *Look-through entity. Look-through entity* means an entity described in § 1.704–1(b)(2)(iii)(*d*)(*2*).

(2) *Noncompensatory option. Noncompensatory option* means an option (as defined in paragraph (b)(3) of this section) issued by a partnership, other than an option issued in connection with the performance of services. For purposes of applying this section, an option that would be a noncompensatory option under this paragraph if it had been issued by a partnership is a noncompensatory option if the option was issued by an eligible entity (as defined in § 301.7701–3(a)) that would become a partnership under § 301.7701–3(f)(2) if the noncompensatory option holder were treated as a partner. Also for purposes of applying this section, if a noncompensatory option is issued by such an eligible entity, then the eligible entity is treated as a partnership.

(3) *Option.* An *option* is a contractual right to acquire an interest in the issuing partnership, including a call option, warrant, or other similar arrangement. In addition, an option includes convertible debt (as defined in § 1.721–(g)(2)) and convertible equity (as defined in § 1.721–(g)(3)). To achieve the purposes of this section, the Commissioner can treat other contractual agreements, including a forward contract, a futures contract, or a notional principal contract, as an option. A contract that otherwise constitutes an option will not fail to be treated as an option for purposes of this section merely because it may or must be settled in cash or property other than a partnership interest.

(4) *Underlying partnership interest. Underlying partnership interest* means the interest in the issuing partnership that would be acquired by the noncompensatory option holder upon exercise of the noncompensatory option.

(c) *Measurement event*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, a measurement event with respect to a noncompensatory option is any of the following events:

(i) Issuance of the noncompensatory option;

(ii) An adjustment of the terms (modification) of the noncompensatory option or of the underlying partnership interest (as defined in paragraph (b)(4) of this section) (including an adjustment pursuant to the terms of the noncompensatory option or the underlying partnership interest);

(iii) Transfer of the noncompensatory option if either:

(A) The option may be exercised (or settled) more than 12 months after its issuance, or

(B) The transfer is pursuant to a plan in existence at the time of the issuance or modification of the noncompensatory option that has as a principal purpose the substantial reduction of the present value of the aggregate Federal tax liabilities of the partners and the noncompensatory option holder (under paragraph (a)(1)(ii) of this section);

(2) *Events not treated as measurement events.* A measurement event does not include the following events:

(i) A transfer of the noncompensatory option at death, between spouses or former spouses under section 1041, or in a transaction that is disregarded for Federal tax purposes;

(ii) A modification that neither materially increases the likelihood that the noncompensatory option will be exercised (as described in paragraph (d)(2) of this section) nor provides the noncompensatory option holder with partner attributes (as described in paragraph (d)(3) of this section);

(iii) A change in the strike price of a noncompensatory option or in the interests in the issuing partnership that may be issued or transferred pursuant to the noncompensatory option, made pursuant to a bona fide, reasonable adjustment formula that has the intended effect of preventing dilution of the interests of the noncompensatory option holder;

(iv) Any other event as provided in guidance published in the Internal Revenue Bulletin.

(d) *Rights substantially similar to partner rights*—(1) *In general.* A noncompensatory option provides the holder with rights that are substantially similar to the rights afforded to a partner if either the option is reasonably certain to be exercised or the option holder possesses partner attributes.

(2) *Reasonable certainty of exercise*—(i) *General rule.* The determination of whether a noncompensatory option is reasonably certain to be exercised at the time of a measurement event is based on all the facts and circumstances, including—

(A) The fair market value of the partnership interest that is the subject of the noncompensatory option;

(B) The strike price of the noncompensatory option;

(C) The term of the noncompensatory option;

(D) The volatility of the value or income of the issuing partnership or the underlying partnership interest;

(E) Anticipated distributions by the partnership during the term of the noncompensatory option;

(F) Any other special option features, such as a strike price that fluctuates;

(G) The existence of related options, including reciprocal options; and

(H) Any other arrangements affecting or undertaken with a principal purpose of affecting the likelihood that the noncompensatory option will be exercised.

(ii) *Safe harbors*—(A) *General rule.* Except as provided in paragraph (d)(2)(ii)(C) of this section, a noncompensatory option is not considered reasonably certain to be exercised if, as of the date of a measurement event with respect to the noncompensatory option—

(*1*) The option may be exercised no more than 24 months after the date of the measurement event and the strike price is equal to or greater than 110 percent of the fair market value of the underlying partnership interest on the date of the measurement event; or

(*2*) The terms of the option provide that the strike price of the option is equal to or greater than the fair market value of the underlying partnership interest on the exercise date.

(B) *Options exercisable at fair market value.* For purposes of paragraph (d)(2)(ii)(A) of this section, an option whose strike price is determined by a formula is considered to have a strike price equal to or greater than the fair market value of the underlying partnership interest on the exercise date if the formula is agreed upon by the parties when the option is issued in a bona fide attempt to arrive at the fair market value on the exercise date and is to be applied based on the facts and circumstances in existence on the exercise date.

(C) *Exception.* The safe harbors of paragraph (d)(2)(ii)(A) of this section do not apply if the parties to the noncompensatory option had a principal purpose described in paragraph (c)(1)(iii)(B) of this section with respect to a measurement event for that option (or, if multiple options were issued pursuant to a plan, a

measurement event with respect to any option issued pursuant to that plan).

(D) *Failure to satisfy safe harbor.* Failure of an option to satisfy one of the safe harbors of paragraph (d)(2)(ii)(A) does not affect the determination of whether an option is treated as reasonably certain to be exercised.

(3) *Partner attributes*—(i) *General rule.* The determination of whether a holder of a noncompensatory option possesses partner attributes is based on all the facts and circumstances, including whether the option holder, directly or indirectly, through the option agreement or a related agreement, is provided with voting rights or managerial rights in the partnership.

(ii) *Certain factors that conclusively establish partner attributes.* For purposes of this section, a noncompensatory option holder has partner attributes if, based on all the facts and circumstances—

(A) The option holder is provided with rights (through the option agreement or a related agreement) that are similar to rights ordinarily afforded to a partner to participate in partnership profits through present possessory rights to share in current operating or liquidating distributions with respect to the underlying partnership interests; or

(B) The option holder, directly or indirectly, undertakes obligations (through the option agreement or a related agreement) that are similar to obligations undertaken by a partner to bear partnership losses.

(iii) *Special rules.* The following rules apply for purposes of paragraphs (d)(3)(i) and (d)(3)(ii) of this section:

(A) Rights in the issuing partnership possessed by a noncompensatory option holder solely by virtue of owning an interest in the issuing partnership are not taken into account, provided that those rights are no greater than the rights granted to other partners owning substantially similar interests in the partnership and who do not hold noncompensatory options in the partnership.

(B) If all of the partners owning substantially similar interests in the issuing partnership also hold noncompensatory options in the partnership, or if none of the other partners owns substantially similar interests in the partnership, then all facts and circumstances will be considered in determining whether the rights in the partnership possessed by the option holder are possessed solely by virtue of owning a partnership interest. If those rights are possessed solely by virtue of owning a partnership interest, they are not taken into account.

(C) A noncompensatory option holder will not ordinarily be considered to possess partner attributes solely because the noncompensatory option agreement significantly controls or restricts, or the noncompensatory option holder has the ability to significantly control or restrict, a partnership decision that could substantially affect the value of the underlying partnership interest. In particular, the following abilities of the option holder will not be treated as partner attributes:

(*1*) The ability to impose reasonable restrictions on partnership distributions or dilutive issuances of partnership equity or options while the noncompensatory option is outstanding.

(*2*) The ability to choose the partnership's section 704(c) method for partnership properties.

(D) When the applicable measurement event is a transfer described in paragraph (c)(1) of this section, the partner attributes of the transferee, not the transferor, are taken into account.

(E) The option holder will be treated as owning all partnership interests and noncompensatory options issued by the partnership that are owned by any person related to the option holder. For purposes of the preceding sentence, a person related to the option holder is defined as any person bearing a relationship to the option holder described in section 267(b) or 707(b).

(e) *Substantial tax reduction requirement*—(1) *General rule.* The determination of whether there is a strong likelihood that the failure to treat a noncompensatory option holder as a partner would result in a substantial reduction in the present value of the partners' and the noncompensatory option holder's aggregate Federal tax liabilities is based on all the facts and circumstances, including—

(i) The interaction of the allocations of the issuing partnership and the partners' and noncompensatory option holder's Federal tax attributes (taking into account tax consequences that result from the interaction of the allocations with the partners' and noncompensatory option holder's Federal tax attributes that are unrelated to the partnership);

(ii) The absolute amount of the Federal tax reduction;

(iii) The amount of the reduction relative to overall Federal tax liability; and

(iv) The timing of items of income and deductions.

(2) *Special rules.* For purposes of applying paragraph (e)(1) of this section to a partner or noncompensatory option holder that is—

(i) A look-through entity (as defined in paragraph (b)(1) of this section), the Federal tax consequences that result from the interaction of allocations of the partnership and the Federal tax attributes of any person that is an owner, or in the case of a trust or estate, the beneficiary, of an interest in such a partner or noncompensatory option holder, whether directly, or indirectly through one or more look-through entities, must be taken into account; or

(ii) A member of a consolidated group (within the meaning of § 1.1502–1(h)), the tax consequences that result from the interaction of the issuing partnership's allocations and the tax attributes of the consolidated group and the tax attributes of another member with respect to a separate return year must be taken into account.

(f) *Examples.* The following examples illustrate the provisions of this section. For purposes of all examples, assume that PRS is a partnership for Federal tax purposes, none of the noncompensatory option holders or partners are related persons, and that general principles of law do not apply to treat the noncompensatory option as a partnership interest. The examples read as follows:

Example 1. Active trade or business. PRS is engaged in an active real estate business, the amount of income, gain, loss, and deductions from which cannot be predicted with any reasonable certainty. In exchange for a premium of $100x, PRS issues a noncompensatory option to A to acquire a 10 percent interest in PRS for $110x at any time during a 3-year period commencing on the date on which the option is issued. At the time of the issuance of the noncompensatory option, a 10 percent interest in PRS has a fair market value of $100x. Due to the nature of PRS's business, the value of a 10 percent PRS interest in 3 years is not reasonably predictable as of the time the noncompensatory option is issued. Assuming there are no other facts affecting the certainty of the option's exercise, it is not reasonably certain that A's option will be exercised. Therefore, assuming that A does not possess partner attributes as described in paragraph (d)(3) of this section, A's noncompensatory option is not treated as a partnership interest under paragraph (a)(1) of this section.

(g) *Effective/applicability date.* This section applies to noncompensatory options issued on or after February 5, 2013.

■ **Par. 7.** Section 1.1272–1 is amended by adding a sentence at the end of paragraph (e) to read as follows:

§ 1.1272–1 Current inclusion of OID in income.

* * * * *

(e) * * * For debt instruments issued on or after February 5, 2013, the term *stock* in the preceding sentence means an equity interest in any entity that is

classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

■ **Par. 8.** Section 1.1273–2 is amended by adding a sentence at the end of paragraph (j) to read as follows:

§ 1.1273–2 Determination of issue price and issue date.

* * * * *

(j) * * * For debt instruments issued on or after February 5, 2013, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

■ **Par. 9.** Section 1.1275–4 is amended by adding a sentence at the end of paragraph (a)(4) to read as follows:

§ 1.1275–4 Contingent payment debt instruments.

(a) * * *

(4) * * * For debt instruments issued on or after February 5, 2013, the term *stock* in the preceding sentence means an equity interest in any entity that is classified, for Federal tax purposes, as either a partnership or a corporation.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: January 24, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013–02259 Filed 2–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2012–0005; T.D. TTB–111; Ref: Notice No. 130]

RIN 1513–AB88

Establishment of the Elkton Oregon Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury Decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 74,900-acre ''Elkton Oregon'' viticultural area in Douglas County, Oregon. The viticultural area lies totally within the Umpqua Valley viticultural area and the multi-county Southern Oregon viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: Effective March 7, 2013.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following—

- Evidence that the area within the proposed viticultural area boundary is locally or nationally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soil, physical features, and elevation, that make the proposed viticultural area distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Elkton Oregon Petition

TTB received a petition from Michael Landt, on behalf of himself and the owners of seven other Elkton area vineyards, proposing the establishment of the ''Elkton Oregon'' American viticultural area in Douglas County in southwestern Oregon. The proposed viticultural area encompasses approximately 74,900 acres, with 12 commercially-producing vineyards covering 96.5 acres, according to the petition. The petition also included a map indicating that the vineyards are disbursed throughout the proposed viticultural area.

The petition indicated that the proposed Elkton Oregon viticultural area is located entirely within the larger Umpqua Valley viticultural area (27 CFR 9.89), which, in turn, is located entirely within the Southern Oregon

viticultural area (27 CFR 9.179). The proposed viticultural area covers approximately 11 percent of the 689,904-acre Umpqua Valley viticultural area and 0.04 percent of the much larger 1,977,298-acre Southern Oregon viticultural area. The petition states that the marine influence from the Pacific Ocean distinguishes the proposed viticultural area from the larger Umpqua Valley.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 130 in the **Federal Register** on June 19, 2012 (77 FR 36433), proposing to establish the Elkton Oregon viticultural area. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed viticultural area. The distinguishing features of the proposed viticultural area include climate and topography. The notice also compared the distinguishing features of the proposed viticultural area to the surrounding areas. The proposed Elkton Oregon viticultural area contains approximately 74,900 acres. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area and a comparison of the distinguishing features of the proposed viticultural area to the surrounding areas, see Notice No. 130.

In Notice No. 130, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. In addition, given the proposed viticultural area's location within the existing Umpqua Valley and Southern Oregon viticultural areas, TTB also solicited comments on whether the evidence submitted in the petition regarding the distinguishing features of the proposed viticultural area sufficiently differentiates the proposed viticultural area from the two existing viticultural areas. TTB also asked for comments on whether the geographical features of the proposed viticultural area are so distinguishable from the surrounding Umpqua Valley or Southern Oregon viticultural areas that the proposed Elkton Oregon viticultural area should no longer be part of the two existing viticultural areas. The comment period closed on August 20, 2012.

In response to Notice No. 130, TTB received five comments. The commenters were all people who demonstrated their familiarity with the region of the proposed viticultural area, including a self-described wine writer, local growers and winery owners, and a member of the Elkton City Council. All five comments supported the establishment of the Elkton Oregon viticultural area. TTB received no comments in opposition of the Elkton Oregon viticultural area as proposed. None of the comments addressed the question of whether or not the Elkton Oregon viticultural area is so distinguishable from the Umpqua Valley and Southern Oregon viticultural areas that it should no longer be part of either existing viticultural area.

TTB Determination

After careful review of the petition and the comments received in response to Notice No. 130, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 74,900-acre Elkton Oregon viticultural area. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Elkton Oregon'' viticultural area in Douglas County, Oregon, effective 30 days from the publication date of this document. TTB also determines that the land within the Elkton Oregon viticultural area will remain part of both the Umpqua Valley and Southern Oregon viticultural areas.

TTB notes that the name ''Elkton OR'' is an equivalent form of the petitioned-for name ''Elkton Oregon.'' Although the original petition only proposed the name ''Elkton Oregon'' in reference to the proposed viticultural area, TTB believes that also allowing the abbreviated ''Elkton OR'' as an alternative name is appropriate. TTB does not believe allowing the abbreviated form as an alternative viticultural area name would cause consumer confusion. Therefore, the part 9 regulatory text set forth in the proposed rule in Notice No. 130 and in this final rule specifies both ''Elkton Oregon'' and ''Elkton OR'' as names for this proposed viticultural area.

Boundary Description

See the narrative boundary description of the viticultural area in the regulatory text published at the end of this document.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, ''Elkton Oregon,'' and the alternative name, ''Elkton OR,'' are both recognized as names of viticultural significance under 27 CFR 4.39(i)(3). The text of the regulation clarifies this point. Once this final rule becomes effective, wine bottlers using ''Elkton Oregon'' or ''Elkton OR'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

The establishment of the Elkton Oregon viticultural area will not affect any existing viticultural area, and any bottlers using ''Umpqua Valley'' or ''Southern Oregon'' as an appellation of origin or in a brand name for wines made from grapes grown within the Elkton Oregon viticultural area will not be affected by the establishment of this new viticultural area. The establishment of the Elkton Oregon viticultural area will allow vintners to use ''Elkton Oregon,'' ''Elkton OR,'' ''Umpqua Valley,'' and ''Southern Oregon'' as appellations of origin for wines made from grapes grown within the Elkton Oregon viticultural area.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural

area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.229 to read as follows:

§ 9.229 Elkton Oregon.

(a) *Name.* The name of the viticultural area described in this section is ''Elkton Oregon''. ''Elkton OR'' may also be used as the name of the viticultural area described in this section. For purposes of part 4 of this chapter, ''Elkton Oregon'' and ''Elkton OR'' are terms of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Elkton Oregon viticultural area are titled:

(1) Kellogg Quadrangle, Oregon-Douglas Co., Provisional Edition 1990;

(2) Old Blue Quadrangle, Oregon-Douglas Co., Provisional Edition 1990;

(3) Devils Graveyard Quadrangle, Oregon-Douglas Co., Provisional Edition 1990;

(4) Elkton Quadrangle, Oregon-Douglas Co., Provisional Edition 1990; and

(5) Yellow Butte, Oregon-Douglas Co., Provisional Edition 1987.

(c) *Boundary.* The Elkton Oregon viticultural area is located in Douglas County, Oregon. The boundary of the Elkton Oregon viticultural area is described as follows:

(1) The beginning point is on the Kellogg map at the intersection of the T23S/T24S and R7W/R8W common lines. From the beginning point, proceed northwest in a straight line, crossing onto the Old Blue map, to the eastern-most intersection of the T22S/T23S and R8W/R9W common lines; then

(2) Proceed north along the R8W/R9W common line onto the Devils Graveyard map, across the Umpqua River, to the intersection of the R8W/R9W common line with the 1,000-foot elevation line along the western boundary of section 30, T21S/R8W; then

(3) Proceed generally east along the meandering 1,000-elevation line, crossing over Patterson Creek, Weatherly Creek headwaters, Cedar Creek, and House Creek; continue following the 1,000-foot elevation line onto the Elkton map, back to the Devils Graveyard map, returning to the Elkton map, and then continuing generally east and southeast across Paradise Creek and Little Tom Folley Creek, to the intersection of the 1,000-foot elevation line with an unnamed, improved road in the southeast quadrant of section 4, T22S/R7W; then

(4) Proceed south-southwest along the unnamed, improved road to the intersection of that road with an unimproved logging road, approximately 1.65 miles due north of the Mile 5 marker on Elk Creek, section 9, T22S/R7W; then

(5) Proceed southeast in a straight line, passing through the southeast corner of section 9, T22S/R7W, to Elk Creek, section 15, T22S/R7W; then

(6) Proceed generally southeast (downstream) along Elk Creek to the State Route 38 bridge at BM 172, section 15, T22S/R7W; then

(7) Proceed south in a straight line to the intersection of the 1,000-foot elevation line and the section 22 south boundary line, T22S/R7W; then

(8) Proceed generally south, west, and then north along the meandering 1,000-foot elevation line, crossing first onto the Kellogg map, then crossing back and forth between the Kellogg map and the Yellow Butte map, returning to the Yellow Butte map to the intersection of the 1,000-foot elevation line with the R7W/R6W common line on Bell Ridge, along the section 1 east boundary line, T23S/R7W; then

(9) Proceed southeast in a straight line to the intersection of the line with the 1,000-foot elevation line and an unnamed, unimproved road, section 7, T23S/R6W; then

(10) Proceed south and west along the meandering 1,000-foot elevation, crossing back and forth between the Kellogg and Yellow Butte maps, and finally returning to the Kellogg map, to the intersection of the 1,000-foot elevation line with the T23S/T24S common line along the section 3 north boundary line, T24S/R7W; and then

(11) Proceed west along the T23S/T24S common line to the beginning point.

Dated: November 1, 2012.

John J. Manfreda,

Administrator.

Approved: November 29, 2012.

Timothy E. Skud,

Deputy Assistant Secretary, (Tax, Trade, and Tariff Policy).

[FR Doc. 2013–02468 Filed 2–4–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2012–0004; T.D. TTB–110; Re: Notice No. 129]

RIN 1513–AB46

Establishment of the Indiana Uplands Viticultural Area and Modification of the Ohio River Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final Rule; Treasury Decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 4,800-square mile ''Indiana Uplands'' viticultural area in south-central Indiana. TTB also modifies the boundary of the established 26,000-square mile Ohio River Valley viticultural area to eliminate a potential overlap with the Indiana Uplands viticultural area. The modification decreases the size of the Ohio River Valley viticultural area by approximately 1,530 square miles. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: Effective March 7, 2013.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated January 21, 2003, to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas and lists the approved American viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and a name and a delineated boundary as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of American viticultural areas. Such petitions must include the following:

- Evidence that the area within the proposed viticultural area boundary is nationally or locally known by the viticultural area name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed viticultural area;
- A narrative description of the features of the proposed viticultural area that affect viticulture, such as climate, geology, soils, physical features, and elevation, that make it distinctive and distinguish it from adjacent areas outside the proposed viticultural area boundary;
- A copy of the appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed viticultural area, with the boundary of the proposed viticultural area clearly drawn thereon; and
- A detailed narrative description of the proposed viticultural area boundary based on USGS map markings.

Indiana Uplands Petition

Jim Butler of Butler Winery in Bloomington, Indiana submitted a petition to establish the approximately 4,800-square mile Indiana Uplands viticultural area in south-central Indiana. The proposed Indiana Uplands viticultural area contains 19 vineyards with approximately 200 acres under cultivation, 2 planned vineyards of 15 to 20 acres each, and 17 wineries; the existing and planned vineyards are geographically distributed throughout the proposed viticultural area, according to a map submitted with the petition.

Spanning 110 miles north to south beginning at the line that separates Morgan and Monroe Counties, the proposed Indiana Uplands viticultural area extends south to the Ohio River at the Kentucky border. The proposed viticultural area extends approximately 63 miles east to west at its widest point, from Clark County to Martin County. Nineteen Indiana counties are located partially or totally within the proposed viticultural area: Monroe, Brown, Morgan, Owens, Greene, Lawrence, Bartholomew, Orange, Washington, Floyd, Harrison, Perry, Crawford, Jackson, Martin, Daviess, Dubois, Scott, and Spencer.

Proposed Modification of the Ohio River Valley Viticultural Area Boundary

TTB notes that approximately 1,530 square miles in the southern portion of the Indiana Uplands viticultural area as originally proposed in the petition overlapped the approximately 26,000-square mile Ohio River Valley viticultural area (27 CFR 9.78). The Ohio River Valley viticultural area encompasses the broad valley surrounding the Ohio River in Indiana, Kentucky, Ohio, and part of West Virginia; see T.D. ATF–144, published in the **Federal Register** (48 FR 40377) on September 7, 1983. Seven Indiana counties are partially or totally within the area overlapping the Ohio River Valley viticultural area: Washington, Clark, Floyd, Harrison, Perry, Crawford, Scott, and Spencer Counties.

The Indiana Uplands petition presents evidence that the geology, soils, topography, and climate of the overlapping portion of the proposed viticultural area are largely consistent with the rest of the proposed viticultural area and are distinctive when compared to the larger Ohio River Valley viticultural area. TTB concluded that the features of the portion of the proposed Indiana Uplands viticultural area that overlaps the Ohio River Valley viticultural area are sufficiently distinct from those within the Ohio River Valley viticultural area as to warrant proposing a boundary adjustment to eliminate the two areas' potential overlap.

In communications with TTB, the Indiana Uplands petitioner agreed that the distinguishing features of the larger Ohio River Valley viticultural area and the overlapping portion of the proposed Indiana Uplands viticultural area differ significantly, and he concluded that modifying the boundary of the Ohio River Valley viticultural area to exclude the overlapping region would be warranted if the proposed Indiana Uplands viticultural area were to be established. At TTB's request, the petitioner obtained letters from the owners of the 11 wineries and vineyards that would be affected by the proposed modification of the Ohio River Valley viticultural area, all of which indicate agreement by the owners with the proposed modification. In the letters, the vineyard owners also indicate their willingness to no longer to use ''Ohio River Valley'' as an appellation of origin for wine produced from their grapes if the boundary is modified.

Notice of Proposed Rulemaking and Comments Received

On June 8, 2012, TTB published Notice No. 129 in the **Federal Register** (77 FR 33985) proposing to establish the Indiana Uplands viticultural area and to modify the boundary of the existing Ohio River Valley viticultural area to eliminate any potential overlap of the two areas, as discussed above. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed Indiana Uplands viticultural area. The distinguishing features of the proposed viticultural area include geology, topography, climate, and soil. The notice included a comparison of the distinguishing features within the proposed viticultural area to the immediately surrounding areas. Notice No. 129 also included an overview of the Ohio River Valley viticultural area and a detailed discussion of the differences between the distinguishing features within the existing Ohio River Valley viticultural area and those of the proposed Indiana Uplands viticultural area. For a description of the evidence relating to the name, boundary, and distinguishing features of the proposed viticultural area, as well as overview of the Ohio River Valley viticultural area and the comparison of the distinguishing features of the two areas, see Notice No. 129.

In Notice No. 129, TTB solicited comments on the accuracy of the name, boundary, climatic, and other required information submitted in support of the establishment of the Indiana Uplands viticultural area. TTB also asked for comments on whether the geographical features of the proposed Indiana Uplands viticultural area are so distinguishable from the existing Ohio River Valley viticultural area that the boundary of the Ohio River Valley viticultural area should be modified to exclude the overlapping portion of the proposed viticultural area. In addition, TTB specifically asked for comments from industry members whose wine labels would potentially be affected by the proposed Ohio River Valley viticultural area boundary modification. The comment period closed on August 7, 2012.

During the comment period, TTB received 5 comments in response to Notice No. 129. All 5 comments are from growers and winery owners within the proposed viticultural area who support the proposed Indiana Uplands viticultural area and the proposed modification of the Ohio River Valley viticultural area boundary. TTB received no comments opposing either the establishment of the Indiana Uplands viticultural area as proposed or the proposed modification of the Ohio River Valley viticultural area boundary.

TTB Determination Regarding the Proposed Indiana Uplands Viticultural Area and Proposed Modification of the Ohio River Valley Viticultural Area

After careful review of the petition and the comments received in response to Notice No. 129, TTB finds that the evidence provided by the petitioner supports the establishment of the approximately 4,800-square mile Indiana Uplands viticultural area. TTB also finds that the evidence submitted supports the modification of the boundary of the established Ohio River viticultural area so that the Ohio River Valley viticultural area and the new established Indiana Uplands viticultural area will not overlap. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and part 4 of the TTB regulations, TTB establishes the ''Indiana Uplands'' viticultural area in Monroe, Brown, Morgan, Owens, Greene, Lawrence, Bartholomew, Orange, Washington, Floyd, Harrison, Perry, Crawford, Jackson, Martin, Daviess, Dubois, Scott, and Spencer Counties, Indiana. TTB also modifies the Ohio River Valley boundary as described in Notice No. 129. These changes are effective 30 days from the publication date of this document.

Boundary Description

In this final rule, TTB made minor editorial changes to clarify some of the language in the written boundary description for the Indiana Uplands viticultural area, but the boundary's location is not changed from that proposed in Notice No. 121. See the narrative boundary description of the Indiana Uplands viticultural area and the modification of the Ohio River Valley viticultural area boundary in the regulatory texts published at the end of this final rule.

Maps

The Indiana Uplands petitioner provided the required maps, and TTB lists them below in the regulatory text.

Impact on Current Wine Labels

General

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area, its name, ''Indiana Uplands,'' is recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the final regulation clarifies this point. Once this final rule becomes effective, wine bottlers using ''Indiana Uplands'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use ''Indiana Uplands'' as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term identified as being viticulturally significant in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with the viticultural area name or other viticulturally significant term and that name or term appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other viticulturally significant term appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Transition Period

Once this final rule to establish the Indiana Uplands viticultural area and to modify the boundary of the Ohio River Valley viticultural area becomes effective, a transition rule will apply to labels for wines produced from grapes grown in the approximately 1,530 square mile area that was formerly within the Ohio River Valley viticultural area. A label containing the words ''Ohio River Valley'' in the brand name or as an appellation of origin may be used on wine bottled within two years from the effective date of this final rule, provided that such label was approved prior to the effective date of this final rule and that the wine conforms to the standards for use of the label set forth in 27 CFR 4.25 or 4.39(i) in effect prior to the final rule. At the end of this two-year transition period, if a wine is no longer eligible for labeling with the Ohio River Valley viticultural area name (e.g., less than 85 percent of the wine is derived from grapes grown in the Ohio River Valley viticultural area, as modified in this final rule), then

a label containing the words ''Ohio River Valley'' in the brand name or as an appellation of origin would not be permitted on the bottle. TTB believes that the two-year period should provide affected label holders with adequate time to use up any existing labels. This transition period is described in the regulatory text for the Ohio River Valley viticultural area published at the end of this final rule. TTB notes that wine eligible for labeling with the Ohio River Valley viticultural area name under the new boundary of the Ohio River Valley viticultural area will not be affected by this two-year transition period.

Regulatory Flexibility Act

TTB certifies that this final regulation will not have a significant economic impact on a substantial number of small entities. The final regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows: Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend section 9.78 by:

■ a. Revising paragraph (c) introductory text and paragraphs (c)(5) and (6);

■ b. Redesignating paragraphs (c)(7) through (21) as paragraphs (c)(11) through (25); and

■ c. Adding new paragraphs (c)(7) through (10) and (d).

The revisions and additions read as follows:

§ 9.78 Ohio River Valley.

* * * * *

(c) *Boundary.* The Ohio River Valley viticultural area is located in portions of Indiana, Ohio, West Virginia, and Kentucky. The boundary description in paragraphs (c)(1) through (24) of this section includes for each point, in parentheses, the name of the map sheet(s) on which the point can be found.

* * * * *

(5) The boundary proceeds in a straight line southeasterly to the confluence of the Anderson River and the Ohio River at Troy, Indiana (Evansville map).

(6) The boundary proceeds along the Indiana shoreline of the Ohio River (Evansville and Vincennes maps) generally easterly to the mouth of French Creek in Franklin Township, Floyd County, Indiana (Louisville map).

(7) The boundary proceeds in a straight line northerly to the peak of Lost Knob, then continues in a straight line north-northeasterly through the peak of Bald Knob to the junction of State Route 111 and a road locally known as W. St. Joe Road at St. Joseph in New Albany Township, Floyd County, Indiana (Louisville map).

(8) The boundary then proceeds on State Route 111 northerly to State Route 60 at Bennettsville in Clark County, Indiana, then on State Route 60 westerly to Carwood, and then in a straight line northerly to the point where the Clark–Scott county line crosses Interstate 65 at Underwood, Indiana (Louisville map).

(9) The boundary proceeds in a straight line northwesterly to Leota in Scott County, Indiana (Louisville map).

(10) The boundary proceeds in a straight line northeasterly to the town of New Marion in Ripley County, Indiana (Cincinnati map).

* * * * *

(d) *Transition period.* A label containing the words ''Ohio River Valley'' in the brand name or as an appellation of origin approved prior to March 7, 2013 may be used on wine bottled before March 9, 2015, if the wine conforms to the standards for use of the label set forth in § 4.25 or § 4.39(i) of this chapter in effect prior to March 7, 2013.

■ 3. Subpart C is amended by adding § 9.228 to read as follows:

§ 9.228 Indiana Uplands.

(a) *Name.* The name of the viticultural area described in this section is ''Indiana Uplands''. For purposes of part 4 of this chapter, ''Indiana Uplands'' is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey 1:100,000-scale metric topographic maps used to determine the boundary of the Indiana Uplands viticultural area are titled:

(1) Tell City, Indiana—Kentucky, 1991;

(2) Jasper, Indiana—Kentucky, 1994;

(3) Bedford, Indiana, 1990;

(4) Bloomington, Indiana, 1986; Photoinspected 1988;

(5) Madison, Indiana—Kentucky, 1990; and

(6) Louisville, Kentucky—Indiana, 1986.

(c) *Boundary.* The Indiana Uplands viticultural area is located in south-central Indiana. The boundary of the Indiana Uplands viticultural area is described as follows:

(1) The beginning point is on the Tell City map at the confluence of the Anderson River and the Ohio River near Troy in Perry County. From the beginning point, proceed north-northwesterly in a straight line, crossing to the Jasper map, to the intersection of State Roads 62 and 162, approximately 3.5 miles north of Santa Claus; then

(2) Proceed north on State Road 162 to its intersection with U.S. Route 231 in Jasper; then

(3) Proceed north on U.S. Route 231, crossing to the Bedford map and the Bloomington map, to the intersection of U.S. Route 231 with the 180-meter contour line in Bloomfield, approximately 0.3 mile south of State Road 54; then

(4) From the west side of U.S. Route 231, proceed northerly along the meandering 180-meter contour line, and, after crossing the Owen-Greene county boundary line, continue northeasterly along the contour line to its intersection with the Monroe-Owen county boundary line approximately 1 mile south of the confluence of Big Creek and the White River; then

(5) Proceed north, then northeasterly, and then south along the Monroe-Owen county boundary line to its intersection with the 200-meter contour line, approximately 0.3 mile south of the White River; then

(6) Proceed easterly along the meandering 200-meter contour line to its intersection with State Road 135, south of Morgantown and approximately 0.8 mile north of the Morgan-Brown county boundary line; then

(7) Proceed south on State Road 135 to the Morgan-Brown county boundary line; then

(8) Proceed east along the Brown-Morgan country boundary line and then

Brown-Johnson county boundary line to its intersection with the Brown-Bartholomew county boundary line; then

(9) Proceed south-southeasterly in a straight line to the intersection of State Road 46 and a road locally known as N. County Club Road, approximately 1 mile north of Harrison Lake in western Bartholomew County; then

(10) Proceed south-southwesterly in a straight line to the intersection of State Road 58 and the Bartholomew-Jackson county boundary line; then

(11) Proceed east along the Bartholomew-Jackson county boundary line for approximately 0.4 mile to the county boundary line's first intersection with the meandering 200-meter contour line after crossing Buck Creek in northwestern Jackson County; then

(12) Proceed easterly then southwesterly along the meandering 200-meter contour line, crossing to the Bedford map, to the intersection of the contour line with U.S. Route 50; then

(13) Proceed east on U.S. Route 50 to its intersection with State Road 235; then

(14) Proceed south on State Road 235 to its intersection with the railroad tracks in Medora; then

(15) Proceed southwesterly along the railroad tracks to a point next to the intersection of two roads locally known as Sparksville Pike Road and Sparks Ferry Road (approximately 0.5 miles east Sparksville) and then proceed southeasterly less than 250 feet on Sparks Ferry Road to that road's bridge over the East Fork of the White River; then

(16) Proceed easterly along the East Fork of the White River and then the Muscatatuck River to the State Road 135 bridge over the Muscatatuck River at Millport; then

(17) Proceed easterly in a straight line to the confluence of the Cammie Thomas Ditch and the Muscatatuck River, located on the northern boundary of Washington County; then

(18) Proceed southeasterly in a straight line, crossing to the Madison map, to the intersection of two roads locally known as E. Pull Tight Road and N. Pumpkin Center East Road at Pumpkin Center in Gibson Township, Washington County; then

(19) Proceed due south in a straight line for approximately 4.5 miles to the line's intersection with a road locally known as E. Old State Road 56; then

(20) Proceed easterly and then northeasterly on E. Old State Road 56 to its intersection with a road locally known in Scott County as S. Bloomington Trail, and then continue southeasterly on S. Bloomington Trail to its intersection with a road locally known as W. Leota Road at Leota; then

(21) Proceed southeasterly in a straight line to the intersection of Interstate 65 and the Scott-Clark counties boundary line at Underwood; then

(22) Proceed south-southwesterly in a straight line, crossing to the Louisville map, to the intersection of State Road 60 and a road locally known as Carwood Road at Carwood in Clark County; then

(23) Proceed southeasterly on State Road 60 to its intersection with State Road 111 at Bennettsville; then

(24) Proceed southerly on State Road 111 for approximately 1.8 miles to its intersection with a road locally known as W. St. Joe Road at St. Joseph; then

(25) Proceed south-southwesterly in a straight line to the 266-meter elevation point on Bald Knob, then continue south-southwesterly in a straight line to the 276-meter elevation point on Lost Knob; then

(26) Proceed southerly in a straight line to the confluence of French Creek and the Ohio River in eastern Franklin Township, Floyd County; then

(27) Proceed (downstream) along the Indiana shoreline of the Ohio River, crossing back and forth between the Tell City and Jasper maps, returning to the beginning point.

Signed: November 1, 2012.

John J. Manfreda,

Administrator.

Approved: November 23, 2012.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2013–02454 Filed 2–4–13; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Parts 401, 402, 403, 404, 405, 406, 408, 409, 417, 451, 452, 453, 457, 458, and 459

Reorganization and Delegation of Authority; Technical Amendments

AGENCY: Office of Labor-Management Standards, Department of Labor.

ACTION: Final rule.

SUMMARY: This document makes a number of technical amendments to Chapter IV of the Department of Labor's regulations. These amendments are necessary because of the dissolution of the Employment Standards Administration (ESA), and because the Secretary's order of November 16, 2012, delegated authority and assigned responsibilities to the Director of the Office of Labor-Management Standards (OLMS) in administering the Department's responsibilities under the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) and under certain provisions relating to standards of conduct for federal sector labor organizations in the Civil Service Reform Act of 1978 (CSRA), the Foreign Service Act of 1980 (FSA), and the Congressional Accountability Act of 1995 (CAA). In addition, a separate order on November 16, 2012, delegated authority and assigned certain responsibilities in enforcement of the CSRA, LMRDA, and FSA, previously vested in ESA, to the Department's Administrative Review Board (ARB).

DATES: Effective February 5, 2013.

FOR FURTHER INFORMATION CONTACT: Andrew R. Davis, Chief of the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5609, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–0123 (this is not a toll-free number), (800) 877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

The amendments to 29 CFR Chapter IV reflect changes required as a result of a reorganization within the Department of Labor. OLMS had been a component of ESA, which was dissolved on November 8, 2009. The former ESA had been headed by an Assistant Secretary for Employment Standards, and, as a subagency of ESA, OLMS had been headed by a Deputy Assistant Secretary. Under the reorganization, OLMS was established as a separate agency headed by a Director, and most Department of Labor responsibilities for the LMRDA, CSRA, CAA, and FSA standards of conduct provisions had been assigned to the Director of OLMS under Secretary's Order No. 8–2009, 74 FR 58835 (November 13, 2009). Secretary's Order No. 8–2009 was cancelled and superseded by two delegations, Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012, continuing the delegation of most of the responsibilities to the Director of OLMS and Secretary's Order No. 02–2012, 77 FR 69378, November 16, 2012, delegating appellate authority of Administrative Law Judge (ALJ) decisions under 29 CFR Parts 458 and 417 to the ARB.

Pursuant to the CSRA, CAA, and FSA enforcement provisions (29 CFR part

458), when OLMS investigates a complaint or otherwise determines that a violation of the Standards of Conduct has occurred and cannot be settled through voluntary compliance, OLMS will file an administrative complaint with the Department of Labor Office of Administrative Law Judges. With OLMS' assistance, the Solicitor of Labor prosecutes these enforcement actions before an ALJ. In accordance with the Department's regulations, the ALJ issues a recommended decision and order, which is subject to appeal by filing exceptions. While ESA existed, appeals of a recommended decision and order were filed with the Assistant Secretary for Employment Standards. After consideration of these exceptions, the Assistant Secretary would issue a decision. In Secretary's Order No. 02–2012, 77 FR 69378, these exceptions are to be filed with the ARB, which will issue a decision. The role of the ARB is to issue final agency decisions for the Secretary of Labor in cases arising under a wide range of the Department's laws. ARB cases generally arise upon an appeal from a recommended decision by an ALJ. Reassignment of this appellate authority is consistent with the Department of Labor's current administrative enforcement framework.

Further, Secretary's Order No. 02–2012, 77 FR 69378, also delegated authority to the ARB to review ALJ decisions involving the adequacy of local labor union's officer removal procedures under section 401(h) of the LMRDA. 29 U.S.C. 481(h). The officer removal enforcement procedures are set forth at 29 CFR Part 417, and these regulations previously required that OLMS challenge the adequacy of local labor union's officer removal procedures in the context of an administrative hearing before an ALJ. The ALJ will issue an initial decision, which is subject to appeal by filing exceptions. While ESA existed, appeals of an initial decision were filed with the Assistant Secretary for Employment Standards. For the reasons explained in the previous paragraph, in Secretary's Order No. 02–2012, 77 FR 69378, these exceptions are to be filed with the ARB, which will issue a decision.

Generally, the amendments made by this rule implement the designation of authorities, consistent with the Department's restructuring in Secretary's Order No. 8–2009, as superseded by Secretary's Order No. 03–2012, 77 FR 69376, and Secretary's Order No. 02–2012, 77 FR 69378. Secretary's Order No. 03–2012, 77 FR 69376, assigns authorities and responsibilities to the Director of OLMS, including those previously vested in the Assistant Secretary for Employment Standards in Part 417 (provisions for the removal of local labor organization officers) and Part 458 (standards of conduct for Federal sector labor organizations governed by the CSRA, the FSA, and the CAA). Secretary's Order No. 02–2012, 77 FR 69378, assigns authorities and responsibilities under Part 417 and Part 458, which previously were delegated to the Assistant Secretary for Employment Standards, to the ARB. The changes made by this rule simply reflect this administrative reorganization and do not change any substantive rule governing administration of these statutes.

II. Summary of the Rule

The regulations specified in this rule have been revised to remove references to the ''Assistant Secretary'' (of the now-dissolved ESA). In some sections, the title ''Assistant Secretary'' is replaced with ''Director,'' to reflect the delegation of authority and assignment of responsibilities to the Director of OLMS. In other sections, ''Assistant Secretary'' is replaced with ''Secretary'' to clarify the Secretary's general authority to prescribe the LMRDA reporting requirements set forth in Parts 401 through 405. Further, in some sections, ''Assistant Secretary'' is replaced with ''Administrative Review Board,'' to reflect the delegation of authority and assignment of responsibilities to the ARB. Additionally, the regulations have been amended to remove references and cross-references to the now-dissolved ESA, as well as to replace the OMB control number previously assigned to ESA forms (1215–0188) with the new OLMS control number (1245–0003).

In every section that has been amended, the authority citations have also been amended by adding either ''Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012'' or ''Secretary's Order No. 02–2012, 77 FR 69378, November 16, 2012'' and by removing previous Secretary's Orders that they supersede. Additionally, the authority citation for Part 403 was amended by removing several incorrect references and adding accurate references.

III. Authority

The legal authority for this rulemaking is set forth in (1) the Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 *et seq.;* (2) the provisions relating to standards of conduct for federal sector labor organizations in the Civil Service Reform Act of 1978, 5 U.S.C. 7120, the Foreign Service Act of 1980, 22 U.S.C. 4117, and the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1). The Secretary has delegated her authority under the above-referenced statutes to either the Director of the Office of Labor-Management Standards or the ARB and permits re-delegation of such authority. *See* Secretary's Order No. 03–2012, 77 FR 69376, and Secretary's Order No. 02–2012, 77 FR 69378.

IV. Rulemaking Analyses

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (APA) exempts ''rules of agency organization, procedure, or practice'' from proposed rulemaking (*i.e.,* notice-and-comment rulemaking). 5 U.S.C. 553(b)(A). This exemption covers matters such as agency rules of practice governing the conduct of proceedings and rules delegating authority or duties within an agency. Rules are also exempt when an agency finds ''good cause'' that notice and comment rulemaking procedures would be ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). An agency may similarly make the rule effective upon publication when it determines that delaying the effective date of the rule for 30 days following its publication, as normally required by 5 U.S.C. 553, is unnecessary and that good cause exists to make the rule effective immediately. 5 U.S.C. 553(d).

The Department has determined that this rulemaking meets the notice-and-comment exemption requirements because this regulation pertains solely to technical amendments required due to an administrative reorganization, and does not change any substantive rule governing administration of the LMRDA, CSRA, CAA, or FSA. The revisions to 29 CFR Chapter IV reflect a change in the title of a government officer, the deletion of references to an agency that has been dissolved, and address the delegation of authority necessitated by the dissolution of ESA. Furthermore, the Department finds that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication since this rule is technical and nonsubstantive, and merely reflects agency organization, practice and procedure. Therefore, these technical amendments shall be effective upon publication in the **Federal Register**. 5 U.S.C. 553(d)(3).

Regulatory Flexibility Act

Because the Department has concluded that this action is not subject

to the Administrative Procedure Act's proposed rulemaking requirements, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Executive Orders 12866 and 13563

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

This action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget under Executive Orders 12866 or 13563.

Unfunded Mandates Reform

This proposed rule will not include any Federal mandate that may result in increased expenditures by State, local, and tribal governments, in the aggregate, of $100 million or more, or in increased expenditures by the private sector of $100 million or more.

Paperwork Reduction Act

This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Executive Order 13132 (Federalism)

The Department has reviewed this rulemaking in accordance with Executive Order 13132 regarding federalism, and has determined that the proposed rule does not have federalism implications. The 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.''

Small Business Regulatory Enforcement Fairness Act of 1996

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

List of Subjects

29 CFR Parts 401, 417, 451, and 452

Labor unions.

29 CFR Parts 402, 403, and 404

Labor unions, Labor union officers and employees, Reporting and recordkeeping requirements.

29 CFR Parts 405 and 406

Labor management relations, Reporting and recordkeeping requirements.

29 CFR Part 408

Labor unions, Reporting and recordkeeping requirements.

29 CFR Part 409

Insurance companies, Reporting and recordkeeping requirements.

29 CFR Part 453

Labor unions, Surety bonds.

29 CFR Parts 457, 458, and 459

Labor unions, Reporting and recordkeeping requirements, Administrative practice and procedure.

For the reasons provided above, the Department of Labor amends Chapter IV of Title 29 of the Code of Federal Regulations as set forth below:

Chapter IV—Office of Labor-Management Standards, Department of Labor

Subchapter A—Labor-Management Standards

PART 401—MEANING OF TERMS USED IN THIS SUBCHAPTER

■ 1. The authority citation for Part 401 is revised to read as follows:

Authority: Secs. 3, 208, 301, 401, 402, 73 Stat. 520, 529, 530, 532, 534 (29 U.S.C. 402, 438, 461, 481, 482); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; § 401.4 also issued under sec. 320 of Title III of the Bankruptcy Reform Act of 1978, Pub. L. 95–598, 92 Stat. 2678.

§ 401.18 [Amended]

■ 2. Section 401.18 is amended by removing ''Employment Standards Administration''.

■ 3. Section 401.19 is is revised to read as follows:

§ 401.19 Director.

''Director'' means the Director of the Office of Labor-Management Standards, head of the Office of Labor-Management Standards.

PART 402—LABOR ORGANIZATION INFORMATION REPORTS

■ 4. The authority citation for Part 402 is revised to read as follows:

Authority: Secs. 201, 207, 208, 73 Stat. 524, 529 (29 U.S.C. 431, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 402.2 [Amended]

■ 5. Section 402.2 is amended by revising the term ''Assistant Secretary'' to read ''Secretary'' in the first sentence.

§ 402.13 [Amended]

■ 6. Section 402.13 is revised by removing OMB control number 1215–0188 and adding, in its place, OMB control number 1245–0003.

PART 403—LABOR ORGANIZATION ANNUAL FINANCIAL REPORTS

■ 7. The authority citation for Part 403 is revised to read as follows:

Authority: Secs. 201, 207, 208, 301, 73 Stat. 524, 529, 530 (29 U.S.C. 431, 437, 438, 461); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 403.2 [Amended]

■ 8. In § 403.2, paragraph (b) is amended by removing the two references to ''Assistant Secretary'' and adding in their place the word ''Secretary''.

§ 403.11 [Amended]

■ 9. Section 403.11 is amended by removing OMB control number 1215–0188 and adding in its place OMB control number 1245–0003.

PART 404—LABOR ORGANIZATION OFFICER AND EMPLOYEE REPORTS

■ 10. The authority citation for Part 404 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 404.2 [Amended]

■ 11. Section 404.2 is amended by removing the reference to ''Assistant Secretary'' and adding in its place the word ''Secretary''.

§ 404.9 [Amended]

■ 12. Section 404.9 is amended by removing OMB control number 1215–0188 and adding, in its place, OMB control number 1245–0003.

PART 405—EMPLOYER REPORTS

■ 13. The authority citation for Part 405 is revised to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 405.2 [Amended]

■ 14. Section 405.2 is amended by removing the reference to ''Assistant Secretary'' and adding, in its place, the word ''Secretary''.

§ 405.11 [Amended]

■ 15. Section 405.11 is amended by removing OMB control number 1215–0188 and adding, in its place, OMB control number 1245–0003.

PART 406—REPORTING BY LABOR RELATIONS CONSULTANTS AND OTHER PERSONS, CERTAIN AGREEMENTS WITH EMPLOYERS

■ 16. The authority citation for Part 406 is revised to read as follows:

Authority: Secs. 203, 207, 208, 73 Stat. 526, 529 (29 U.S.C. 433, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 406.10 [Amended]

■ 17. Section 406.10 is amended by removing OMB control number 1215–0188 and adding, in its place, OMB control number 1245–0003.

PART 408—LABOR ORGANIZATION TRUSTEESHIP REPORTS

■ 18. The authority citation for Part 408 is revised to read as follows:

Authority: Secs. 202, 207, 208, 73 Stat. 525, 529 (29 U.S.C. 432, 437, 438); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 408.13 [Amended]

■ 19. Section 408.13 is amended by removing OMB control number 1215–0188 and adding, in its place, OMB control number 1245–0003.

PART 409—REPORTS BY SURETY COMPANIES

■ 20. The authority citation for Part 409 is revised to read as follows:

Authority: Secs. 207, 208, 211; 79 Stat. 888; 88 Stat. 852 (29 U.S.C. 437, 438, 441); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 409.7 [Amended]

■ 21. Section 409.7 is amended by removing OMB control number 1215–0188 and adding, in its place, OMB control number 1245–0003.

PART 417—PROCEDURE FOR REMOVAL OF LOCAL LABOR ORGANIZATION OFFICERS

■ 22. The authority citation for Part 417 is revised to read as follows:

Authority: Secs. 401, 402, 73 Stat. 533, 534 (29 U.S.C. 481, 482); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 02–2012, 77 FR 69378, November 16, 2012.

§ 417.2 [Amended]

■ 23. Section 417.2 is amended by removing the reference to ''Employment Standards Administration'' in paragraph (a).

§ 417.4 [Amended]

■ 24. Section 417.4 is amended by removing the references to ''Assistant Secretary'' and adding in their place the term ''Director'' in paragraphs (b)(1)(ii) and (b)(2).

§ 417.6 [Amended]

■ 25. Section 417.6 is amended by removing the four references to ''Assistant Secretary'' and adding in their place the term ''Director'' in the undesignated paragraph following paragraph (m).

§ 417.7 [Amended]

■ 26. Section 417.7 is amended by removing the reference to ''Assistant Secretary'' and adding in its place the term ''Director''.

§ 417.9 [Amended]

■ 27. Section 417.9 is amended by removing the reference to ''Assistant Secretary'' and adding in its place the term ''Director'' in paragraph (c).

§ 417.13 [Amended]

■ 28. Section 417.13 is amended by removing the reference to ''Assistant Secretary'' and adding in its place ''Administrative Review Board.''

§ 417.14 [Amended]

■ 29. Section 417.14(a) and (b) is amended by removing the references to ''Assistant Secretary'' and adding in their place ''Administrative Review Board'' in the heading, and in six places in the text.

§ 417.15 [Amended]

■ 30. Section 417.15 is amended by removing the references to ''Assistant Secretary'' and adding in their place ''Administrative Review Board'' in the heading, and in one place in the text.

§ 417.16 [Amended]

■ 31. Section 417.16(a) is amended by removing reference to ''Assistant Secretary'' and adding in its place ''Administrative Review Board'' in one place in the text.

§ 417.17 [Amended]

■ 32. Section 417.17 is amended by removing the reference to ''Assistant Secretary'' and adding in its place the term ''Director''.

§ 417.19 [Amended]

■ 33. Section 417.19 is amended by removing the reference to ''Assistant Secretary's'' in the heading and the third sentence and adding in its place the term ''Director's'' and removing ''Assistant Secretary'' in the first sentence and adding in its place ''Director''.

§ 417.21 [Amended]

■ 34. Section 417.21 is amended by removing the two references to ''Assistant Secretary'' and adding in its place the term ''Director''.

§ 417.23 [Amended]

■ 35. Section 417.23 is amended by removing the reference to ''Assistant Secretary'' in the section heading and the first sentence and adding in their place the term ''Director'' and removing the reference to ''Assistant Secretary's'' in the first sentence and adding in its place ''Director's''.

§ 417.24 [Amended]

■ 36. Section 417.24 is amended by removing the references to ''Assistant Secretary'' in the section heading and paragraphs (a) and (b) and adding in their place the term ''Director'' and removing the reference to ''Assistant Secretary's'' in the first sentence of paragraph (a) and adding in its place the term ''Director's''.

§ 417.25 [Amended]

■ 37. Section 417.25 is amended by removing the reference to ''Assistant Secretary'' and adding in its place the term ''Director'' and removing the reference to ''Assistant Secretary's'' and adding in its place the term ''Director's''.

PART 451—LABOR ORGANIZATIONS AS DEFINED IN THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

■ 38. The authority citation for Part 451 is revised to read as follows:

Authority: Secs. 3, 208, 401, 73 Stat. 520, 529, 532 (29 U.S.C. 402, 438, 481); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 451.1 [Amended]

■ 39. Section 451.1(c) is amended by removing the five references to ''Assistant Secretary'' and adding in their place, the word ''Director''.

PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

■ 40. The authority citation for Part 452 is revised to read as follows:

Authority: Secs. 401, 402, 73 Stat. 532, 534 (29 U.S.C. 481, 482); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 452.1 [Amended]

■ 41. Section 452.1(b) is amended by removing the four references to ''Assistant Secretary'' and adding in their place, the word ''Director''.

§ 452.6 [Amended]

■ 42. Section 452.6 is amended by removing the reference to ''Assistant Secretary'' and adding, in its place, the word ''Director''.

PART 453—GENERAL STATEMENT CONCERNING THE BONDING REQUIREMENTS OF THE LABOR–MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

■ 43. The authority citation for Part 453 is revised to read as follows:

Authority: Sec. 502, 73 Stat. 536; 79 Stat. 888 (29 U.S.C. 502); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 453.1 [Amended]

■ 44. Section 453.1 is amended by removing the reference to ''Assistant Secretary'' and adding, in their place, the word ''Director'' in paragraph (a) and the four references in paragraph (b).

Subchapter B—Standards of Conduct

PART 457—GENERAL

■ 45. The authority citation for Part 457 is revised to read as follows:

Authority: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 02–2012, 77 FR 69378, November 16, 2012.

§ 457.1 [Amended]

■ 46. Section 457.1 is amended by removing the reference to ''Assistant Secretary'' and adding, in its place, the word ''Director''.

§ 457.13 [Amended]

■ 47. Section 457.13 is revised to as follows:

§ 457.13 Director.

Director means the Director of the Office of Labor-Management Standards, head of the Office of Labor-Management Standards.[2]

[2] Pursuant to Secretary of Labor's Orders No. 02–2012, 77 FR 69378 (November 16, 2012), and 03–2012, 77 FR 69376 (November 16, 2012), the Director of the Office of Labor-Management Standards has certain responsibilities and authority for implementing the standards of conduct provisions of the CSRA and the FSA.

■ 48. Section 457.15 is revised to read as follows:

§ 457.15 District Director.

District Director means the Director of a district office within the Office of Labor-Management Standards.

■ 49. Section 457.16 is revised to read as follows:

§ 457.16 Chief, DOE.

Chief, DOE means the Chief of the Division of Enforcement within the Office of Labor-Management Standards.

§ 457.19 [Amended]

■ 50. Section 457.19(c) is amended by removing the reference to ''Assistant Secretary'' and adding, in its place, the word ''Director''.

§ 457.20 [Amended]

■ 51. Section 457.20 is amended by removing the reference to ''Assistant Secretary'' and adding, in its place, the word ''Director''.

PART 458—STANDARDS OF CONDUCT

■ 52. The authority citation for Part 458 is revised to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012; Secretary's Order No. 02–2012, 77 FR 69378, November 16, 2012.

§ 458.1 [Amended]

■ 53. Section 458.1 is amended by removing the reference to ''Assistant Secretary'' and adding, in its place, the word ''Director''.

§ 458.4 [Amended]

■ 54. Section 458.4(c) is amended by removing the following parenthetical text: ''(available on the OLMS Web site at http://*www.dol.gov/esa/regs/compliance/olms/CSRAFactSheet.pdf* for the pdf version and *http://www.dol.gov/esa/regs/compliance/olms/CSRA* FactSheet.htm for the html version),'' and adding in its place, ''(available on the OLMS Web site at *http://www.dol.gov/olms*.)''

§ 458.35 [Amended]

■ 55. Section 458.35 is amended by removing the reference to ''Assistant Secretary,'' and adding in their place, the term ''Director''.

§ 458.36 [Amended]

■ 56. Section 458.36 is amended by removing the two references to ''Assistant Secretary,'' and adding in their place, the term ''Director''.

§ 458.59 [Amended]

■ 57. Section 458.59 is amended by removing the two references to ''Assistant Secretary,'' and adding in their place, the term ''Director''.

§ 458.64 [Amended]

■ 58. Section 458.64 is amended by removing the reference to ''Assistant Secretary,'' and adding in their place, the term ''Director'' in paragraph (c).

§ 458.65 [Amended]

■ 59. Section 458.65 is amended by removing the references to ''Assistant Secretary,'' and adding in their place, the term ''Director'' in paragraphs (b) and (c).

§ 458.66 [Amended]

■ 60. Section 458.66 is amended by removing the references to ''Assistant Secretary,'' and adding in their place, the term ''Director'' in paragraph (c).

§ 458.70 [Amended]

■ 61. Section 458.70 is amended by removing the two references to ''Assistant Secretary'' and adding in their place, ''Administrative Review Board''.

§ 458.72 [Amended]

■ 62. Section 458.72 is amended by removing the reference to ''Assistant Secretary'' and adding in their place, ''Administrative Review Board'' in paragraph (b).

§ 458.76 [Amended]

■ 63. Section 458.76 is amended by removing the reference to ''Assistant Secretary'' and adding in their place, ''Administrative Review Board'' in the introductory text.

§ 458.81 [Amended]

■ 64. Section 458.81 is amended by removing the two references to ''Assistant Secretary'' and adding in

their place, ''Administrative Review Board'' in paragraph (b).

§ 458.82 [Amended]

■ 65. Section 458.82 is amended by removing the three references to ''Assistant Secretary'' and adding in their place, ''Administrative Review Board''.

§ 458.88 [Amended]

■ 66. Section 458.88 is amended by removing the references in the section heading and paragraphs (b) and (c) to ''Assistant Secretary'' and adding in their place, ''Administrative Review Board''.

§ 458.90 [Amended]

■ 67. Section 458.90 is amended by removing the reference to ''Assistant Secretary'' and adding in their place, ''Administrative Review Board'' in paragraph (b).

§ 458.91 [Amended]

■ 68. Section 458.91 is revised to read as follows:

§ 458.91 Action by the Administrative Review Board.

(a) After consideration of the Administrative Law Judge's recommended decision and order, the record, and any exceptions filed, the Administrative Review Board shall issue its decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however,* That unless exceptions are filed which are timely and in accordance with § 458.89, the Administrative Review Board may, at its discretion, adopt without discussion the recommended decision and order of the Administrative Law Judge, as contained in his recommended decision and order, shall, upon appropriate notice to the parties, automatically become the decision of the Administrative Review Board.

(b) Upon finding a violation of the CSRA, FSA or this part, the Administrative Review Board may order respondent to cease and desist from such violative conduct and may require the respondent to take such affirmative action as it deems appropriate to effectuate the policies of the CSRA or FSA.

(c) Upon finding no violation of the CSRA, FSA or this part, the Administrative Review Board shall dismiss the complaint.

■ 69. Section 458.92 is revised to read as follows:

§ 458.92 Compliance with decisions and orders of the Administrative Review Board.

When remedial action is ordered, the respondent shall report to the Director, within a specified period, that the required remedial action has been effected. When the Director finds that the required remedial action has not been effected, he shall refer the matter for appropriate action to the Federal Labor Relations Authority (in the case of labor organizations covered by the CSRA), the Foreign Service Labor Relations Board (in the case of labor organizations covered by the FSA), or the Board of Directors of the Office of Compliance (in the case of labor organizations covered by the Congressional Accountability Act).

■ 70. Section 458.93 is revised to read as follows:

§ 458.93 Stay of remedial action.

In cases involving violations of this part, the Administrative Review Board may direct, subject to such conditions at it deems appropriate, that the remedial action ordered by stayed.

PART 459—MISCELLANEOUS

■ 71. The authority citation for Part 459 is revised to read as follows:

Authority: 5 U.S.C. 7120, 7134; 22 U.S.C. 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

§ 459.1 [Amended]

■ 72. Section 459.1 is amended by removing the reference to ''Assistant Secretary,'' and adding in their place, the word ''Director''.

§ 459.4 [Amended]

■ 73. Section 459.4 is amended by removing the reference to ''Assistant Secretary,'' and adding in their place, the word ''Director'' in paragraph (b).

§ 459.5 [Amended]

■ 74. Section 459.5 is amended by removing the reference to ''Assistant Secretary,'' and adding in their place, the word ''Director'' in paragraph (b).

Subchapter D—Notification of Employee Rights Under Federal Labor Laws

PART 471—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTIFICATION OF EMPLOYEE RIGHTS UNDER FEDERAL LABOR LAWS

■ 75. The authority citation for Part 471 is revised to read as follows:

Authority: 40 U.S.C. 101 *et seq.;* Executive Order 13496, 74 FR 6107, February 4, 2009; Secretary's Order No. 7–2009, 74 FR 58834, November 13, 2009; Secretary's Order No. 03–2012, 77 FR 69376, November 16, 2012.

Signed in Washington, DC, this 26th day of November, 2012.

John Lund,

Director, Office of Labor-Management Standards.

[FR Doc. 2013–01020 Filed 2–4–13; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0900]

RIN 1625–AA00

Safety Zone, Coast Guard Exercise Area, Hood Canal, Washington

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The U.S. Coast Guard is establishing a safety zone around vessels involved in Coast Guard training exercises in Hood Canal, WA. This is necessary to ensure the safety of the maritime public during these exercises, which involve fast moving surface vessels, smoke machines, pyrotechnics, and other elements which could create safety concerns for waterway users. This safety zone ensures the safety of the maritime public by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port (COTP) or a Designated Representative.

DATES: This rule is effective March 7, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0900]. 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 ENS Nathaniel P. Clinger, Waterways Management Division, Coast Guard Sector Puget Sound, U.S. Coast

Guard; telephone (206) 217–6045, email *SectorPugetSoundWWM@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 published a NPRM, Safety Zone, Coast Guard Exercise Area, Hood Canal, Washington, on October 5, 2012. The Coast Guard received zero comments submitted via regulations.gov and received zero requests for public meeting. However, on November 4, 2012, pursuant to a request by the Port Gamble S'Klallam Tribe, the Coast Guard held a consultation meeting with the Tribe to discuss this rule. Details of that meeting are contained in a separate document which has been placed in the docket for this rulemaking.

We also note that temporary final rules have been established and published for previous Coast Guard exercises of this type in the Hood Canal on October 28, 2011, May 08, 2012, and on September 26, 2012. No negative comments or complaints were received pertaining to these rules.

B. Basis and Purpose

The Coast Guard utilizes the northern part of the Hood Canal, WA to conduct training exercises. During these exercises, tactical vessels are maneuvering through the Hood Canal from the entrance of Dabob Bay to Foul Weather Bluff. These exercises include fast moving surface vessels, smoke machines, and pyrotechnics. Blank ammunition, flares and LA51 warning munitions may be used during these exercises. This safety zone is necessary to ensure the safety of the maritime public and vessels participating in these exercises. It prevents collisions between vessels in the exercise and the maritime public by keeping the maritime public a safe distance away from potentially startling or disorienting smoke, bright flashes, and loud noises.

C. Discussion of Comments, Changes and the Final Rule

The safety zone established by this rule prohibits any person or vessel from entering or remaining within 500 yards of any vessel involved in Coast Guard training exercises in the northern area of Hood Canal, WA. Members of the maritime public will be able to identify participating vessels as those flying the Coast Guard Ensign. The COTP may also be assisted in the enforcement of the zone by other federal, state, or local agencies. Notification may also include but is not limited to, Broadcast Notice to Mariners or Local Notice to Mariners.

We did not receive any public comments or requests for public meetings during the comment period. However, the Coast Guard did meet with the Port Gamble S'Klallam Tribe at their request. In response to the issues raised at that meeting, the Coast Guard is increasing the notification period for enforcement of the rule from 10 days to 45 days. Additionally, in order to clarify certain aspects of the rule, the Coast Guard has added some definitions to the regulatory text.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the safety zone will be in place for a limited period of time and vessel traffic will be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zone from the COTP, Puget Sound or a Designated Representative.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: the owners and operators of vessels intending to operate in the waters covered by the safety zone while it is in effect. This rule would not have a significant economic impact on a substantial number of small entities because the safety zone would be in place for limited periods of time and maritime traffic would still be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zone from the COTP, Puget Sound or a Designated Representative.

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 rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. However, we note that the Coast Guard did consult with the Port Gamble S'Klallam Tribe at their request during the rulemaking process, and considered their input when devising this final rule.

12. Energy Effects

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

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone. 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 record keeping 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. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.1339 to read as follows:

§ 165.1339 Safety Zone; Coast Guard Exercise Area, Hood Canal, Washington.

(a) *Location.* The following area is a safety zone: All waters encompassed within 500 yards of any vessel that is involved in a Coast Guard training exercise while such vessel is transiting Hood Canal, WA between Foul Weather Bluff and the entrance to Dabob Bay. Vessels involved will be various sizes and can be identified as those flying the Coast Guard Ensign.

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this rule unless authorized by the Captain of the Port or a Designated Representative. See 33 CFR Part 165, Subpart C, for additional information and requirements. Vessel operators wishing to enter the zone during the enforcement period must request permission for entry by contacting the on-scene patrol commander on VHF channel 13 or 16, or the Sector Puget Sound Joint Harbor Operations Center at (206) 217–6001.

(c) *Definition.* Training exercises are defined as full scale exercises that are significant in nature and involve multiple units and vessels. This safety zone will not be utilized by operations and training which is conducted daily or is routine in nature.

(d) *Enforcement period.* The safety zone described in paragraph (a) of this section would be enforced by the Captain of the Port only upon notice. Notice of enforcement by the Captain of the Port will be provided 45 days prior to execution of the exercise by all appropriate means, in accordance with 33 CFR 165.7(a). Such means will include publication in the **Federal Register**, and may also include Broadcast Notice to Mariners, Local Notice to Mariners, or both.

Dated: *January 22, 2013.*

S.J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2013–02431 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 13–13]

Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule; interpretation.

SUMMARY: In this document, the Commission adopts a final interpretive rule modification to clarify its Telecommunications Relay Service (TRS) payment rule to explicitly provide that the Interstate TRS Fund (Fund or TRS Fund) administrator shall not be obligated to pay any request for compensation until it has been established as compensable. The Commission's action is intended preserve the integrity and viability of the TRS Fund by ensuring that obligations are not incurred prior to the Fund administrator or the Commission has determined that requests for payment are compensable. Because this is an interpretive rule modification, it is not subject to notice and comment procedures.

DATES: Effective March 7, 2013.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email *Eliot.Greenwald@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, document FCC 13–13, adopted on January 24, 2013 and released on January 25, 2013, in CG Docket Nos. 13–24 and 03–123. In document FCC 13–13, the Commission also adopted an Interim Rule and a Notice of Proposed Rulemaking, each of which is summarized in a separate **Federal Register** publication. The full text of document FCC 13–13 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* Document FCC 13–13 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro/trs.html#orders.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 13–13, final rule, does not contain new or modified 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).

Synopsis

1. In document FCC 13–13, the Commission reminds TRS providers that, under existing law, they are not entitled to collect payment from the TRS Fund for service that does not constitute compensable TRS under the statute and our rules. TRS is defined as ''telephone transmission services that provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio.'' 47 U.S.C. 225(a)(3). Payments to TRS providers are based on total monthly TRS minutes of use. §§ 64.601(a)(21), 64.604(c)(5)(iii)(E) of the Commission's rules. *See also Publix Network Corp.; Customer Attendants, LLC; Revenue Controls Corp.; Revenue Controls Corp.; SignTel, Inc.; and Focus Group, LLC,* Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 11487, 11495, paragraph 19 (2002) (*Publix*).

2. Thus, service to a user who is not ''deaf, hard of hearing, deaf-blind, or who [does not have] a speech disability,'' or service that otherwise does not meet the requirements in the Commission's rules and orders, does not qualify for reimbursement from the TRS Fund. Therefore, the Commission may, for example, request providers to submit to the Commission a description of the reasonable practices they are using to ensure that they are not requesting payment from the TRS Fund for service that does not constitute compensable TRS. Providers whose submissions do not adequately establish that they are requesting compensation only for service to eligible users may be denied compensation for IP CTS minutes.

3. To address any possible ambiguity in the Commission's existing rules as to when TRS providers are entitled to compensation, the Commission amends § 64.604(c)(5)(iii)(E) of its rules (governing payments to TRS providers) to clarify that the Fund administrator shall not be obligated to pay any request for compensation until it has been established as compensable. A request will be established as compensable only after the administrator or the Commission determines that the provider has met its burden to demonstrate that the claim is properly compensable under these rules and the procedures established by the administrator in consultation with the Commission. The Commission clarifies that any request for compensation for which payment has been suspended or withheld in accordance with 47 CFR 64.604(c)(5)(iii)(L) will not be considered compensable until the administrator, in consultation with the Commission, or the Commission on its own makes a final determination that the request is compensable in accordance with that provision. Because this revision to § 64.604 of the Commission's rules does not impose new substantive rules but rather clarifies existing rules, it constitutes an interpretive rule for which the Commission need not provide prior notice and obtain public comment. *See* 5 U.S.C. 553(b)(A). *See also Syncor Intern. Corp.* v. *Shalala,* 127 F.3d 90, 94 (DC Cir. 1997) (''an interpretive rule can construe an agency's substantive regulation as well as a statute'').

Final Regulatory Flexibility Analysis

4. The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3).

A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

5. In document FCC 13–13, to preserve the integrity and viability of the TRS Fund by ensuring that obligations are not incurred prior to the Fund administrator or the Commission has determined that requests for payment are compensable, the Commission adopts a final rule amending § 64.604(c)(5)(iii)(E) of its rules (governing payments to TRS providers) to clarify that the TRS Fund administrator shall not be obligated to pay any request for compensation until it has been established as compensable. As a result, a request will be established as compensable only after the administrator or the Commission determines that the provider has met its burden to demonstrate that the claim is properly compensable under the rules and the procedures established by the administrator in consultation with the Commission. Because this revision to § 64.604 of the Commission's rules does not impose new substantive rules but rather clarifies existing rules, it constitutes an interpretive rule for which the Commission need not provide prior notice and obtain public comment. *See* 5 U.S.C. 553(b)(A). *See also Syncor Intern. Corp.* v. *Shalala,* 127 F.3d 90, 94 (DC Cir. 1997) (''an interpretive rule can construe an agency's substantive regulation as well as a statute'').

6. With regard to the criterion of the economic impact of document FCC 13–13, the Commission concludes that IP CTS providers fit within the business classification of Wired Telecommunications Carriers. *See* NAICS Code 517110 (2007). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110 (2007). Collectively, there are four IP CTS providers that are authorized by the Commission to offer these services. Only one of these entities is a small business under the SBA size standard. Therefore, the *interim rules* would not have a significant economic impact on a substantial number of small entities.

7. The Commission therefore certifies, pursuant to the RFA, that the interim rules adopted in document FCC 13–13 will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of document FCC 13–13, including a copy of the RFA certification, to the Chief Counsel for Advocacy of the SBA.

Congressional Review Act

8. The Commission will send a copy of document FCC 13–13 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

9. Pursuant to sections 1, 2, 4(i) and (j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (j) and 225, document FCC 13–13 is hereby *adopted.*

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.604 by revising paragraph (c)(5)(iii)(E) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(E) *Payments to TRS providers.* (*1*) TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. The formulas should appropriately compensate interstate providers for the provision of TRS, whether intrastate or interstate.

(*2*) TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit.

(*3*) In addition to the data required under paragraph (c)(5)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments.

(*4*) The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in this section, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with 47 CFR parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers.

(*5*) The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator.

(*6*) The administrator shall not be obligated to pay any request for compensation until it has been established as compensable. A request shall be established as compensable only after the administrator, in consultation with the Commission, or the Commission determines that the provider has met its burden to demonstrate that the claim is compensable under applicable Commission rules and the procedures established by the administrator. Any request for compensation for which payment has been suspended or withheld in accordance with paragraph (c)(5)(iii)(L) of this section shall not be established as compensable until the administrator, in consultation with the Commission, or the Commission determines that the request is

compensable in accordance with paragraph (c)(5)(iii)(L)(*4*) of this section.

* * * * *

[FR Doc. 2013–02367 Filed 2–1–13; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 13–13]

Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Interim rule.

SUMMARY: In this document, the Commission adopts interim rules prohibiting all referrals for rewards programs (as described in the synopsis below) and any other form of direct or indirect inducements, financial or otherwise, to subscribe to or use, or encourage subscription to or use of, Internet Protocol Captioned Telephone Service (IP CTS); requiring each IP CTS provider, as a precondition to providing service to new IP CTS users, to register each new IP CTS user, to obtain from the user, as part of the registration process, self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, and where the consumer accepts IP CTS equipment at a price below $75 from any source other than a governmental program, to also obtain from the user a certification from an independent, third party professional attesting to the same; and requiring IP CTS providers to ensure that equipment and software used in conjunction with their service have a default setting of captions off at the beginning of each call, so that the consumer must take an affirmative step to turn on the captions each time the consumer wishes to use IP CTS. The Commission's action is intended to address certain practices related to the provision and marketing of IP CTS that appear to be contributing to a recent and dramatic spike in reimbursement requests to the Interstate Telecommunications Relay Service Fund (TRS Fund or Fund), of sufficient magnitude to constitute a serious threat to the Fund if not promptly and decisively addressed.

DATES: Effective February 5, 2013, except the amendments to § 64.604(c)(10) of the Commission's rules which is effective March 7, 2013. and 64.604(c)(9) of the Commission's rules which contain new information collection requirements that have not been approved by the Office of Management and Budget (OMB). This amendment will become effective upon publication in the **Federal Register** of a notice announcing the approval of such requirements by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The Commission will publish a separate document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email *Eliot.Greenwald@fcc.gov.* For additional information concerning the PRA information collection requirements contained in document FCC 13–13, contact Cathy Williams at (202) 418–2918, or email: *Cathy.Williams@fcc.gov* and *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, document FCC 13–13, adopted on January 24, 2013 and released on January 25, 2013, in CG Docket Nos. 13–24 and 03–123. In document FCC 13–13, the Commission also adopted a Final Rule and a Notice of Proposed Rulemaking, each of which is summarized in a separate **Federal Register** publication. The full text of document FCC 13–13 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* Document FCC 13–13 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro/trs.html#orders.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Final Paperwork Reduction Act of 1995 Analysis

Document FCC 13–13 contains new information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public to comment on the information collection requirements contained in document FCC 13–13 as required by the PRA of 1995, Public Law 104–13 in a separate notice that will be published in the **Federal Register**. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. In this present document, the Commission has assessed the effects of imposing various requirements on IP CTS providers and on consumers of IP CTS. The Commission recognizes that these requirements are necessary to detect and prevent abuse and waste in the IP CTS program. The Commission takes these actions to ensure the sustainability of the program upon which individuals with hearing disabilities have come to rely for their daily communication needs. In doing so, the Commission has balanced preserving the sustainability of the IP CTS program and minimizing the information collection burden for consumers and small business concerns, including those small businesses with fewer than 25 employees. For example, in adopting requirements for IP CTS providers, in order to be eligible for compensation from the TRS Fund for providing service to new IP CTS users, to register the users and obtain from the users certification of hearing loss necessitating use of IP CTS, the rule affords considerable flexibility by allowing those consumers who have purchased their IP CTS equipment for $75 or more, or obtained equipment from a governmental program, to self-certify as to their hearing loss. Nevertheless, such procedures are necessary to limit use of IP CTS to those who actually have a hearing loss that necessitates use of the service.

Synopsis

1. In document FCC 13–13, the Commission takes immediate, interim steps to address certain practices related to the provision and marketing of IP CTS that appear to be contributing to a recent and dramatic spike in reimbursement requests to the TRS Fund, of sufficient magnitude to constitute a serious threat to the Fund

if not promptly and decisively addressed. IP CTS permits people who can speak, but who have difficulty hearing over the telephone, to speak directly to another party on a telephone call and to use an IP-enabled device to simultaneously listen to the other party and read captions of what that party is saying. In document FCC 13–13, the Commission finds good cause to adopt on an emergency basis interim rules (1) prohibiting all referrals for rewards programs (as described below) and any other form of direct or indirect inducements, financial or otherwise, to subscribe to or use, or encourage subscription to or use of, IP CTS; (2) requiring each IP CTS provider, in order to be eligible for compensation from the Fund for providing service to new IP CTS users, (i) to register each new IP CTS user, (ii) as part of the registration process, to obtain from the user a self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, and (iii) where the consumer accepts IP CTS equipment at a price below $75 from any source other than a governmental program, to also obtain from the user a certification from an independent, third party professional attesting to the same; (3) requiring IP CTS providers to ensure that equipment and software used in conjunction with their service have a default setting of captions off at the beginning of each call, so that the consumer must take an affirmative step to turn on the captions each time the consumer wishes to use IP CTS. The interim rules will take effect in three stages. First, the interim rules prohibiting referrals for rewards will become effective upon publication in the **Federal Register**. Second, the interim rules requiring a default setting of captions off at the beginning of each call will become effective thirty days after publication in the **Federal Register**. Third, the interim rules on registration and certification will become effective upon publication in the **Federal Register** of a notice announcing the approval of such requirements by the Office of Management and Budget under the Paperwork Reduction Act of 1995. These interim rules will sunset on a common date, which will be either (1) 180 days after the effective date for the interim rules on registration and certification or (2) the effective date of final rules on these issues, whichever date is sooner. The Commission will publish a separate document in the **Federal Register** announcing the sunset date.

2. Telecommunications relay services (TRS) enable an individual with a hearing or speech disability to communicate with other individuals ''in a manner that is functionally equivalent'' to a hearing individual's ability to communicate using voice communications services. 47 U.S.C. 225. This is currently accomplished through TRS facilities staffed by communications assistants (CAs) who relay conversations between persons using various types of assistive communication devices and persons using end user telephone equipment, such as a standard telephone, smartphone, or computer. Captioned telephone service (CTS) works by having the hard of hearing user dial the number she or he wishes to call. The user's phone is automatically connected to a captioned telephone CA at the same time she or he reaches the called party. Once connected, the CA re-voices everything the called party says and uses voice recognition technology to automatically transcribe those words into captions. The captions then are transmitted directly to the user and are displayed, shortly after the called party speaks, on the display of a captioned telephone device, a computer, or a smartphone. The public switched telecommunications network (PSTN) version of CTS was approved in 2003. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Declaratory Ruling, CC Docket No. 98–67, published at 68 FR 55898, September 29, 2003 (*CTS Declaratory Ruling*). The Internet-based version of CTS (IP CTS) was approved in 2007. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Declaratory Ruling, published at 72 FR 6960, February 14, 2007 (*IP CTS Order*). When this service was first established, the Commission set only the minimum standards that apply to all TRS, but did not establish any eligibility criteria specifically for use of this service.

3. Section 225 of the Communications Act of 1934, as amended (Act), 47 U.S.C. 225, and its implementing regulations provide that the costs for providing TRS, including IP CTS, are not charged to the consumers using these services; rather, the costs are passed on to all consumers of telecommunications and voice over Internet Protocol providers. 47 U.S.C. 225(d)(3); *see also* § 64.604(c)(5) of the Commission's rules. Interstate relay calls and all calls made via Internet-based forms of TRS are funded through mandatory contributions made to the Fund by these providers. 47 U.S.C. 225(d)(3); *see also* § CFR 64.604(c)(5) of the Commission's rules. Eligible providers of compensable TRS are then entitled to recover their ''reasonable'' costs of providing service from this Fund in compliance with the Commission's service rules. *See* § 64.604(c)(5)(iii)(E) of the Commission's rules. IP CTS and interstate CTS providers are paid using a methodology known as the Multi-state Average Rate Structure Plan (MARS Plan), which calculates the compensation rate for IP CTS using a weighted average of the state rates for intrastate CTS. Given this funding methodology, the Commission presently does not require providers of these services to file annual cost and demand data submissions with the Fund administrator. *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Report and Order, and Declaratory Ruling, published at 73 FR 3197, 3200, January 17, 2008. In the absence of such data, the Fund administrator estimates CTS and IP CTS demand projections based on actual historical demand. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Structure and Practices of the Video Relay Service Program,* CG Docket Nos. 03–123 & 10–51, Order, 27 FCC Rcd 7150, 7155 at paragraph 13, footnote 56 (CGB 2012) (*2012 TRS Rate Order*).

4. In recent months, IP CTS has been experiencing unprecedented and unusually rapid growth. For example, the total number of minutes for which compensation was requested by providers increased by an average of 11% per month from June to October 2012. In October 2012 alone, requested minutes exceeded the minutes budgeted for this service by the Fund Administrator by 38% and as a consequence, the total requested payout also exceeded the budgeted amount by 38%, almost $4 million. As discussed below, the Commission has reason to believe that this growth is being caused by the offering of incentives for referrals to use this service, as well as usage of this service by people without a hearing loss that necessitates the use of IP CTS to communicate in a functionally equivalent manner, and that, if unchecked, this growth threatens in the very near term to overwhelm the Fund. Because all forms of TRS are supported through one Fund, this puts all forms of

TRS in jeopardy and threatens to deprive people who are deaf or hard of hearing of the benefits of the program.

5. The growth in IP CTS witnessed in recent months represents a sudden and sharp departure from the trend of declining rates of growth in usage of this service over three prior years. It is only within recent months that the Commission learned about the extraordinary escalation in this service's usage, as well as the existence of the referrals for rewards programs and the lack of specific eligibility criteria for new users. Although there was a temporary leveling off of usage in September 2012, it was followed by a steep incline in usage in October 2012, confirming the Commission's expectation that the program's sudden acceleration of growth will continue in the immediate months ahead—growth that, if left unchecked, could exacerbate the potential for harm to both the Fund and legitimate users of TRS. In particular, data indicate that, absent Commission action, there could be insufficient funds available in this Fund year to meet the needs of the Fund, potentially triggering a violation of the Anti-Deficiency Act, 31 U.S.C. 1341(a)(1)(A), and otherwise threatening the availability of the service for consumers of this and other relay services supported by the Fund.

6. The Commission concludes that protecting such interests at this time outweighs the public interest in providing prior notice of the interim rules the Commission now adopts. Moreover, although the Commission did not formally provide notice and an opportunity to comment, the Commission nevertheless received extensive input from interested parties on these issues, including input from all of the active providers of IP CTS and a number of consumer groups. In order to allow for notice and comment as soon as feasible, however, the Commission is putting these rules in place for only a short interim period. Because the harm to the Fund appears to result from certain practices addressed in document FCC 13–13, the Commission believes the most appropriate immediate action is to adopt the few interim rules discussed below, rather than simply to allow the Fund to grow unchecked while the Commission solicits public comment. Such action will enable the Commission to better control the level of TRS disbursements and protect the programmatic, legal, and financial integrity of the TRS program. Conversely, failing to take immediate action to stem such practices could well threaten the availability of this and other relay services that are supported by the Fund for the benefit of legitimate users. Moreover, because the Commission believes that a substantial portion of this growth is arising from practices that may be inconsistent with the policies underlying section 225 of the Act and the Commission's implementing regulations, the Commission is concerned that if interim rules are not adopted immediately, the use of questionable practices would continue and even accelerate, adding further to the strain on the Fund. In addition, if the Commission were to follow ordinary notice and comment procedures, IP CTS providers would be able to continue—indeed, to accelerate—the use of potentially inappropriate incentives to recruit and sign up new IP CTS users without first establishing their eligibility for an extended period of time while the rulemaking process is pending.

7. To prevent these imminent public harms from occurring and to bring Fund expenditures for this service under control, the Commission finds that three immediate measures are necessary. First, because, as discussed below, the Commission finds that referrals for rewards programs are likely to unduly and inappropriately incent consumers to obtain equipment and use service that they might not otherwise use, the Commission prohibits all referrals for rewards programs and any other form of direct or indirect inducements, financial or otherwise, to subscribe or use or encourage subscription to or use of IP CTS. Second, to prevent the unnecessary subscription to and use of the service by consumers who do not need IP CTS to communicate in a functionally equivalent manner, the Commission adopts interim rules to require each IP CTS provider, in order to be eligible for compensation from the TRS Fund for providing service to new IP CTS users, to register each new user for service with the IP CTS provider and, as part of the registration process, to obtain from each user a self-certification that (1) the user has a hearing loss that necessitates the use of IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, (2) the user understands that the captioning service is provided by a live CA; and (3) the user understands that the cost of the IP CTS calls is funded by the TRS Fund. In addition, where the consumer accepts IP CTS equipment for less than $75 from any source other than a governmental program that distributes the equipment, the provider must obtain from the user a certification from an independent, third party professional attesting to the necessity for IP CTS. Third, to prevent improper billing of the TRS Fund for the use of IP CTS by individuals who do not need IP CTS to communicate in a functionally equivalent manner and who are either living in the household or visiting the house or office of an eligible user, the Commission adopts interim rules requiring IP CTS providers to ensure that equipment and software used in conjunction with IP CTS have a default setting of captions off at the beginning of each call, so that the consumer must take an affirmative step to turn on the captions each time the consumer wishes to use IP CTS. At the same time that the Commission adopts these rules on an interim basis to address these immediate concerns, the Commission seeks comment in the accompanying Notice of Proposed Rulemaking (NPRM) on these and other possible actions to address the sustainability of this service in the long term.

8. As noted above, TRS enables an individual with a hearing or speech disability to communicate with other individuals ''in a manner that is functionally equivalent'' to a hearing individual's ability to communicate using voice communications services. Section 225(b) of the Act directs the Commission to ensure that TRS services are available to persons with hearing and speech disabilities ''to the extent possible and in the most efficient manner.'' 47 U.S.C. 225(b)(1). Further, section 225(d) of the Act instructs the Commission to adopt regulations implementing section 225 of the Act, including regulations ''establish[ing] functional requirements, guidelines, and operations procedures for [TRS],'' 47 U.S.C. 225(d)(1)(A), as well as mandatory ''minimum standards'' governing the provision of TRS. 47 U.S.C. 225(d)(1)(A). These provisions authorize the rules adopted herein, and as discussed below, the Commission concludes that it has authority to adopt these interim rules immediately, without prior notice and opportunity for comment.

9. Section 553 of the Administrative Procedure Act (APA) requires that agencies provide notice of and an opportunity for public comment on their proposed rules except, *inter alia,* ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B). The decision not to follow notice and comment procedures has been allowed

in emergency situations or where delay could result in serious harm. *Chamber of Commerce,* 443 F.3d at 908. *See also Rural Cellular Ass'n* v. *FCC,* 588 F.3d 1095, 1105–06 (DC Cir. 2009). In this case, the Commission finds good cause to adopt immediate interim rules to address the recent, unprecedented and unusually rapid increase in IP CTS minutes of use in order to maintain the integrity of the Fund, to sustain this service and other forms of TRS for legitimate users during the coming months, and to help avoid increasing mid-year the amount that telecommunications and VoIP providers must pay into the Fund in order to account for the rapid growth caused by these potentially improper practices. In particular, the Commission finds that because IP CTS growth is occurring so rapidly, it would be impracticable and contrary to the public interest to delay remedial action by waiting until after completion of the notice and comment process, which can take several months, to adopt any rules. *See, e.g., Amendment of the Commission's Rules to Permit FM Channel And Class Modifications by Application,* Notice of Proposed Rulemaking, 7 FCC Rcd 4943, 4944, paragraph 6, footnote 12 (1992). The actions the Commission takes in this order thus are aimed at preserving the fiscal integrity of the TRS Fund and ensuring compliance with applicable Federal law.

10. *Referrals for Rewards.* The recent expansion in usage of IP CTS appears to have been precipitated largely by new referral programs that offer monetary rewards for the referral of customers who sign up for installation of the provider's IP CTS end user equipment. These rewards are being given to third parties, including the providers' existing customers, members of the general public, and hearing and health care professionals such as audiologists. In a variation of these referral programs, providers are also making donations to charities, again contingent on a consumer's receiving the providers' IP CTS phone and service. The Commission is concerned about these financial incentive programs, which may well be resulting in the registration for and usage of IP CTS by new IP CTS users who do not need these services to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users. By offering rewards to individuals, professionals, and organizations for enlisting customers for IP CTS, the referral programs may indirectly encourage consumers to sign up for this relay service, whether or not they actually need the service to communicate in a functionally equivalent manner, in order to earn money for their friends or for programs and charitable services that they support. As noted above, such practices appear to be having a profound detrimental impact on the Fund. Specifically, payment of such rewards to third parties may well encourage consumers to order IP CTS service just to gain the incentive benefit. For example, such incentive rewards programs appear to prompt charitable organizations to advertise a provider's IP CTS to their members and to encourage those members to produce the promised donations by ordering the provider's IP CTS. When a charitable organization promotes registration with an IP CTS provider in order for the organization to receive the $50 donations that result, such promotions may encourage the organization's members to order the IP CTS provider's service in order to support the organization, whether or not they actually need the service to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users. The more customers that sign up to use the provider's IP CTS, the greater the financial rewards to participants in the incentive programs, and the more compensation the provider is able to collect from the Fund, at no cost to the consumer. In short, offering such rewards may have the effect of enlisting customers who might not otherwise have a reason to use the service. Such practices thus not only threaten the Fund, but also may be inconsistent with the very purpose of the TRS program—to provide communication services for people with hearing or speech disabilities who are otherwise unable to use conventional telephone services. *See* 47 U.S.C. 225(a)(3) (defining TRS to ''* * * provide the ability for an individual who is deaf, hard of hearing, deaf-blind, or who has a speech disability to engage in communication by wire or radio. * * *''). For these various reasons, the Commission finds good cause to adopt an interim rule expressly prohibiting, for a short term, all referrals for rewards programs and any other form of direct or indirect inducements, financial or otherwise, to subscribe to or use, or encourage subscription to or use of IP CTS, including inducements that provide incentives for potential users to subscribe to IP CTS or that incent third parties, such as audiologists and other hearing and health professionals, to encourage such subscriptions.

11. The Commission disagrees with the argument that it should treat differently the payment of referral fees to hearing specialists and payments to non-experts such as friends and charities. To the extent that such professionals are offered rewards that incent them to encourage consumers to order and use IP CTS—whether or not such consumers would actually benefit from IP CTS—such rewards may be promoting the use of IP CTS by individuals who do not need this service, or who could benefit more from other assistive devices or hearing technologies.

12. In the TRS context, the Commission has had a history of addressing fraud, abuse and misuse through restrictions on financial incentives such as those adopted here. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, Report and Order, and Declaratory Ruling; published at 73 FR 3197, January 17, 2008 (prohibiting payments made to third parties and incentives that result in the registration of consumers with a TRS provider, as well as incentives that increase a subscriber's usage of TRS).

13. The Commission believes that providers can effectively promote IP CTS without offering financial rewards for referrals through, for example, the distribution of literature to assistive technology specialists, audiologists, and other professionals; the insertion of advertisements in mainstream and disability publications, and participation in disability conferences and other activities to inform professionals and the public about the benefits of this service. The Commission also believes that any expectation by professionals that they will receive compensation for making such referrals appears to be generally inconsistent with established federal policy. For example, the Commission's interim prohibition of referral awards to audiologists and other professionals is consistent with the health care anti-kickback statute, which prohibits the offering or payment of any remuneration in return for (A) referring an individual for the furnishing or arranging for the furnishing of any item or service for which payment may be made under a Federal health care program or (B) in return for purchasing, leasing or ordering any good, facility, service, or item for which payment may be made under a Federal health care program. 42 U.S.C. 1320a–7b(b)(2). Subject to receiving further comment on this and other issues, the Commission finds that

the underlying public policy reasons for the healthcare anti-kickback statute appear to apply equally to awards for referrals provided to audiologists and other professionals.

14. The temporary prohibition adopted by the Commission includes any programs initiated, sponsored or operated by IP CTS providers that offer financial or other incentives or rewards to third parties for the referral of customers who sign up to use the provider's IP CTS offering, as well as provider programs or practices offering or providing any payment or other thing of value, directly or indirectly to a potential or existing IP CTS user. In addition to the prohibition against rewards for referrals, the temporary prohibition against any other form of direct or indirect inducements, financial or otherwise, to subscribe or use or encourage subscription to or use of IP CTS would prohibit, for example, a provider from reimbursing a consumer for the cost of his or her examination by a hearing or health professional that would be needed to establish the consumer's hearing loss or for the cost of obtaining other eligibility documentation. The Commission is reserving judgment at this point pending the further development of a record in response to the accompanying NPRM as to whether there should be a permanent prohibition on these practices.

15. *Registration and Certification.* The recent and unexpected escalation in IP CTS minutes raises serious concerns about whether IP CTS is now being made available to and used by some consumers who may not need the service to communicate in a manner that is functionally equivalent to telephone communication by conventional voice telephone users. This sudden swell in IP CTS minutes not only threatens the long term viability of this service for those who truly need it, but also, on a more immediate basis, it threatens to exhaust monies currently available in the Fund for this and other approved TRS within the next few months. For the reasons discussed below, the Commission finds it necessary to adopt interim rules addressing registration and eligibility certification to use this service.

16. IP CTS is distinguishable from most other forms of TRS by its unusual ease and convenience of use. In contrast to other forms of TRS, which often require special skills (*e.g.,* knowledge of American Sign Language by persons who use video relay services) or are designed for very discrete portions of the population with specific communication needs (*e.g.,* people with speech disabilities who need to use specially trained speech-to-speech CAs), consumers who use IP CTS may be less likely to ''self-screen'' in choosing whether to subscribe to IP CTS. Furthermore, IP CTS is ''provided in a way that is automated and invisible to both parties to the call,'' *IP CTS Order,* 72 FR 6960, February 14, 2007, likely making it a more attractive TRS option than other services in which the CA has a known presence. Indeed, one of the central benefits to IP CTS is that, unlike most other forms of TRS, IP CTS is capable of being used without any interruption in the normal flow of a voice telephone conversation. Further, unlike the PSTN-based forms of CTS and many other types of TRS, incoming IP CTS calls are not encumbered by having to first dial an 800 number to reach a CA; rather, the call can be directly dialed to the IP CTS user. Finally, IP CTS offers certain features that may attract its use by individuals who may not necessarily need the service to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, but rather simply desire such features. For example, a consumer with no hearing loss might subscribe to and use IP CTS merely because it provides a transcription of what the other party to a call is saying. Other individuals may use the captions to engage in multiple tasks at the same time, and may not be aware that this is a publicly funded program that supports the costs of captions each time they are produced. And some individuals who do not need captions might sign up for service in order to obtain a free or subsidized highly-amplified phone from the provider. The Commission therefore finds that there is a greater risk, compared with other forms of TRS, that IP CTS is being used (with consequent billing of the Fund for the minutes used) by individuals who do not need the service to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users.

17. To address the anticipated near-term impact on the TRS Fund and to ensure that only those individuals for whom TRS truly was intended are using this service—and thereby prevent waste of Fund resources—the Commission finds it necessary and appropriate at this time to adopt, on an interim basis, a registration and certification requirement to restrict the use of IP CTS to those who have a hearing disability that the Commission believes the Act and the Commission's rules are intended to address. The Commission believes that the exigent circumstances that now exist require the Commission to take such action to protect the Fund during the 2012–13 Fund year, and to fulfill Congress's mandate for this service to be available to eligible persons who genuinely need it to communicate by telephone in a manner that is functionally equivalent to telephone use by hearing individuals. The Commission further believes that the action it takes today is in accordance with section 225 of the Act's mandate to provide TRS ''to the extent possible and in the most efficient manner'' to its intended population. 47 U.S.C. 225(b)(1).

18. In order to ease the burden of compliance, the Commission will accept a self-certification in those instances in which the user has either made a significant financial investment in IP CTS equipment or received that equipment through a governmental program. While there is no way at this time to pinpoint the precise cost that will most effectively deter ineligible usage of IP CTS, the Commission believes that setting a floor of at least $75 in order to qualify for the self-certification-only option represents a reasonable balancing of interests. The amount is high enough to affect most consumers' purchasing decisions, but not so high as to make the purchase of equipment infeasible. Indeed, a floor of $75 is well below the listed retail prices for the captioned telephones used with current IP CTS offerings. The Commission also finds self-certification alone to be sufficient if the individual obtains free or low-cost equipment from a governmental program because such programs themselves screen users to determine their need for IP CTS.

19. The Commission believes that limiting the number of potential users who need to seek third-party certification in this manner for a short period while it determines what permanent certification requirements will best serve the Fund is in the public interest, and will not place an undue burden on legitimate IP CTS users. As to the effect of this rule on low-income individuals who may not be able to afford $75 for IP CTS equipment, those individuals may be able to obtain IP CTS equipment from state equipment distribution programs, and in any event may accept free or very low-priced equipment so long as they obtain a third-party certification. Thus, the Commission believes that this interim rule is unlikely to prevent those who truly need access to IP CTS from receiving the service.

20. The Commission therefore adopts an interim rule that requires each IP

CTS provider, in order to be eligible for compensation from the TRS Fund for providing service to new IP CTS users, to register each new IP CTS user for service and as part of the registration process, to obtain from each user a self-certification that (1) the user has a hearing loss that necessitates the use of IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, (2) the user understands that the captioning service is provided by a live CA, and (3) the user understands that the cost of the IP CTS calls is funded by the TRS Fund. This self-certification must be made on a form separate from any other user agreement (such as on a separate page), and requires a separate signature specific to the self-certification. For the purposes of this requirement, an electronic signature has the same legal effect as a written signature.

21. Where the consumer accepts IP CTS equipment for less than $75 from any source other than a governmental program, the interim rule also requires the provider to obtain a certification from an independent, third-party professional attesting that the user has a hearing loss that necessitates the use of IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users. Such third-party professionals must be qualified to evaluate an individual's hearing loss in accordance with applicable professional standards, and may include community-based service providers, hearing related professionals, vocational rehabilitation counselors, occupational therapists, social workers, educators, audiologists, speech pathologists, hearing instrument specialists, and doctors, nurses, and other medical or health professionals. Any such professionals must certify in writing that the applicant needs IP CTS to communicate in a manner that is functionally equivalent to conventional voice telephone service experienced by individuals without hearing disabilities. In cases where new users have obtained IP CTS equipment for free or at low cost through a governmental program, the Commission finds it reasonable for purposes of the interim rules to permit the provider to rely on documentation demonstrating that the equipment was obtained through one of these programs, in lieu of providing an independent, third-party certification. These steps will protect against registration by individuals who do not need captioning, but who are registering merely to receive free or very inexpensive phones. The Commission also requires each IP CTS provider to maintain the confidentiality of all registration and certification information obtained by the provider, and to not disclose such registration and certification information, as well as the content of such information, except as required by law.

22. *Default Captions Off.* In addition to adopting measures to ensure that IP CTS equipment and service is provided to subscribers who need the service to communicate in a functionally equivalent manner, the Commission seeks to prevent billing of the TRS Fund for casual or inadvertent use of IP CTS by other individuals who do not need IP CTS to communicate by phone, in particular those who may be living in a subscriber's household or visiting a subscriber's house or office. It is the Commission's understanding that much of the IP CTS equipment that is being distributed at this time provides for captions to be automatically displayed without the need to affirmatively turn the captions on. As a consequence, the TRS Fund is billed unless the person using the IP CTS equipment takes affirmative action to turn the captions off. Further, some equipment is configured such that the user must go through a two-step process to turn captions off, rather than having a clear on/off button visible at all times.

23. To avoid misuse of IP CTS, and to ensure that the Fund is used for functionally equivalent telephone service for people with disabilities, the Commission is requiring on an interim basis that all providers ensure that equipment and software used in conjunction with their IP CTS have captions turned off as the default setting. This is consistent with actions already taken by a number of states to prevent similar misuse of PSTN-based CTS. The Commission anticipates that consumers who are provided with a clear on/off option and an explanation of how to use it can reasonably be expected to learn to turn captioning on at the beginning of each call.

24. Further, while taking one or more steps, such as pushing a button, to receive captions may add a small burden to the process of using IP CTS, the Commission preliminarily finds that any burden is outweighed by the substantial public interest in preventing the misuse of this service. As explained earlier, IP CTS is ''provided in a way that is automated and invisible to both parties to the call,'' *IP CTS Order,* 72 FR 6960, is capable of being used without any interruption in the normal flow of a voice telephone conversation, and offers certain features that may attract its use by individuals who may not necessarily need the service to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users. Because of these IP CTS attributes, with a captions-on setting, the likelihood increases that individuals who do not need IP CTS may be casually or inadvertently using IP CTS, causing illegitimate minutes of use to be billed to the Fund.

25. For these same reasons, the Commission also requires, on an interim basis, that IP CTS equipment not provide consumers the option of changing the default setting from captions-off to captions-on. At this time, the Commission likewise does not adopt a proposed exception to allow a consumer-initiated ''default on'' setting for users that provide an elevated certification to the effect that: (a) They understand that the captioning service they enjoy free of charge is provided by a live CA dedicated to each of their captioned calls, and reimbursed by the TRS Fund, (b) their device is not accessed by or easily accessible to ineligible users, and (c) they will not permit the use of captions on their device by any ineligible persons. Even well-intentioned users may find it difficult to ensure that there is no unnecessary use of captioning once it is turned on; by contrast, the burden on the consumer to simply press a ''captions on'' button or similar method appears to be minimal. The accompanying NPRM seeks comment on this proposed exception, as well as a suggestion that the Commission set standards for connection time after the consumer activates the captions.

26. In order to afford IP CTS providers an opportunity to make any software and other changes necessary to implement a captions-off default setting, the requirements adopted herein will become effective 30 days after their publication in the **Federal Register**. To the extent that it is technically infeasible for a particular IP CTS provider to comply within this 30-day time period for equipment that is already deployed, the provider may request additional time by seeking a limited waiver of the effective date, supported by an appropriate good cause showing.

Effective Date

27. The APA provides that a substantive rule cannot become effective earlier than 30 days after the required publication or service of the rule, except ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d). *See also* § 1.427(a) of the Commission's rules. As

discussed above, the Commission finds good cause to adopt immediately interim rules without the opportunity for public comment because the Commission believes that the imminent harms to the Fund and legitimate TRS users outweigh the public interest in obtaining comment before such rules go into effect. The same good cause reasons for adopting immediately interim rules without the opportunity for public comment apply to making the rules effective as soon as possible. As noted above, any delay in making the rules effective would encourage IP CTS providers, during the period prior to the effective date, to continue and possibly even accelerate the use of inappropriate incentives to recruit and sign up new users without first establishing their eligibility, adding additional uncontrolled growth that could result in TRS payment obligations exceeding the amount available in the Fund. Further, the Commission has no reason to believe that IP CTS providers cannot comply with the rules adopted herein within the prescribed time periods. There are only four providers currently offering IP CTS, and the payment of incentives and registration of new users are matters well within each provider's immediate ability to control.

28. The interim rules adopted in document FCC 13–13 shall cease to be effective on a common date that is either (1) 180 days after the effective date for the interim rules on registration and certification, § 64.604(c)(9) of the Commission's rules, or (2) the effective date of final rules on these issues, whichever date is sooner. The Commission will publish a separate document in the **Federal Register** announcing the sunset date.

Final Regulatory Flexibility Analysis

29. The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C 601(3). A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

30. In document FCC 13–13, in response to an urgent public interest need to curtail misuse of IP CTS, the Commission adopts interim rules prohibiting all referrals for rewards programs and any other form of direct and indirect inducements, financial or otherwise to subscribe or use or encourage subscription to or use of IP CTS. The Commission also adopts interim rules requiring each IP CTS provider, in order to be eligible for compensation from the TRS Fund for providing service to new IP CTS users, (1) to register each new IP CTS user for service, (2) as part of the registration process, to obtain from each user a self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, and (3) where the consumer accepts IP CTS equipment at a price below $75 from any source other than a governmental program, to obtain from the user a certification from an independent, third party professional attesting to the same. The Commission also requires IP CTS equipment to have a default setting of captions off at the beginning of each call, so that the consumer must affirmatively turn on the captions each time the consumer wishes to use IP CTS.

31. In recent months, IP CTS has been experiencing unusually rapid growth. The Commission is concerned that usage of this service by people who may not need the assistance of IP CTS, along with improper incentives for referrals to use this service are contributing substantially to this sudden, rapid increase in IP CTS minutes of use.

32. With regard to the criterion of the economic impact of document FCC 13–13, the Commission concludes that IP CTS providers fit within the business classification of Wired Telecommunications Carriers. *See* NAICS Code 517110 (2007). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110 (2007). Collectively, there are four IP CTS providers that are authorized by the Commission to offer these services. Only one of these entities is a small business under the SBA size standard. Therefore, the interim rules would not have a significant economic impact on a substantial number of small entities.

33. The Commission therefore certifies, pursuant to the RFA, that the interim rules adopted in document FCC 13–13 will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of document FCC 13–13, including a copy of the RFA certification, to the Chief Counsel for Advocacy of the SBA.

Congressional Review Act

34. The Commission will send a copy of document FCC 13–13 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

35. Pursuant to sections 1, 2, 4(i) and (j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (j) and 225, document FCC 13–13 is hereby *adopted.*

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission

Marlene H. Dortch,

Secretary.

Interim Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.604 by adding paragraphs (c)(8), (9), and (10) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(8) *Inducements for use of IP CTS.* (i) An IP CTS provider shall not offer or provide to any person or entity any form of direct or indirect inducements, financial or otherwise, to subscribe to or use or encourage subscription to or use of IP CTS. IP CTS providers offering or providing such inducements shall be ineligible for any compensation for IP CTS from the TRS Fund.

(ii) [Reserved].

(9) *IP CTS registration and certification requirements.* (i) IP CTS providers, in order to be eligible to receive compensation from the TRS Fund for providing IP CTS to a new consumer, must first register the new consumer applying for service by obtaining the following registration information: The consumer's name, address and telephone number.

(ii) IP CTS providers, in order to be eligible to receive compensation from the TRS Fund for providing IP CTS to a new consumer, also must first obtain a written certification attesting that the consumer needs IP CTS to communicate in a manner that is functionally equivalent to the ability of a hearing individual to communicate using voice communications services.

(iii) The certification required by paragraph (c)(9)(ii) of this section must include the consumer's certification that:

(A) The consumer has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users;

(B) The consumer understands that the captioning service is provided by a live communications assistant; and

(C) The consumer understands that the cost of the IP CTS calls is funded by the TRS Fund.

(iv) The certification required by paragraph (c)(9)(ii) of this section must be made on a form separate from any other agreement or form, and must include a separate consumer signature specific to the certification. For purposes of this rule, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.,* as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(v) In instances where IP CTS equipment is obtained by a new consumer for less than $75, the IP CTS provider must also, in order to be eligible to receive compensation from the TRS Fund, obtain written certification provided and signed by an independent third-party professional, except as provided in paragraph (c)(9)(v)(D) of this section .

(A) In instances where certification from an independent third-party professional is required, such professionals must be qualified to evaluate an individual's hearing loss in accordance with applicable professional standards, and may include, but are not limited to, community-based social service providers, hearing related professionals, vocational rehabilitation counselors, occupational therapists, social workers, educators, audiologists, speech pathologists, hearing instrument specialists, and doctors, nurses, and other medical or health professionals.

(B) In instances where certification from an independent third-party professional is required, such third-party professionals must certify in writing that the IP CTS consumer is an individual with hearing loss who needs IP CTS to communicate in a manner that is functionally equivalent to telephone service experienced by individuals without hearing disabilities.

(C) In instances where certification from an independent third-party professional is required, such third-party professional must provide his or her name, title, and contact information, including address, telephone number, and email address.

(D) In instances where the new consumer has obtained equipment from a governmental program, the new consumer may present documentation to the IP CTS provider demonstrating that the equipment was obtained through one of these programs, in lieu of providing an independent, third-party certification.

(vi) Each IP CTS provider shall maintain the confidentiality of any registration and certification information obtained by the provider, and may not disclose such registration and certification information or the content of such registration and certification information except as required by law or regulation.

(vii) [Reserved].

(10) *IP CTS default settings.* (i) IP CTS providers must ensure that equipment and software used in conjunction with their service have a default setting of captions off, so that new and existing IP CTS users must affirmatively turn on captioning for each telephone call initiated or received before captioning is provided.

(ii) [Reserved].

[FR Doc. 2013–02369 Filed 2–1–13; 4:15 pm]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 24
Tuesday, February 5, 2013

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Document Number AMS–NOP–12–0016; NOP–12–07PR]

RIN 0581–AD27

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances (Crops and Processing)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA's) National List of Allowed and Prohibited Substances (National List) to address recommendations submitted to the Secretary of Agriculture (Secretary) by the National Organic Standards Board (NOSB) on November 5, 2009, and December 2, 2011. One recommendation addressed in this proposed rule pertains to amending the annotations for two exemptions (uses) for peracetic acid in organic crop production. Additional NOSB recommendations addressed in this proposed rule pertain to changing the annotations for three substances, potassium hydroxide, silicon dioxide, and beta-carotene extract color, which are currently allowed for use in organic handling. This proposed rule would also address the NOSB recommendation to remove the allowance on the National List for the use of nonorganic annatto extract color in organic handling.

DATES: Comments must be received by March 7, 2013.

ADDRESSES: Interested persons may comment on the proposed rule using the following procedures:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Toni Strother, Agricultural Marketing Specialist, National Organic Program, USDA–AMS–NOP, 1400 Independence Ave. SW., Room 2646–So., Ag Stop 0268, Washington, DC 20250–0268.

Instructions: All submissions received must include the docket number AMS–NOP–12–0016; NOP–12–07PR, and/or Regulatory Information Number (RIN) 0581–AD27 for this rulemaking. You should clearly indicate the topic and section number of this proposed rule to which your comment refers. You should clearly indicate whether you support the action being proposed for the substances in this proposed rule. You should clearly indicate the reason(s) for your position. You should also supply information on alternative management practices, where applicable, that support alternatives to the proposed action. You should also offer any recommended language change(s) that would be appropriate to your position. Please include relevant information and data to support your position (e.g. scientific, environmental, manufacturing, industry, impact information, etc.). Only relevant material supporting your position should be submitted. All comments received will be posted without change to *http://www.regulations.gov.*

AMS is particularly interested in comments that identify any formulated hydrogen peroxide products labeled for agricultural use that contain more than 5% peracetic acid and that may be impacted by this rulemaking action. AMS is also interested in comments that describe whether product reformulation will be necessary and the timeframe that will be needed to comply with the proposed amendment for silicon dioxide at section 205.605(b) and the proposed removal of annatto extract color from section 206.606. Such comments will be considered to determine appropriate effective dates for these changes to the National List if codified through a final rule.

Document: For access to the document to read comments received or any related background documents, go to *http://www.regulations.gov.* Comments submitted in response to this proposed rule will also be available for viewing in person at USDA–AMS, National Organic Program, Room 2646–South Building, 1400 Independence Ave. SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Melissa Bailey, Ph.D., Director, Standards Division, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFROMATION:

I. Background

On December 21, 2000, the Secretary established, within the National Organic Program (NOP) (7 CFR part 205), the National List regulations in sections 205.600 through 205.607. This National List identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic production. The National List also identifies synthetic, nonsynthetic nonagricultural and nonorganic agricultural substances that may be used in organic handling. The Organic Foods Production Act of 1990 (OFPA) (7 U.S.C. 6501–6522), and USDA organic regulations, in section 205.105, specifically prohibit the use of any synthetic substance in organic production and handling unless the synthetic substance is on the National List. Section 205.105 also requires that any nonorganic agricultural and any nonsynthetic nonagricultural substance used in organic handling be on the National List.

Under the authority of the OFPA, the National List can be amended by the Secretary based on recommendations developed by the NOSB. Since established, AMS has published multiple amendments to the National List beginning on October 31, 2003 (68 FR 61987). AMS published the most recent amendment to the National List on September 27, 2012 (77 FR 59287).

This proposed rule would amend the National List to reflect one recommendation submitted to the Secretary by the NOSB on November 5, 2009, and four recommendations submitted to the Secretary by the NOSB on December 2, 2011. Based upon their evaluation of petitions submitted by industry participants, public comments, market surveillance, and review of technical reports and previous NOSB recommendations, the NOSB recommended that the Secretary revise the annotations for two listings for peracetic acid for organic crop

production at section 205.601, revise the annotations for two substances (potassium hydroxide, and silicon dioxide) for organic processing at section 205.605(b), and revise the annotation for one substance (beta-carotene extract color) for organic processing at section 205.606. In addition, the NOSB recommended removing one substance (annatto extract color) for organic processing from section 205.606, which allows the nonorganic form to be used when the organic form is not commercially available. The exemptions for the use of each substance in organic crop production and handling were evaluated by the NOSB using the criteria specified in OFPA (7 U.S.C. 6517–6518).

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments to designated sections of the National List regulations:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This proposed rule would amend subparagraphs (a)(6) and (i)(8) of section 205.601 by amending two annotations for the following substance:

Peracetic acid. Peracetic acid is a clear, colorless liquid. It is an oxidizing agent formed by a reaction of hydrogen peroxide with acetic acid in water. The reaction used to produce peracetic acid proceeds until equilibrium is reached, and all three species (i.e., peracetic acid, hydrogen peroxide, and acetic acid) are always simultaneously present in any formulated peracetic acid product. Peracetic acid is often used in the food industry as a sanitizer and disinfects by oxidizing the outer cell membrane of vegetative bacterial cells, endospores, yeast, and mold spores.[1]

This proposed rule would implement a recommendation issued by the NOSB at its meeting on November 5, 2009, to amend two listings for peracetic acid in subparagraphs (a)(6) and (i)(8) in section 205.601 of the National List. This rule proposes an amendment to the annotation for peracetic acid to clarify that peracetic acid is also permitted with certain restrictions in hydrogen peroxide formulations. This change is necessary to align the USDA organic regulations with an updated labeling requirement of the Environmental Protection Agency (EPA). The EPA labeling requirement specifies that peracetic acid needs to be listed as an active ingredient in some products that were previously labeled with hydrogen peroxide as the sole active ingredient.

Peracetic acid was first added to section 205.601 of the National List on November 3, 2003 (68 FR 61987). AMS added peracetic acid to the National List for use in disinfecting equipment, seed, and asexually propagated plant material and for use to control fire blight bacteria. In 2007, the NOSB reviewed these two listings for peracetic acid under the five-year sunset process required by OFPA and, consistent with the NOSB recommendation, AMS renewed both listings on November 3, 2008 (73 FR 59479). Following their renewal in 2008, these two listings for peracetic acid are scheduled to sunset from the National List on November 3, 2013.

On August 12, 2008, AMS received a petition from a manufacturer of sanitizer products requesting an amendment to the National List to expand the allowance for peracetic acid in organic crop production.[2] The petition to amend the annotations for peracetic acid in sections 205.601(a)(6) and 205.601(i)(8) was submitted in response to a change in the EPA labeling requirements for certain products registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136–136(y)). These products were previously labeled with hydrogen peroxide as the sole active ingredient. Some hydrogen peroxide labeled products also contain a small amount of peracetic acid. Peracetic acid is produced from the *in situ* reaction of acetic acid, an inert ingredient permitted under section 205.601(m) of the USDA organic regulations, with the active ingredient hydrogen peroxide. EPA now requires that these hydrogen peroxide products be relabeled to list both hydrogen peroxide and peracetic acid as active ingredients.

Under the USDA organic regulations, hydrogen peroxide is permitted for plant disease control in organic crop production (§ 205.601(i)(5)). However, the allowance for peracetic acid for plant disease control under the USDA organic regulations is limited to fire blight control (§ 205.601(i)(8)). Since EPA now requires that peracetic acid be listed as an active ingredient on the product label in some hydrogen peroxide formulations, certifying agents and material evaluation programs have had to limit the use of these products to that for fire blight control in organic crop production. In the course of their product review, certifying agents and material evaluation programs identify the active ingredients on the product label (i.e. both hydrogen peroxide and peracetic acid) and ensure that the producer's use aligns with the restrictive allowance for peracetic acid on the National List at section 205.601(i)(8).

At its November 2009 public meeting, the NOSB reviewed the petition and public comment and, in response to the petition, issued a recommendation to amend the restrictive annotation for both listings of peracetic acid.[3] A second motion to list peracetic acid without any restrictive annotation under the USDA organic regulations did not receive the required two-thirds majority to pass.[4]

The NOSB indicated in its recommendation for peracetic acid that its intent was to amend the annotations for peracetic acid to continue the availability of certain hydrogen peroxide containing products that are now required by EPA to list peracetic acid as a second active ingredient on the label. The NOSB recommended that AMS amend the annotations for peracetic acid to limit the amount of peracetic acid to no more than 5% concentration in hydrogen peroxide products. Although the NOSB recommendation characterized the small amount of peracetic acid in hydrogen peroxide products as ''formerly allowed as inert,'' peracetic acid is not an inert ingredient under section 205.601(m) of the USDA organic regulations, since peracetic acid was not classified as a List 4 inert ingredient under the former classification system used by EPA.[5] Instead, the peracetic acid may have always been present in some products from the *in situ* reaction of acetic acid (a List 4 inert ingredient) with the active ingredient hydrogen peroxide.

At its December 2, 2011, public meeting, the NOSB recommended that the listings for peracetic acid in section 205.601 be renewed under the sunset process.[6] The NOSB sunset

[1] Technical advisory panel report for peracetic acid. November 6, 2000. Available in Petitioned Substances Database under ''P,'' at the NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5067081&acct=nopgeninfo.*

[2] The petition was submitted by BioSafe Systems LLC, and is available on the NOP Web site at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5071775&acct=nopgeninfo.*

[3] Available on the NOP Web site at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5092050&acct=nosb.*

[4] Available on the NOP Web site at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5092052&acct=nosb.*

[5] The former list of EPA List 4 inert ingredients is available at *http://www.epa.gov/opprd001/inerts/cascomplete.pdf.* This list was last updated in August 2004 and is no longer maintained by EPA.

[6] The NOSB recommendation for peracetic acid for Sunset 2013 is available on the NOP Web site

Continued

recommendation noted that the 2009 NOSB recommendation to amend the listing for peracetic acid had not yet been implemented by AMS. Since both NOSB recommendations for peracetic acid are outstanding, AMS is proposing to implement the 2009 NOSB recommendation for peracetic acid through this proposed rule. AMS intends to complete rulemaking prior to the November 3, 2013, sunset date for both listings of peracetic acid in section 205.601 of the National List. The amended listings for peracetic acid in section 205.601 would then be subject to review again within five years of their amendment, in accordance with the OFPA provision for the sunset of National List substances (7 U.S.C. 6517(e)).

The proposed changes are necessary to ensure that some formulated products that were previously compliant with the USDA organic regulations will continue to be permitted for many applications currently in use by organic crop producers. Such applications are in addition to those for disinfection of equipment, seed, and asexually propagated planting material, and for control of fire blight. Implementing the NOSB recommendation continues the use of certain hydrogen peroxide products for plant diseases which would not otherwise be permitted if the product has been relabeled in accordance with EPA requirements to list peracetic acid as an active ingredient.

If this proposed amendment is not adopted as final, some hydrogen peroxide products that contain small amounts (i.e., 5% or less) of peracetic acid will become prohibited under the USDA organic regulations for most applications. Once these products are labeled in accordance with new EPA labeling guidelines, these products will be subject to the more restrictive allowances for peracetic acid under the USDA organic regulations. AMS has not identified any formulated hydrogen peroxide products which are labeled for agricultural use and contain more than 5% peracetic acid as an active ingredient on the product label. Furthermore, under this proposed action, formulated peracetic acid products, including hydrogen peroxide products that contain more than 5% peracetic acid, would continue to be subject to the same restrictive annotations for peracetic acid under the USDA organic regulations. Formulated hydrogen peroxide products that do not contain peracetic acid are not impacted by this rulemaking.

The NOSB recommended the addition of the following text to the current annotations for the peracetic acid listings in section 205.601: ''Permitted in hydrogen peroxide formulations at concentration of no more than 5%.'' In this proposed rule, AMS is proposing a modification to the NOSB's recommended text as follows (emphasis added): ''Permitted in hydrogen peroxide formulations at concentration of no more than 5% *as indicated on the pesticide product label*.'' This amendment is intended to clarify the point that the 5% concentration of peracetic acid should be verified in the formulated product itself, not after the product has been diluted according to label directions prior to its application.

AMS has reviewed and proposes to address the NOSB recommendations with the modification described. This proposed rule would amend subparagraphs (a)(6) and (i)(8) of section 205.601 of the National List by adding the following text to the current annotations for peracetic acid: ''Permitted in hydrogen peroxide formulations at concentration of no more than 5% as indicated on the pesticide product label.'' If finalized, the listings for peracetic acid in section 205.601 would be subject to review within five years of their amendment, in accordance with the OFPA provision for the sunset of National List substances (7 U.S.C. 6517(e)).

AMS is particularly interested in comments that identify any impacted hydrogen peroxide products labeled for agricultural use that contain more than 5% peracetic acid.

Section 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food groups(s)).''

This proposed rule would amend section 205.605(b) by changing an annotation to expand the use for the following substance:

Potassium hydroxide. Potassium hydroxide is a white, caustic solid which is highly absorbent to the point that it dissolves into solution. It is alkaline in solution and available in pellets, flakes, sticks, lumps and powder. Commercially, food grade potassium hydroxide is obtained from the electrolysis of potassium chloride solution in the presence of a porous diaphragm. According to the Food and Drug Administration (FDA), potassium hydroxide is generally recognized as safe (GRAS) when used as a formulation aid, a pH control agent, a processing aid or a stabilizer and thickener (21 CFR 184.1631). The FDA regulations further provide that substances generally regarded as safe in food may be used to wash or to assist in the peeling of fruits and vegetables (21 CFR 173.315).[7] In the lye peeling of fruits and vegetables, potassium hydroxide works by weakening the glycolic bonds of pectin responsible for peel adhesion so that the peel can be removed by water spray and other mechanical methods.

An allowance for potassium hydroxide was codified on the National List on December 21, 2000 (65 FR 80548). The allowance permitted potassium hydroxide in organic processing but prohibited its use in lye peeling of fruits and vegetables.[8] On November 3, 2003, AMS published a final rule which amended the annotation for potassium hydroxide to allow its use for peeling peaches during the Individually Quick Frozen (IQF) production process (68 FR 62215). AMS based this amendment on a 2001 NOSB recommendation to allow potassium hydroxide for IQF peaches. The NOSB recommendation stated that there were no commercially viable alternatives to lye peeling of peaches. The NOSB also concluded that the low pH of the peaches would help neutralize the pH of the wastewater from organic processing and, therefore, mitigate any potentially adverse environmental effects of the potassium hydroxide use.

On April 19, 2011, AMS received a petition requesting that potassium hydroxide be permitted as a processing aid in the lye peeling of fresh peaches for canning.[9] The petition explained that the peeling processes for freezing or canning peaches are identical. Therefore, the petition claimed that an allowance to use potassium hydroxide to peel peaches for canning is consistent with the existing allowance for the use of potassium hydroxide in peeling of organic peaches for frozen products.

at *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5097089*.

[7] Technical Report on Potassium hydroxide. May 21, 2001. Available in Petitioned Substances Database, under ''P,'' at the NOP Web site: *http://www.ams.usda.gov/NOPPetitionedSubstances Database*.

[8] In 1995, the NOSB recommended the addition of potassium hydroxide to section 205.605 for use in organic processing with an annotation prohibiting its use in the lye peeling of fruits and vegetables. The NOSB based the restriction on concerns about the environmental effects of the waste products of the lye peeling process, and their understanding that mechanical and non-chemical alternatives were available for peeling most fruits and vegetables.

[9] The petition was submitted by Pacific Coast Producers, and is available in the Petitioned Substances Database, under ''P,'' at the NOP Web site: *http://www.ams.usda.gov/NOPPetitioned SubstancesDatabase*.

The petition also stated that no other treatment or process is equivalent to potassium hydroxide for peeling peaches, in terms of minimal loss of texture, flavor, appearance and aroma.

At its November 29–December 2, 2011 meeting, the NOSB considered the petition to amend the annotation for potassium hydroxide to allow its use in lye peeling of peaches to be canned. In its deliberations, the NOSB noted a lack of commercially viable alternatives for peeling peaches and stated that the acidity of the fruit and on-site buffering would mitigate any potential environmental impact of alkaline waste from a peach processing facility using potassium hydroxide. The NOSB also reasoned that freezing and canning are the primary commercial processes for peaches and that these processes are identical until the last step. Based upon the information in the petition and technical report, and prior NOSB action regarding potassium hydroxide, the NOSB recommended that potassium hydroxide be allowed for any peach peeling in organic processing, rather than limiting the allowance to peaches to be frozen using the IQF process.

AMS has reviewed and proposes to address the NOSB recommendation through this proposed rule. Consistent with the NOSB recommendation, this proposed rule would amend the listing for potassium hydroxide in section 205.605(b) by deleting the words, ''during the Individually Quick Frozen (IQF) production process''. This change would, in effect, allow the use of potassium hydroxide in lye peeling of peaches for all types of organic peach processing, including canning and the IQF process. If finalized, the listing for potassium hydroxide in section 205.605(b) would be subject to review within five years of its amendment, in accordance with the OFPA provision for the sunset of National List substances (7 U.S.C. 6517(e)).

This proposed rule would further amend section 205.605(b) by adding an annotation to specify the permitted use of the following substance:

Silicon dioxide. Silicon dioxide is currently listed as an allowed synthetic in organic processing in section 205.605(b). In accordance with applicable FDA requirements for its use as a food additive,[10] the substance can serve many technical, functions including as an anti-caking agent, a defoamer, a stabilizer, or an adjuvant.

At its meeting November 29–December 2, 2011, the NOSB considered a petition requesting the removal of silicon dioxide from section 205.605(b) of the National List. The petition was submitted by a manufacturer of an organic product derived from rice hulls. The petitioner stated that the rice hull product is an organic alternative for the use of synthetic silicon dioxide in some applications. The petitioner requested that silicon dioxide be removed from the National List based on the criteria provided under section 205.600(b)(1) of the USDA organic regulations. Section 205.600(b)(1) specifies that any synthetic substance used as a processing aid or adjuvant on the National List must be evaluated under the criteria that the substance cannot be produced from a natural source and there are no organic substitutes.

During its deliberations, the NOSB stated that the alternative organic product, derived from organic rice hulls, could be a replacement for silicon dioxide in some, but not all, current applications of silicon dioxide in organic handling. Specifically, the NOSB noted that the alternative organic product does not function as a replacement for synthetic silicon dioxide as a defoamer. In addition, the NOSB also noted that there may be other applications where the continued use of silicon dioxide may be necessary if the alternative organic product does not provide the functionality needed.

In order to recognize the availability of the alternative organic product as a substitute for some uses of silicon dioxide, the NOSB recommended that an annotation be added to the listing for silicon dioxide at section 205.605(b) as follows: ''Silicon dioxide—allowed for use as a defoamer. May be used in other applications when non-synthetic alternatives are not commercially available.''

AMS understands that the intent of the NOSB's recommendation is to allow the continued use of silicon dioxide as a defoamer and to require the use of a nonsynthetic substance instead of silicon dioxide when possible. To ensure clarity and consistency within the USDA organic regulations, AMS is proposing a modification to the NOSB's recommendation by proposing an annotation which would read as follows: ''Silicon dioxide—Permitted as a defoamer. Allowed for other uses when organic rice hulls are not commercially available.''

AMS is proposing this modification to specify the specific alternative substance (i.e., organic rice hulls) that the NOSB considered during its review, rather than including the general term ''nonsynthetic alternatives.'' AMS has specified the particular nonsynthetic alternative within the annotation so that certifying agents can consistently verify that organic handlers are in compliance with the regulations. The clarification also reduces the burden on organic handlers since they would not be required to demonstrate that all nonsynthetic inputs were considered prior to the use of silicon dioxide.

AMS has also specified in the annotation that the rice hulls must be organic, since the use of conventional (i.e., nonorganic) rice and rice products is not permitted in products labeled as ''organic'' under the USDA organic regulations. Section 205.606 of the National List specifies the nonorganically produced agricultural products that may be used as ingredients in or on processed products labeled as ''organic.'' Substances included in section 205.606 are only permitted when the product is not commercially available in organic form. Rice and rice hulls are not included at section 205.606 of the National List; therefore, the use of nonorganic rice products would not be permitted in products labeled as ''organic.'' This proposed rule does not change this requirement. Because section 205.606 does not apply to products labeled ''made with organic (specified ingredients or food group(s)),'' organic or nonorganic rice hulls would be permitted as a substitute for silicon dioxide in the 30 percent nonorganic content of a ''made with organic (specified ingredients or food group(s)),'' product under section 205.301(c) of the USDA organic regulations.

AMS understands that the NOSB recommendation intended for silicon dioxide to continue to be allowed in applications when organic rice hulls do not adequately substitute for the functionality provided by silicon dioxide. Commercially available is defined under section 205.2 of the USDA organic regulations as ''the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.'' Linking the use of silicon dioxide by annotation to the commercial availability of organic rice hulls reflects

[10] There are multiple references in the FDA regulations that are relevant to silicon dioxide and its authorized use in food for human consumption. These are cited in the Technical Report prepared for the NOSB and include 21 CFR 172.480, 21 CFR 172.230, 21 CFR 73.340, 21 CFR 160.105, 21 CFR 160.185, and 21 CFR 182.90. See Technical Report on Silicon Dioxide. November 12, 2010. Available in Petitioned Substances Database, under ''S,'' at the NOP Web site: *http://www.ams.usda.gov/NOP PetitionedSubstancesDatabase.*

the NOSB's intent to permit the use of synthetic silicon dioxide when organic rice hulls do not fulfill an essential function in a system of organic handling, as determined by the certifying agent in the course of reviewing the organic plan. A difference in cost between synthetic silicon dioxide and organic rice hulls would not be considered a permitted justification for use of synthetic silicon dioxide under the proposed annotation.

AMS has reviewed and proposes to address the NOSB recommendation with the modification described. This proposed rule would amend section 205.605(b) by adding an annotation for silicon dioxide to read as follows: ''Silicon dioxide—Permitted as a defoamer. Allowed for other uses when organic rice hulls are not commercially available.'' AMS is seeking comments that describe whether product reformulation will be necessary and the timeframe that will be needed to comply with this change. Such comments will inform an appropriate effective date for this amendment if finalized. If finalized, the listing for silicon dioxide in section 205.605 would be subject to review within five years of its amendment, in accordance with the OFPA provision for the sunset of National List substances (7 U.S.C. 6517(e)).

Section 205.606 Nonorganically Produced Agricultural Products Allowed as Ingredients in or on Processed Products Labeled as ''Organic''

This proposed rule would amend subparagraph (d)(3), redesignated under this proposed action as (d)(2), of section 205.606 by changing the annotation to correct the Chemical Abstracts Service (CAS) number and to allow an additional source of the following substance:

Beta-carotene extract color. Beta-carotene is a carotenoid. Carotenoids are natural pigments synthesized by plants that aid in photosynthesis by absorbing light and protect the plant from photosensitization. Carotenoids commonly exhibit antioxidant activity in food. In the human body, beta-carotene is converted to vitamin A. Beta-carotene is the most common carotenoid and the major colorant in carrot and palm oil seed extracts and is also found in cantaloupes, apricots, sweet potatoes and other orange, red and dark green fruits and vegetables.[11]

Beta-carotene can be produced through various methods including chemical synthesis, fermentation of microorganisms (fungi, yeasts, or bacteria), and extraction from certain algae (*Dunnaliella salina*) and vegetables. Obtaining beta-carotene from natural sources generally involves propagation and harvest of the source and solvent extraction of the beta-carotene. According to the 2011 Technical Report for beta-carotene, only one preparation of crystalline beta-carotene from carrots is commercially available and the substance is not yet obtained commercially from other vegetable sources.

Beta-carotene is used as a color additive and as a nutritive supplement in a variety of foods including dairy products, fats and oils, and processed fruits and fruit juices. As a colorant, it adds a deep orange to light yellow color to the food depending upon the concentration. The FDA regulations provide that beta-carotene, prepared synthetically or obtained from natural sources, may be safely used for coloring foods in amounts consistent with good manufacturing practices. It may not be used in foods for which there is an FDA standard of identity unless that standard of identity authorizes its use (21 CFR 73.95).

On June 27, 2007, a listing for beta-carotene extract color, derived from carrots, was added to section 205.606 of the National List through an interim final rule (72 FR 35137).[12] This allowance provides for the use of the nonorganic form of beta-carotene extract color, derived from carrots, in organic processing when an organic form is not commercially available.[13]

On July 20, 2009, AMS received a petition to amend the annotation for beta-carotene extract color derived from carrots.[14] The petition requested two changes to the listing for beta-carotene extract color: (i) Correction of the CAS number; and (ii) the inclusion of algae as a source of beta-carotene extract color. The petition indicated that the CAS number listed for beta-carotene extract color (CAS #1393–63–1) is incorrect and refers to the pigment found in annatto extract color. The petition also stated that algae provide the only source of beta-carotene that can be produced with allowed solvents, such as nonsynthetic ethanol, vegetable oil, and carbon dioxide.

At its November 29–December 2, 2011 meeting, the NOSB considered the petition to amend the listing for beta-carotene extract color. In its deliberations, the NOSB considered its October 2010 recommendation to prohibit the use of synthetic solvents and carrier systems or any artificial preservative in the production of colors used in organic processing. The October 2010 NOSB recommendation specified that the listing for colors derived from agricultural products at section 205.606 should include the following annotation: ''Must not be produced using synthetic solvents and carrier systems or any artificial preservative.[15] This NOSB recommendation was codified through a final rule published on June 6, 2012 (77 FR 33290). The NOSB accepted the petition's justification for revision of the listing for beta-carotene extract color, which stated that the only method to extract beta-carotene from carrots uses synthetic solvents and would not comply with the revised requirements for colors derived from agricultural products in section 205.606. The NOSB concluded that the production of beta-carotene color from algae, as described in the petition, could comply with the amended annotation for colors in section 205.606 and be an acceptable source of beta-carotene extract color in organic products when an organic form was not commercially available. The NOSB also recommended that the CAS number be corrected to 7235–40–7 for this listing.[16]

AMS has reviewed and proposes to address the NOSB recommendation through this proposed rule. Consistent with the NOSB recommendation, this proposed rule would amend paragraph (d)(3), redesignated under this action as paragraph (d)(2), of section 205.606 of the National List by: (i) Replacing the text, ''(CAS #1393–63–1)'' with the text

[11] Technical Report on Beta-carotene extract color. July 15, 2011. Available in Petitioned Substances Database, under ''C'' for colors, at the NOP Web site: *http://www.ams.usda.gov/NOP PetitionedSubstancesDatabase.*

[12] The interim final rule was superseded by a final rule published June 6, 2012 (77 FR 33290) which renewed the listing for beta-carotene extract color as part of the 2012 sunset review. The final rule was effective June 27, 2012.

[13] In April 2007, the NOSB recommended adding beta-carotene color extract derived from carrots to 205.606. The NOSB concluded that this substance was not available in organic form because the specific varieties of carrots grown for beta-carotene production were not produced organically in sufficient quantities. NOSB Formal Recommendation on Beta-carotene color derived from carrots. April 21, 2007. Available at the NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5061991.*

[14] The petition was submitted by D.D. Williamson & Co., Inc., and is available from the NOP Web site in the Petitioned Substances Database: *http://www.ams.usda.gov/NOPPetitionedSubstancesDatabase.* A separate petition has been submitted by the International Formula Council for the use of the synthetic form of beta-carotene in organic processing.

[15] NOSB Formal Recommendation on Colors derived from agricultural ingredients. October 2010. Available at the NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5088018&acct=nosb.*

[16] NOSB Formal Recommendation on Annatto Extract Color. December 2, 2011. Available at the NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5097101.*

''(pigment CAS #7235–40–7)''; and (ii) adding the words, ''or algae'' between ''carrots'' and ''(pigment CAS #7235–40–7).'' If finalized, the listing for beta-carotene extract color at section 205.606 would be subject to review within five years of its amendment, in accordance with the OFPA provision for the sunset of National List substances (7 U.S.C. 6517(e)).

This proposed rule would further amend paragraph (d) of section 205.606 by removing the exemption for the following substance:

Annatto extract color. Annatto extract color is made from the dried seed of *Bixa orellana* L., an evergreen shrub native to Central and tropical South America, which is cultivated globally in tropical areas. The seed's coating contains carotenoid pigments, principally bixin, which are used to impart a deep orange to light yellow color, depending upon the concentration, to foods and beverages. The water soluble form is used as a colorant in foods, such as hard cheeses, bakery products, sauces, and sugar and flour confectionary. This form is available spray-dried on a carrier or is available in an aqueous solution. The oil soluble form is used in foods with a high fat content, such as salad dressings. This form is available dried or suspended in vegetable oil.[17] Organic annatto extract seeds are hulled, crushed into small pieces and physically ground together in vegetable oil or mildly alkaline water. The oil and water are filtered and concentrated, and retain the pigments contained in the seed.

According to FDA, annatto extract may be safely used for coloring foods generally in amounts consistent with good manufacturing practices, except where a standard of identity does not authorize its use. The FDA has also determined that annatto extract color is exempt from color certification (21 CFR 73.30). Under section 721(c) of the Federal Food, Drug and Cosmetic Act (FFDCA), the FDA exempts certain color additives from certification if FDA approval is not necessary for the protection of the public health.

On June 27, 2007, a listing for annatto extract color (pigment CAS #1393–63–1), water and oil soluble, was added in section 205.606 of the National List through an interim final rule (72 FR 35137).[18] This allowance provides for the use of the nonorganic forms of water and oil soluble annatto extract color in organic processing when an organic form is not commercially available. The 2007 rule stated that the global supply production of annatto seeds was insufficient to consistently provide organic sources of this substance.

In September 2010, AMS received a petition for the removal of annatto extract color from the National List.[19] The petition stated that the use of nonorganic annatto extract in organic processing was no longer warranted because there is an adequate supply of organic annatto seed from which organic annatto extract can be produced. The petition explained that the geographic diversity in organic annatto seed production protects the supply from interruptions due to weather. In addition, the petition indicated that the availability of water soluble, oil soluble, oil soluble suspensions and powdered forms of annatto extract are adequate for the needs of the organic industry.

On June 6, 2012, AMS published a final rule, renewing the listing for annatto extract color at section 205.606, prior to its sunset date on June 27, 2012 (77 FR 33290). The final rule is consistent with the October 2010 NOSB sunset recommendation to continue the allowance for the use of nonorganic annatto extract color. In the justification for recommending renewal in 2010, the NOSB explained its uncertainty about the commercial availability of organic powdered annatto extract based upon public comment at that time. The NOSB indicated that it would address the commercially availability of liquid and dry forms of annatto extract color during its future consideration of the September 2010 petition to remove annatto extract color from the National List.[20]

At the November 29–December 2, 2011 NOSB meeting, the NOSB considered the September 2010 petition to remove annatto extract from the National List. The NOSB Handling Committee conducted market research to verify that the forms of annatto extract used by organic handlers are available organically. Their findings indicated that liquid forms of organic annatto extract were widely available, and the powdered form of organic annatto extract was available, but not widely used. The NOSB Handling Committee proposed that the annotation for annatto extract be revised from water and oil soluble to liquid and powdered forms to reflect the forms found in the marketplace. To ensure that the NOSB considered all forms of annatto extract needed by organic handlers, the Committee solicited public comment on any specific needs for a continued allowance of nonorganic annatto extract.[21] During the November 29–December 2, 2011, NOSB meeting, the Handling Committee explained that it had not received public comment indicating that nonorganic forms of annatto extract were needed. Therefore, the NOSB approved a recommendation to remove annatto extract color from section 205.606(d).[22]

AMS has reviewed and proposes to address the NOSB's recommendation through this proposed rule. Consistent with the NOSB recommendation, this proposed rule would amend paragraph (d) of section 205.606 by removing annatto extract color (pigment CAS #1393–63–1)—water and oil soluble and redesignating paragraphs (d)(2) through (d)(19) as paragraphs (d)(1) through (d)(18). AMS is seeking comments that describe whether product reformulation will be necessary and the timeframe that will be needed to comply with this change. Such comments will inform an appropriate effective date for this amendment if finalized.

III. Related Documents

Two notices were published regarding meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** notices: (1) 74 FR 46411, September 9, 2009 (peracetic acid); and (2) 76 FR 62336, October 17, 2011 (potassium hydroxide, silicon dioxide, beta-carotene extract color, and annatto extract color).

IV. Statutory and Regulatory Authority

The OFPA, as amended, (7 U.S.C. 6501–6522), authorizes the Secretary to make amendments to the National List

[17] Food and Agriculture Organization of the United Nations. 1995. Non-Wood Forest Products, Natural Colourants and Dyestuffs, *http://www.fao.org/docrep/v8879e/V8879e00.htm.*

[18] The interim final rule was superseded by a final rule published June 6, 2012 (77 FR 33290) which renewed the listing for annatto extract color as part of the 2012 sunset review. The final rule was effective June 27, 2012.

[19] The petition was submitted by D.D. Williamson & Co., Inc. and is available from the NOP Web site in the Petitioned Substances Database under ''C'' for colors: *http://www.ams.usda.gov/NOPPetitionedSubstancesDatabase.*

[20] NOSB Formal Recommendation: Colors derived from agricultural products—Annotation Change. October 28, 2010. Available at the NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5088018&acct=nosb.*

[21] NOSB Handling Committee recommendation on Annatto extract color. September 29, 2011. Available at the NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5094391.*

[22] NOSB Formal recommendation on Annatto extract color, December 2, 2011. Available at the NOP Web site: *http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELPRDC5097099.*

based on proposed amendments developed by the NOSB. Sections 6518(k) and 6518(n) of the OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion on or deletion from the National List. The National List petition process is implemented under section 205.607 of the USDA organic regulations. The current petition process (72 FR 2167, January 18, 2007) can be accessed through the NOP Web site at *http://www.ams.usda.gov/AMSv1.0/nop*.

A. Executive Order 12866

This action has been determined not significant for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under the OFPA from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in the OFPA (7 U.S.C. 6514(b)). States are also preempted by the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to the OFPA (7 U.S.C. 6519(f)), this proposed rule would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601–624), the Poultry Products Inspection Act (21 U.S.C. 451–471), or the Egg Products Inspection Act (21 U.S.C. 1031–1056), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the FFDCA (21 U.S.C. 301–399), nor the authority of the Administrator of EPA under the FIFRA (7 U.S.C. 136–136(y)).

The OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's final decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $7,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

U.S. sales of organic food and non-food have grown from $1 billion in 1990 to $31.4 billion in 2011. Sales in 2011 represented 9.5 percent growth over 2010 sales.[23] According to USDA, National Agricultural Statistics Service (NASS), certified organic acreage exceeded 3.5 million acres in 2011.[24] According to NOP's Accreditation and International Activities Division, the number of certified organic operations in the U.S. has more than doubled over time from approximately 7,000 operations in 2000 to over 17,000 operations by the end of 2011. Of these operations, over 4,900 are organic handlers, over 10,000 are organic crop producers, and over 1,900 are organic livestock producers. AMS believes that most of these entities would be considered small entities under the criteria established by the SBA.

In addition, the USDA has 87 accredited certifying agents who provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP web site, at *http://www.ams.usda.gov/nop.* AMS believes that most of these accredited certifying agents would be considered small entities under the criteria established by the SBA. Certifying agents reported approximately 29,000 certified operations worldwide in 2011.

AMS has considered the economic impact of this action on small entities. The effect of this proposed rule would be to expand the allowed uses of peracetic acid in organic crop production. AMS concludes that expanding the allowance for peracetic acid on the National List both addresses EPA relabeling issues for products used in organic crop production and continues access to a substance used for plant disease control on organic farms. Therefore, this action will be beneficial to small agricultural service firms. This proposed rule also would expand the use of potassium hydroxide and beta-carotene extract color in organic handling. AMS concludes that expanding the allowance for these substances on the National List provides organic handlers with more tools for processing organic products and, therefore, will be beneficial to small agricultural service firms. This proposed rule would amend the allowance for synthetic silicon dioxide such that organic rice hulls would be required as an alternative to silicon dioxide when commercially available. The proposal would continue to allow the use of silicon dioxide as a defoamer and would allow the use of silicon dioxide when organic rice hulls are not available in an appropriate form, quality, or quantity to fulfill an essential function in a system

[23] Organic Trade Association. 2012. Organic Industry Survey. *www.ota.com.*

[24] U.S. Department of Agriculture, National Agricultural Statistics Service. October 2012. 2011 Certified Organic Productions Survey. *http://usda01.library.cornell.edu/usda/current/Organic Production/OrganicProduction-10-04-2012.pdf.*

of organic handling. This flexibility is intended to minimize the impact on small entities. This proposed rule would also remove the allowance for one nonorganic agricultural substance, annatto extract, in organic handling. The NOSB has determined that annatto extract is commercially available in organic form in sufficient quantities for organic handling. AMS concludes that the economic impact of this amendment to the National List, if any, would be minimal to small agricultural service firms and may spur further development of organic annatto production. Accordingly, AMS certifies that this rule will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, and Chapter 35.

E. Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

F. General Notice of Public Rulemaking

This proposed rule addresses recommendations submitted to the Secretary by the NOSB for substances on the National List of Allowed and Prohibited Substances. A 30-day period for interested persons to comment on this rule is provided. Thirty days is deemed appropriate because potential changes to these listings were widely publicized through two NOSB meetings. Further, certain proposed amendments, one for potassium hydroxide in organic handling, and those for peracetic acid in organic crop production, are considered time sensitive and critical to organic production. The proposed amendment to the listing for potassium hydroxide would provide more tools for organic peach processors by allowing use of this substance to peel peaches for canning, in addition to its current allowance to peel peaches for frozen products. The proposed amendments to the listings for peracetic acid would ensure consistency with EPA labeling requirements for hydrogen peroxide products containing peracetic acid.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

■ 1. The authority citation for 7 CFR part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

■ 2. Section 205.601 is amended by revising paragraphs (a)(6) and (i)(8) to read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

* * * * *

(a) * * *

(6) Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material. Permitted in hydrogen peroxide formulations at concentration of no more than 5% as indicated on the pesticide product label.

* * * * *

(i) * * *

(8) Peracetic acid—for use to control fire blight bacteria. Permitted in hydrogen peroxide formulations at concentration of no more than 5% as indicated on the pesticide product label.

* * * * *

■ 3. In § 205.605 paragraph (b), revise the entry for ''Potassium hydroxide'' and ''Silicon dioxide'' to read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as ''organic'' or ''made with organic (specified ingredients or food group(s)).''

* * * * *

(b) * * *

Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables except when used for peeling peaches.

* * * * *

Silicon dioxide—Permitted as a defoamer. Allowed for other uses when organic rice hulls are not commercially available.

* * * * *

■ 4. Section 205.606 is amended by:

■ A. Removing paragraph (d)(1);

■ B. Redesignating (d)(2) through (d)(19) as (d)(1) through (d)(18); and

■ C. Revising paragraph (d)(2) to read as follows:

§ 205.606 Nonorganically produced agricultural products allowed as ingredients in or on processed products labeled as ''organic.''

* * * * *

(d) * * *

(2) Beta-carotene extract color—derived from carrots or algae (pigment CAS# 7235–40–7).

* * * * *

Dated: January 30, 2013.

Rex A. Barnes,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2013–02398 Filed 2–4–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 959

[Doc. No. AMS–FV–12–0039; FV12–959–1 PR]

Onions Grown in South Texas; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the South Texas Onion Committee (Committee) for the 2012–13 and subsequent fiscal periods from $0.025 to $0.03 per 50-pound equivalent of onions handled. The Committee locally administers the marketing order which regulates the handling of onions grown in South Texas. Assessments upon onion handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins August 1 and ends July 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by February 15, 2013.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at:

http://www.regulations.gov. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or Email: *Doris.Jamieson@ams.usda.gov* or *Christian.Nissen@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Laurel.May@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 959, as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, South Texas onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable onions beginning on August 1, 2012, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2012–13 and subsequent fiscal periods from $0.025 to $0.03 per 50-pound equivalent of onions.

The South Texas onion marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2009–10 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 26, 2012, and unanimously recommended 2012–13 expenditures of $145,467 and an assessment rate of $0.03 per 50-pound equivalent of onions. In comparison, last year's budgeted expenditures were $190,467. The assessment rate of $0.03 is $0.005 higher than the rate currently in effect. The Committee's 2012–13 crop estimate of five million 50-pound equivalents is lower than the six million estimated for last year, and would not generate adequate assessment income to cover budgeted expenses at the $0.025 rate. With the recommended $0.005 increase, assessment income should approximate $150,000. The increased assessment rate should provide sufficient funds to cover anticipated 2012–13 expenses.

The major expenditures recommended by the Committee for the 2012–13 fiscal period include $46,610 for compliance, $37,050 for administrative, and $32,942 for management. Budgeted expenses for these items were the same in 2011–12. The reduction in overall budgeted expenses from $190,467 to $145,467 is due to the elimination of market development programs.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Onion shipments for the year are estimated at five million 50-pound equivalents which should provide $150,000 in assessment income. Income derived from handler assessments, along with interest income, would be adequate to cover budgeted expenses. Funds in the reserve (currently $107,162) would be kept within the maximum permitted by the order (approximately two fiscal periods' expenses as authorized in § 959.43).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2012–13 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially

small entities acting on their own behalf.

There are approximately 85 producers of onions in the production area and approximately 30 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000 (13 CFR 121.201).

According to Committee data and information from the National Agricultural Statistical Service (NASS), the average price for South Texas onions during the 2010–11 season was around $7.35 per 50-pound equivalents and total shipments were approximately 5.4 million 50-pound equivalents. Using the average price and shipment information and assuming a normal distribution, the majority of South Texas onion producers would have annual receipts of less than $750,000. In addition, based on available information, approximately 80 percent South Texas onion handlers could be considered small businesses under SBA's definition. Thus, the majority of South Texas onion producers and handlers may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2012–13 and subsequent fiscal periods from $0.025 to $0.03 per 50-pound equivalent of onions. The Committee unanimously recommended 2012–13 expenditures of $145,467 and an assessment rate of $0.03 per 50-pound equivalent. The proposed assessment rate of $0.03 is $0.005 higher than the 2011–12 rate. The quantity of assessable onions for the 2012–13 fiscal year is estimated at five million 50-pound equivalents, compared to an estimated six million 50-pound equivalents last year. The current assessment rate of $0.025 would not generate sufficient revenue to meet expenses, however the $0.03 rate should provide $150,000 in assessment income and be adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2012–13 fiscal period include $46,610 for compliance, $37,050 for administrative, and $32,942 for management. Budgeted expenses for these items were the same in 2011–12. The reduction in overall budgeted expenses from $190,467 to $145,467 is due to the elimination of market development programs.

Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget and Personnel Committee and the Marketing Committee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various promotional projects to the South Texas onion industry. The assessment rate of $0.03 per 50-pound equivalent of assessable onions was then determined by dividing the total recommended budget by the quantity of assessable onions, estimated at five million 50-pound equivalents for the 2012–13 fiscal period. Assessment income should approximate $150,000, $5,333 above anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2012–13 fiscal period could range between $6.60 and $9.80 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2012–13 fiscal period as a percentage of total grower revenue could range between .3 and .45 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 26, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178 (Vegetable and Specialty Crops). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously-mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 10-day comment period is provided to allow interested persons to respond to this proposed rule. Ten days is deemed appropriate because: (1) The 2012–13 fiscal period began on August 1, 2012, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

■ 1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2012, an assessment rate of $0.03 per 50-pound equivalent is established for South Texas onions.

Dated: January 30, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–02400 Filed 2–4–13; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[Docket No. PRM–72–7; NRC–2012–0266]

Spent Fuel Cask Certificate of Compliance Format and Content

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; receipt and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt for a petition for rulemaking (PRM), dated October 3, 2012, which was filed with the NRC by Anthony R. Pietrangelo on behalf of the Nuclear Energy Institute (NEI or the petitioner). The petition was docketed by the NRC on October 18, 2012, and assigned Docket No. PRM–72–7. The petitioner requests that the NRC add a new rule that governs the format and content of spent fuel storage cask Certificates of Compliance (CoCs), extend the backfit rule to CoCs, and make other improvements that result in ''more efficient and effective NRC oversight of dry cask storage activities as well as improved implementation of dry cask storage requirements by industry.''

DATES: Submit comments by April 22, 2013. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this petition for rulemaking, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0266. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0266. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3667, email: *Cindy.Bladey@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0266 when contacting the NRC about the availability of information for this petition for rulemaking. You may access information related to this petition for rulemaking, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0266.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The incoming petition is in ADAMS under Accession No. ML12299A380.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0266 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in you comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. The Petitioner

The NEI is the policy organization for the nuclear energy and technologies industry. The NEI's petition states that its ''members include entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, and other organizations and entities involved in the nuclear energy industry.'' These include CoC ''holders, and licensees—under both the specific and general license provisions—regulated by the NRC through 10 CFR part 72 [part 72 of Title 10 of the *Code of Federal Regulations* (10 CFR)].'' The petitioner states that its primary interest in submitting this petition is that it ''is responsible for coordinating the combined efforts of licensees and CoC holders on matters involving generic NRC regulatory policy issues, and generic operations and technical regulatory issues affecting the activities of NRC-licensed independent spent fuel storage installations (ISFSIs) and NRC-certified dry storage cask designs.''

III. The Petition

In its petition (ADAMS Accession No. ML12299A380), the petitioner requests that the NRC initiate a rulemaking to amend 10 CFR part 72. The petitioner requests that the NRC regulations be amended as follows:

1. Add a new rule to ''provide specific criteria for the format and content to be included in a spent fuel storage cask Certificate of Compliance (CoC).''

2. Revise the backfit rule in 10 CFR 72.62 to apply to CoCs and CoC holders, ensuring that the addition, elimination, or modification, after the license has been issued, of structures, systems, or components of an ISFSI or Monitored Retrievable Storage (MRS) facility, or the procedures or organization required to operate an ISFSI or MRS are limited to ''situations where the Commission finds that the proposed change will yield a substantial increase in the overall protection of public health and safety and is cost-justified.''

3. Delete the requirement in 10 CFR 72.212(b)(6) for general licensees to review the NRC Safety Evaluation Report (SER) related to the CoC or amended CoC prior to use of the general license.

4. Clarify the regulatory requirements in 10 CFR 72.212(b)(10), which requires the licensee ''to review various plans and programs that are governed by other regulations.''

5. Remove the requirement in 10 CFR 72.236 that the empty weight be marked on the storage cask.

6. Amend 10 CFR 72.124 to clarify the applicability of the criticality monitoring exemptions ''to reflect that criticality monitoring does not apply to spent fuel dry storage, including cask loading, preparation, onsite transport and storage operations governed by a Part 72 license.''

The petitioner states that these changes are necessary ''to achieve needed improvements to regulatory efficiency and effectiveness, * * * can only be achieved by amending the regulations, and * * * are not currently being considered by the NRC.''

A. Discussion of Proposed Amendments to 10 CFR Part 72

1. Add a New Rule for CoC Format and Content

The petitioner states that amending 10 CFR part 72, subpart L, to provide specific criteria for CoC format and content ''would provide the largest benefit to regulatory clarity and stability by assuring that the level of detail in CoCs is consistent and risk informed.'' Currently, the regulatory requirements for spent fuel storage cask approval and fabrication are contained in 10 CFR 72.236, and apply to the applicants and holders of CoCs for spent fuel storage casks. The petitioner asserts that ''these regulations do not provide specific requirements for the CoC format and content'' and ''[a]s a result, the content of existing CoCs and associated documents varies, with respect to both the type of information included and the level of detail provided.'' The petitioner states that making format changes to CoCs ensures ''clarity with respect to the division of responsibilities between CoC holders and licensees in implementing the CoC. * * *'' Additionally, the petitioner asserts that changes related to the content of the CoC will clarify the specific details that must be included in the CoC, improving ''efficiencies in licensing by focusing on the safety significant aspects of cask use.'' The petitioner believes these changes would ''reduce the number of unnecessary CoC amendments by eliminating the need for NRC review of less-safety-significant information that is currently included in many CoCs.''

2. Revise the Backfit Rule in 10 CFR 72.62 To Apply to CoCs and CoC Holders

The petitioner requests that 10 CFR 72.62, subpart C, be amended, so that the backfitting protections provided to general and specific licensees are applied to CoCs and CoC holders. The petitioner also requests that conforming changes be made to 10 CFR 72.13. The petitioner argues that ''[n]ew or amended NRC staff positions should not be imposed on a CoC or CoC holder, unless the NRC official communicating that position has first ascertained whether the new or changed position is a backfit.'' The petition goes on to state that ''if a staff proposed position is identified as a backfit, the staff should determine expeditiously whether the backfit is needed to ensure adequate protection of the public health and safety, or to comply with Commission rules or orders, the CoC itself, or written CoC holder commitments.'' The petitioner states that ''[p]ositions identified as CoC backfits that do not fall into one of these exceptions, should be imposed on CoCs and CoC holders only after documentation of a determination indicating that there is a substantial increase in the overall protection of the public health and safety, or the common defense and security, and that the direct and indirect costs of implementation are outweighed by the increased protection.'' The petitioner believes that this change ''would improve consistency between the way in which specific licensees, CoC holders and general licensees are regulated, and would ensure that changes to CoCs are imposed only after an adequate justification has been developed.''

3. Delete the Requirement in 10 CFR 72.212(b)(6) for General Licensees To Review the SER

The petitioner requests that 10 CFR part 72, subpart K, be amended ''to remove the requirement for the general licensee to perform the NRC SER compliance evaluation.'' The petitioner states that 10 CFR 72.212 ''requires general licensees to perform a compliance evaluation of the Safety Analysis Report (SAR), referenced in the CoC, or the amended CoC * * *.'' The petitioner argues that ''since the review of the cask SAR referenced in the CoC or amended CoC, would encompass the evaluation of the site-specific parameters versus the cask design bases information'' the ''[r]eview of the SER is extraneous, as the SER will not contain any new requirements or commitments that are not already contained in the CoC and FSAR.''

4. Clarify the Requirement in 10 CFR 72.212(b)(10) for Review of Programs and Plans Governed by Other Parts of the Regulations

The petitioner requests that 10 CFR 72.212 be amended to clarify requirements ''that general licensees perform a review of the emergency plan (EP), quality assurance program (QAP), training program, and radiation protection program (RP), to determine if their effectiveness is decreased and, if so, prepare the necessary changes and seek and obtain the necessary approvals.'' The petitioner suggests that currently the rule may be interpreted as imposing additional change control requirements different than the existing change control requirements provided for in 10 CFR part 50. The petitioner argues that changes should be made that ''would remove ambiguity and duplication, and improve clarity by simply directing the general licensee to the appropriate governing regulations for 10 CFR Part 50 program change control.''

5. Remove Requirement in 10 CFR 72.236 That the Empty Weight Be Marked on the Storage Cask

The petitioner requests that 10 CFR part 72, subpart L, be amended to remove the requirement that the empty weight be marked on storage casks. Currently, 10 CFR 72.236(k) stipulates that spent fuel storage casks be marked with the model number, a unique identification number, and empty weight. The petitioner believes that the model number and unique identification number are necessary and ''ensure that the cask can be properly identified, and traced back to its QA

[Quality Assurance] records, which include information on the design and contents.'' However, the petitioner states that it is important to minimize the number of markings on a container, which will reduce the chances that changes will have to be made to the permanent markings on a cask. The petitioner also states, ''[c]hanging permanent markings on the cask are problematic since this would require significant repair work, evaluation to verify the cask maintains conformance with the CoC, and worker dose if the cask contains used fuel.'' The petitioner maintains that since this information is contained in the QA controlled records, requiring that the empty weight be permanently marked on the cask does not ''provide any increase to the protection of public health and safety'' and ''serves no useful purpose.''

6. Amend 10 CFR 72.124 To Clarify the Applicability of the Criticality Monitoring Exemptions

The petitioner requests that 10 CFR part 72, subpart F, be amended ''to specify that criticality monitoring does not apply to special nuclear material in a dry storage cask being managed under a license granted pursuant to part 72, with 'managed' defined as cask loading, preparation, onsite transport and storage operation.'' The petitioner states that ''no criticality monitoring should be required as long as the cask/canister is being managed in accordance with its approved licensing and design basis as described in the Cask CoC or ISFSI license and their respective FSARs [Final Safety Analysis Reports].'' In addition, the petitioner asserts that ''the proposed rule change to modify 10 CFR 72.124(c), would clarify the regulations without modifying the intent'' and ''is consistent with NRC guidance, and other parts of the regulations.''

B. Additional Regulatory Framework Improvements (Not Requested as Part of This Petition for Rulemaking)

Separate from these rulemaking changes, the petitioner recommends eight other regulatory framework improvements. The petitioner states that these improvements are not requested as part of the petition, but believes that these other changes would provide ''synergies with the improvements'' requested in the petition. These recommendations include:

1. Streamlining the cask certification process.
2. Clarifying ''the implementation of the general license process and activities at the interface of Part 50 and Part 72 requirements.''
3. Updating guidance for implementing 10 CFR 72.48.
4. Examining the role of cladding integrity in the regulatory framework.
5. Discussing ''the potential to reinitiate a rulemaking for moderator exclusion.''
6. Discussing the ''potential options for harmonization of Part 71 and Part 72 for spent fuel.''
7. Making further improvements to the inspection program.
8. Streamlining the process for ''establishing and maintaining the relevant NRC guidance'' and ''achieving a more straight-forward regulatory framework by implementing improvements to the organization of the network of guidance documents'' that exists.

IV. Conclusion

The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802, ''Petition for rulemaking,'' and the petition has been docketed as PRM–72–7. The NRC is requesting public comment on the petition for rulemaking.

Dated at Rockville, Maryland, this 30th day of January 2013.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2013–02477 Filed 2–4–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1322; Directorate Identifier 2012–NM–155–AD]

RIN 2120–AA64

Airworthiness Directives; DASSAULT AVIATION 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 DASSAULT AVIATION Model MYSTERE–FALCON 900 and FALCON 900EX airplanes. This proposed AD was prompted by reports of chafing between the tail strobe power supply and a hydraulic line. This proposed AD would require modifying the tail strobe power supply wire routing. We are proposing this AD to prevent chafing between the tail strobe power supply and a hydraulic line, which could result in hydraulic fluid leakage and possible fire due to arcing, and consequent loss of control of the airplane due to structural failure of the tail.

DATES: We must receive comments on this proposed AD by March 22, 2013.

ADDRESSES: You may send comments 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:* 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 service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No.

FAA–2012–1322; Directorate Identifier 2012–NM–155–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 based on 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

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0162, dated August 29, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Two reports were received concerning Falcon 900 aeroplanes, where chafing between the tail strobe power supply and a hydraulic line was found. In the latest reported occurrence, the chafing damaged the power line and created an electrical arcing which created a pin hole in the hydraulic line, leading to hydraulic fluid leakage.
>
> This condition, if not corrected, could jeopardize the aeroplane's safe flight.
>
> To address this potential unsafe condition, Dassault Aviation developed modification (M5741) of the routing of the tail strobe power supply wire, which is available for accomplishment in service through Dassault Service Bulletin (SB) F900–431 or SB F900EX–437, as applicable to aeroplane model.
>
> For the reasons described above, this [EASA] AD requires modification of the routing of the tail strobe power supply wire.

The unsafe condition is chafing between the tail strobe power supply and a hydraulic line, which could result in hydraulic fluid leakage and possible fire due to arcing, and consequent loss of control of the airplane due to structural failure of the tail. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued Mandatory Service Bulletin F900–431, dated November 8, 2011 (for Model MYSTERE–FALCON 900 airplanes); and Mandatory Service Bulletin F900EX–437, dated November 8, 2011 (for Model FALCON 900EX airplanes). The actions described in these service bulletins are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 180 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $31 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $36,180, or $201 per product.

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.

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

List of Subjects in 14 CFR Part 39

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

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 AD:

DASSAULT AVIATION: Docket No. FAA–2012–1322; Directorate Identifier 2012–NM–155–AD.

(a) Comments Due Date

We must receive comments by March 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes specified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) DASSAULT AVIATION Model MYSTERE–FALCON 900 airplanes, serial numbers (S/N) 142 and subsequent.

(2) DASSAULT AVIATION Model FALCON 900EX airplanes, all serial numbers

except those on which Dassault Aviation modification M5741 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power.

(e) Reason

This AD was prompted by reports of chafing between the tail strobe power supply and a hydraulic line. We are issuing this AD to prevent chafing between the tail strobe power supply and a hydraulic line, which could result in hydraulic fluid leakage and possible fire due to arcing, and consequent loss of control of the airplane due to structural failure of the tail.

(f) Compliance

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

(g) Actions

Within 65 days or 200 flight hours after the effective date of this AD, whichever occurs first: Modify the tail strobe power supply wire routing, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin F900–431, dated November 8, 2011 (for Model MYSTERE–FALCON 900 airplanes); or Dassault Mandatory Service Bulletin F900EX–437, dated November 8, 2011 (for FALCON 900EX airplanes).

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2012–0162, dated August 29, 2012, and the service information specified in paragraphs (j)(1)(i) and (j)(1)(ii) of this AD, for related information.

(i) Dassault Mandatory Service Bulletin F900–431, dated November 8, 2011.

(ii) Dassault Mandatory Service Bulletin F900EX–437, dated November 8, 2011.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on January 28, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–02450 Filed 2–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1321; Directorate Identifier 2011–NM–147–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede an existing airworthiness directive (AD) that applies to certain Airbus Model A310 series airplanes. The existing AD currently requires repetitive inspections for fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors of the bottom skin panel of the wings, and related corrective action. The existing AD provides for an optional terminating action, which ends the repetitive inspections. Since we issued that AD, a reassessment of the previous fatigue threshold and inspection interval resulted in a determination that reduced inspection thresholds and intervals for accomplishment of the tasks are necessary. This proposed AD would reduce the initial inspection compliance time and intervals and provide additional terminating action options. We are proposing this AD to detect and correct fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors and the bottom skin panel of the wings, which could result in reduced structural integrity of the wings.

DATES: We must receive comments on this proposed AD by March 22, 2013.

ADDRESSES: You may send comments 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:* 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 service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about

this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1321; Directorate Identifier 2011–NM–147–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 based on 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

On July 9, 2004, we issued AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004). That AD required actions intended to address an unsafe condition on Airbus Model A310 series airplanes.

Since we issued AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004), the manufacturer has done a reassessment of the previous fatigue threshold and inspection interval resulting in a recommendation of reduced inspection thresholds and intervals for accomplishment of the tasks. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0125, dated June 30, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

DGAC [Direction Générale de l'Aviation Civile] France issued AD 2003–242(B) [which corresponds to FAA AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004)] to require an inspection programme for aeroplanes with pre- and post-Airbus modification 05106 configurations (Airbus SB A310–57–2004) in order to detect any crack located on the trailing edge of the wing bottom skin No.2 panel of the all-speed-aileron servo control bay. A crack at this location, if not detected and corrected, would propagate towards the wing rear spar and ultimately into the wing fuel tank area. Undetected cracks would affect the structural integrity of the [left hand] LH and/or [right hand] RH wing.

Since issuance of DGAC France AD 2003–242(B), a reassessment of the previous fatigue threshold and inspection interval has been completed. As a result of the reassessment, the inspection thresholds and intervals for accomplishment of the tasks as defined in Airbus SB A310–57–2082 have been adjusted and reduced. Airbus SB A310–57–2082 Revision 03 has been published, in which the compliance time periods for these inspection thresholds and intervals have been amended.

For the reasons stated above, this [EASA] AD retains the requirements of the DGAC France AD 2003–242(B), which is superseded, and requires implementation of the amended inspection programme.

Corrective action includes doing a permanent repair (installing a repair plate and new landing plates), a temporary repair (crack-stop drilling and application of a protective coating) followed by repetitive inspections until a permanent repair is done, and a repair approved by the FAA or EASA (or its delegated agent). This proposed AD also adds optional permanent repairs.

The initial inspection compliance times are dependent on the configuration (modification status, repair status, and crack length), and type of use (short range, long range, and normal). For airplanes without temporary repairs, the initial inspection compliance time ranges between 2,000 total flight cycles or 10,200 total flight hours, whichever occurs first; and 12,000 total flight cycles or 24,000 total flight hours, whichever occurs first. If the total flight cycles or total flight hours compliance time has been exceeded, the initial inspection compliance time (grace period) ranges between 200 flight cycles or 1,000 flight hours, to within 1,000 flight cycles or 2,800 flight hours, whichever occurs first.

For airplanes with temporary repairs, the initial inspection compliance time is dependant on crack length and ranges between 7 flight cycles or 35 flight hours, whichever occurs first, since the repair; to within 100 flight cycles or 200 flight hours, whichever occurs first, since the repair.

For airplanes with a temporary repair, the compliance time for completing the permanent repair ranges between 35 flight cycles or 175 flight hours, whichever occurs first, after completing the temporary repair; to within 500 flight cycles or 1,000 flight hours, whichever occurs first, after completing the temporary repair.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following service information.

- Airbus Service Bulletin A310–57–2081, Revision 03, dated October 13, 2010.
- Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010.
- Airbus Repair Instruction R573–49237, Repair To Crack In Trailing Edge Bottom Skin Panel No 2 Both Wings, Revision D, dated July 16, 2003.
- Airbus Repair Instruction R573–49243, Repair to cracks in all speed aileron access door landing plates, both wings, Revision C, dated July 16, 2003.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010; and Airbus Service Bulletin A310–57–2081, Revision 03, dated October 13, 2010; specify to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method approved by the FAA or the EASA (or its delegated agent).

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 58 products of U.S. registry.

The actions that are required by AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004), and retained in this proposed AD take about 2 work-hours per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it would take about 4 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $19,720, or $340 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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); and

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

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 removing airworthiness directive (AD) 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004), and adding the following new AD:

Airbus: Docket No. FAA–2012–1321; Directorate Identifier 2011–NM–147–AD.

(a) Comments Due Date

We must receive comments by March 22, 2013.

(b) Affected ADs

This AD supersedes AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004).

(c) Applicability

This AD applies to Airbus Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category, all serial numbers; except for airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Airplanes that have been modified in service according to Airbus Service Bulletin A310–57–2081 or during production by Airbus modification 12525.

(2) Airplanes that have been repaired according to Airbus Repair Inspection R573–49243 or R573–49237.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by a reassessment of the previous fatigue threshold and inspection interval specified in AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004), which resulted in a determination that reduced inspection thresholds and intervals for accomplishment of the tasks are necessary. We are issuing this AD to detect and correct fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors and the bottom skin panel of the wings, which could result in reduced structural integrity of the wings.

(f) Compliance

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

(g) Retained Repetitive Inspections for Airplanes Without Airbus Modification 5106

This paragraph restates the requirements of paragraph (a) of AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004). For airplanes on which Airbus Modification 5106 (Airbus Service Bulletin A310–57–2004, Revision 2, dated March 5, 1990) has not been done as of August 31, 2004 (the effective date of AD 2004–15–07): Within 2,000 flight cycles after the August 31, 2004 (the effective date of AD 2004–15–07), or within 3,000 flight cycles after the last inspection done per paragraph (k) of AD 98–26–01, Amendment 39–10942 (63 FR 69179, December 16, 1998), whichever is first; do a high frequency eddy current (HFEC) inspection for cracking of the area around the fasteners of the landing plate of the wing bottom skin panel No. 2 of the left and right wings. Do the inspection per the Accomplishment Instructions of Airbus Service Bulletin A310–57–2082, dated June 11, 2002. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 1,900 flight cycles, until accomplishment of the terminating action specified in paragraph (j) of this AD. Accomplishment of the inspection required by paragraph (k) of this AD terminates the requirements of paragraph (g) of this AD.

(h) Retained Repetitive Inspection for Airplanes With Airbus Modification 5106

This paragraph restates the requirements of paragraph (b) of AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004). For airplanes on which Airbus Modification 5106 has been done as of August 31, 2004 (the effective date of AD 2004–15–07): Do the HFEC inspection required by paragraph (g) of this AD at the applicable time specified in paragraph (h)(1), (h)(2), (h)(3), or (h)(4) of this AD. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 1,900 flight cycles, until accomplishment of the terminating action specified in paragraph (j) of this AD. Accomplishment of the inspection required by paragraph (k) of this AD terminates the requirements of paragraph (h) of this AD.

(1) For airplanes that have accumulated fewer than 17,000 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of August 31, 2004 (the effective date of AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004)): Inspect prior to the accumulation of 18,000 total flight cycles.

(2) For airplanes that have accumulated 17,000 or more total flight cycles, but fewer than 19,001 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of August 31, 2004 (the effective date of AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004)): Inspect within 2,000 flight cycles after August 31, 2004 (the effective date of AD 2004–15–07).

(3) For airplanes that have accumulated 19,001 or more total flight cycles, but fewer than 21,001 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of August 31, 2004 (the effective date of AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004)): Inspect with 1,200 flight cycles after August 31, 2004 (the effective date of AD 2004–15–07).

(4) For airplanes that have accumulated 21,001 or more total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of August 31, 2004 (the effective date of AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004)): Inspect within 500 flight cycles after August 31, 2004 (the effective date of AD 2004–15–07).

(i) Retained Corrective Action

This paragraph restates the requirements of paragraph (c) of AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004). If any cracking is found during any inspection required by paragraph (g) or (h) of this AD: Before further flight, do the actions required by either paragraph (i)(1) or (i)(2) of this AD.

(1) Do a permanent repair of the area by doing the applicable corrective actions per the Accomplishment Instructions of Airbus Service Bulletin A310–57–2082, dated June 11, 2002. Accomplishment of the permanent repair terminates the repetitive inspections required by this AD for the repaired area only.

(2) Do the terminating action specified in paragraph (j) of this AD.

(j) Retained Optional Terminating Action, With New Service Information and Options

This paragraph restates the retained optional terminating action information specified in paragraph (d) of AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004), with new service information and new options. Modification of the landing plate of the aileron access doors of the wing bottom skin panel No. 2 of the left and right wings by doing all the actions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–57–2081, dated June 11, 2002, or Airbus Service Bulletin A310–57–2081, Revision 03, dated October 13, 2010; or by doing the repair in accordance with Airbus Repair Instruction R573–49243, Revision C, dated July 16, 2003, or Airbus Repair Instruction R573–49237, Revision D, dated July 16, 2003; terminates the requirements of this AD. Where Airbus Service Bulletin A310–57–2081, dated June 11, 2002; and Airbus Service Bulletin A310–57–2081, Revision 03, dated October 13, 2010; specify contacting the manufacturer for disposition of certain repair conditions that might be associated with the modification procedure, this AD requires that the repair be done in accordance with a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent); or the European Aviation Safety Agency (EASA) (or its delegated agent).

(k) New Inspections, Related Investigative Actions, and Corrective Actions

Except as specified in paragraph (m)(1) of this AD, at the applicable time specified in Paragraph 1.E., ''Compliance,'' of Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010: Do a high frequency eddy current (HFEC) inspection to detect cracking of the area around the fasteners of the landing plate of the wing bottom skin panel No. 2 of the left and right wings; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010, except as required by paragraph (m)(2) of this AD. Do all applicable corrective actions before further flight. Repeat the inspection of the area around the fasteners of the landing plate of the wing bottom skin panel number 2 of the left and right wings thereafter at the applicable intervals, including the compliance times for post temporary repair inspections, specified in Paragraph 1.E., ''Compliance,'' of Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010, except as specified in paragraph (m)(3) of this AD. The temporary repair of cracks, as identified in Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010, does not constitute terminating action for the repetitive inspections required by this AD. Accomplishment of the inspection required by this paragraph terminates the requirements of paragraphs (g) and (h) of this AD. Doing the modification specified in paragraph (j) of this AD terminates the repetitive inspections required by this paragraph.

(l) New Permanent Repair

For airplanes on which the temporary repair as specified in Airbus Mandatory Service Bulletin A310–57–2082 has been done, within the applicable time specified in Paragraph 1.E., ''Compliance,'' of Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010: Do the permanent repair, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010, except as provided by paragraph (m)(2) of this AD.

(m) New Exceptions to Service Information

(1) Where Paragraph 1.E., ''Compliance,'' of Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010, specifies a compliance time ''from receipt of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010, specifies to contact Airbus for repair: Before further flight, repair the crack using a method approved by either the Manager, International Branch, ANM–116; or EASA (or its delegated agent).

(3) Where Paragraph 1.E., ''Compliance,'' of Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010, specifies to contact Airbus for inspection intervals, this AD requires using an inspection interval approved by either the Manager, International Branch, ANM–116; or EASA (or its delegated agent).

(n) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraphs (k) and (l) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (n)(1)(i), (n)(1)(ii), or (n)(1)(iii) of this AD, which is not incorporated by reference in this AD.

(i) Airbus Service Bulletin A310–57–2082, dated June 11, 2002.

(ii) Airbus Service Bulletin A310–57–2082, Revision 01, dated August 22, 2003.

(iii) Airbus Service Bulletin A310–57–2082, dated June 11, 2002.

(2) This paragraph provides credit for the modification of the landing plate of the aileron access doors of the wing bottom skin panel No. 2 of the left and right wings required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraph (n)(2)(i) or (n)(2)(ii) of this AD, which is not incorporated by reference in this AD, except where this service information specifies contacting the manufacturer for disposition of certain repair conditions that might be associated with the modification procedure, this AD requires that the repair be done in accordance with a method approved by either the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

(i) Airbus Service Bulletin A310–57–2081, Revision 01, dated February 26, 2003.

(ii) Airbus Service Bulletin A310–57–2081, Revision 02, dated October 18, 2007.

(o) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, 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 International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(3) AMOCs approved previously in accordance with AD 2004–15–07, Amendment 39–13741 (69 FR 44592, July 27, 2004), are approved as AMOCs for the corresponding provisions of this AD.

(p) Related Information

(1) Refer to MCAI EASA Airworthiness Directive 2011–0125, dated June 30, 2011,

and the service information specified in paragraphs (p)(1)(i) through (p)(1)(vi) of this AD, for related information.

(i) Airbus Mandatory Service Bulletin A310–57–2082, Revision 03, dated November 15, 2010.

(ii) Airbus Service Bulletin A310–57–2081, dated June 11, 2002.

(iii) Airbus Service Bulletin A310–57–2081, Revision 03, dated October 13, 2010.

(iv) Airbus Service Bulletin A310–57–2082, dated June 11, 2002.

(v) Airbus Repair Instruction R573–49237, Revision D, dated July 16, 2003.

(vi) Airbus Repair Instruction R573–49243, Revision C, dated July 16, 2003.

(2) For service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on January 20, 2013.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–02448 Filed 2–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0270; Directorate Identifier 2011–NM–113–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for all Fokker Services B.V. Model F.27 Mark 050 airplanes, and Model F.28 Mark 0070 and 0100 airplanes. That NPRM proposed to require inspecting and, if necessary, adjusting, the torque values of nuts on circuit breakers, contactors, and terminal blocks of the electrical power center (EPC) and battery relay panel. This proposed AD would also require inspecting to determine if certain parts are installed, and installing the parts if necessary. This action revises that NPRM by adding a previously omitted terminal block to the required actions. We are proposing this AD to detect and correct loose nuts, which could result in arcing and potentially an onboard fire, possibly resulting in damage to the airplane and injury to occupants or maintenance personnel. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these proposed changes.

DATES: We must receive comments on this proposed AD by March 22, 2013.

ADDRESSES: You may send comments 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:* 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 service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; email *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0270; Directorate Identifier 2011–NM–113–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 based on 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

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on March 21, 2012 (77 FR 16486). That earlier NPRM proposed to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM (77 FR 16486, March 21, 2012) was issued, we have determined that an additional terminal block used in some Model F.28 Mark 0100 airplanes needs to be included in the required actions proposed in the earlier NPRM. European Aviation Safety Agency (EASA) has issued Airworthiness Directive 2012–0050, dated March 27, 2012 (referred to after this as ''the MCAI''), to add that terminal block to their required actions. The MCAI states:

> In December 1989, Fokker issued Service Bulletin (SB) SBF50–24–A013 and SBF100–24–A011 (both Alert Bulletins) to instruct operators to inspect and adjust several torque values of bus bars and contactors in the EPC. The Civil Aviation Authority of The Netherlands (CAA–NL, formerly RLD) issued AD (BLA) 89–159 and BLA 89–157 respectively (both now at issue 2), to require operators of the affected aeroplanes to comply with the instructions of these SB's.
>
> Since those [Dutch] ADs were issued, several operators reported finding loose nuts on contactors in the EPC of Fokker 50/60 aeroplanes in post-SBF50–24–A013 configuration and on Fokker 70/100 aeroplanes in post-SBF100–24–A011 configuration. In some cases, the findings included damaged (burned) contactors.
>
> This condition, if not detected and corrected, could lead to arcing and, in

combination with other factors, to an on-board fire, possibly resulting in damage to the aeroplane and injury to occupants or maintenance personnel. EASA issued AD 2011–0083 [referenced in the earlier FAA NPRM (77 FR 16486, March 21, 2012)] to address this unsafe condition.

After that [EASA] AD was issued, it was noticed that terminal block TB4906A, used in some Fokker 100 aeroplanes, was missing from the list of affected terminal blocks, as specified in Fokker SBF100–24–043. To correct this oversight, Fokker Services issued Revision 1 of SBF100–24–043, adding terminal block TB4906A.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2011–0083, which is superseded, and for F28 Mark 0100 aeroplanes, adds required action for the missing terminal block TB4906A by making reference to SBF100–24–043 Revision 1.

The required actions include doing a general visual inspection to determine if either the lock washer, flat washer and nut, or locking nut and flat washer, are installed; installing a new lock washer or self-locking nut, if necessary; and applying torque inspection lacquer. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–24–043, Revision 1, dated December 15, 2011 (for Model F.28 Mark 0070 and 0100 airplanes). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Comments

We gave the public the opportunity to comment on the earlier NPRM (77 FR 16486, March 21, 2012). We received no comments on that NPRM or on the determination of the cost to the public.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM (77 FR 16486, March 21, 2012). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Difference Between the Proposed AD and the MCAI

The MCAI specifies credit for actions done according to Fokker Service Bulletin SBF100–24–043, dated February 10, 2011, which does not include inspecting the additional terminal block part number. This proposed AD does not specify such credit because we determined that inspecting for the additional terminal block more properly meets the intent of this proposed AD. This difference has been coordinated with EASA.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 4 products of U.S. registry. We also estimate that it would take about 5 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,700, or $425 per product.

In addition, we estimate that any necessary follow-on actions would take about 4 work-hours and require parts costing $25, for a cost of $365 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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.

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

List of Subjects in 14 CFR Part 39

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

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 AD:

Fokker Services B.V.: Docket No. FAA–2012–0270; Directorate Identifier 2011–NM–113–AD.

(a) Comments Due Date

We must receive comments by March 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Fokker Services B.V. Model F.27 Mark 050 airplanes, and Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 24: Electric power.

(e) Reason

This AD was prompted by reports of loose nuts on contactors in the electrical power center (EPC), and in some cases, burned contactors. We are issuing this AD to detect and correct loose nuts, which could result in

arcing and potentially an onboard fire, possibly resulting in damage to the airplane and injury to occupants or maintenance personnel.

(f) Compliance

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

(g) Actions

Within 24 months after the effective date of this AD, do the actions specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) Do a torque check of the nuts and circuit breakers, contactors, and terminal blocks of the EPC and battery relay panel, as applicable, and do all applicable adjustments of the torque values, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–24–032, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F50–072, dated February 10, 2011 (for Model F.27 Mark 050 airplanes); or the Accomplishment Instructions of Fokker Service Bulletin SBF100–24–043, Revision 1, dated December 15, 2011 (for Model F.28 Mark 0070 and 0100 airplanes). Do all applicable adjustments before further flight.

(2) Do a general visual inspection of the contacts and nuts on circuit breakers, contactors, and terminal blocks of the EPC and battery relay panel to determine if either the lock washer, flat washer and nut, or locking nut and flat washer are installed, and do all applicable installations; in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–24–032, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F50–072, dated February 10, 2011 (for Model F.27 Mark 050 airplanes); or the Accomplishment Instructions of Fokker Service Bulletin SBF100–24–043, Revision 1, dated December 15, 2011 (for Model F.28 Mark 0070 and 0100 airplanes). Do all applicable installations before further flight.

(3) Before further flight after accomplishing any check required by paragraph (g)(1) of this AD or any inspection required by paragraph (g)(2) of this AD: Apply torque inspection lacquer, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–24–032, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F50–072, dated February 10, 2011 (for Model F.27 Mark 050 airplanes); or the Accomplishment Instructions of Fokker Service Bulletin SBF100–24–043, Revision 1, dated December 15, 2011 (for Model F.28 Mark 0070 and 0100 airplanes).

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(i) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2012–0050, dated March 27, 2012, and the service information specified in paragraphs (i)(1) and (i)(2) of this AD, for related information.

(1) Fokker Service Bulletin SBF50–24–032, including Fokker Manual Change Notification—Maintenance Documentation MCNM–F50–072, dated February 10, 2011.

(2) Fokker Service Bulletin SBF100–24–043, Revision 1, dated December 15, 2011 (for Model F.28 Mark 0070 and 0100 airplanes).

(3) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; email *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on January 25, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–02451 Filed 2–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106918–08]

RIN 1545–BH89

Treatment of Grantor of an Option on a Partnership Interest

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership. Specifically, the proposed regulations expand the characterization rule measurement events to include certain transfers of interests in the issuing partnership and other look-through entities, and provide additional guidance in determining the character of the grantor's gain or loss as a result of a closing transaction with respect to, or a lapse of, an option on a partnership interest. The proposed regulations will affect partnerships that issue noncompensatory options, the partners of such partnerships, and the holders of such options.

DATES: Written or electronic comments and requests for a public hearing must be received by May 6, 2013.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–106918–08), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–106918–08), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–106918–08).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations under § 1.761–3, Benjamin Weaver at (202) 622–3050; concerning the proposed regulations under § 1.1234–3, Shawn Tetelman at (202) 622–3930; concerning submissions of comments and requests for a public hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under sections 761 and 1234 of the Internal Revenue Code (Code). On January 22,

2003, proposed regulations (REG–103580–02) relating to the tax treatment of noncompensatory options and convertible instruments issued by a partnership (noncompensatory partnership option regulations) were published in the **Federal Register** (68 FR 2930). Final regulations in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations (26 CFR Part 1), which finalize the proposed regulations. However, the Treasury Department and the IRS have decided to propose amendments to the regulations expanding the characterization rule measurement events to include certain transfers of interests in the issuing partnership and other look-through entities.

Additionally, the Treasury Department and the IRS received comments on the proposed regulations expressing uncertainty as to whether section 1234(b) applies to the grantor of an option on a partnership interest on the lapse or repurchase of the option. The comments indicated that it was unclear whether the term ''securities,'' as used in section 1234(b)(2)(B), includes partnership interests. After consideration of all comments received, the IRS and Treasury Department believe that it is appropriate to propose an amendment to the regulations under section 1234(b) to expressly treat partnership interests as securities for purposes of section 1234(b).

Explanation of Provisions

1. Proposed Additions to the Noncompensatory Partnership Option Characterization Rule Measurement Events

The final regulations being published elsewhere in this issue of the **Federal Register**, relating to the tax treatment of noncompensatory partnership options, contain a characterization rule providing that the holder of a noncompensatory option is treated as a partner under certain circumstances. Under the characterization rule, a noncompensatory option is treated as a partnership interest if, on the date of a measurement event (1) the noncompensatory option provides the option holder with rights that are substantially similar to the rights afforded a partner, and (2) there is a strong likelihood that the failure to treat the holder of the noncompensatory option as a partner would result in a substantial reduction in the present value of the partners' and noncompensatory option holder's aggregate Federal tax liabilities. The final regulations define a measurement event as: (1) Issuance of the noncompensatory option; (2) an adjustment of the terms (modification) of the noncompensatory option or of the underlying partnership interest (including an adjustment pursuant to the terms of the noncompensatory option or the underlying partnership interest); or (3) transfer of the noncompensatory option if either (A) the option may be exercised (or settled) more than 12 months after its issuance, or (B) the transfer is pursuant to a plan in existence at the time of the issuance or modification of the noncompensatory option that has as a principal purpose the substantial reduction of the present value of the aggregate Federal tax liabilities of the partners and the noncompensatory option holder.

The Treasury Department and the IRS believe it is appropriate to expand the list of measurement events to include certain transfers of interests in the issuing partnership and look-through entities. The proposed regulations add three measurement events to the list above, but apply only if those measurement events are pursuant to a plan in existence at the time of the issuance or modification of the noncompensatory option that has as a principal purpose the substantial reduction of the present value of the aggregate Federal tax liabilities of the partners and the noncompensatory option holder. The three additional measurement events are: (1) Issuance, transfer, or modification of an interest in, or liquidation of, the issuing partnership; (2) issuance, transfer, or modification of an interest in any look-through entity that directly, or indirectly through one or more look-through entities, owns the noncompensatory option; and (3) issuance, transfer, or modification of an interest in any look-through entity that directly, or indirectly through one or more look-through entities, owns an interest in the issuing partnership. The Treasury Department and the IRS believe that the first of these measurement events is necessary because it is inconsistent to test a noncompensatory option under the characterization rule upon transfer of the noncompensatory option, but not upon transfer of an interest in the issuing partnership, because either type of transfer may change the analysis of whether there is a strong likelihood that the failure to treat the option holder as a partner would result in a substantial reduction in the present value of the partners' and option holder's aggregate tax liabilities. The Treasury Department and the IRS believe that the second and third measurement events are necessary to prevent avoidance of the characterization rule through the use of look-through entities.

Like the measurement events in the final regulations, the three measurement events in the proposed regulations are subject to exceptions in § 1.761–3(c)(2). The Treasury Department and the IRS believe that the limitations on these measurement events will reduce the administrative burden associated with testing under the characterization rule upon these events.

The Treasury Department and the IRS request comments on the appropriate procedures for notifying the partners and the partnership upon the occurrence of a measurement event.

2. Character of Gain or Loss on Lapse, Sale, or Exchange of Partnership Options

A. Character of Gain or Loss to the Grantor of the Option

In response to comments, the proposed regulations address the application of section 1234(b) to the grantor of an option on a partnership interest on the lapse or repurchase of the option. Section 1234(b) provides that, in the case of the grantor of an option, gain or loss from any closing transaction with respect to, and gain on lapse of, an option in property shall be treated as gain or loss from the sale or exchange of a capital asset held not more than one year. Section 1234(b)(2)(B) defines the term property to mean stock and securities (including stocks and securities dealt with on a when issued basis), commodities, and commodity futures. Accordingly, for section 1234(b) to apply to a closing transaction with respect to, or lapse of, an option on a partnership interest, a partnership interest would have to be a security and, thus, property within the meaning of section 1234(b)(2)(B). The proposed regulations provide that the term ''securities'' as used in section 1234(b)(2)(B) includes partnership interests. As a result, in the case of the grantor of an option on a partnership interest, gain or loss from any closing transaction with respect to, and gain on lapse of, the option is generally treated under the proposed regulations as gain or loss from the sale or exchange of a capital asset held not more than 1 year.

B. Character of Gain Or Loss to the Option Holder

With respect to an option holder, under section 1234(a), gain or loss on the sale or exchange of, or loss on failure to exercise, an option is

considered gain or loss from the sale or exchange of property that has the same character as the property to which the option relates would have in the hands of the taxpayer. Although a partnership interest is generally considered a capital asset, section 751(a) may apply to recharacterize a portion of a partner's gain on the sale or exchange of a partnership interest as ordinary. A number of commenters on the noncompensatory partnership option proposed regulations questioned whether section 751 applies to the lapse, repurchase, sale, exchange, or other termination of a noncompensatory option.

The Treasury Department and the IRS continue to study this issue and request comments on (1) if section 751(a) applies to the lapse, repurchase, sale, or exchange of a noncompensatory option, (a) how the option holder's share of income or loss from section 751 property would be determined under § 1.751–1(a)(2), and (b) how a partner in the issuing partnership that transfers its partnership interest while the option is outstanding would determine its share of income or loss from section 751 property under § 1.751–1(a)(2) (that is, should it be reduced by the amount of income or loss from section 751 property attributable to the option holder); and (2) if section 751(a) does not apply to the lapse, repurchase, sale, or exchange of a noncompensatory option, what measures, if any, should be taken to ensure that ordinary income is not permanently eliminated.

Effective/Applicability Date

To coordinate the proposed regulations with the final noncompensatory partnership option regulations, the proposed regulations are proposed to have the same effective date as the final noncompensatory partnership option regulations. Therefore, the proposed regulations are proposed to apply to options issued on or after February 5, 2013.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments are available at *www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Benjamin Weaver of the Office of Associate Chief Counsel (Passthroughs and Special Industries) and Shawn Tetelman of the Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

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

■ **Par. 2.** Section 1.761–3 is amended by adding paragraph (c)(1)(iv) to read as follows:

§ 1.761–3 Certain option holders treated as partners.

* * * * *

(c) * * *

(1) * * *

(iv) An event described in paragraphs (c)(1)(iv)(A), (B), or (C) of this section, provided the event is pursuant to a plan in existence at the time of the issuance or modification of the noncompensatory option that has as a principal purpose the substantial reduction of the present value of the aggregate Federal tax liabilities of the partners and the noncompensatory option holder (under paragraph (a)(1)(ii) of this section):

(A) Issuance, transfer, or modification of an interest in, or liquidation of, the issuing partnership;

(B) Issuance, transfer, or modification of an interest in any look-through entity (as defined in paragraph (b)(1) of this section) that directly, or indirectly through one or more look-through entities, owns the noncompensatory option;

(C) Issuance, transfer, or modification of an interest in any look-through entity that directly, or indirectly through one or more look-through entities, owns an interest in the issuing partnership.

* * * * *

■ **Par. 3.** Section 1.1234–3 is amended by adding a sentence at the end of paragraph (b)(2) to read as follows:

§ 1.1234–3 Special rules for the treatment of grantors of certain options granted after September 1, 1976.

* * * * *

(b) * * *

(2) * * * For purposes of the preceding sentence, for options granted on or after February 5, 2013, the term *securities* includes partnership interests.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2013–02260 Filed 2–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–141066–09]

RIN 1545–BL08

Awards for Information Relating To Detecting Underpayments of Tax or Violations of the Internal Revenue Laws; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking (REG–141066–09) that was published in the **Federal Register** on Tuesday, December 18, 2012 (77 FR 74798). The proposed regulations provide comprehensive guidance for the award program authorized under the

Internal Revenue Code section 7623, as amended. The regulations provide guidance on submitting information regarding underpayments of tax or violations of the internal revenue laws and filing claims for award, as well as on the administrative proceedings applicable to claims for award under section 7623.

FOR FURTHER INFORMATION CONTACT: Meghan M. Howard at (202) 622–7950 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG–141066–09) that is the subject of these corrections is under Section 7623 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–141066–09) contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG–141066–09), that was the subject of FR Doc. 2012–30512, is corrected as follows:

1. On page 74798, in the preamble, column 3, under the caption **FOR FURTHER INFORMATION**, line 1 from the top of the column, the language ''Oluwafunmilavaio Taylor, at (202) 622–'' is corrected to read ''Oluwafunmilayo Taylor, at (202) 622–''.

§ 301.7623–1 [Corrected]

■ 2. On page 74804, column 3, § 301.7623–1(a), line 3, the language ''by law, the IRS's Whistleblower Office'' is corrected to read ''by law, the Whistleblower Office''.

§ 301.7623–2 [Corrected]

■ 3. On page 74806, column 1, § 301.7623–2(a)(2), line 5, the language ''a portion of an IRS civil or criminal'' is corrected to read ''a portion of an Internal Revenue Service (IRS) civil or criminal''.

■ 4. On page 74806, column 1, § 301.7623–2(b)(1), line 4, the language ''Internal Revenue (IRS) *proceeds based*'' is corrected to read ''IRS *proceeds based*''.

§ 301.7623–3 [Corrected]

■ 5. On page 74808, column 2, § 301.7623–3(a) second column, line 17, the language ''Internal Revenue Service (IRS) may,'', is corrected to read ''Internal Revenue Service (IRS) may rely on the claimant's description of the amount owed by the taxpayers(s). The IRS may,'',

■ 6. On page 74808, column 3, § 301.7623–3(c)(1), line 10, the language ''file.'' is corrected to read ''file. The whistleblower administrative proceeding described in paragraphs (c)(1) through (6) of this section begins on the date the Whistleblower Office sends the preliminary award recommendation letter. The preliminary award recommendation is not a determination letter within the meaning of paragraph (c)(6) of this section and cannot be appealed to Tax Court under section 7623(b)(4) and paragraph (d) of this section. The preliminary award recommendation will notify the individual that the IRS cannot determine or pay any award until there is a final determination of tax, as defined in § 301.7623–4(d)(2).''

■ 7. On page 74808, column 3, § 301.7623–3(c)(2)(iv), lines 1 through 18, the language ''A confidentiality agreement. The whistleblower administrative proceeding described in paragraphs (c)(1) through (6) of this section begins on the date the Whistleblower Office sends the preliminary award recommendation letter. The preliminary award recommendation is not a determination letter within the meaning of paragraph (c)(6) of this section and cannot be appealed to Tax Court under section 7623(b)(4) and paragraph (d) of this section. The preliminary award recommendation will notify the individual that the IRS cannot determine or pay any award until there is a final determination of tax, as defined in § 301.7623–4(d)(2). '' is corrected to read ''A confidentiality agreement.''.

§ 301.7623–4 [Corrected]

■ 8. On page 74810, column 2, instructional paragraph 5, is corrected to read ''**Par. 6.** Section 301.7623–4 is added to read as follows:''.

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedure and Administration).

[FR Doc. 2013–02416 Filed 2–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1001]

RIN 1625–AA00

Safety Zones; Annual Firework Displays Within the Captain of the Port, Puget Sound Area of Responsibility, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to add three new fireworks events and to correct the location of five existing events to ensure public safety during annual firework displays at various locations in the Captain of the Port (COTP), Puget Sound Area of Responsibility (AOR). When these safety zones are activated and subject to enforcement, this rule would limit the movement of vessels within the established firework display areas. These additions and corrections are necessary to prevent injury and to protect life and property of the maritime public from hazards associated with firework displays.

DATES: Comments and related material must be received by the Coast Guard on or before April 8, 2013.

ADDRESSES: You may submit comments identified by docket number USCG–2012–1001 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 ENS Nathaniel P. Clinger, Coast Guard Sector Puget Sound, Waterways Management Division, U.S. Coast Guard; telephone (206) 217–6045, email

SectorPugetSoundWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. 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 (USCG–2012–1001), 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–2012–1001] 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–2012–1001'' in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

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

B. Regulatory History and Information

The Coast Guard published the following Temporary Final Rules: Safety Zones; Multiple Firework Displays in Captain of the Port, Puget Sound Area of Responsibility, 2010 Docket No. USCG–2010–0591, 2011 Docket No. USCG–2011–0450, and 2012 Docket No. USCG–2012–0488. The Coast Guard received no negative comments or complaints pertaining to these rules.

C. Basis and Purpose

There is a need to correct the coordinates of five firework displays outlined in 33 CFR 165.1332, located within the greater Puget Sound Area, to accurately reflect the correct position of the firework displays. Additionally, three new firework display locations have been added to area, and the title of the rule does not accurately reflect what is codified in 33 CFR 3.65–10. These corrections and additions are necessary in order to restrict vessel movement and reduce vessel congregation in the proximity of firework discharge sites ensuring maritime public safety.

D. Discussion of Proposed Rule

This rule proposes to amend the following firework display positions: *City of Renton Fireworks.* Coordinates will be revised to read: latitude 47° 30.386′ N, longitude 122° 12.502′ W; *Bainbridge Island Fireworks.* Coordinates will be revised to read: latitude 47° 37.142′ N, longitude 122° 30.397′ W; *Port Townsend Sunrise Rotary.* Coordinates will be revised to read: latitude 48° 08.413′ N, longitude 122° 45.531′ W; *Tacoma Freedom Fair.* Coordinates will be revised to read: latitude 47° 17.103′ N, longitude 122° 28.410′ W; *Brewster 4th of July.* Coordinates will be revised to read: latitude 48° 05.362′ N, longitude 119° 47.147′ W.

This rule proposes to add the following firework displays: *Port Ludlow Fireworks,* latitude 47° 55.161′ N, longitude 122° 41.157′ W; *Boston Harbor 4th of July,* latitude 47° 08.626′ N, longitude 122° 54.149′ W; *Everett 4th of July,* latitude 48° 00.672′ N, 122° 13.391′ W.

These safety zones will extend 450 yards from their launch site. This zone size allows for the use of up to a 16″ mortar shell in annual firework displays. However, safety zones will be only be enforced for the appropriate size for the largest mortar shell used. These zones are nominal in size and are typically positioned in areas which allow for transit around the zone. Thus, these zones have an inconsequential impact on the majority of waterway users. These zones are also short in duration and allow waterway users to enter or transit through the zone when deemed safe by the on-scene patrol commander. Through this action, the COTP intends to promote the safety of personnel, vessels, and facilities in the area.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and

does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the safety zones listed will be in place for a limited period of time and are minimal in duration, and vessel traffic will be able to transit around the safety zones.

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 term ''Small entities'' comprises small business, 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities; the owners and operators of vessels intending to operate in the waters covered by the safety zone while it is in effect. This rule would not have a significant economic impact on a substantial number of small entities because the safety zone would be in place for limited periods of time and maritime traffic would still be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zone from the COTP, Puget Sound or a Designated Representative.

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.

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 rule involves the amendment of safety zones listed in 33 CFR 165.1332. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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. 1226, 1231; 46 U.S.C. Chapters 701, 3306, 3707; 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. In § 165.1332, amend the table in paragraph (a)(1) by:

a. Revising the entries for ''City of Renton Fireworks,'' ''Bainbridge Island Fireworks,'' and ''Port Townsend Sunrise Rotary''; and

b. Adding entries for ''Tacoma Freedom Fair,'' ''Brewster 4th of July,'' ''Port Ludlow Fireworks,'' ''Boston Harbor 4th of July,'' and ''Everett 4th of July.''

The revisions and additions read as follows:

§ 165.1332 Safety Zones; Annual Fireworks Displays within the Captain of the Port Puget Sound Zone.

(a) * * *

(1) * * *

Event name	Event location	Latitude	Longitude
* * *	* *	*	*
City of Renton Fireworks	Renton, Lake Washington	47° 30.386′ N	122° 12.502′ W
* * *	* *	*	*
Bainbridge Island Fireworks	Eagle Harbor	47° 37.142′ N	122° 30.397′ W
* * *	* *	*	*
Port Townsend Sunrise Rotary	Port Townsend	47° 08.413′ N	122° 45.531′ W
* * *	* *	*	*
Tacoma Freedom Fair	Commencement Bay	47° 17.103′ N	122° 28.410′ W
Brewster 4th of July	Brewster	48° 05.362′ N	119° 47.147′ W
Port Ludlow Fireworks	Port Ludlow	47° 55.161′ N	122° 41.157′ W
Boston Harbor 4th of July	Boston Harbor	47° 08.626′ N	122° 54.149′ W
Everett 4th of July	Port Gardner	48° 00.672′ N	122° 13.391′ W

* * * * *

Dated: January 14, 2013.

S. J. Ferguson,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 2013–02432 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50

[EPA–HQ–OAR–2012–0210; FRL–9775–6]

RIN 2060–AP89

Method for the Determination of Lead in Total Suspended Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Data used for comparison with the lead (Pb) national ambient air quality standards (NAAQS), must be collected using either a Federal Reference Method (FRM) or a Federal Equivalent Method (FEM) as defined in the Code of Federal Regulations (CFR). The EPA is proposing to establish a new FRM for measuring Pb in total suspended particulate matter (TSP) collected from ambient air. The proposed method is intended for use by analytical laboratories performing the analysis of Pb in TSP to support data collection for the Pb NAAQS. The EPA is also proposing to make the existing FRM for Pb a new FEM, and retain currently designated FEMs. This proposed action avoids any disruption to existing Pb monitoring networks and data collection and would also not affect the FRM for TSP sample collection (High-Volume Method).

DATES: Comments must be received on or before March 7, 2013

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0210 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epamail.epa.gov*
- *Fax:* (202) 566–9744
- *Mail:* Federal Reference Method for Lead in Total Suspended Particulate Matter, U.S. Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, MC 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Room 3334 in the EPA West Building, located at 1301 Constitution Ave. NW., Washington, DC 20460. The Docket is open to the public on all federal government work days from 8:30a.m. to 4:30p.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–OAR–2012–0210. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the

Internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*. 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 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 at *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The Docket Facility and the Public Reading Room are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Joann Rice, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Ambient Air Monitoring Group (C304–06), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3372; fax number: (919) 541–1903; email address: *rice.joann@epa.gov*.

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I. Background

A. Purpose of the New Reference Method

On November 12, 2008, the EPA substantially strengthened the National Ambient Air Quality Standard for Lead (73 FR 66964). The EPA revised the level of the primary (health-based) standard from 1.5 micrograms per cubic meter (μg/m^3) of Pb to 0.15 μg/m^3 of Pb measured in TSP and revised the secondary (welfare-based) standard to be identical in all respects to the primary standard. The current Pb in TSP FRM is based on Flame Atomic Absorption Spectroscopy (FAAS) as specified in 40 CFR part 50, Appendix G. The FRM in Appendix G was originally promulgated in 1978 when FAAS was widely used and considered the best available method to support Pb NAAQS data collection at a level of 1.5 μg/m^3. A new Pb in TSP FRM is needed to: (1) Take advantage of improved extraction methods that are now available with improved precision, sample throughput, and extraction efficiency; (2) address advances in measurement technology that have occurred since promulgation of the original FRM; and (3) address the improved measurement sensitivity (detection limits) needed in response to the tightened Pb NAAQS.

The reference method for Pb in TSP includes two parts, the analysis method for Pb in TSP as specified in Appendix G and the reference method for high-volume sampling of TSP as specified in 40 CFR 50, Appendix B. The proposed FRM will become a replacement for the analytical method in Appendix G. The EPA is proposing a new FRM for the analysis of Pb in TSP based on Inductively Coupled Plasma Mass Spectrometry (ICP–MS). The FRM would serve as the definitive method for routinely analyzing Pb for comparison to the NAAQS and also serve as the standard of comparison for determining equivalence of candidate FEMs. The method is proposed as a new Appendix G to 40 CFR part 50. The FRM that was promulgated in 1978 as Appendix G would become an approved FEM and the currently designated FEMs would be retained. The EPA believes this is appropriate because the new FRM is based on two methods that were tested and approved as FEMs (EQL–0510–191 and EQL–0710–192) to ensure comparability with the existing FRM. The proposed approach permits continued use of the old FRM (as an FEM) and the existing FEMs. This avoids any disruption to state and local air monitoring agencies using these methods for Pb monitoring. The reference method for high volume sampling of TSP will continue to be performed in accordance with the FRM described in Appendix B, and, therefore, is not included as part of this proposed FRM.

With the much tightened NAAQS in 2008 and the need for increased measurement sensitivity, an improved measurement technology has become available to better meet the needs of the current NAAQS. The FAAS FRM is less frequently used in the Pb ambient monitoring network (about 10 percent of the sites reported Pb in TSP data to the EPA's Air Quality System in 2012 using the FRM) and ICP-based methods have increased in popularity. The FAAS method is mainly used as the reference method for testing and designation of candidate FEMs for Pb in accordance with 40 CFR 53.33. With the lowered Pb concentration testing range in Part 53 and new requirement for a Method Detection Limit (MDL) of 0.0075 μg/m^3 (described below), the FAAS method sensitivity and availability of laboratories with FAAS capability have created some challenges for comparability testing of new FEMs.

In 2008, the EPA also revised the performance-based requirements for Pb FEMs in Part 53. The performance requirements were revised to be consistent with the revised Pb NAAQS level. Specifically, the Pb concentration range at which the FEM comparability testing is conducted was lowered to a range of 0.045 to 0.375 μg/m^3 and the requirement for a minimum method detection limit was established at 0.0075 μg/m^3. The detection limit of the proposed FRM is more than adequate to meet the reduced testing range and detection limit requirements. The proposed FRM's average detection limit for Pb-spiked filters is estimated at 0.00009 μg/m^3, which is well below the requirement of 0.0075 μg/m^3.

B. Rationale for Selection of the New Reference Method

The proposed FRM is based on two recently approved FEMs for extracting Pb from glass fiber filters for subsequent analysis by ICP–MS: (1) Method EQL–0510–191 which uses a heated (80 ± 5°

C) ultrasonic water bath with 1.03M nitric (HNO_3)/2.23M hydrochloric (HCl) acids, and (2) Method EQL–0710–192 which uses a heated (95 ± 5° C) graphite block (hot block) with 3.5 percent volume/volume (v/v) HNO_3. In selecting the proposed methodology, the EPA's primary considerations were: methods that have already been tested and approved against the FAAS FRM (current Appendix G); use of equipment that is commonly used; a method that is practical (use of a single vessel for the entire extraction process and storage); and a method with improved sensitivity and throughput to increase efficiency and cost effectiveness over the current FRM. ICP–MS was chosen as the analytical technique because it has much improved sensitivity, selectivity, linear range, and is much more readily available than FAAS in laboratories today.

The proposed FRM uses methods from two existing FEMs that have been proven comparable to FAAS and, therefore, retains consistency with the legacy FRM (Rice 2013). The proposed FRM is only intended for the analysis of Pb in TSP and allows for the use of glass fiber, quartz, or Teflon® filters. HNO_3 alone is sufficient for the extraction of Pb; however, the ultrasonic extraction method includes HCl to allow monitoring agencies some flexibility for future needs that may include the extraction of other metals. HCl is needed to aid the extraction of other metals that are not easily brought into solution with HNO_3 alone. The proposed FRM was evaluated for the extraction of Pb only. If the proposed FRM is used for metals other than Pb, the user must evaluate the FRM's applicability before use. The heated block extraction method uses only HNO_3 and must also be evaluated by the user before use to extract metals other than Pb.

The approach and key specifications of the method were submitted for peer review to the Clean Air Scientific Advisory Committee (CASAC) Ambient Air Monitoring and Methods Subcommittee. Public meetings were held to discuss the method and related monitoring issues on September 15, 2010. Comments on the proposed method and approach were provided in writing in a letter dated November 30, 2010 (EPA–CASAC–11–002),[1] forwarded by CASAC to the Administrator.

The CASAC was supportive of the ICP–MS analytical method and found the approach to be appropriate with superior sensitivity and specificity for Pb. The CASAC recommended a strategy, using a performance-based FRM, to provide flexibility for use of non-FRM or FEM measurement methods and recommended that a third extraction method (microwave) be added to the FRM for its greater sample throughput and potential for reduced sample-to-sample variability. The CASAC viewed the comprehensiveness of the FRM test plan to be appropriate, and recommended that the EPA consider separating the extraction methods from the analytical methods so that any of the proposed FRM extraction methods can be used with any of the proposed FRM analytical measurement methods.

The federal reference and equivalence testing method for Pb in 40 CFR 53.33 serves as the performance-based method approach for the FEM approval process. Candidate methods are tested using the performance specifications of part 40 CFR part 53 for acceptance and approval as equivalent methods. Users also have the flexibility to test and submit additional extraction and analysis methods for review and approval as equivalent methods. The EPA believes that microwave extraction is a viable option and is already available as an approved FEM[2]. The ultrasonic and hot block approaches are sufficient for the extraction of Pb and provide high sample throughput, low consumable costs, and lower equipment costs while minimizing the risk of cross contamination and sample loss. In addition, the EPA believes that the existing FEMs[3] currently provide a wide variety of extraction and analytical methods and the EPA strongly encourages monitoring agencies to consider adopting one of the already approved FEMs in lieu of submitting new FEM applications. The proposed FRM has two extraction methods (heated ultrasonic and hot block) and one analytical method (ICP–MS). The proposed FRM allows for the use of either of the two extraction methods specified with the ICP–MS analytical method. The method also allows for the use of glass fiber, Teflon®, or quartz filter media for the collection of Pb in TSP.

II. Summary of Method

The proposed FRM uses the ambient air sample collection procedures of the high-volume TSP method (40 CFR part 50, Appendix B) and the analytical procedure for the measurement of Pb based on ICP–MS. Two extraction methods are proposed: one using heated ultrasonic and one using heated block digestion. The proposed extraction methods and ICP–MS analysis method have been tested and found acceptable for extraction of Pb from glass fiber, Teflon®, or quartz filter media (Rice 2013). The proposed method will replace the existing FRM specified in 40 CFR part 50, Appendix G. Although the existing FRM in Appendix G is adequate, the proposed FRM offers advantages over the current FRM by providing improved sensitivity or detection limits, precision, sample throughput, and extraction efficiency.

III. Statutory and Executive Order Reviews

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.* Burden is defined at 5 CFR 1320.3(b). The proposed rule is for a new FRM for Pb in TSP, and to designate the existing FRM as an FEM, and does not add any information collection requirements beyond those imposed by the existing Pb monitoring requirements.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as (1) a small

[1] CASAC's final report on the Approach for the Development of a New Federal Reference Method (FRM) for Lead in Total Suspended Particulates (Pb-TSP) can be found at: *http://yosemite.epa.gov/sab/sabproduct.nsf/DA39026E54BAF46E8525781D00606633/$File/EPA–CASAC–11–002-unsigned.pdf*

[2] FEM EQL–0400–0140 (65 FR 26603,May 8, 2000)

[3] The list of current FEMs is located at: *http://epa.gov/ttn/amtic/files/ambient/criteria/reference-equivalent-methods-list.pdf*

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 this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any additional monitoring requirements beyond those specified in the current regulations, nor will it require any changes in approved monitoring methods. As such, it will not impose any requirements on small entities. The EPA continues to be interested in the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

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. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action proposes to establish a new FRM for state and local air monitoring agencies to use as one of the approved methods for measurement of Pb in TSP and to designate the existing FRM as an FEM. It does not create any additional monitoring requirements or require changes in approved monitoring methods.

E. Executive Order 13132: Federalism

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. This action proposes to establish a new FRM for state and local air monitoring agencies to use as one of the approved methods for measurement of Pb in TSP and to designate the existing FRM as an FEM. This action does not create any new monitoring requirements or require any changes in approved monitoring methods. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed rule from state and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule imposes no requirements on tribal governments. This action proposes to establish a new FRM for state and local air monitoring agencies to use as one of the approved methods for measurement of Pb in TSP and to designate the existing FRM as an FEM. This action does not create any new monitoring requirements nor require any changes in approved monitoring methods. Thus, Executive Order 13175 does not apply to this action. In the spirit of Executive order 13175, the EPA specifically solicits additional comment on this proposed action from tribal officials.

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

The EPA interprets EO 13045 (62 F.R. 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 EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations 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 (15 U.S.C. 272 note) directs the 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 the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The proposed rule involves environmental monitoring and measurement consistent with the Agency's Performance Based Measurement System (PBMS). The PBMS approach is intended to be more flexible and cost-effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. Specifically, this proposed rule would establish a new FRM for Pb in TSP measurements. The EPA used voluntary consensus standards in the preparation of this FRM. The FRM is the benchmark against which all ambient monitoring methods are compared. The FRM is not a voluntary consensus standard.

The FEM equivalency criteria contained in 40 CFR part 53 constitutes performance criteria. Therefore, the EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the specified performance criteria in 40 CFR part 53 and is approved by the EPA pursuant to those regulations.

The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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.

The EPA has determined that this proposed rule will not have

disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action proposes to establish a new FRM for state and local air monitoring agencies to use as one of the approved methods for measurement of Pb in TSP and to designate the existing FRM as an FEM.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, and Lead.

Dated: January 25, 2013.

Lisa P. Jackson,

Administrator.

For reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations proposes to amend as set forth in the following.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

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

■ 2. Appendix G to part 50 is revised to read as follows:

Appendix G to Part 50—Reference Method for the Determination of Lead in Total Suspended Particulate Matter

1.0 Scope and applicability

Based on review of the air quality criteria and national ambient air quality standards (NAAQS) for lead (Pb) completed in 2008, the EPA made revisions to the primary and secondary NAAQS for Pb to protect public health and welfare. The EPA revised the level from 1.5 μg/m^3 to 0.15 μg/m^3 while retaining the current indicator of Pb in total suspended particulate matter (Pb-TSP).

Pb-TSP is collected for 24 hours on a TSP filter as described in Appendix B of part 50, the Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method). This method is for the determination of Pb from TSP filters by Inductively Coupled Plasma Mass Spectrometry (ICP–MS) using a heated ultrasonic bath with nitric and hydrochloric acid or a heated block (hot block) digester with nitric acid for filter extraction.

This method is based on the EPA's Office of Solid Waste (SW–846) Method 6020A—Inductively Coupled Plasma Mass Spectrometry.[1] Wording in certain sections of this method is paraphrased or taken directly from Method 6020A.

1.1 ICP–MS is applicable for the sub-μg/mL (ppb) determination of Pb in a wide variety of matrices. The method sensitivity is more than adequate for determining Pb at concentrations equal to, or less than, 5 percent of the level of the Pb NAAQS (0.15μg/m^3) for Pb-TSP. Results reported for monitoring or compliance purposes are calculated in μg/m^3 at local conditions (LC). This procedure describes a method for the acid extraction of Pb in particulate matter collected on glass fiber, quartz, or Teflon® filters and measurement of the extracted Pb using ICP–MS.

1.2 Due to variations in the isotopic abundance of Pb, the value for total Pb must be based on the sum of the signal intensities for isotopic masses, 206, 207, and 208. Most instrument software packages are able to sum the primary isotope signal intensities automatically.

1.3 ICP–MS requires the use of an internal standard. ^{115}In (Indium), ^{165}Ho (Holmium), and ^{209}Bi (Bismuth) are recommended internal standards for the determination of Pb.

1.4 Use of this method is restricted to use by, or under supervision of, properly trained and experienced personnel. Requirements include training and experience in inorganic sample preparation, including acid extraction, and also knowledge in the recognition and in the correction of spectral, chemical and physical interference in ICP–MS.

2.0 Summary of method

2.1 This method describes the acid extraction of Pb in particulate matter collected on glass fiber, quartz, or Teflon® ambient air filters with subsequent measurement of Pb by ICP–MS. Estimates of the Method Detection Limit (MDL) or sensitivity of the method are provided in Tables 1, 3 and 5 and determined using either blank filters or Pb-spiked filters or strips analyzed in accordance with the guidance provided in 40 CFR part 136, Appendix B—Determination and procedures for the Determination of the Method Detection Limit—Revision 1.1. The analytical range of the method is 0.00024 μg/m^3 to 0.60 μg/m^3, and based on the low and high calibration curve standards and a nominal filter sample volume of 2000 m^3.

2.2 This method includes two extraction methods. In the first method, a solution of HNO_3 and HCl is added to the filter strips in plastic digestion tubes and the tubes are placed in a heated ultrasonic bath for one hour to facilitate the extraction of Pb. Following ultrasonication, the samples are brought to a final volume of 40 mL, vortex mixed or shaken vigorously, and centrifuged prior to aliquots being taken for ICP–MS analysis. In the second method, a solution of dilute HNO_3 is added to the filter strips in plastic digestion tubes and the tubes placed into the heated block digester. The filter strip is completely covered by the solution. The tubes are covered with polypropylene watch glasses and refluxed. After reflux, the samples are diluted to a final volume of 50 mL with reagent water and mixed before analysis.

2.3 Calibration standards and check standards are prepared to matrix match the acid composition of the samples. ICP–MS analysis is then performed. With this method, the samples are first aspirated and the aerosol thus created is transported by a flow of argon gas into the plasma torch. The ions produced (e.g., Pb^{+1}) in the plasma are extracted via a differentially-pumped vacuum interface and are separated on the basis of their mass-to-charge ratio. The ions are quantified by a channel electron multiplier or a Faraday detector and the signal collected is processed by the instrument's software. Interferences must be assessed and corrected for, if present.

3.0 Definitions

Pb—Elemental or ionic lead
HNO_3—Nitric acid
HCl—Hydrochloric acid
ICP–MS—Inductively Coupled Plasma Mass Spectrometer
MDL—Method detection limit
RSD—Relative standard deviation
RPD—Relative percent difference
CB—Calibration Blank
CAL—Calibration Standard
ICB—Initial calibration blank
CCB—Continuing calibration blank
ICV—Initial calibration verification
CCV—Continuing calibration verification
LLCV—Lower Level Calibration Verification, serves as the lower level ICV and lower level CCV
RB—Reagent blank
RBS—Reagent blank spike
MSDS—Material Safety Data Sheet
NIST—National Institute of Standards and Technology
D.I. water—Deionized water
SRM—NIST Standard Reference Material
CRM—Certified Reference Material
EPA—Environmental Protection Agency
v/v—volume to volume ratio

4.0 Interferences

4.1 Reagents, glassware, plasticware, and other sample processing hardware may yield artifacts and/or interferences to sample analysis. If reagent blanks, filter blanks, or quality control blanks yield results above the detection limit, the source of contamination must be identified. All containers and reagents used in the processing of the samples must be checked for contamination prior to sample extraction and analysis. Reagents shall be diluted to match the final concentration of the extracts and analyzed for Pb. Labware shall be rinsed with dilute acid solution and the solution analyzed. Once a reagent or labware article (such as extraction tubes) from a manufacturer has been successfully screened, additional screening is not required unless contamination is suspected.

4.2 Isobaric elemental interferences in ICP–MS are caused by isotopes of different elements forming atomic ions with the same nominal mass-to-charge ratio (m/z) as the species of interest. There are no species found in ambient air that will result in isobaric interference with the three Pb isotopes (206, 207, and 208) being measured. Polyatomic interferences occur when two or more elements combine to form an ion with the same mass-to-charge ratio as the isotope being measured. Pb is not subject to interference from common polyatomic ions and no correction is required.

4.3 The distribution of Pb isotopes is not constant. The analysis of total Pb should be based on the summation of signal intensities for the isotopic masses 206, 207, and 208. In most cases, the instrument software can perform the summation automatically.

4.4 Physical interferences are associated with the sample nebulization and transport

processes as well as with ion-transmission efficiencies. Dissolved solids can deposit on the nebulizer tip of a pneumatic nebulizer and on the interface skimmers of the ICP–MS. Nebulization and transport processes can be affected if a matrix component causes a change in surface tension or viscosity. Changes in matrix composition can cause significant signal suppression or enhancement. These interferences are compensated for by use of internal standards. Sample dilution will reduce the effects of high levels of dissolved salts, but calibration standards must be prepared in the extraction medium and diluted accordingly.

4.5 Memory interferences are related to sample transport and result when there is carryover from one sample to the next. Sample carryover can result from sample deposition on the sample and skimmer cones and from incomplete rinsing of the sample solution from the plasma torch and the spray chamber between samples. These memory effects are dependent upon both the analyte being measured and sample matrix and can be minimized through the use of suitable rinse times.

5.0 Health and safety cautions

5.1 The toxicity or carcinogenicity of reagents used in this method has not been fully established. Each chemical should be regarded as a potential health hazard and exposure to these compounds should be as low as reasonably achievable. Each laboratory is responsible for maintaining a current file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) should be available to all personnel involved in the chemical analysis. Specifically, concentrated nitric acid presents various hazards and is moderately toxic and extremely irritating to skin and mucus membranes. Use this reagent in a fume hood whenever possible and if eye or skin contact occurs, flush with large volumes of water. Always wear safety glasses or a shield for eye protection, protective clothing, and observe proper mixing when working with these reagents.

5.2 Concentrated HNO_3 and HCl are moderately toxic and extremely irritating to the skin. Use these reagents in a fume hood, and if eye and skin contact occurs, flush with large volumes of water. Always wear safety glasses or a shield for eye protection when working with these reagents. The component of this procedure requiring the greatest care is HNO_3. HNO_3 is a strong, corrosive, oxidizing agent that requires protection of the eyes, skin, and clothing. Items to be worn during use of this reagent include:

1. Safety goggles (or safety glasses with side shields),
2. Acid resistant rubber gloves, and
3. A protective garment such as a laboratory apron. HNO_3 spilled on clothing will destroy the fabric; contact with the skin underneath will result in a burn.

It is also essential that an eye wash fountain or eye wash bottle be available during performance of this method. An eye wash bottle has a spout that covers the eye. If acid or any other corrosive gets into the eye, the water in this bottle is squirted onto the eye to wash out the harmful material. Eye washing should be performed with large amounts of water immediately after exposure. Medical help should be sought immediately after washing. If either acid, but especially HNO_3, is spilled onto the skin, wash immediately with large amounts of water. Medical attention is not required unless the burn appears to be significant. Even after washing and drying, HNO_3 may leave the skin slightly brown in color; this will heal and fade with time.

5.3 Pb salts and Pb solutions are toxic. Great care must be taken to ensure that samples and standards are handled properly; wash hands thoroughly after handling.

5.4 Care must be taken when using the ultrasonic bath and heated block digester as they are capable of causing mild burns. Users should refer to the safety guidance provided by the manufacturer of their specific equipment.

5.5 Analytical plasma sources emit radio frequency radiation in addition to intense ultra violet (UV) radiation. Suitable precautions should be taken to protect personnel from such hazards. The inductively coupled plasma should only be viewed with proper eye protection from UV emissions.

6.0 Equipment

6.1 Thermo Scientific X-Series ICP–MS or equivalent. The system must be capable of providing resolution better or equal to 1.0 atomic mass unit (amu) at 10 percent peak height. The system must have a mass range from at least 7 to 240 amu that allows for the application of the internal standard technique. For the measurement of Pb, an instrument with a collision or reaction cell is not required.

6.2 Ultrasonic extraction equipment

6.2.1 Heated ultrasonic bath capable of maintaining a temperature of 80°C; VWR Model 750HT, 240W, or equivalent. Ultrasonic bath must meet the following performance criteria:

1. Cut a strip of aluminum foil almost the width of the tank and double the depth.
2. Turn the ultrasonic bath on and lower the foil into the bath vertically until almost touching the bottom of the tank and hold for 10 seconds.
3. Remove the foil from the tank and observe the distribution of perforations and small pin prick holes. The indentations should be fine and evenly distributed. The even distribution of indentations indicates the ultrasonic bath is acceptable for use.

6.2.2 Laboratory centrifuge, Beckman GS–6, or equivalent.

6.2.3 Vortex mixer, VWR Signature Digital Vortex Mixer, VWR Catalog No. 14005–824, or equivalent.

6.3 Heated block extraction equipment

6.3.1 Heated block digester, SCP Science DigiPrep Model MS, No. 010–500–205 block digester capable of maintaining a temperature of 95°C, or equivalent.

6.4 Materials and Supplies

- Argon gas supply, 99.99 percent purity or better. National Welders Microbulk, or equivalent.
- Plastic digestion tubes with threaded caps for extraction and storage, SCP Science DigiTUBE® Item No. 010–500–063, or equivalent.
- Disposable polypropylene ribbed watch glasses (for heated block extraction), SCP Science Item No. 010–500–081, or equivalent.
- Pipette, Rainin EDP2, 100 µL, ± 1 percent accuracy, ≤1 percent RSD (precision), with disposable tips, or equivalent.
- Pipette, Rainin EDP2, 1000 µL, ± 1 percent accuracy, ≤1 percent RSD (precision), with disposable tips, or equivalent.
- Pipette, Rainin EDP2, 1–10 mL, ± 1 percent accuracy, ≤1 percent RSD (precision), with disposable tips, or equivalent.
- Pipette, Thermo Lab Systems, 5 mL, ± 1 percent accuracy, ≤1 percent RSD (precision), with disposable tips, or equivalent.
- Plastic tweezer, VWR Catalog No. 89026–420, or equivalent.
- Laboratory marker.
- Ceramic knife, Kyocera LK–25, and non-metal ruler or other suitable cutting tools for making straight cuts for accurately measured strips.
- Blank labels or labeling tape, VWR Catalog No. 36425–045, or equivalent.
- Graduated cylinder, 1 L, VWR 89000–260, or equivalent.
- Volumetric flask, Class A, 1 L, VWR Catalog No. 89025–778, or equivalent.
- Millipore Element deionized water system, or equivalent, capable of generating water with a resistivity of ≥17.9 MΩ-cm).
- Disposable syringes, 10-mL, with 0.45 micron filters (must be Pb-free).
- Plastic or Teflon® wash bottles.
- Glassware, Class A—volumetric flasks, pipettes, and graduated cylinders.
- Glass fiber, quartz, or Teflon® filters from the same filter manufacturer and lot used for sample collection for use in the determination of the MDL and for laboratory blanks.

7.0 Reagents and standards

7.1 Reagent—or trace metals-grade chemicals must be used in all tests. Unless otherwise indicated, it is intended that all reagents conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available.

7.2 Concentrated nitric acid, 67–70 percent, SCP Science Catalog No. 250–037–177, or equivalent.

7.3 Concentrated hydrochloric acid (for the ultrasonic extraction method), 33–36 percent, SCP Science Catalog No. 250–037–175, or equivalent.

7.4 Deionized water—All references to deionized water in the method refer to deionized water with a resistivity ≥17.9 MΩ-cm.

7.5 Standard stock solutions may be commercially purchased for each element or as a multi-element mix. Internal standards may be purchased as a mixed multi-element solution. The manufacturer's expiration date and storage conditions must be adhered to.

7.5.1 Lead standard, 1000 µg/mL, NIST traceable, commercially available with certificate of analysis. High Purity Standards Catalog No. 100028–1, or equivalent.

7.5.2 Indium (In) standard, 1000 µg/mL, NIST traceable, commercially available with certificate of analysis. High Purity Standards Catalog No. 100024–1, or equivalent.

7.5.3 Bismuth (Bi) standard, 1000 µg/mL, NIST traceable, commercially available with

certificate of analysis. High Purity Standards Catalog No. 100006–1, or equivalent.

7.5.4 Holmium (Ho) standard, 1000 µg/mL, NIST traceable, commercially available with certificate of analysis. High Purity Standards Catalog No. 100023–1, or equivalent.

7.5.5 Second source lead standard, 1000 µg/mL, NIST traceable, commercially available with certificate of analysis. Must be from a different vendor or lot than the standard described in 7.5.1. Inorganic Ventures Catalog No. CGPB–1, or equivalent.

7.5.6 Standard Reference Materials, NIST SRM 2583[2], 2586[3], 2587[4] or 1648[5], or equivalent.

Note: The In, Bi, and Ho internal standards may also be purchased as 10 µg/mL standards. Calibration standards are prepared by diluting stock standards to the appropriate levels in the same acid concentrations as in the final sample volume. The typical range for calibration standards is 0.001 to 2.00 µg/mL. At a minimum, the curve must contain a blank and five Pb containing calibration standards. The calibration standards are stored at ambient laboratory temperature. Calibration standards must be prepared weekly and verified against a freshly prepared ICV using a NIST-traceable source different from the calibration standards.

7.6 Internal standards may be added to the test solution or by on-line addition. The nominal concentration for an internal standard is 0.010 µg/mL (10 ppb). Bismuth (Bi) or holmium (Ho) are the preferred internal standards for Pb but indium (In) may be used in the event the sample contains bismuth and high recoveries are observed.

7.7 Three laboratory blank solutions are required for analysis: (1) The calibration blank is used in the construction of the calibration curve and as a periodic check of system cleanliness (ICB and CCB); (2) the reagent blank (RB) is carried through the extraction process to assess possible contamination; and (3) the rinse blank is run between samples to clean the sample introduction system. If RBs or laboratory blanks yield results above the detection limit, the source of contamination must be identified. Screening of labware and reagents is addressed in Section 4.1.

7.7.1 The calibration blank is prepared in the same acid matrix as the calibration standards and samples and contains all internal standards used in the analysis.

7.7.2 The RB contains all reagents used in the extraction and is carried through the extraction procedure at the same time as the samples.

7.7.3 The rinse blank is a solution of 1–2 percent HNO_3 (v/v) in reagent grade water. A sufficient volume should be prepared to flush the system between all standards and samples analyzed.

7.7.4 The EPA currently provides glass fiber, quartz, and Teflon® filters to air monitoring agencies as requested annually. As part of the procurement process, these filters are tested for acceptance by the EPA. The current acceptance criteria for glass fiber and quartz filters is 15 µg per filter or 0.0075 µg/m^3 using a nominal sample volume of 2000 m^3 and 4.8 ng/cm^2 or 0.0024 µg/m^3 for Teflon® filters using a nominal sample volume of 24 m^3. Acceptance test results for filters obtained by the EPA are typically well below the criterion specified and also below the recently revised Pb method performance detection limit of 0.0075 µg/m^3; therefore, blank subtraction should not be done.

7.7.5 If filters are not provided by the EPA for sample collection and analysis, filter lot blanks should be analyzed for Pb content. For large filter lots (≤500 filters) randomly select 20 to 30 filters from the lot and analyze the filter or filter strips for Pb. For smaller filter lots a lesser number of filters can be analyzed. Glass, quartz and Teflon® filters must not have levels of Pb above the criteria specified in section 7.7.4 and, therefore, blank correction should not be performed. If acceptance testing shows levels of Pb above the criteria in Section 7.7.4, corrective action must be taken to reduce the levels before proceeding.

7.8 The Initial Calibration Verification (ICV), Lower Level Calibration Verification (LLCV), and Continuing Calibration Verification (CCV) solutions are prepared from a different Pb source than the calibration curve standards and at a concentration that is either at or below the midpoint on the calibration curve, but within the calibration range. Both are prepared in the same acid matrix as the calibration standards. Note that the same solution may be used for both the ICV and CCV. The ICV/CCV and LLCV solutions must be prepared fresh daily.

7.9 Tuning Solution. Prepare a tuning solution according to the instrument manufacturer's recommendations. This solution will be used to verify the mass calibration and resolution of the instrument.

8.0 Quality Control (QC)

8.1 Standard QC practices shall be employed to assess the validity of the data generated. Included are: MDL, RB, duplicate samples, spiked samples, serial dilutions, ICV, CCV, LLCV, ICB, CCB, and SRMs/CRMs.

8.2 MDLs must be calculated in accordance with 40 CFR part 136, appendix B. RBs with low-level standard spikes can be used to estimate the MDL. The low-level standard spike is added to at least seven individual filter strips and then carried through the entire extraction procedure. This will result in at least 7 individual samples to be used for the MDL. The recommended range for spiking the strips is 2–5 times the estimated MDL.

8.3 For each batch of samples, one RB and one reagent blank spike (RBS) spiked at the same level as the sample spike (see Section 8.6) must be prepared and carried throughout the entire process. The results of the RB must be below 0.001 µg/mL. The recovery for the RBS must be within ± 20 percent of the expected value. If the RB yields a result above 0.001 µg/mL, the source of contamination must be identified and the extraction and analysis repeated. Reagents and labware must be suspected as sources of contamination. Screening of reagents and labware is addressed in Section 4.1.

8.4 Any samples that exceed the highest calibration standard must be diluted and rerun so that the concentration falls within the curve. The minimum dilution will be 1 to 5 with matrix matched acid solution.

8.5 The internal standard response must be monitored during the analysis. If the internal standard response falls below 70 percent or rises above 120 percent of expected due to possible matrix effects, the sample must be diluted and reanalyzed. The minimum dilution will be 1 to 5 with matrix matched acid solution. If the first dilution does not correct the problem, additional dilutions must be run until the internal standard falls within the specified range.

8.6 For every batch of samples prepared, there must be one duplicate and one spike sample prepared. The spike added is to be at a level that falls within the calibration curve, normally the midpoint of the curve. The initial plus duplicate sample must yield a relative percent difference ≤ 20 percent. The spike must be within ± 20 percent of the expected value.

8.7 For each batch of samples, one extract must be diluted five-fold and analyzed. The corrected dilution result must be within ±10 percent of the undiluted result. The sample chosen for the serial dilution shall have a concentration at or above 10X the lowest standard in the curve to ensure the diluted value falls within the curve. If the serial dilution fails, chemical or physical interference should be suspected.

8.8 ICB, ICV, LLCV, CCB and CCV samples are to be run as shown in the following table.

Sample	Frequency	Performance specification
ICB	Prior to first sample	Less than 0.001 µg/mL.
ICV	Prior to first sample	Within 90 to 110 percent of the expected value.
LLCV	Daily, before first sample and after last sample	±10 percent of the expected value.
CCB	After every 10 extracted samples	Less than 0.001 µg/mL.
CCV	After every 10 extracted samples	Within 90–110 percent of the expected value.

If any of these QC samples fails to meet specifications, the source of the unacceptable performance must be determined, the problem corrected, and any samples not bracketed by passing QC samples must be reanalyzed.

8.9 For each batch of samples, one certified reference material (CRM) must be combined with a blank filter strip and carried

through the entire extraction procedure. The result must be within ±10 percent of the expected value.

8.10 For each run, a LLCV must be analyzed. The LLCV must be prepared at a concentration not more than three times the lowest calibration standard and at a concentration not used in the calibration curve. The LLCV is used to assess performance at the low end of the curve. If the LLCV fails (±10 percent of the expected value) the run must be terminated, the problem corrected, the instrument recalibrated, and the analysis repeated.

8.11 Pipettes used for volumetric transfer must have the calibration checked at least once every 6 months and pass ± 1 percent accuracy and ≤ 1 percent RSD (precision) based on five replicate readings. The pipettes must be checked weekly for accuracy with a single replicate. Any pipette that does not meet ± 1 percent accuracy on the weekly check must be removed from service, repaired, and pass a full calibration check before use.

8.12 Samples with physical deformities are not quantitatively analyzable. The analyst should visually check filters prior to proceeding with preparation for holes, tears, or non-uniform deposit which would prevent representative sampling. Document any deformities and qualify the data with flags appropriately. Care must be taken to protect filters from contamination. Filters must be kept covered prior to sample preparation.

9.0 ICP–MS Calibration

Follow the instrument manufacturer's instructions for the routine maintenance, cleaning, and ignition procedures for the specific ICP–MS instrument being used.

9.1 Ignite the plasma and wait for at least one half hour for the instrument to warm up before beginning any pre-analysis steps.

9.2 For the Thermo X-Series with Xt cones, aspirate a 10 ng/mL tuning solution containing In, Bi, and Ce(Cerium) . Monitor the intensities of In, Bi, Ce, and CeO (Cerium oxide) and adjust the instrument settings to achieve the highest In and Bi counts while minimizing the CeO/Ce oxide ratio. For other instruments, follow the manufacturer's recommended practice. Tune to meet the instrument manufacturer's specifications. After tuning, place the sample aspiration probe into a 2 percent HNO_3 rinse solution for at least 5 minutes to flush the system.

9.3 Aspirate a 5 ng/mL solution containing Co, In, and Bi to perform a daily instrument stability check. Run 10 replicates of the solution. The percent RSD for the replicates must be less than 3 percent at all masses. If the percent RSD is greater than 3 percent, the sample introduction system, pump tubing, and tune should be examined, and the analysis repeated. Place the sample aspiration probe into a 2 percent HNO_3 rinse solution for at least 5 minutes to flush the system.

9.4 Load the calibration standards in the autosampler and analyze using the same method parameters that will be used to analyze samples. The curve must include one blank and at least 5 Pb-containing calibration standards. The correlation coefficient must be at least 0.998 for the curve to be accepted. The lowest standard must recover ± 15 percent of the expected value and the remaining standards must recover ± 10 percent of the expected value to be accepted.

9.5 Immediately after the calibration curve is completed, analyze an ICV and an ICB. The ICV must be prepared from a different source of Pb than the calibration standards. The ICV must recover 90–110 percent of the expected value for the run to continue. The ICB must be less than 0.001 µg/mL. If either the ICV or the ICB fails, the run must be terminated, the problem identified and corrected, and the analysis re-started.

9.6 A LLCV, CCV and a CCB must be run after the ICV and ICB. A CCV and CCB must be run at a frequency of not less than every 10 extracted samples. A typical analytical run sequence would be: Calibration blank, Calibration standards, ICV, ICB, LLCV, CCV, CCB, Extracts 1–10, CCV, CCB, Extracts 11–20, CCV, CCB, Extracts 21–30, CCV, CCB, LLCV, CCV, CCB. Extracts are any field sample or QC samples that have been carried through the extraction process. The CCV solution is prepared from a different source than the calibration standards and may be the same as the ICV solution. The LLCV must be within ± 10 percent of expected value. The CCV value must be within ± 10 percent of expected for the run to continue. The CCB must be less than 0.001 µg/mL. If either the CCV, LLCV, or CCB fails, the run must be terminated, the problem identified and corrected, and the analysis re-started from the last passing CCV/LLCV/CCB set.

9.7 A LLCV, CCV, and CCB set must be run at the end of the analysis. The LLCV must be within ± 30 percent of expected value. If either the CCV, LLCV, or CCB fails, the run must be terminated, the problem identified and corrected, and the analysis re-started from the last passing CCV/LLCV/CCB set.

10.0 Heated Ultrasonic Filter Strip Extraction

All plasticware (e.g., Nalgene) and glassware used in the extraction procedures is soaked in 1 percent HNO_3 (v/v) for at least 24 hours and rinsed with reagent water prior to use. All mechanical pipettes used must be calibrated to ±1 percent accuracy and ≤ 1 percent RSD at a minimum of once every 6 months.

10.1 Sample Preparation—Heated Ultrasonic Bath

10.1.1 Extraction solution (1.03M HNO_3 + 2.23M HCl). Prepare by adding 500 mL of deionized water to a 1000 mL flask, adding 64.4 mL of concentrated HNO_3 and 182 mL of concentrated HCl, shaking to mix, allowing solution to cool, diluting to volume with reagent water, and inverting several times to mix. Extraction solution must be prepared at least weekly.

10.1.2 Use a ceramic knife and non-metal ruler, or other cutting device that will not contaminate the filter with Pb. Cut a ¾ inch X 8 inch strip from the glass fiber or quartz filter by cutting a strip from the edge of the filter where it has been folded along the 10 inch side at least 1 inch from the right or left side to avoid the un-sampled area covered by the filter holder. The filters must be carefully handled to avoid dislodging deposits.

10.1.3 Using plastic tweezers, roll the filter strip up in a coil and place the rolled strip in the bottom of a labeled 50 mL extraction tube. In a fume hood, add 15.00 ± 0.15 mL of the extraction solution (see Section 10.1.1) using a calibrated mechanical pipette. Ensure that the extraction solution completely covers the filter strip.

10.1.4 Loosely cap the 50 mL extraction tube and place it upright in a plastic rack. When all samples have been prepared, place the racks in an uncovered heated ultrasonic water bath that has been preheated to 80 ± 5°C and ensure that the water level in the ultrasonic is above the level of the extraction solution in the tubes but well below the level of the extraction tube caps to avoid contamination. Start the ultrasonic bath and allow the unit to run for 1 hour ± 5 minutes at 80 ± 5°C.

10.1.5 Remove the rack(s) from the ultrasonic bath and allow the racks to cool.

10.1.6 Add 25.00 ± 0.25 mL of D.I. water with a calibrated mechanical pipette to bring the sample to a final volume of 40.0 ± 0.4 mL. Tightly cap the tubes and vortex mix or shake vigorously. Place the extraction tubes in an appropriate holder and centrifuge for 20 minutes at 2500 revolutions per minute (RPM).

CAUTION—Make sure that the centrifuge holder has a flat bottom to support the flat bottomed extraction tubes.

10.1.7 Pour an aliquot of the solution into an autosampler vial for ICP–MS analysis to avoid the potential for contamination. Do not pipette an aliquot of solution into the autosampler vial.

10.1.8 Decant the extract to a clean tube, cap tightly, and store the sample extract at ambient laboratory temperature. Extracts may be stored for up to six months from the date of extraction.

10.2 47 mm Teflon® Filter Extraction—Heated Ultrasonic Bath

10.2.1 Extraction solution (1.03M HNO_3 + 2.23M HCl). Prepare by adding 500 mL of D.I. water to a 1000mL flask, adding 64.4 mL of concentrated HNO_3 and 182 mL of concentrated HCl, shaking to mix, allowing solution to cool, diluting to volume with reagent water, and inverting several times to mix. Extraction solution must be prepared at least weekly.

10.2.2 Using plastic tweezers, bend the Teflon® filter into a U-shape and insert the filter into a labeled 50 mL extraction tube with the particle loaded side facing the center of the tube. Gently push the filter to the bottom of the extraction tube. In a fume hood, add 25.00 ± 0.15 mL of the extraction solution (see Section 10.2.1) using a calibrated mechanical pipette. Ensure that the extraction solution completely covers the filter.

10.2.3 Loosely cap the 50 mL extraction tube and place it upright in a plastic rack. When all samples have been prepared, place the racks in an uncovered heated ultrasonic water bath that has been preheated to 80 ± 5°C and ensure that the water level in the ultrasonic is above the level of the extraction solution in the tubes but well below the level of the extraction tube caps to avoid contamination. Start the ultrasonic bath and allow the unit to run for 1 hour ± 5 minutes at 80 ± 5°C.

10.2.4 Remove the rack(s) from the ultrasonic bath and allow the racks to cool.

10.2.5 Add 25.00 ± 0.25 mL of D.I. water with a calibrated mechanical pipette to bring the sample to a final volume of 50.0 ± 0.4 mL. Tightly cap the tubes and vortex mix or shake vigorously. Allow samples to stand for one hour to allow complete diffusion of the extracted Pb. The sample is now ready for analysis.

Note: Although Teflon® filters have only been extracted using the ultrasonic extraction procedure in the development of this FRM, Teflon® filters are inert and have very low Pb content. No issues are expected with the extraction of Teflon® filters using the heated block digestion method. However, prior to using Teflon® filters in the heated block extraction method, extraction method performance test using CRMs must be done to confirm performance (see Section 8.9).

11.0 Heated Block Filter Strip Extraction

All plasticware (e.g., Nalgene) and glassware used in the extraction procedures is soaked in 1 percent HNO_3 for at least 24 hours and rinsed with reagent water prior to use. All mechanical pipettes used must be calibrated to ±1 percent accuracy and ≤ 1 percent RSD at a minimum of once every 6 months.

11.1 Sample Preparation—Heated Block Digestion

11.1.1 Extraction solution (1:19, v/v HNO_3). Prepare by adding 500 mL of D.I. water to a 1000 mL flask, adding 50 mL of concentrated HNO_3, shaking to mix, allowing solution to cool, diluting to volume with reagent water, and inverting several times to mix. The extraction solution must be prepared at least weekly.

11.1.2 Use a ceramic knife and non-metal ruler, or other cutting device that will not contaminate the filter with Pb. Cut a 1 inch × 8 inch strip from the glass fiber or quartz filter. Cut a strip from the edge of the filter where it has been folded along the 10 inch side at least 1 inch from the right or left side to avoid the un-sampled area covered by the filter holder. The filters must be carefully handled to avoid dislodging particle deposits.

11.1.3 Using plastic tweezers, roll the filter strip up in a coil and place the rolled strip in the bottom of a labeled 50 mL extraction tube. In a fume hood, add 20.0 ± 0.15 mL of the extraction solution (see Section 11.1.1) using a calibrated mechanical pipette. Ensure that the extraction solution completely covers the filter strip.

11.1.4 Place the extraction tube in the heated block digester and cover with a disposable polyethylene ribbed watch glass. Heat at 95 ± 5 °C for one hour and ensure that the sample does not evaporate to dryness. For proper heating, adjust the temperature control of the hot block such that an uncovered vessel containing 50 mL of water placed in the center of the hot block can be maintained at a temperature approximately, but no higher than 85 °C. Once the vessel is covered with a ribbed watch glass the temperature of the water will increase to approximately 95 °C.

11.1.5 Remove the rack(s) from the heated block digester and allow the samples to cool.

11.1.6 Bring the samples to a final volume of 50 mL with D.I. water. Tightly cap the tubes and vortex mix or shake vigorously for at least 5 seconds. Set aside (with the filter strip in the tube) for at least 30 minutes to allow the nitric acid trapped in the filter to diffuse into the extraction solution.

11.1.7 Shake thoroughly (with the filter strip in the digestion tube) and let settle for at least one hour. The sample is now ready for analysis.

12.0 Measurement Procedure

12.1 Follow the instrument manufacturer's startup procedures for the ICP–MS.

12.2 Set instrument parameters to the appropriate operating conditions as presented in the instrument manufacturer's operating manual and allow the instrument to warm up for at least 30 minutes.

12.3 Calibrate the instrument per Section 9.0 of this method.

12.4 Verify the instrument is suitable for analysis as defined in Sections 9.2 and 9.3.

12.5 As directed in Section 8.0 of this method, analyze an ICV and ICB immediately after the calibration curve followed by a LLCV, then CCV and CCB. The acceptance requirements for these parameters are presented in Section 8.8.

12.6 Analyze a CCV and a CCB after every 10 extracted samples.

12.7 Analyze a LLCV, CCV and CCB at the end of the analysis.

12.8 A typical sample run will include field samples, field sample duplicates, spiked field sample extracts, serially diluted samples, the set of QC samples listed in Ssection 8.8 above, and one or more CRMs or SRMs.

12.9 Any samples that exceed the highest standard in the calibration curve must be diluted and reanalyzed so that the diluted concentration falls within the calibration curve.

13.0 Results

13.1 The filter results must be initially reported in µg/mL as analyzed. Any additional dilutions must be accounted for. The internal standard recoveries must be included in the result calculation; this is done by the ICP–MS software for most commercially-available instruments. Final results should be reported in µg Pb/m³ to three significant figures as follows:

C = ((µg Pb/mL * Vf * A)* D))/Vs

Where:

C = Concentration, µg Pb/m³
µg Pb/mL = Lead concentration in solution
Vf = Total extraction solution volume
A = Area correction; ¾″ × 8″ strip = 5.25 in² analyzed, A = 12.0 or 1″ ° 8″ strip = 7 in² analyzed, A = 9.0
D = dilution factor (if required)
Vs = Actual volume of air sampled

The calculation assumes the use of a standard 8 inch × 10 inch TSP filter which has a sampled area of 9 inch × 7 inch (63.0 in²) due to the ½ inch filter holder border around the outer edge. The ¾ inch × 8 inch strip has a sampled area of ¾ inch × 7 inch (5.25 in²). The 1 inch × 8 inch strip has a sampled area of 1 inch × 7 inch (7.0 in²). If filter lot blanks are provided for analysis, refer to Section 7.7.5 of this method for guidance on testing.

14.0 Method Performance

Information in this section is an example of typical performance results achieved by this method. Actual performance must be demonstrated by each individual laboratory and instrument.

14.1 Performance data have been collected to determine MDL for this method. MDLs were determined in accordance with 40 CFR part 136, Appendix B. MDLs were estimated for glass fiber, quartz, and Teflon® filters using seven reagent/filter blank solutions and seven reagent/filter blank solutions spiked with low level Pb at three times the estimated MDL. Tables 1, 3, and 5 shows the MDLs estimated using both the ultrasonic and heated block extraction methods for glass fiber and quartz filters and the ultrasonic method for Teflon® filters. The MDLs are well below the EPA requirement of 5 percent of the current Pb NAAQS or 0.0075 µg/m³.

14.2 Extraction method recovery tests with glass fiber and quartz filter strips, and Teflon® filters spiked with NIST SRMs were performed using the ultrasonic/HNO_3 and HCl filter extraction methods and measurement of the dissolved Pb with ICP–MS. Tables 2, 4, and 6 show recoveries obtained with these SRM. The recoveries for all SRMs were ≥ 90 percent at the 95 percent confidence level.

TABLE 1—METHOD DETECTION LIMITS DETERMINED BY ANALYSIS OF REAGENT/GLASS FIBER FILTER BLANKS AND REAGENT/GLASS FIBER FILTER BLANKS SPIKED WITH LOW-LEVEL Pb SOLUTION

	Ultrasonic		Hotblock	
	Blank (µg/m³)*	Pb-spiked (µg/m³)*	Blank (µg/m³)*	Pb-spiked (µg/m³)*
n=1	0.0000434	0.0000702	0.000362	0.000533
n=2	0.0000420	0.0000715	0.000400	0.000482
n=3	0.0000439	0.0000611	0.000386	0.000509
n=4	0.0000407	0.0000587	0.000415	0.000427
n=5	0.0000437	0.0000608	0.000414	0.000449
n=6	0.0000437	0.0000607	0.000409	0.000539

TABLE 1—METHOD DETECTION LIMITS DETERMINED BY ANALYSIS OF REAGENT/GLASS FIBER FILTER BLANKS AND REAGENT/GLASS FIBER FILTER BLANKS SPIKED WITH LOW-LEVEL Pb SOLUTION—Continued

	Ultrasonic		Hotblock	
	Blank (μg/m³)*	Pb-spiked (μg/m³)*	Blank (μg/m³)*	Pb-spiked (μg/m³)*
n=7	0.0000403	0.0000616	0.000361	0.000481
Average	0.0000425	0.0000635	0.000392	0.000489
Standard	0.0000015	0.0000051	0.000023	0.000042
MDL**	0.0000047	0.0000161	0.000073	0.000131

* Assumes 2000 m³ of air sampled.
** MDL is 3.143 times the standard deviation of the results for seven sample replicates analyzed.

TABLE 2—RECOVERIES OF LEAD FROM NIST SRMS SPIKED ONTO GLASS FIBER FILTERS

Extraction method	Recovery, ICP–MS, (percent)			
	NIST 1547 plant	NIST 2709 soil	NIST 2583 dust	NIST 2582 paint
Ultrasonic Bath	100±4	98±1	103±8	101±0
Block Digestion	92±7	98±3	103±4	94±4

TABLE 3—METHOD DETECTION LIMITS DETERMINED BY ANALYSIS OF REAGENT/QUARTZ FILTER BLANKS AND REAGENT/QUARTZ FILTER BLANKS SPIKED WITH LOW-LEVEL Pb SOLUTION

	Ultrasonic		Hotblock	
	Blank (μg/m³)*	Pb-spiked (μg/m³)*	Blank (μg/m³)*	Pb-spiked (μg/m³)*
n=1	0.000273	0.000533	0.000121	0.000274
n=2	0.000270	0.000552	0.000112	0.000271
n=3	0.000270	0.000534	0.000112	0.000281
n=4	0.000279	0.000684	0.000111	0.000269
n=5	0.000277	0.000532	0.000121	0.000278
n=6	0.000282	0.000532	0.000117	0.000272
n=7	0.000276	0.000552	0.000115	0.000261
Average	0.000275	0.000560	0.000116	0.000272
Standard	0.000004	0.000055	0.000004	0.000007
MDL**	0.000014	0.000174	0.000013	0.000021

* Assumes 2000 m³ of air sampled.
** MDL is 3.143 times the standard deviation of the results for seven sample replicates analyzed.

TABLE 4—RECOVERIES OF LEAD FROM NIST SRMS SPIKED ONTO QUARTZ FIBER FILTERS

Extraction method	Recovery, ICP–MS, (percent)			
	NIST 1547 plant	NIST 2709 soil	NIST 2583 dust	NIST 2582 paint
Ultrasonic Bath	101±6	95±1	91±5	93±1
Block Digestion	106±3	104±3	92±6	95±2

TABLE 5—METHOD DETECTION LIMITS DETERMINED BY ANALYSIS OF REAGENT/TEFLON FILTER BLANKS AND REAGENT/TEFLON FILTER BLANKS SPIKED WITH LOW-LEVEL Pb SOLUTION

	Ultrasonic extraction method	
	Blank (μg/m³)*	Pb-spiked (μg/m³)*
n=1	0.000070	0.001775
n=2	0.000039	0.001812
n=3	0.000009	0.001773
n=4	−0.000012	0.001792
n=5	0.000062	0.001712
n=6	−0.000019	0.001767
n=7	0.000033	0.001778
Average	0.000026	0.001773
Standard Deviation	0.000035	0.000031

TABLE 5—METHOD DETECTION LIMITS DETERMINED BY ANALYSIS OF REAGENT/TEFLON FILTER BLANKS AND REAGENT/TEFLON FILTER BLANKS SPIKED WITH LOW-LEVEL Pb SOLUTION—Continued

	Ultrasonic extraction method	
	Blank (μg/m³)*	Pb-spiked (μg/m³)*
MDL**	0.000109	0.000097

* Assumes 24 m³ of air sampled.
** MDL is 3.143 times the standard deviation of the results for seven sample replicates analyzed.

TABLE 6—RECOVERIES OF LEAD FROM NIST SRMS SPIKED ONTO TEFLON FILTERS

Extraction method	Recovery, ICP–MS, (percent)			
	NIST 1547 plant	NIST 2709 soil	NIST 2583 dust	NIST 2582 paint
Ultrasonic Bath	104±5	93±1	108±11	96±3

15.0 Pollution Prevention

15.1 Pollution prevention encompasses any technique that reduces or eliminates the quantity and/or toxicity of waste at the point of generation. Numerous opportunities for pollution prevention exist in laboratory operations. Whenever feasible, laboratory personnel should use pollution prevention techniques to address their waste generation. The sources of pollution generated with this procedure are waste acid extracts and Pb-containing solutions.

15.2 For information about pollution prevention that may be applicable to laboratories and research institutions, consult Less is Better: Laboratory Chemical Management for Waste Reduction, available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th St. NW., Washington, DC 20036, *www.acs.org.*

16.0 Waste Management

16.1 Laboratory waste management practices must be conducted consistent with all applicable rules and regulations. Laboratories are urged to protect air, water, and land by minimizing all releases from hood and bench operations, complying with the letter and spirit of any sewer and discharge permits and regulations, and by complying with all solid and hazardous waste regulation. For further information on waste management, consult The Waste Management Manual for Laboratory Personnel available from the American Chemical Society listed in Section 15.2 of this method.

16.2 Waste HNO_3, HCl, and solutions containing these reagents and/or Pb must be placed in labeled bottles and delivered to a commercial firm that specializes in removal of hazardous waste.

17.0 References

1. Method 6020A—Inductively Coupled Plasma Mass Spectrometry. U.S. Environmental Protection Agency. Revision 1, February 2007.

2. NIST, Certificate of Analysis: Standard Reference Materials 2583, Trace Elements in Indoor Dust, Nominal 90 mg/kg Lead, National Institute of Standards and Technology, Gaithersburg, MD, 1998.

3. NIST, Certificate of Analysis: Standard Reference Materials 2586, Trace Elements in Soil, Nominal 500 mg/Kg Lead, National Institute of Standards and Technology, Gaithersburg, MD, 2008.

4. NIST, Certificate of Analysis: Standard Reference Materials 2587, Trace Elements in Soil Containing Lead from Paint, Nominal 3000 mg/Kg Lead, National Institute of Standards and Technology, Gaithersburg, MD, 2008.

5. NIST, Certificate of Analysis: Standard Reference Materials 1648, Urban Particulate Matter, 0.655 ± 0.033% Lead, National Institute of Standards and Technology, Gaithersburg, MD, 2008.

6. Rice 2013, Results from the Development of a New Federal Reference Method (FRM) for Lead in Total Suspended Particulate (TSP) Matter. Docket # EPA–HQ–OAR–2012–0210.

[FR Doc. 2013–02382 Filed 2–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2006–0600; FRL–9776–4]

Approval and Promulgation of Implementation Plans; Texas; Revisions to New Source Review (NSR) State Implementation Plan (SIP); Emergency Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing disapproval of revisions to the SIP for the State of Texas that relate to Emergency Orders. This includes portions of SIP revisions that relate to Emergency Orders that were submitted by Texas on August 31, 1993; December 10, 1998; February 1, 2006; and July 17, 2006. EPA is proposing disapproval of these revisions because these regulations do not meet the requirement of the Clean Air Act (the ''Act'' or ''CAA''), EPA regulations, and applicable policy and guidance. EPA is proposing this action under section 110 and parts C and D of Title I of the Act. EPA is returning the non-air portions of the aforementioned SIP submittals to the State because these provisions cannot be included in the SIP.

DATES: Comments must be received on or before March 7, 2013.

ADDRESSES: Submit your comments identified by Docket ID No. EPA–R06–OAR–2006–0600 by one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) *Email:* Ms. Ashley Mohr at *mohr.ashley@epa.gov.*

(3) *Fax:* Ms. Ashley Mohr, Air Permits Section (6PD–R), at fax number 214–665–6762.

(4) *Mail:* Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

(5) *Hand or Courier Delivery:* Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2006–0600. 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 that 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 statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Permits Section (6PD–R), 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 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 submittals, which are part of the EPA docket, are also available for public inspection at the State Air Agency during official business hours by appointment: Texas Commission on Environmental Quality (TCEQ), Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Mohr, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733; telephone (214) 665–7289; fax number (214) 665–6762; email address *mohr.ashley@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever any reference to ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. Background

On August 31, 1993, TCEQ submitted its regulations for Emergency Orders. Revisions to these regulations were submitted on December 10, 1998; February 1, 2006; and July 17, 2006. The pending SIP revisions are summarized in Tables 1 and 2 below. Additional information is included in the Technical Support Document (TSD) for this action, which is in the docket.

TABLE 1—SUMMARY OF PENDING SIP SUBMITTALS ADDRESSED IN THIS ACTION

Description of SIP submittal	Date submitted to EPA	Date adopted by State	Date effective as State rule	Sections related to emergency orders
Original Recodification of Chapter 116	8/31/1993	8/16/1993	9/13/1993	*Chapter 116:* Submittal of sections 116.410 through 116.418.
Emergency and Temporary Orders	12/10/1998	11/18/1998	12/10/1998	*Chapter 35:* Submittal of sections 35.1–35.3, 35.11–35.13, 35.21–35–30, and 35.801–35.809 *Chapter 116:* Revisions to section 116.410; Repeal of sections 116.411–116.418, which were replaced by sections 35.802–35.809
Federal New Source Review Permits Rules	2/1/2006	1/11/2006	2/1/2006	*Chapter 116:* Recodification of § 116.410 to § 116.1200.
Revision to Provisions for Emergency Orders	7/17/2006	6/28/2006	7/19/2006	*Chapter 35:* Revisions to sections 35.801, 35.802, 35.804, 35.805, 35,807, and 35.808.

TABLE 2—SUMMARY OF THE INDIVIDUAL REVISIONS TO EACH SECTION EVALUATED

Section—title	Date submitted to EPA	Adopted by State	Effective as State rule	Comments
30 TAC Chapter 35—Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permits Conditions				
Subchapter A—Purpose, Applicability, and Definitions				
Section 35.1—Purpose	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.2—Applicability	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.3—Definitions	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Subchapter B—Authority of the Executive Director				
Section 35.11—Purpose and Applicability	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.12—Authority of the Executive Director.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.13—Eligibility of the Executive Director.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Subchapter C—General Provisions				
Section 35.21—Action by the Commission or Executive Director.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.22—Term and Renewal of Orders	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
§ 35.23—Effect of Orders	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.24—Application for Emergency or Temporary Orders.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.25—Notice and Opportunity for Hearing.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.26—Contents of Emergency or Temporary Orders.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.27—Hearing Required	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.28—Hearing Requests	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
§ 35.29—Procedures for a Hearing	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Section 35.30—Application Fees	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
Subchapter K—Air Orders [1]				
Section 35.801—Emergency Orders Because of Catastrophe.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
	7/17/2006	6/28/2006	7/19/2006	Revisions to section 35.801.
§§ 35.802—Application for an Emergency Order	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.411.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.802; • Revisions to introductory paragraph; • Revisions to paragraphs (1)–(8); • New paragraph (9); and • Redesignate former paragraph (9) to paragraph (10) with revisions.
	7/17/2006	6/28/2006	7/19/2006	Revisions to introductory paragraph (1) and paragraph (5).
Section 35.803—Public Notification	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.412
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.803; and • Revisions to introductory paragraph.
Section 35.804—Issuance of an Emergency Order.	12/10/1998	11/18/1998	12/10/1998	Initial adoption.
	7/17/2006	6/28/2006	7/19/2006	Revision to paragraphs (1) and (1)(C).
Section 35.805—Contents of an Emergency Order.	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.415.
	12/10/1998	11/18/1998	12/10/1998	Redesignated to section 35.805; and Revision to introductory paragraph and paragraphs (1)–(4).
	7/17/2006	6/28/2006	7/19/2006	• Reorganization of paragraph (3) to paragraphs (3), (3)(A), and (3)(B); • New paragraph 3)(C); • New paragraph (4); and • Redesignation of existing paragraph (4) to paragraph (5) with revisions.
Section 35.806—Requirement to Apply for a Permit or Modification.	8/31/1993	8/16/1993	9/13/1993	Initial adoption as § 116.416.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.806; and • Revisions to introductory paragraph.
Section 35.807—Affirmation of an Emergency Order.	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.414.

TABLE 2—SUMMARY OF THE INDIVIDUAL REVISIONS TO EACH SECTION EVALUATED—Continued

Section—title	Date submitted to EPA	Adopted by State	Effective as State rule	Comments
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.807; and • Revisions to the introductory paragraph, paragraphs (1)–(3); • New paragraph (4); • Redesignation of former (4)–(5) to paragraphs (5)–(6) with revisions.
	7/17/2006	6/28/2006	7/19/2006	• Revisions to paragraph (1). • Reorganization of paragraph (5) into paragraphs (5), (5)(A), and (5)(B); and • New paragraph (5)(C).
Section 35.808—Modification of an Emergency Order.	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.417.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.808; and • Revisions to paragraphs (1)–(3).
	7/17/2006	6/28/2006	7/19/2006	Revision to paragraph (1).
Section 35.809—Setting Aside an Emergency Order.	8/31/1993	8/16/1993	9/13/1993	Adopted as § 116.418.
	12/10/1998	11/18/1998	12/10/1998	• Redesignated to section 35.809; and • Revision to introductory paragraph.
30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification				
Subchapter K—Emergency Orders				
Section 116.1200—Applicability	8/31/1993	8/16/1993	9/13/1993	Initial adoption as section 116.410.
	12/10/1998	11/18/1998	12/10/1998	Revised introductory paragraph.
	2/1/2006	1/11/2006	2/1/2006	Redesignated to section 116.1200.

In general, the regulations governing Emergency Orders are found in 30 TAC Chapter 35—Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions. These regulations provide the process by which the Texas Commission on Environmental Quality (TCEQ) may issue a Temporary Order, Emergency Order, Mandatory Order, Permissive Order, and Prohibitory Order and include provisions that apply to both air orders and non-air orders. As part of this action, we are reviewing only those portions that are applicable to the issuance of air Emergency Orders. Under the CAA, SIPs can only include provisions addressing criteria pollutants and their precursors, so the portions of the Texas submittals related to non-air orders cannot be included in the SIP. Therefore, EPA is returning the non-air portions of the aforementioned submittals to the State.

Under the provisions in 30 TAC Chapter 35, the TCEQ may issue an Emergency Order under its air quality program which authorizes immediate action for the addition, replacement, or repair of facilities, control equipment, or the repair or replacement of roads, bridges, and other infrastructure whenever a catastrophe necessitates such construction and emissions otherwise precluded under the Texas Clean Air Act. See 30 TAC 35.801. Additional information on these regulations, and the specific provisions included in the regulations, is provided in TSD for this action.

Today, EPA proposes to disapprove the regulations identified in Table 2 above, except for provisions that do not relate to the air quality requirements of the Act. EPA is returning the following non-air portions of the submitted rules to the State: 30 TAC 35.13; 35.24(b) and (e)(6)–(7); and 35.25(e)(1)–(8) and (11)–(15). While we are proposing disapproval of the Emergency Orders Program, EPA does recognize the merits of such a state-only Program that allows for application review and order issuance to authorize proposed actions following catastrophes that often necessitate immediate action by owners and operators to minimize additional downstream impacts resulting from the catastrophe. Texas's Emergency Orders Program does allow for coordination between the source and the TCEQ to facilitate expedited review while maintaining a review process, as described in the June 17, 2006 SIP submittal. Other State and local agencies operate programs similar to the Emergency Orders program. In these cases, the regulations containing the provisions related to those programs are located within the states' air quality permitting regulations, not in the SIP. EPA may exercise its enforcement discretion on a case-by-case basis to evaluate the owner or operator's proposed action in response to a catastrophe and utilizes enforcement discretion to allow for appropriate immediate actions to minimize impacts and restore the sources to full operation.

II. What is EPA's evaluation of the Texas Emergency Orders Program?

A. Does the Emergency Orders Program meet the requirements for projects that are subject to New Source Review (NSR)?

The Emergency Orders Program could be used to authorize construction via the issuance of an Order prior to a source submitting an application for a NSR preconstruction permit. The issued Emergency Order is an interim authorization for the emissions of air contaminants that are associated with the construction or modification of any source or facility in response to a catastrophe, as defined in 30 TAC 35.801. Under the Emergency Orders Program, an owner or operator can apply for an Emergency Order that would ''authorize immediate action for the addition, replacement, or repair of facilities or control equipment, or the repair or replacement of roads, bridges, or other infrastructure, and authorizing associated emissions of air contaminants.'' See 30 TAC 35.801.

[1] On August 18, 1993, sections 116.411 through 116.418 were adopted under Chapter 116, Subchapter E—Emergency Orders. On November 18, 1998, these regulations were replaced with sections 35.802 through 35.809 and placed in Chapter 35, Subchapter K.

1. Summary of the Federal Program for Major NSR

The requirements for Major NSR are in Title I, Parts C and D of the CAA and in 40 CFR 51.165 and 51.166 and apply to the construction and modification of major stationary sources. The Major NSR requirements apply to projects that would be new major stationary sources and projects that would be major modifications under the requirements for Prevention of Significant Deterioration (PSD) under 40 CFR 51.166 and the requirements for Nonattainment Area New Source Review (NNSR) under 40 CFR 51.165.

The requirements for Major NSR apply to the construction or modification of stationary sources which emit, or have the potential to emit a regulated NSR pollutant at greater than 100 tons per year for most stationary sources. See CAA § 302(j).[2] Major NSR is required under two programs as described below:

Prevention of Significant Deterioration (PSD). The requirements for PSD are under the CAA Title I, Part C and under 40 CFR 51.166. PSD applies to the construction and modification of major stationary sources for the emissions of any pollutant for which the region (or portion thereof) is designated attainment or unclassifiable. See CAA at § 161 and 40 CFR 51.166(a)(7)(i). Requirements of the PSD Permitting Program include the following:

- The PSD permit must be issued prior to commencement of construction and set forth emission limitations which conform to the CAA. CAA § 165(a)(1) and 40 CFR 51.166(a)(7).
- The proposed permit has been subject to review in accordance with CAA requirements and the regulations promulgated under CAA, and the permit has been subject to public hearing and opportunity for interested persons to submit comments. CAA § 165(a)(2) and 40 CFR 51.166(a)(7) & (q).
- The emissions from the construction or operation of the source will not cause, or contribute to, air pollution in excess of the following: (1) Maximum allowable increase or maximum allowable concentration for any pollutant in any area in which PSD applies; (2) National Ambient Air Quality Standard; and (3) Any other applicable emission standard or standard of performance under the Act. CAA § 165(a)(3) and 40 CFR 51.166(c).
- The source is subject to best available control technology and the permitted emissions represent that technology. CAA § 165(a)(4) and 51.166(j).
- The requirements for protection of Class I areas have been met by the source. CAA § 165(a)(5) and 40 CFR 51.166(p).
- There has been an analysis of the air quality impacts projected to occur as the result of growth associated with the source. CAA § 165(a)(6) and 40 CFR 51.166(o).
- Monitoring has been conducted, as necessary, to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source. CAA § 165(a)(7) and 40 CFR 51.166(m).
- Specific requirements applicable to source proposed to be located in Class III areas have been met by the source. CAA § 165(a)(8).

Nonattainment New Source Review (NNSR). The requirements for NNSR are under the CAA Title I, Part D and under 40 CFR 51.165. NNSR applies to the construction and modification of major stationary sources for the emissions of any pollutant for which the region (or portion thereof) is designated nonattainment. See CAA at § 172(c)(5) and 40 CFR 51.165(a)(2)(i). Requirements of the NNSR Program include the following:

- Emission increases must be offset by reductions that are greater than the increase. CAA § 173(a)(1).
- The proposed source is required to comply with lowest achievable emission rate. CAA § 173(a)(2).
- The owner or operator must demonstrate that all major stationary sources owned by such person (or entity) are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under the Act. CAA § 173(a)(3).
- EPA has not determined that the State is not adequately implementing the SIP for the nonattainment area in which the proposed source is to be constructed or modified. CAA § 173(a)(4).
- An analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. CAA § 173(a)(5).

The PSD and NNSR Programs each require a new major stationary source or major modification to obtain a preconstruction permit prior to commencing construction. For PSD see CAA at § 165(a)(1) and 40 CFR 51.166(a)(7)(iii). For NNSR see CAA § 172(c)(5) and 40 CFR 51.165(a)(2)(i)–(iii). Accordingly, a new or modified major stationary source or major modification may not be constructed without a permit that meets the requirements of the applicable Major NSR Program.

2. What is EPA's evaluation?

As discussed in detail in the TSD for this action, in the July 17, 2006 SIP submittal TCEQ characterizes its Emergency Orders Program as a program which ''contemplate(s) and call(s) for a comprehensive technical review.'' However, notwithstanding the fact that TCEQ states that the ''comprehensive review'' for an Emergency Order is at least as comprehensive as the TCEQ's review of permit applications, the Emergency Orders Program does not meet all the requirements applicable to NSR. Specifically, the issuance of Emergency Orders to projects that are subject to Major NSR fail to meet the requirements of the Clean Air Act and the implementing regulations as follows:

- *The Emergency Orders Program does not satisfy the public participation required for NSR at the time the Emergency Order is issued.* Public participation requirements that are applicable to projects that are subject to Major NSR are not met prior to the issuance of the Emergency Order, which would authorize the construction of such projects. Instead, the applicable public participation for Major NSR projects will take place after the issuance of the Emergency Order when the applicant submits their application for a Major NSR permit. The source has 60 days following the issuance of the Emergency Order to submit the permit application. See 30 TAC 35.806. Meanwhile, the applicant is authorized by the Emergency Order to begin construction of the Major NSR project prior to permit application submission and permit issuance. Consequently, the public is not afforded an opportunity to review and comment on the proposed project (as required under the CAA and implementing regulations) until after construction has begun; thus the public has not been provided meaningful opportunity to participate prior to commencement of construction of the Major NSR project. See 40 CFR 51.161

[2] In certain nonattainment areas, the CAA specifies lower thresholds based upon the degree of nonattainment. See CAA at §§ 182(c), (d), and (d); 187(c)(1); and 189(b)(3). See 40 CFR 51.165(a)(1)(iv). Also, in a PSD area, under the CAA § 169(1), a major stationary source is either 100 tons per year or more if the source belongs to a category identified in the definition, otherwise it is major if it emits or has the potential to emit 250 tons per year or more. See 40 CFR 51.166(b)(1).

and 51.166(q). It is important to note, that while we are evaluating the Emergency Orders Program against the Major NSR requirements, the Minor NSR Program also requires public participation as part of the construction permitting process.[3]

• *The Emergency Orders Program does not meet the requirement that a NSR permit be issued prior to the commencement of construction of a Major Source.* The CAA contemplates a Major NSR permit that is issued as a final authorization that certifies that the Major NSR permit meets all the requirements of PSD and NNSR. See CAA at section 165(a) and 173(a) and 40 CFR 51.165(a)(2)(i) through (ii), and 51.166(a)(7)(i) through (v). In contrast, the Emergency Order is an interim authorization for immediate action, including construction, following a catastrophe and is not a final issued Major NSR permit. Notwithstanding the fact that the TCEQ conducts a review of Emergency Order applications, which TCEQ characterized as being equivalent to the technical review of a permit, as discussed above, the technical review does not include all required preconstruction review elements and the issued order is an interim authorization and not a final issued Major NSR permit. The Emergency Orders Program does require that a source submit an application for any necessary air permits, including Major NSR permits, within 60 days following the issuance of an Emergency Order. See 30 TAC 35.806. These permits are required to be applied for and issued in accordance with the applicable New Source Review requirements. However, the New Source Review permitting would occur following the commencement of construction at the source. Therefore, the Emergency Orders Program does not meet the CAA requirement that the Major NSR permit be issued prior to a source commencing construction. For PSD see CAA at § 165(a)(1) and 40 CFR 51.166(a)(7)(iii). For NNSR see CAA § 172(c)(5) and 40 CFR 51.165(a)(2)(i)–(iii).

Based on our review of the Emergency Orders Program, which includes authorizations of NSR actions, and comparison with the applicable requirements for Major NSR, we are proposing to disapprove the Program on the basis that it does not meet all applicable requirements. While we are proposing disapproval of the Emergency Orders Program, EPA would like to recognize the merits of having a state-only Program that allows for application review and order issuance to authorize proposed actions following catastrophes that often necessitate immediate action by owners and operators to minimize additional downstream impacts resulting from the catastrophe. Texas's Emergency Orders Program does allow for coordination between the source and the TCEQ to facilitate expedited review while maintaining a review process, as described in the June 17, 2006 SIP submittal.

Other State and local agencies operate programs similar to the Emergency Orders Program to allow for the authorization of owners and operators to take immediate actions, including construction, following catastrophes that include natural disasters, such as hurricanes, floods, and earthquakes, and plant fires or explosions. In these cases, the regulations containing the provisions related to the program operated by the State or local agency are located within the states' air quality permitting regulations, not in the SIP, and EPA may exercise enforcement discretion on a case-by-case basis to evaluate the owner or operators' proposed actions in response to catastrophe. For example, in 2005, the EPA Region 6 office utilized enforcement discretion to allow facilities impacted by Hurricane Rita to take appropriate immediate actions to bring the sources back up to full operation and minimize additional impacts resulting from the catastrophe. In this case, EPA issued Administrative Compliance Orders after conducting case-by-case review of the proposed actions at a particular facility.[4] [5] More recently, EPA has exercised enforcement discretion in response to the impacts caused by Hurricane Sandy in both Regions 1 and 2. Following this natural disaster, EPA issued a No Action Assurance to allow loading and unloading of fuel at bulk gasoline and marine loading terminals and associated truck loading racks in New York and New Jersey without the required vapor recovery/combustion if the facility was not equipped with this control equipment or the equipment had been damaged by Sandy.[6] EPA exercised its enforcement discretion by issuing a No Action Assurance to address severe fuel shortages resulting from Hurricane Sandy's impacts. In each of the examples here, and in fact in any disaster situation, EPA has acted very quickly to gather facts and take appropriate action, so that critical systems are not impeded from operating as a result of the catastrophe.

While we are proposing disapproval of the Emergency Orders Program on the basis that the Program does not meet the necessary federal requirements for approval into the Texas SIP, this proposed action will not impact how the TCEQ has been operating the Program in response to catastrophes since the Program's original adoption into the State's regulations in August 1993. EPA will continue to exercise enforcement discretion on a case-by-case basis for actions proposed by sources in Texas in response to catastrophes, while the TCEQ continues to rely upon the technical review process provided by the Emergency Orders Program to ensure that the proposed actions are consistent with the applicable State requirements and will not interfere with the attainment or maintenance of national ambient air quality standards or violate applicable portions of the control strategy.

III. Proposed Action

Under section 110(k)(3) of the Act, and for the reasons stated above, EPA proposes to disapprove the following revisions to the Texas SIP.

• New 30 TAC 35.1—Purpose—submitted December 10, 1998.

• New 30 TAC 35.2—Applicability—submitted December 10, 1998.

• New 30 TAC 35.3—Definitions—submitted December 10, 1998.

• New 30 TAC 35.11—Purpose and Applicability—submitted December 10, 1998.

• New 30 TAC 35.12—Authority of the Executive Director—submitted December 10, 1998.

• New 30 TAC 35.21—Action by the Commission or Executive Director—submitted December 10, 1998.

• New 30 TAC 35.22—Term and Renewal of Orders—submitted December 10, 1998.

• New 30 TAC 35.23—Effect of Orders—submitted December 10, 1998.

• New 30 TAC 35.24—Application for Emergency or Temporary Orders—

[3] The Minor NSR requirements for public participation are found at 40 CFR 51.161, and require prior to construction or modification the availability for public inspection of information regarding the construction (including the State's analysis of the effect on air quality), a 30-day period for submittal of public comment, and a notice by prominent advertisement in the area affected. EPA recognizes a state's ability to tailor the scope of its Minor NSR program as necessary to achieve and maintain the NAAQS. See 77 FR 74140.

[4] Administrative Compliance Order dated September 28, 2005 issued by the EPA Region 6 Compliance Assurance and Enforcement Division to Georgia Pacific for the Port Hudson facility.

[5] Administrative Compliance Order dated November 17, 2005 issued by the EPA Region 6 Compliance Assurance and Enforcement Division to the Municipality of Chambers County.

[6] No Action Assurance dated November 2, 2012 issued by the EPA Assistant Administrator to the states of New York and New Jersey. Available at: *http://www.epa.gov/enforcement/air/documents/policies/mobile/naa-vaporrecovery.pdf.*

submitted December 10, 1998. No action is proposed on subsection (b) and paragraphs (e)(6)–(7) which are outside the scope of the SIP.

• New 30 TAC 35.25—Notice and Opportunity for Hearing—submitted December 10, 1998. No action is proposed on paragraphs (e)(1)–(8) and (11)–(15) which are outside the scope of the SIP.

• New 30 TAC 35.26—Contents of Emergency or Temporary Order—submitted December 10, 1998.

• New 30 TAC 35.27—Hearing Required—submitted December 10, 1998.

• New 30 TAC 35.28—Hearing Requests—submitted December 10, 1998.

• New 30 TAC 35.29—Procedures for a Hearing—submitted December 10, 1998.

• New 30 TAC 35.30—Application Fees—submitted December 10, 1998.

• New 30 TAC 35.801—Emergency Orders Because of a Catastrophe—submitted December 10, 1998; revision submitted July 17, 2006.

• New 30 TAC 35.802—Applications for an Emergency Order—submitted August 31, 1993 (as 30 TAC 116.411); revision submitted December 10, 1998 (as redesignated to 30 TAC 35.802); revision submitted July 17, 2006.

• New 30 TAC 35.803—Public Notification—submitted August 31, 1993 (as 30 TAC 116.412); and revision submitted December 10, 1998 (as redesignated to 30 TAC 35.803).

• New 30 TAC 35.804—Issuance of an Emergency Order—submitted December 10, 1998; revision submitted July 17, 2006.

• New 30 TAC 35.805—Contents of an Emergency Order—submitted August 31, 1993 (as 30 TAC 116.415); revision submitted December 10, 1998 (as redesignated to 30 TAC 35.805); revision submitted July 17, 2006.

• New 30 TAC 35.806—Requirement to Apply for a Permit or Modification—submitted August 31, 1993 (as 30 TAC 116.416); revision submitted December 10, 1998 (as redesignated to 30 TAC 35.806).

• New 30 TAC 35.807—Affirmation of an Emergency Order—submitted August 31, 1993 (as 30 TAC 116.414); revision submitted December 10, 1998 (as redesignated to 30 TAC 35.807); revision submitted July 17, 2006.

• New 30 TAC 35.808—Modification of an Emergency Order—submitted August 31, 1993 (as 30 TAC 116.417); revision submitted December 10, 1998 (as redesignated to 30 TAC 35.808); revision submitted July 17, 2006.

• New 30 TAC 35.809—Setting Aside an Emergency Order—submitted August 31, 1993 (as 30 TAC 116.418); revision submitted December 10, 1998 (as redesignated to 30 TAC 35.809).

• New 30 TAC 116.1200—Applicability—submitted August 31, 1993 (as 30 TAC 116.411); revisions submitted December 10, 1998; revision submitted February 1, 2006 (as redesignated to 30 TAC 116.1200).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and 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 the Executive Order.

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 proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act 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 proposed 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 proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves 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 Clean Air Act prescribes that various consequences (e.g., higher offset requirements) may or will flow from this 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.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

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 proposed disapproval 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 proposes to disapprove 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 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 Clean Air Act. 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 (*59 FR 22951,* November 9, 2000), because the SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this 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 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 proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This proposed rule 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 Clean Air Act.

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

Executive Order 12898 (*59 FR 7629* (Feb. 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 proposed action. In reviewing SIP submissions, EPA's role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely proposes to disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

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

Dated: January 28, 2013.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2013–02499 Filed 2–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0913; FRL–9775–7]

Partial Disapproval of State Implementation Plan; Arizona; Regional Haze Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to disapprove in part revisions to the Arizona State Implementation Plan (SIP) to implement the regional haze program addressing visibility impairment in mandatory Class I areas covered by the requirements related to the Grand Canyon Visibility Transport Commission, an optional program for certain western states. These SIP revisions were submitted to address the requirements of the Clean Air Act (CAA or Act) requiring states to prevent any future and remedy any existing impairment of visibility in mandatory Class I areas caused by man-made pollution. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must be received on or before March 7, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0913, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous

access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, EPA Region IX, (415) 947–4115.

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

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I. Overview of Proposed Action

The Arizona Department of Environmental Quality (ADEQ) is the state agency in Arizona responsible for air quality planning. ADEQ submitted a SIP revision on December 24, 2008 (which consisted of materials previously submitted on December 23, 2003 and December 30, 2004) to address the regional haze regulations at 40 CFR 51.309 regarding visibility impairment in mandatory Class I areas covered by the Grand Canyon Visibility Transport Commission (GCVTC) Report. In this action, pursuant to CAA Section 110, EPA is proposing to disapprove in part this regional haze SIP submittal because it does not meet the requirements of 40 CFR 51.309. This proposed action is a partial disapproval because EPA previously approved certain burning and smoke management rules that were part of the 2008 SIP submittal.

II. Background

A. What is regional haze?

Regional haze is visibility impairment that is produced by a multitude of sources and activities that are located across a broad geographic area and emit fine particulates (e.g., sulfates, nitrates, organic carbon (OC), elemental carbon (EC), and soil dust), and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form particulate matter (PM), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. PM can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national parks (NPs) and wilderness areas (WAs). The average visual range [1] in many Class I areas (i.e., NPs and memorial parks, WAs, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

B. Clean Air Act, Visibility Impairment, and Regional Haze

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [2] which impairment results from manmade air pollution.'' EPA promulgated regulations on December 2, 1980, to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' 45 FR 80084 (December 2, 1980). These regulations at 40 CFR 51.300–307 represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

As part of the 1990 Amendments to the CAA, Congress added section 169B to focus attention on regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999. 64 FR 35714 (July 1, 1999) codified at

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

40 CFR part 51, subpart P (Regional Haze Rule). EPA's Regional Haze Rule provides two paths to address regional haze. One is through 40 CFR 51.308, which requires states to submit a SIP that establishes reasonable progress goals and a long-term strategy for achieving those goals. During the first implementation period for the Regional Haze Program (through 2018), states must also impose best available retrofit technology (''BART'') on ''BART-eligible sources,'' [3] or adopt alternative measures that can be shown to achieve greater reasonable progress than source-specific BART controls. The other path for addressing regional haze is through 40 CFR 51.309, which is an option for certain western states as described below. In this notice, the regional haze regulations at 40 CFR 51.309 will be referred to as ''the 309 regulations.''

C. Grand Canyon Visibility Transport Commission and the Regional Haze Regulations

Pursuant to Section 169B(c)(1) and Section 169B(e) of the CAA, EPA established the GCVTC on November 12, 1991.[4] The purpose of the GCVTC was to assess information about the adverse impacts on visibility in and around the 16 Class I areas on the Colorado Plateau [5] region and to provide policy recommendations to EPA to address such impacts. The nine states that are part of the Grand Canyon Visibility Transport Region are Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming.

The CAA called for the GCVTC to evaluate visibility research as well as other available information ''pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the region.'' The GCVTC was required to issue a report to EPA recommending what measures, if any, should be taken to protect visibility. In June 1996, the GCVTC issued its policy recommendations to EPA.[6] The GCVTC determined that all transport region states could potentially impact the 16 Class I areas on the Colorado Plateau. The GCVTC recommendations included: Strategies for addressing smoke emissions from wildland fires and agricultural burning; provisions to prevent pollution by encouraging renewable energy development; and provisions to manage clean air corridors, mobile sources, and wind-blown dust, among other recommendations.

The GCVTC's recommendations were incorporated into EPA's Regional Haze Rule at 40 CFR 51.309. The 309 regulations provided states in the Grand Canyon Visibility Transport Region an alternative method of achieving reasonable progress for Class I areas that were covered by the GCVTC's analysis.[7] States electing to submit regional haze SIPs under the 309 regulations (309 SIPs) may have other Class I areas that are not on the Colorado Plateau. Such states must either address these additional Class I areas through the 309 SIP pursuant to 40 CFR 51.309(g), or submit a regional haze SIP under 40 CFR 51.308.

The 1999 Regional Haze Rule at 40 CFR 51.309(f) required the submittal of an Annex whose purpose was to provide the specific details needed to translate the GCVTC's general recommendations for stationary source sulfur dioxide (SO_2) reductions into an enforceable regulatory program. The GCVTC's recommendations for stationary sources included a declining SO_2 emissions cap and an enforceable market trading program that would serve as a ''backstop'' if voluntary measures did not result in meeting the SO_2 emissions cap. The Western Regional Air Partnership (WRAP), a regional planning body formed to implement the GCVTC recommendations, submitted the Annex and EPA approved the Annex on June 5, 2003 as 40 CFR 51.309(h) (''the Annex Rule'').

D. Legal Challenge and Revision of 309 Regulations

In 2005, the D.C. Circuit Court granted a petition for review challenging EPA's revision to section 309 of the regional haze rule incorporating the recommendations in the Annex. The court concluded that EPA had established too high a bar in establishing the parameters for the SO_2 stationary source program. *Center for Energy & Economic Development* v. *EPA,* 398 F.3d 653 (D.C. Cir. 2005). In response to this ruling, EPA revised 40 CFR 51.309 on October 13, 2006, making a number of substantive changes. The regulations required, for those states electing to submit 309 SIPs, that 309 SIPs be submitted by December 17, 2007. See 71 FR 60612.

E. State Submittals and Previous EPA Actions

Since four of its twelve Class I areas are on the Colorado Plateau, Arizona had the option of submitting a regional haze SIP under section 309 of the Regional Haze Rule. When these regulations were first promulgated in 1999, 309 SIP submissions were due no later than December 31, 2003. Accordingly, ADEQ submitted to EPA on December 23, 2003, a 309 SIP for Arizona's four Class I Areas on the Colorado Plateau.[8] On December 31, 2004, ADEQ submitted a revision to its 309 SIP, consisting of rules on emissions trading and smoke management, and a correction to the State's regional haze statutes

Following the court's 2005 ruling in *Center for Energy & Economic Development* v. *EPA* and EPA's subsequent October 2006 promulgation of revised 309 regulations, ADEQ sent a letter to EPA dated December 24, 2008, resubmitting the 309 SIPs that were previously submitted on December 31, 2003 and December 31, 2004. ADEQ acknowledged, however, that it had not submitted a SIP revision to address the requirements of 309(d)(4) related to stationary sources and 309(g) which governs reasonable progress requirements for Class I areas outside of the Colorado Plateau.[9]

The stationary source provisions in 40 CFR 51.309(d)(4) are a central and fundamental part of the GCVTC's recommendations and of the 309

[3] Pursuant to 40 CFR 51.301, ''BART-eligible source'' means a source in one of 26 categories, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant.

[4] See 56 FR 57522, November 12, 1991.

[5] The Colorado Plateau is a high, semi-arid tableland in southeast Utah, northern Arizona, northwest New Mexico, and western Colorado. The 16 mandatory Class I areas are as follows: Grand Canyon National Park, Mount Baldy Wilderness, Petrified Forest National Park, Sycamore Canyon Wilderness, Black Canyon of the Gunnison National Park Wilderness, Flat Tops Wilderness, Maroon Bells Wilderness, Mesa Verde National Park, Weminuche Wilderness, West Elk Wilderness, San Pedro Parks Wilderness, Arches National Park, Bryce Canyon National Park, Canyonlands National Park, Capital Reef National Park, and Zion National Park.

[6] See Grand Canyon Visibility Transport Commission, ''Recommendations for Improving Western Vistas,'' Report of the Grand Canyon Visibility Transport Commission to the United States Environmental Protection Agency, June 10, 1996 (hereinafter referred to as the ''GCVTC Report'').

[7] A SIP that is approved by EPA as meeting all of the requirements of section 309 is ''deemed to comply with the requirements for reasonable progress with respect to the 16 Class I areas [on the Colorado Plateau] for the period from approval of the plan through 2018.'' 40 CFR 51.309(a).

[8] ADEQ also submitted provisions to address the regulations that pertain to reasonably attributable visibility impairment (''RAVI'') at 40 CFR 51.302, 303, 304, 305, 306, and 307. Although these RAVI provisions were submitted along with Arizona's 309 Regional Haze SIP, EPA is only proposing action on Arizona's 309 Regional Haze SIP at this time.

[9] Letter from Stephen A. Owens, ADEQ, to Wayne Nastri, EPA (December 24, 2008).

regional haze program. Of particular importance, 40 CFR 51.309(d)(4)(i) requires reductions in stationary source emissions of SO_2 sufficient to ensure greater reasonable progress than would be achieved by application of BART under 40 CFR 51.308(e)(2). In addition, 40 CFR 51.309(d)(4)(vii) requires implementation of any necessary long-term strategies and BART requirements for stationary source PM and NO_X emissions.

Pursuant to 40 CFR 51.309(a), each state electing to submit a 309 SIP must also address reasonable progress requirements for Class I areas that are outside of the Colorado Plateau, but are within the state or affected by emissions from the state. These areas may be addressed either under 40 CFR 51.308 or under 40 CFR 51.309(g). Arizona ultimately chose to address these other areas in a SIP submittal under 40 CFR 51.308.

For the purposes of this **Federal Register** notice, the Arizona regional haze SIP submitted by ADEQ on December 24, 2008 (which included the regional haze SIPs that were previously submitted on December 23, 2003 and December 30, 2004) will be referred to as ''Arizona's 309 Regional Haze SIP.''

EPA made a finding on January 15, 2009, that 37 states, including Arizona, had failed to make all or part of the required SIP submissions to address regional haze. See 74 FR 2392. Specifically, EPA found that Arizona failed to submit the plan elements required by 40 CFR 51.309(d)(4) and (g). EPA sent a letter to ADEQ on January 14, 2009, notifying the state of this failure to submit a complete SIP. ADEQ subsequently decided to submit a SIP to address the regional haze requirements in 40 CFR 51.308. Arizona's 308 SIP is not the subject of this proposed action.[10]

F. EPA's Approval of Burning and Smoke Management Rules

As part of ADEQ's December 30, 2004 309 SIP submittal, ADEQ submitted rules pertaining to fire, open and prescribed burning, and smoke management. In addition to its own rules, ADEQ submitted rules from three other local agencies: the Maricopa County Environmental Services Department (MCESD),[11] the Pima County Department of Environmental Quality (PCDEQ), and the Pinal County Air Quality Control District (PCAQCD).[12] ADEQ indicated that these rules were submitted to meet the requirements of Arizona's Enhanced Smoke Management Plan. These rules control PM emissions which may contribute to visibility impairment. Although the burning rules were submitted as part of the 309 SIP, EPA determined that these rules were separable from the remainder of the 309 SIP submittals.[13] Accordingly, EPA reviewed these burning rules to determine if the rules met the general criteria for approval into the SIP under CAA Section 110 and 40 CFR Part 51. EPA did not review the rules for purposes of meeting any of the requirements of the 309 regulations. On May 16, 2006 (71 FR 28270), EPA approved the rules from ADEQ, PCDEQ, and PCAQCD, and on May 8, 2007 (72 FR 25973), EPA approved the rules from MCESD. The effect of these final actions taken in 2006 and 2007 is that EPA has approved part of Arizona's 309 regional haze SIP submittals, but has not taken action on the remainder of those submittals.[14]

III. The State's Submittal

A. What is the purpose of the state's submittal?

While states are required to submit SIPs to assure reasonable progress toward meeting the national goal of preventing any future and remedying any existing impairment of visibility in Class I areas which impairment results from man-made pollution, the regulations at 40 CFR 51.309 are optional for certain western states. ADEQ elected to submit a SIP pursuant to 40 CFR 51.309, which address regional haze visibility impairment in the 16 Class I areas on the Colorado Plateau.

B. What did the state submit?

On December 24, 2008, ADEQ re-submitted Arizona's 309 SIP pursuant to 40 CFR 51.309. ADEQ previously submitted a 309 regional haze SIP on December 23, 2003 and a revision on December 30, 2004. As described above, following the court's ruling in *Center for Energy & Economic Development* v. *EPA,* EPA revised 40 CFR 51.309 on October 13, 2006 making a number of substantive changes. ADEQ resubmitted their regional haze SIP on December 24, 2008 and stated that its submittal consisted of SIPs that were previously submitted to EPA on December 23, 2003 and December 30, 2004. As stated earlier, the Arizona regional haze SIP submitted by ADEQ on December 24, 2008 (which included the regional haze SIPs that were previously submitted on December 23, 2003 and December 30, 2004) will be referred to as ''Arizona's 309 Regional Haze SIP.''

ADEQ also stated that the submittal did not include provisions to address 40 CFR 51.309(d)(4)—provisions for the implementation of stationary source reductions, and 40 CFR 51.309(g)—provisions to address additional Class I areas other the 16 Class I areas covered by the GCVTC.

ADEQ's December 24, 2008 letter identified the specific requirements of 40 CFR 51.309 that were addressed by the submittal.

TABLE 1—309 REQUIREMENTS ADDRESSED BY ADEQ'S SUBMITTAL

Subsections of 40 CFR 51.309	*Description*
309(d)(1)	Time period covered.
309(d)(2)	Projection of visibility improvement.
309(d)(3)	Treatment of clean air corridors.
309(d)(5)	Mobile sources.
309(d)(6)	Programs related to fire.
309(d)(7)	Area sources of dust emissions from paved and unpaved roads.
309(d)(8)	Pollution prevention.
309(d)(9)	Implementation of additional recommendations.
309(d)(10)	Periodic implementation revision.
309(d)(11)	State planning and interstate coordination.

IV. EPA's Evaluation and Proposed Action

A. How is EPA evaluating the submittal?

The primary requirements applicable to Arizona's 309 Regional Haze SIP are the regional haze regulations at 40 CFR 51.309, which comprise a comprehensive long-term strategy for

[10] EPA recently took final action to approve in part and disapprove in part a portion of Arizona's 308 SIP. 77 FR 72512 (December 5, 2012). EPA has also proposed to approve in part and disapprove in part the remainder of Arizona's 308 SIP. 77 FR 75704 (December 21, 2012).

[11] The Maricopa County Environmental Services Department is currently known as the Maricopa County Air Quality Department.

[12] ADEQ, MCESD, PCDEQ, and PCAQCD regulate many sources of air pollution within their county boundaries, and in addition to ADEQ, develop and implement regulations that apply within their jurisdictions. The submitted rules are: ADEQ Rule R18–2–602, R18–2–1501 through 1513, PCDEQ Rule 17.12.480, PCAQCD Rule 3–8–700 and 3–8–710, and MCESD Rule 314.

[13] Pursuant to Section 110(k)(3) of the CAA, EPA may approve a SIP revision in part, if a separable portion of a submittal meets all applicable requirements of the CAA. ''By separable, EPA means that the action it anticipates taking will not result in the approved rule(s) being more stringent than the State anticipated.'' See Memo from John Calcagni entitled, Processing of State Implementation Plan (SIP) Submittals (July 21, 1992) at 2.

[14] See CAA section 110(k)(3) ''If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part.''

addressing sources that contribute to visibility impairment within the 16 Class I areas on the Colorado Plateau. The 309 regulations require that 309 SIPs include provisions to address the projection of visibility improvement, the treatment of clean-air corridors, emissions from mobile sources, fire programs, area sources of dust emissions from paved and unpaved roads, pollution prevention, and the implementation of a program for stationary source reductions. EPA's Technical Support Document (TSD) at sections 4 and 5 has more details on the 309 requirements.

Pursuant to 40 CFR 51.309(d)(4), the stationary source program must: establish quantitative SO_2 emission ''milestones'' (e.g., emission caps) that provide for continuing emission reductions for each year of the program through 2018, include provisions that allow states to determine whether the milestones have been met, and include provisions that implement the backstop trading program in the event that a milestone is exceeded and the trading program is triggered.

Arizona must also demonstrate that its stationary source program will provide greater reasonable progress than would be achieved by application of BART under 40 CFR 51.308(e)(1). Pursuant to 40 CFR 51.309(d)(4)(vii), Arizona's 309 Regional Haze SIP must also address NO_X and PM emissions at stationary sources and require the implementation of any necessary long term strategies and BART requirements for stationary source PM and NO_X emissions.

Lastly, regional haze SIP submittals must also meet general criteria for SIP approval under CAA Section 110 and 40 CFR Part 51.

B. Does the submittal meet the evaluation criteria?

As stated earlier, the 309 regulations comprise an optional program and provide an alternative method for GCVTC states to meet the regional haze reasonable progress requirements. The 309 regulations include the GCVTC recommendations and cover a wide range of control strategies and approaches. The regulations recognized that the 309 program is one that must be taken together as a whole and evaluated collectively.'' [15]

Arizona's 309 Regional Haze SIP did not include provisions to address 40 CFR 51.309(d)(4), i.e., provisions for the implementation of stationary source reductions. As described in the preceding section, the stationary source provisions in 40 CFR 51.309(d)(4) are a central and fundamental part of the GCVTC's recommendations and of the 309 regional haze program. Based on this deficiency alone, Arizona's 309 Regional Haze SIP is not approvable. EPA's TSD has more details on our evaluation.

In addition to lacking provisions to address 309(d)(4), Arizona's 309 Regional Haze SIP also did not address the requirements of 40 CFR 51.309(g) pertaining to Class I areas that are not on the Colorado Plateau. However, Arizona ultimately chose to address these other areas in a SIP submittal under 40 CFR 51.308. Therefore, the absence of these provisions from the 309 SIP does not form part of the basis for today's proposed disapproval.

C. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a partial disapproval of Arizona's 309 Regional Haze SIP. The proposed action is a partial disapproval because EPA had previously approved, in 2006 and 2007, the burning and smoke management rules from ADEQ, MCESD, PCDEQ, and PCAQCD.

Under section 179(a) of the CAA, final disapproval of a submittal that addresses a requirement of part D, title I of the CAA (CAA sections 171–193) or is required in response to a finding of substantial inadequacy as described in CAA section 110(k)(5) (SIP Call) starts a sanctions clock. Arizona's 309 Regional Haze SIP was not submitted to meet either of these requirements. Therefore, any action we take to finalize the described partial disapproval will not trigger mandatory sanctions under CAA section 179.

In addition, CAA section 110(c)(1) requires EPA to promulgate a Federal Implementation Plan (FIP) within two years after finding that a State has failed to make a required submission or disapproving a SIP submission in whole or in part, unless EPA approves a SIP revision correcting the deficiencies within that two-year period. Due to our previous finding that Arizona had failed to make part of the required regional haze submission,[16] EPA is already subject to a ''FIP duty'' under section 110(c)(1) with respect to the regional haze requirements for Arizona. We are also subject to a set of court-ordered deadlines for approval of a SIP and/or promulgation of a FIP that collectively meet the regional haze implementation plan requirements for Arizona.[17] Thus, our proposed partial disapproval of Arizona's 309 Regional Haze SIP, if finalized, will not create a new FIP obligation.[18]

We will accept comments from the public on the proposed partial disapproval for the next 30 days.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

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 proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act 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

[15] See 40 CFR 51.309(d): (''Except as provided for in paragraph (e) of this section, each Transport Region State must submit an implementation plan that meets the following requirements * * *''). See also 64 FR 35754, July 1, 1999 (explaining that ''the requirements of Section 51.309 * * * are not severable. States that wish to take advantage of the GCVTC's efforts and EPA's acceptance thereof are obligated to meet *all* of the requirements of section 51.309.'' (emphasis added)).

[16] 74 FR 2392 (January 15, 2009).

[17] *National Parks Conservation Association* v. *Jackson* (D.D.C. Case 1:11–cv–01548).

[18] We note that Arizona is appealing the district court's entry and modification of the consent decree that sets the deadlines for EPA action on regional haze plans for Arizona. *National Parks Conservation Association v. EPA* (USCA Case #12–5211). If this challenge ultimately results in any limitations on the scope of EPA's current FIP duty with respect to regional haze in Arizona, then today's action, if finalized, could result in a new or altered FIP duty.

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 proposed 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 proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new requirements but simply disapproves 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 Clean Air Act prescribes that various consequences may flow from this 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.

We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

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 proposed disapproval 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 proposes to disapprove 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 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 Clean Air Act. 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 SIP EPA is proposing to disapprove would not 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. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 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 EO has the potential to influence the regulation. This action is not subject to EO 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 proposed SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

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

This proposed rule 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 No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. 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 Clean Air Act.

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

Executive Order (EO) 12898 (59 FR 7629 (Feb. 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 rulemaking.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 23, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–02498 Filed 2–4–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1233]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On November 29, 2011 and November 9, 2012, FEMA published in the **Federal Register** a proposed rule and a correction to the proposed rule that contained erroneous tables. This notice provides corrections to those tables, to be used in lieu of the information published at 76 FR 73537 and 76 FR 67325. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Sullivan County, Pennsylvania (All Jurisdictions). Specifically, it addresses the flooding sources Big Run, Little Loyalsock Creek, Loyalsock Creek, and Muncy Creek.

DATES: Comments are to be submitted on or before May 6, 2013.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1233, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Correction

In the proposed rule published at 76 FR 73537, in the November 29, 2011, issue of the **Federal Register**, and in the proposed correction rule published at 76 FR 67325, in the November 9, 2012, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Sullivan County, Pennsylvania (All Jurisdictions)'' addressed the flooding sources Big Run, Little Loyalsock Creek, Loyalsock Creek, and Muncy Creek. Those tables contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected for these flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding Source(s)	Location of Referenced Elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Sullivan County, Pennsylvania (All Jurisdictions)				
Big Run	At the Muncy Creek confluence	+968	+965	Township of Davidson.
	Approximately 1,660 feet upstream of Fairman Road	None	+1153	
Little Loyalsock Creek	Approximately 1,150 feet downstream of the Marsh Run confluence.	None	+1432	Borough of Dushore.
	Approximately 540 feet upstream of Main Street	None	+1458	
Loyalsock Creek	Approximately 2.6 miles downstream of the Ogdonia Creek confluence.	+789	+780	Borough of Forksville, Township of Elkland, Township of Forks, Township of Hillsgrove.
	At the Little Loyalsock Creek confluence	None	+1004	
Muncy Creek	At the Muncy Creek Tributary 1 confluence	+787	+783	Township of Davidson, Township of Shrewsbury.
	Approximately 0.76 mile upstream of Pecks Road	+991	+988	

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

Flooding Source(s)	Location of Referenced Elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Borough of Dushore
Maps are available for inspection at the Municipal Building, 216 Julia Street, Dushore, PA 18614.

Borough of Forksville
Maps are available for inspection at Sullivan County Planning and Community Development, 245 Muncy Street, Suite 110, Laporte, PA 18626.

Township of Davidson
Maps are available for inspection at the Davidson Township Municipal Building, 20 Michelle Road, Muncy Valley, PA 17758.

Township of Elkland
Maps are available for inspection at the Elkland Township Municipal Office Building, 909 Kobbe Road, Forksville, PA 18616.

Township of Forks
Maps are available for inspection at the Forks Township Hall, 627 Molyneux Hill Road, Dushore, PA 18614.

Township of Hillsgrove
Maps are available for inspection at the Township Hall, 2232 Route 87, Hillsgrove, PA 18619.

Township of Shrewsbury
Maps are available for inspection at the Shrewsbury Township Building, 1793 Edkin Hill Road, Muncy Valley, PA 17758.

James A. Walke,
Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2013–02461 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 13–24 and 03–123; FCC 13–13]

Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on whether to make permanent, revise or eliminate its interim rules that: prohibit all referrals for rewards programs (as described in the synopsis below) and any other form of direct or indirect inducements, financial or otherwise, to subscribe to or use, or encourage subscription to or use of, Internet Protocol Captioned Telephone Service (IP CTS); require each IP CTS provider, in order to be eligible for compensation from the Interstate Telecommunications Relay Service (TRS) Fund (Fund or TRS Fund) for providing service to *new* IP CTS users, to register each new IP CTS user, and as part of the registration process, to obtain from the user a certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users; and require IP CTS providers to ensure that equipment and software used in conjunction with their service have a default setting of captions off at the beginning of each call. The Commission also seeks comment on the following additional matters: the likely reasons that IP CTS has been experiencing unprecedented and unusually rapid growth; whether to prohibit all provider programs that give away or loan equipment to potential or existing IP CTS users at no cost or below some specified cost level; whether to require each IP CTS provider, as a condition of continuing to offer service to *existing* IP CTS users, to obtain registration and certification information from each such user; and whether to adopt any requirements for IP CTS equipment to have labels informing consumers that IP CTS may be used only by persons with hearing disabilities. The proposed rules are intended to address certain practices related to the provision and marketing of IP CTS that appear to be contributing to a recent and dramatic spike in reimbursement requests to the TRS Fund of sufficient magnitude to constitute a serious threat to the Fund if not promptly and decisively addressed.

DATES: Comments are due on or before February 26, 2013, and reply comments on or before March 12, 2013.

ADDRESSES: You may submit comments, identified by CG Docket No. 13–24, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket No. 13–24.

• *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All

filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

• Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

• U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

▪ In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com.* For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 or email *Eliot.Greenwald@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* Notice of Proposed Rulemaking (*NPRM*), document FCC 13–13, adopted on January 24, 2013 and released on January 25, 2013, in CG Docket Nos. 13–24 and 03–123. In document FCC 13–13, the Commission also adopted an Interim Rule and a Final Rule, each of which is summarized in a separate **Federal Register** Publication. The full text of document FCC 13–13 will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. It also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* Document FCC 13–13 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro/trs.html#orders.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

Document FCC 13–13 seeks comment on potential new or revised information collection requirements or may result in new or revised information collection requirements. If the Commission adopts any new or revised information collection requirement, the Commission will publish another notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Synopsis

1. In the accompanying order, which is part of document FCC 13–13, the Commission adopts an emergency interim rule prohibiting all referrals for rewards programs or other financial inducements to subscribe to IP CTS. Specifically, the Commission prohibits any program initiated, sponsored or operated by IP CTS providers that offer financial or similar incentives or rewards to third parties for the referral of customers who sign up to use the provider's IP CTS offering, or who have a device or software installed that is needed for use with the provider's IP CTS offering, and any other form of direct or indirect inducements, financial or otherwise, to subscribe to or use, or encourage subscription to or use of, IP CTS. The Commission seeks comment on whether it should adopt this rule permanently, as well as any alternatives. The Commission asks commenters to weigh the potential benefits of the proposed rule against the potential costs. The Commission also seeks comment on whether it should address any other activities related to referrals for rewards programs or other financial inducements to subscribe to or use IP CTS, and if so, what the appropriate scope and nature of those requirements should be. Again, the Commission asks commenters offering additional proposals to weigh the potential benefits of such proposals against the potential costs.

2. In recent months, some providers have initiated programs to give away or to loan, at no charge, end user IP CTS equipment to IP CTS users who subscribe to their services. Just as the Commission is concerned about the potential for certain marketing programs to incent improper use of IP CTS, it is similarly concerned that the recent spike in IP CTS usage may be the direct result of these equipment giveaway or loan programs. Specifically, by giving away devices at no cost, these programs may be encouraging consumers to obtain and use the free equipment whether or not they actually need the service to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users. Many such phone devices are modern and attractive—and often provide enhanced sound amplification—features that are likely to entice consumers with or without hearing loss to seek their acquisition. Because of the ease and convenience of using such devices, which function much the same as a conventional telephone but for the addition of captions, once the device is in a consumer's possession, the consumer may begin to routinely use the device—as might others in the consumer's household—even if they do not need the service to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users. In fact, the unobtrusive nature of IP CTS is such that, when using the phone, consumers may not even be aware that captions are turned on or that they have the ability to turn them off. In this manner, the free distribution or loan of such devices may be contributing to heightened IP CTS usage by persons who do not have a sufficient degree of hearing loss to require this service to understand conversation over the phone, and may be contributing to the recent acceleration in usage of this service. As holds true for the rewards programs discussed above, the more customers that sign up to acquire free devices to use the provider's IP CTS, the more compensation the provider may seek to collect from the Fund, at no cost to the customer. Offering such free equipment, thus, may have the effect of enlisting customers who might not otherwise have a reason to use the service, an effect that is inconsistent with the

purpose of the TRS program to provide communication services to persons who have difficulty using conventional telephone services. *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC Docket No. 98–67, Report and Order and Further Notice of Proposed Rulemaking; published at 65 FR 38432, June 21, 2000, and at 65 FR 38490, June 21, 2000). By contrast, when a consumer is required to pay some amount of money for an IP CTS phone, that individual has the incentive to first consider whether he or she needs the service, *i.e.,* to evaluate whether the benefit from the service is worth the cost of the specialized phone.

3. For these reasons, the Commission proposes to prohibit all provider programs that give away or loan equipment to potential or existing IP CTS users at no cost or at *de minimis* cost and seeks comment on this proposal. The Commission proposes to define ''*de minimis* cost'' for the purposes of this rule as a cost that is small enough so as to generally not be a factor in the consumer's decision to acquire the IP CTS equipment or software. *Cf. Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010; Amendments of the Commission's Rules Implementing Sections 255 and 251(a)(2) of the Communications Act of 1934, as Enacted by the Telecommunications Act of 1996; In the Matter of Accessible Mobile Phone Options for People who are Blind, Deaf-Blind, or Have Low Vision,* CG Docket No. 10–213, WT Docket No. 96–198, CG Docket No. 10–145, Report and Order and Further Notice of Proposed Rulemaking; published at 76 FR 82354, December 30, 2011, and at 76 FR 82240, December 30, 2011 (*ACS Report and Order*). The Commission tentatively concludes that the distribution of equipment for a *de minimis* cost will have the same effect as giving such equipment away for free. The Commission believes that only if the cost of such equipment is more than *de minimis,* even if discounted from its full production cost, will consumers have sufficient incentive to determine whether the benefits of purchasing the equipment outweighs its costs. The Commission seeks comment on these proposals, including its definition of *de minimis* cost, whether any rule should be based on a higher price point, and the impact that free or *de minimis* cost equipment can have on a consumer's acquisition of IP CTS equipment and use of IP CTS. In addition, the Commission seeks comment on the extent to which governmental programs are able to provide IP CTS equipment to people with limited incomes, making the free distribution of equipment by providers unnecessary. Commenters are also invited to offer alternative definitions of *de minimis* cost for the Commission's consideration. In addition, the Commission seeks comment on whether it should adopt any prohibitions with regard to the free or *de minimis* cost distribution of software that facilitates the use of IP CTS. Finally, the Commission seeks comment on whether it should address any other aspects of IP CTS equipment and software, and if so, what the appropriate scope and nature of those requirements should be. The Commission asks commenters to weigh the potential benefits of such proposed rules against the potential costs.

4. In the accompanying Order which is part of document FCC 13–13, the Commission adopts interim rules requiring each IP CTS provider, in order to be eligible for compensation from the TRS Fund for providing service to *new* IP CTS users, (1) To register each new IP CTS user for service, (2) as part of the registration process, to obtain from each user a self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, and (3) where the consumer accepts IP CTS equipment for less than $75 from any source other than a governmental program, to obtain from the user a certification from an independent, third party professional attesting to the same. The Commission seeks comment on whether to make these interim requirements permanent for new IP CTS users. The Commission also seeks comment on whether it should include existing users within these requirements. In other words, the Commission also seeks comment on whether it should require each IP CTS provider, as a precondition to continuing to be eligible for compensation from the TRS Fund for providing service to *existing* IP CTS users, (1) To register each existing IP CTS user and as part of the registration process, (2) to obtain from each existing user a self-certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, and (3) where the existing user accepts (or has accepted) IP CTS equipment for less than $75 from any source other than a governmental program, to also obtain a certification from an independent, third party professional attesting to the same. As would be the case for a new user, an existing user who has obtained equipment from a governmental program would be able to present documentation to the provider demonstrating that the equipment was obtained through one of these programs instead of presenting a third-party certification. The Commission seeks comment on whether these or other certification requirements would be necessary if the Commission bars the provision of equipment for free or at *de minimis* cost. In addition, the Commission seeks comment on whether, where certification from independent, third party professionals is required, such certification should be made under penalty of perjury as an added layer of assurance that the individual's disability satisfies the Commission's eligibility requirements. The Commission also seeks comment on whether such requirements will effectively fulfill Congress's directive to the Commission, in section 225 of the Communications Act, to ensure that TRS is available, ''to the extent possible and in the most efficient manner,'' to persons with hearing and speech disabilities. 47 U.S.C. 225(b)(1). Will the proposed requirements be effective in covering the population intended for IP CTS, while excluding those who otherwise are able to communicate effectively by phone? Commenters who do not believe these are the appropriate requirements should offer alternative requirements that can be used to ensure that only eligible individuals who are intended to benefit from this service (*i.e.,* to receive functionally equivalent telephone service) are permitted to use it. The Commission also asks commenters to weigh the potential benefits of the proposed rules against the potential costs.

5. The Commission seeks comment as well on whether to adopt the same specifications as in the interim rules for the form and content of any self-certifications, or different specifications. Specifically, the Commission seeks comment on whether to require the self-certification to state that (1) The user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users; (2) the user understands that the captioning service is provided by a live communications assistant (CA); and (3) the user

understands that the cost of IP CTS calls is funded by the federal TRS Fund. The Commission further seeks comment on whether the self-certification must be made on a form separate from any other user agreement (such as on a separate page), and require a separate signature specific to the self-certification. Finally, the Commission seeks comment on whether such self-certification should be made under penalty of perjury.

6. The Commission also seeks comment on whether to adopt any quantitative threshold hearing loss requirements to be eligible to use IP CTS. By way of background, the severity of an individual's hearing loss is often determined by the additional loudness above a nominal threshold to which a sound must be amplified before an individual can detect it. In this manner, levels of hearing loss are frequently classified in the following categories, defined in terms of the level of amplification, in decibels of gain (abbreviated as dB HL), necessary for the individual to detect the sound:

- Mild—between 26 and 40 dB HL
- Moderate—between 41 and 54 dB HL
- Moderately severe—between 55 and 70 dB HL
- Severe—between 71 and 90 dB HL
- Profound—91+ dB HL
- Totally Deaf—no hearing at all

7. Some states have established eligibility threshold requirements for programs distributing adaptive telecommunications equipment, including equipment specifically designed for use with CTS and/or IP CTS service, free of charge, to qualifying residents. Hearing loss thresholds used for these programs may be relevant because they are established for purposes of determining whether adaptive equipment is necessary to enable a person to communicate effectively by telephone. Most state equipment programs do not use quantified hearing loss criteria for determining eligibility to receive assistive devices. Instead, they usually require a general certification from an audiologist or other professional that the applicant has a disability preventing effective use of the telephone without the requested device and frequently, they also require an audiogram to accompany the certification. At least three states—North Dakota, Washington, and Wisconsin—however, do set mandatory or recommended criteria requiring that an individual's hearing loss be severe to profound in order to receive a CTS device.

8. In commenting on whether the Commission should adopt any quantitative eligibility requirements, and if so, what those requirements ought to be, the Commission asks commenters to address the criteria used by states, and also to address whether an eligibility threshold for using IP CTS should be based on a moderate hearing loss of 40 dB in the better ear or whether any other level of hearing loss would provide a more appropriate threshold. If the Commission were to adopt objective, quantitative eligibility criteria, should there also be an alternative means of establishing eligibility, for example a standard that qualifies an individual to use CTS if, in the reasonable opinion of a hearing professional, the individual is not capable of using the telephone in a manner that is functionally equivalent to communication by conventional telephone users? In addition, the Commission asks commenters who oppose quantitative requirements to propose alternative eligibility requirements. The Commission also asks commenters to weigh the potential benefits of establishing quantitative and other threshold eligibility criteria against the potential costs. Finally, the Commission seeks feedback on whether it should similarly allow states to use their own eligibility thresholds for IP CTS calls made by their residents to the extent that these exceed our federal standards, so long as such state requirements do not conflict with federal law.

9. The Commission also proposes to make permanent its interim rule requiring each IP CTS provider to maintain the confidentiality of any registration and certification information obtained by the provider, and to not disclose such registration and certification information or the content of such information except as required by law.

10. The Commission seeks comment on these proposals and any alternatives, including other eligibility criteria that should be required to become registered to use IP CTS. If the Commission adopts permanent rules requiring third party certification of the user's need for IP CTS, the Commission also seeks comment on which professionals should qualify as resources for providing such certification. The Commission also asks commenters to weigh the potential benefits of the proposed rules against the potential costs.

11. The Commission further proposes that providers be allowed a 90-day grace period to obtain registration and certification from their existing users, and that IP CTS providers that fail to register existing users within this grace period be required to cease providing service to any unregistered users or to any users who fail to provide the required certification immediately upon expiration of this grace period. The Commission seeks feedback on how to best implement a transition period for these requirements, if adopted, and asks commenters that do not believe that 90 days is the appropriate length of time for a transition period for registration of existing users to offer alternative proposals and include the reasons for such proposals. The Commission notes that in the Commission's reform of the Lifeline program, the Commission required carriers to recertify the eligibility of all existing Lifeline subscribers by December 31, 2012, which was seven months after the effective date of the certification requirement. *Lifeline & Link Up Reform and Modernization,* WC Docket No. 11–42, Report and Order and Further Notice of Proposed Rulemaking, published at 77 FR 12784, March 2, 2012, and at 77 FR 12952, March 2, 2012. While so long a grace period may not be necessary here because the number of IP CTS subscribers is much smaller than the number of Lifeline subscribers, are there other reasons, such as the need to obtain certification from a professional, that would make a period longer than 90 days appropriate? Finally, the Commission asks commenters to weigh the potential benefits of the rules proposed above against the potential costs.

12. The Commission further proposes to require applicants seeking certification as IP CTS providers, including any applicants with pending applications for certification to whom certification has not been granted as of the effective date of this proposed rule, to submit to the Commission a description of how they will ensure that they do not request or collect payment from the TRS Fund for service to users who do not satisfy the eligibility criteria contained in the rules proposed herein, and an explanation of how those measures provide such assurance. Applicants whose submissions do not adequately establish that they have adequate measures and procedures in place to ensure that they will serve only eligible users will be denied IP CTS certification. The Commission seeks comment on this proposal.

13. In the accompanying Order, the Commission raises the concern that individuals who do not need CTS to communicate in a functionally equivalent manner and who are either living in the household or visiting the house or office of an eligible IP CTS user are likely to use the IP CTS equipment and service, resulting in improper billing of the TRS Fund. The Commission therefore adopts interim

rules requiring IP CTS providers to ensure that equipment and software used in conjunction with their service have captions turned off as the default setting at the beginning of each call, so that the consumer must take an affirmative step to turn on the captions each time the consumer wishes to use IP CTS. The Commission seeks comment on whether it should make this interim rule permanent, and if so, whether it should be changed in any way. The Commission asks commenters to weigh the cost of a requirement for a default setting of captions off against the benefits of such a requirement. The Commission asks commenters to address whether a requirement to have captions turned off as the default setting results in functionally equivalent IP CTS. The Commission also asks commenters to provide specific data comparing CTS usage in states with a required captions default off setting to CTS usage in states without such a requirement. In particular, the Commission asks commenters to address variations in the data that may not be related to the default setting—variations such as overall telephone usage and whether individuals with hearing loss living in households that include individuals with little or no hearing loss make less use of the telephone than individuals with hearing loss living in households where all occupants in the household experience hearing loss.

14. The Commission's speed of answer rules require that 85% of all calls be answered within 10 seconds, measured daily. 47 CFR 64.604(b)(2) of the Commission's rules. The Commission seeks comment on whether the current speed of answer rules are appropriate for IP CTS or whether such rules should be amended with respect to IP CTS. The Commission asks commenters to weigh the cost of any amended speed of answer rules against the benefits of such amended rules.

15. The Commission also seeks comment on whether it should adopt rules providing for an exception for devices located in a consumer or work environment where the devices are not accessible to non-eligible persons and the user certifies that he or she will not permit non-qualified users to utilize the captioning services provided on the device. The Commission asks commenters to weigh the cost of adopting the requirement for a default of captions off without the proposed exception against the benefits of not including the exception.

16. To further prevent casual or inadvertent use of IP CTS, the Commission seeks comment on whether it should require that each piece of new IP CTS equipment have a label on its face in a conspicuous location specifying that FCC regulations require that captions may be used only by people with hearing loss who require captions to fully understand telephone conversations. The Commission also seeks comment on whether it should require, for equipment that is already in the possession of users, that IP CTS providers send such labels to their registered users of this service, with specific instructions directing users to affix such labels on the front of their IP CTS equipment in a conspicuous location. In addition, the Commission seeks comment on whether it should require that the same information be provided on the caption screen when the equipment is turned on and is in captions-off mode, as well as during the time period after the user pushes the ''captions on'' button (or takes some other similar action to initiate captioning) and before captioning commences. The Commission asks commenters to weigh the costs of these labeling and display requirements against the benefits of such requirements.

Initial Regulatory Flexibility Analysis

17. The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C 601(3). A ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

18. In document FCC 13–13, the Commission seeks comment on its proposal to adopt permanently its interim rule prohibiting all referrals for rewards programs and any other form of direct or indirect inducements, financial or otherwise, to subscribe or use, or encourage subscription to or use of, Internet Protocol captioned telephone service (IP CTS). The Commission also seeks comment on its proposal to adopt a rule prohibiting IP CTS providers from providing to consumers, directly or indirectly, equipment at no cost or at nominal cost, whether through giveaway, sale, loan or otherwise. In addition, the Commission seeks comment on whether to adopt permanently its interim rule requiring each IP CTS provider, in order to be eligible for compensation from the TRS Fund for providing service to *new* IP CTS users, (1) To register each new IP CTS user for service, and as part of the registration process, (2) to obtain from each user a self-certification that (i) the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, (ii) the user understands that the captioning service is provided by a live communications assistant (CA); and (iii) the user understands that the cost of IP CTS calls is funded by the federal TRS Fund; and (3) where the consumer accepts IP CTS equipment at a price below $75 from any source other than a governmental program, to also obtain from the user a certification from an independent, third party professional attesting to the user's need for IP CTS. In addition, the Commission seeks comment on whether to require each IP CTS provider, as a condition of continuing to offer service to *existing* IP CTS users who have not yet registered for service, (1) to register each such user with the IP CTS provider and as part of the registration process, to (2) obtain from each user certification that the user has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users. Lastly, the Commission seeks comment on its proposals to adopt permanently its interim rule requiring IP CTS equipment to have a default setting of captions off, so that the consumer must affirmatively turn on the captions each time the consumer wishes to use IP CTS, and on whether to require IP CTS equipment to have labels informing consumers that IP CTS may be used only by persons with hearing disabilities.

19. In recent months, IP CTS has been experiencing unusually rapid growth. The Commission is concerned that usage of this service by people who may not need the assistance of IP CTS, along with improper incentives for referrals to use this service are contributing substantially to this sudden, rapid increase in IP CTS minutes of use.

20. With regard to the criterion of the economic impact of document FCC 13–13, the Commission concludes that IP CTS providers fit within the business

classification of Wired Telecommunications Carriers. *See* NAICS Code 517110 (2007). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers, for which the small business size standard is all such firms having 1,500 or fewer employees. 13 CFR 121.201, NAICS Code 517110 (2007). Collectively, there are four IP CTS providers that are authorized by the Commission to offer these services. Only one of these entities is a small business under the SBA size standard. Therefore, document FCC 13–13, if adopted, would not have a significant economic impact on a substantial number of small entities.

21. The Commission therefore certifies, pursuant to the RFA, that the proposals in document FCC 13–13, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in document FCC 13–13 require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the Notice, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA.

Ordering Clauses

22. Pursuant to sections 1, 2, 4(i) and (j) and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (j) and 225, document FCC 13–13 is hereby *adopted.*

List of subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); 403(b)(2)(B), (c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 227, 228, 254(k), 616, 620, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

■ 2. Amend § 64.604 by revising paragraph (c)(8), and paragraphs (c)(9), added elsewhere in this issue of the **Federal Register**, effective upon OMB approval, and (10), added elsewhere in this issue of the **Federal Register**, effective March 7, 2013, and by adding paragraph (c)(11) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(8) *Inducements for use of IP CTS.* An IP CTS provider shall not provide to any person or entity any form of direct or indirect inducements, financial or otherwise, to subscribe to or use or encourage subscription to or use of IP CTS. IP CTS providers offering or providing such inducements shall be ineligible for any compensation for IP CTS from the TRS Fund.

(9) *IP CTS registration and certification requirements.* (i) IP CTS providers, in order to be eligible to receive compensation from the TRS Fund for providing IP CTS, must first register the consumer by obtaining the following registration information: the applicant's name, address and telephone number.

(ii) IP CTS providers, in order to be eligible to receive compensation from the TRS Fund for providing IP CTS, also must first obtain a written certification attesting that the consumer needs IP CTS to communicate in a manner that is functionally equivalent to the ability of a hearing individual to communicate using voice communications services.

(iii) The certification required by paragraph (c)(9)(ii) of this section must include the consumer's certification that

(A) The consumer has a hearing loss that necessitates IP CTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users;

(B) The consumer understands that the captioning service is provided by a live communications assistant; and

(C) The consumer understands that the cost of the IP CTS calls is funded by the TRS Fund.

(iv) The certification required by paragraph (c)(9)(ii) of this section must be made on a form separate from any other agreement or form, and must include a separate consumer signature specific to the certification. For purposes of this rule, an electronic signature, defined by the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.,* as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record, has the same legal effect as a written signature.

(v) In instances where IP CTS equipment is or has been obtained by a consumer for less than $75, the IP CTS provider must also, in order to be eligible to receive compensation from the TRS Fund, obtain written certification provided and signed by an independent third-party professional, except as provided in paragraph (c)(9)(v)(D) of this section.

(A) In instances where certification from an independent third-party professional is required, such professionals must be qualified to evaluate an individual's hearing loss in accordance with applicable professional standards, and may include, but are not limited to, community-based social service providers, hearing related professionals, vocational rehabilitation counselors, occupational therapists, social workers, educators, audiologists, speech pathologists, hearing instrument specialists, and doctors, nurses and other medical or health professionals.

(B) In instances where certification from an independent third-party professional is required, such third-party professional must certify in writing that the IP CTS consumer is an individual with hearing loss who needs IP CTS to communicate in a manner that is functionally equivalent to telephone service experienced by individuals without hearing disabilities.

(C) In instances where certification from an independent third-party professional is required, such third-party professional must provide his or her name, title, and contact information, including address, telephone number, and email address.

(D) In instances where the consumer has obtained equipment from a governmental program, the consumer may present documentation to the IP CTS provider demonstrating that the equipment was obtained through one of these programs, in lieu of providing an independent, third-party certification.

(vi) Each IP CTS provider shall maintain the confidentiality of any registration and certification information obtained by the provider, and may not disclose such registration and certification information or the content of such registration and certification information except as required by law or regulation.

(vii) IP CTS providers may continue to provide IP CTS to existing IP CTS subscribers without obtaining registration information and certification of the existing subscriber's hearing loss for a period of 90 days following the effective date of this paragraph (c)(9) of this section.

(10) *IP CTS default settings.* (i) IP CTS providers must ensure that their equipment and software used in conjunction with their service have a default setting of captions off, so that all new and existing IP CTS users must affirmatively turn on captioning for each telephone call initiated or received before captioning is provided.

(ii) When IP CTS equipment is in operation with captions off, and during the time period after the user of IP CTS takes action to initiate captioning and before any such captioning commences, the IP CTS provider must display on the screen of the user's IP CTS equipment the following message: ''FCC regulations permit the use of captions only by people with hearing loss who require captions to communicate effectively using the telephone.''

(11) *IP CTS equipment.* (i) An IP CTS provider shall not provide to consumers, directly or indirectly, equipment at no cost or at *de minimis* cost, whether through giveaway, sale, loan, or otherwise. For the cost to be above *de minimis* cost, the cost must be large enough such that the consumer is likely to consider such cost in determining whether the benefit received from the IP CTS service is worth the cost of the specialized equipment or software. IP CTS providers providing such equipment or software at no cost or for a *de minimis* cost shall be ineligible to receive compensation for minutes of IP CTS use generated by consumers receiving, directly or indirectly, equipment or software at no cost or at *de minimis* cost.

(ii) IP CTS providers shall ensure that any equipment newly distributed for use with IP CTS has a label on its face in a conspicuous location specifying that FCC regulations permit the use of captions only by people with hearing loss who require captions to communicate effectively using the telephone. For IP CTS equipment already distributed to users by any IP CTS provider as of the effective date of this paragraph, such provider shall distribute to users equipment labels specifying that FCC regulations permit the use of captions only by people with hearing loss who require captions to communicate effectively using the telephone, along with specific instructions directing the users to place such labels on the face of their IP CTS equipment in a conspicuous location.

■ 2. Amend § 64.606 by adding paragraph (a)(2)(ii)(F) to read as follows:

§ 64.606 Internet-based TRS provider and TRS program certification.

(a) * * *

(2) * * *

(ii) * * *

(F) In the case of applicants to provide IP CTS or IP CTS providers, a description of measures taken by such applicants or providers to ensure that they do not and will not request or collect payment from the TRS Fund for service to consumers who do not satisfy the registration and certification requirements in § 64.604(c)(9), and an explanation of how these measures provide such assurance.

* * * * *

[FR Doc. 2013–02370 Filed 2–1–13; 4:15 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0004; 4500030113]

RIN 1018–AZ26

Endangered and Threatened Wildlife and Plants; Listing as Endangered and Designation of Critical Habitat for Six West Texas Aquatic Invertebrate Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the August 16, 2012, proposed endangered status for six west Texas aquatic invertebrate species under the Endangered Species Act of 1973, as amended (Act). We also announce the reopening of comment on the August 16, 2012, proposed designation of critical habitat for the six west Texas aquatic invertebrate species and the availability of a draft economic analysis of the proposed designation and amended required determinations in the proposed rule. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rules, the associated draft economic analysis, and the amended required determinations. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rules.

DATES: We will consider comments received or postmarked on or before March 22, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

Public Hearing: We will hold a public hearing on these proposed rules at Balmorhea State Park in Toyahvale, Texas, on February 21, 2013 (see **ADDRESSES**).

ADDRESSES: *Document availability:* You may obtain a copy of the proposed rule on the internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029 or by mail from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain a copy of the draft economic analysis at Docket No. FWS–R2–ES–2013–0004.

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Submit comments on the listing proposal to Docket No. FWS–R2–ES–2012–0029, and submit comments on the critical habitat proposal and associated draft economic analysis to Docket No. FWS–R2–ES–2013–0004. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit comment on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0029; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. Submit comment on the critical habitat proposal and draft economic analysis by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0004; 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).

Public informational session and public hearing: The public informational session and hearing will be held in the conference room at Balmorhea State Park, State Highway 17, Toyahvale, Texas. The public information session will begin at 5:00 p.m., and the public hearing will begin at 6:00 p.m. Central Time. People

needing reasonable accommodation in order to attend and participate in the public hearing should contact Adam Zerrenner, Field Supervisor, Austin Ecological Services Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; by telephone (512–490–0057); or by facsimile (512–490–0974). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We are reopening the comment period for our proposed listing determination and proposed critical habitat designation for the Phantom Cave snail *(Pyrgulopsis texana),* Phantom springsnail *(Tryonia cheatumi),* diminutive amphipod *(Gammarus hyalleloides),* Diamond Y Spring snail *(Pseudotryonia adamantina),* Gonzales springsnail *(Tryonia circumstriata),* and Pecos amphipod *(Gammarus pecos*) (the six west Texas aquatic invertebrate species) that was published in the **Federal Register** on August 16, 2012 (77 FR 49602). We are specifically seeking comments on the draft economic analysis, which is now available, for the critical habitat designation; see **ADDRESSES.**

We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for the six west Texas aquatic invertebrate species. The final listing rule will publish under the existing docket number, FWS–R2–ES–2012–0029, and the final critical habitat designation will publish under docket number FWS–R2–ES–2013–0004.

We request that you provide comments specifically on our listing determination under the existing docket number [FWS–R2–ES–2012–0029]. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

We request that you provide comments specifically on the critical habitat determination and draft economic analysis under docket number [FWS–R2–ES–2013–0004]. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether 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.

(6) Specific information on:

(a) The amount and distribution of habitat for the six west Texas aquatic invertebrates;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) 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

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on the six west Texas aquatic invertebrates and proposed critical habitat.

(9) 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.

(10) Information on the extent to which the description of economic impacts in the draft economic analysis is complete and accurate.

(11) 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.

(12) Whether the benefits of exclusion outweigh the benefits of including the area proposed as critical habitat around San Solomon Spring at Balmorhea State Park based on the existing habitat conservation plan or other relevant factors.

(13) 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.

If you submitted comments or information on the proposed rules (77 FR 49601; August 16, 2012) during the initial comment period from August 16, 2012, to October 15, 2012, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final rules. On the basis of public comments and other relevant information, we may, during the development of our final determination on the proposed critical habitat designation, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or draft economic analysis by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029 (for the proposed listing rule) and Docket No. FWS–R2–ES–2013–0004 (for the proposed critical habitat designation and draft economic analysis), or by

appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at *http://www.regulations.gov* at Docket No. FWS–R2–ES–2012–0029 and the draft economic analysis at Docket No. FWS–R2–ES–2013–0004, or by mail from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for six west Texas aquatic invertebrate species in this document. For more information on the six west Texas aquatic invertebrate species, the species' habitat, and previous Federal actions concerning the species, refer to the proposed listing rule and designation of critical habitat, published in the **Federal Register** on August 16, 2012 (77 FR 49602). The proposed rule is available online at *http://www.regulations.gov* (at Docket No. FWS–R2–ES–2012–0029) or from the Austin Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On August 16, 2012, we published a proposed rule to list as endangered and to designate critical habitat for the six west Texas aquatic invertebrate species (77 FR 49602). In total, approximately 181.7 hectares (ha) (450.6 acres (ac)) were proposed for designation as critical habitat in four units for three species and one unit for three other species. The proposed critical habitat is located in Pecos, Reeves, and Jeff Davis Counties, Texas. We proposed to designate approximately 3.7 ha (9.2 ac) in four units located in Reeves and Jeff Davis Counties, Texas, as critical habitat for the Phantom Cave snail, Phantom springsnail, and diminutive amphipod. We also proposed to designate approximately 178.6 ha (441.1 ac) in one unit located in Pecos County, Texas, as critical habitat for the Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod. That proposal had a 60-day comment period, ending October 15, 2012. We received a request for a public hearing; therefore, a public hearing will be held (see **DATES** and **ADDRESSES**). We will submit for publication in the **Federal Register** a final listing determination and critical habitat designation for the six west Texas aquatic invertebrates on or before August 16, 2013.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. We are considering excluding the San Solomon Spring Unit that is currently covered under a habitat conservation plan with Texas Parks and Wildlife Department for the Phantom Cave snail, Phantom springsnail, and diminutive amphipod for management activities at Balmorhea State Park. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The purpose of the draft economic analysis is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Phantom Cave snail, Phantom springsnail, diminutive amphipod, Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod. The draft economic analysis separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the six west Texas aquatic invertebrate species (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the draft economic analysis, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Appendix B, ''Framework,'' of the draft economic analysis.

The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the six west Texas aquatic invertebrate species over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe.

It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The draft economic analysis quantifies economic impacts of the six west Texas aquatic invertebrate species conservation efforts associated with the following categories of activity: (1) Water withdrawals for agricultural and municipal use; (2) oil and gas development; and (3) recreation and species management.

We do not anticipate recommending incremental conservation measures to avoid adverse modification of critical habitat over and above those recommended to avoid jeopardy of the species, and, as such, the economic analysis forecasts few incremental economic impacts as a result of the designation of critical habitat for these species. A number of factors limit the extent to which the proposed critical habitat designation will result in incremental costs, including the fact that all the proposed habit is occupied by the species, the species' survival is so closely linked to the quality of their habitat, few actions being carried out in the area are subject to a Federal nexus, and much of the proposed habitat is currently managed for conservation.

The total projected incremental costs of administrative efforts resulting from section 7 consultations on the six invertebrates are approximately $40,000 over 20 years ($4,000 on an annualized basis), assuming a seven percent discount rate. The analysis estimates potential future administrative impacts based on the historical rate of consultation on co-occurring listed species in areas proposed for critical habitat, as discussed in Chapter 2 of the draft economic analysis.

As stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rules and our amended required determinations. We may revise the proposed rules or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our August 16, 2012, proposed rule (77 FR 49601), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the draft economic analysis data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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 (i.e., 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. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

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 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 agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered 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.

To determine if the proposed designation of critical habitat for the six west Texas aquatic invertebrate species would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as water withdrawals for agricultural and municipal use, oil and gas development, and recreation and species management. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we finalize the proposed listing for the species, in areas where any one of the six west Texas aquatic invertebrate species is present, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions

related to the proposed designation of critical habitat for the Phantom Cave snail, Phantom springsnail, diminutive amphipod, Diamond Y Spring snail, Gonzales springsnail, and Pecos amphipod. We do not anticipate recommending incremental conservation measures to avoid adverse modification of critical habitat over and above those recommended to avoid jeopardy of the species, and as such the economic analysis forecasts few incremental economic impacts as a result of the designation of critical habitat for these species. Those incremental impacts forecasted are solely related to administrative costs for adverse modification analyses in section 7 consultations. We anticipate conducting approximately 7 formal, 15 informal, and 3 technical assistance consultations considering the designation, for a total of 25 consultations, over the next 20 years. Assuming the consultations are equally likely to occur in any year, this results in fewer than two consultations a year. Based on the consultation history, most consultations are unlikely to involve a third party. If any consultations were to involve a third party, fewer than two small entities, if any, could be affected each year. The incremental cost per entity of participating in a consultation is likely to range from $400 to $5,000. Please refer to Appendix A of the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the EO regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We conclude that future consultations are unlikely to involve a third party. However if a third party were to be involved in a consultation, we identified fewer than two small business entities that could be affected each year as a result of the designation of critical habitat for the six west Texas aquatic invertebrate species. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designations would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Austin Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 23, 2013.

Michael J. Bean,

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–02051 Filed 2–4–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 78, No. 24
Tuesday, February 5, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2013–0006]

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Additives

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Acting Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, is sponsoring a public meeting on February 11, 2013, from 9:00 a.m. to 12:00 p.m. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 45th Session of the Codex Committee on Food Additives (CCFA) of the Codex Alimentarius Commission (Codex), which will be held in Beijing, China March 18–22, 2013. USDA and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 45th Session of the CCFA and to address items on the agenda.

DATES: The public meeting is scheduled for Monday, February 11, 2013, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: The public meeting will be held in Rooms 1A–001 and 1A–002, US FDA, Harvey Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740.

Documents related to the 45th Session of the CCFA will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*.

The U.S. Delegate to the 45th Session of the CCFA, Susan Carberry, USDA and FDA, invite interested U.S. parties to submit their comments electronically to the following email address: *ccfa@fda.hhs.gov*.

REGISTRATION: Attendees may register by emailing *ccfa@fda.hhs.gov* by February 6, 2013. Early registration is encouraged because it will expedite entry into the building and its parking area. If you require parking, please include the vehicle make and tag number when you register. Because the meeting will be held in a Federal building, you should also bring photo identification and plan for adequate time to pass through security screening systems. Attendees who are not able to attend the meeting in-person but wish to participate may do so by phone. Those wishing to participate by phone should request the call-in number and conference code when they register for the meeting.

For further information about the 45th Session of the CCFA contact: Susan Carberry, Ph.D., Supervisory Chemist, Division of Petition Review, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition CFSAN/FDA, HFS–205, 5100 Paint Branch Parkway, College Park, MD 20740, Telephone: (240) 402–1269, Fax: (301) 436–2972, email: *susan.carberry@fda.hhs.gov*.

FOR FURTHER INFORMATION ABOUT THE PUBLIC MEETING CONTACT: Daniel E. Folmer, Ph.D., Review Chemist, Division of Petition Review, Office of Food Additive Safety, CFSAN/FDA HFS–265, 5100 Paint Branch Parkway, College Park, MD 20740, Telephone: (240) 402–1269, Fax: (301) 436–2972, email: *daniel.folmer@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCFA establishes or endorses acceptable maximum levels for individual food additives; prepares priority lists of food additives for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); assigns functional classes and International Numbering System (INS) numbers to individual food additives; recommends specifications of identity and purity for food additives for adoption by Codex; considers methods of analysis for the determination of additives in food; and considers and elaborates standards or codes for related subjects such as labeling of food additives when sold as such. The CCFA is hosted by China.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 45th Session of the CCFA will be discussed during the public meeting:

- Matters referred by Codex and other Codex Committees and Task Forces. (CX/FA 13/45/2).
- Matters of interest arising from FAO/WHO and from the 76th Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA). (CX/FA 13/45/3).
- Endorsement and/or revision of maximum levels for food additives and processing aids in Codex standards. (CX/FA 13/45/4).
- Application of the decision-tree on the alignment of the food additive provisions of commodity standards and relevant provisions of the GSFA. (CX/FA 13/45/5)
- Discussion paper on the revision of *the Guidelines for the Evaluation of Food Additive Intakes* (CAC/GL 3–1989). (CX/FA 13/45/6).
- Provisions in Tables 1 and 2 for food additives listed in Table 3 with ''acidity regulator'' function and horizontal approach for provisions in Tables 1 and 2 for food additives listed in Table 3 with ''emulsifier, stabilizer and thickener'' function. (CX/FA 13/45/7).
- Provisions for aluminum containing food additives of the GSFA. (CX/FA 13/45/8).
- Proposed draft food additive provisions for aspartame-acesulfame salt (INS 962) (replies to CL 2012/5–FA Part B, point 7). (CX/FA 13/45/9).
- New proposals for the use of nisin (INS 234) in food category 08.0 ''Meat and meat products, including poultry and game'' (replies to CL 2012/5–FA Part B, point 8). (CX/FA 13/45/10).
- Proposals for new additive provisions in food category 16.0

''Prepared foods'' (replies to CL 2012/5–FA Part B, point 9). (CX/FA 13/45/11).

• Proposals for new additive provisions and/or revision of food additive provisions of the GSFA (replies to CL 2012/5–FA Part B, point 10). (CX/FA 13/45/12).

• Proposals for application of Note 188 to provisions for acesulfame potassium (INS 950) and Note 191 to provisions for aspartame (INS 951). (CX/FA 13/45/13).

• Proposals for Changes and/or Addition to the International Numbering System for Food Additives. (CX/FA 13/45/14).

• Specifications for the Identity and Purity of food additives arising from the 76th JECFA Meeting. (CX/FA 13/45/15).

• Proposals for additions and changes to the Priority List of Food Additives proposed for evaluation by JECFA (replies to CL 2012/8–FA) (CX/FA 13/45/16).

• Proposed prioritized list of colors for re-evaluation by JECFA. (CX/FA 13/45/17).

• Database on processing aids—criteria for entry of substances in the database (CX/FA 13/45/18).

• Discussion paper on recommendations for Note 161 of the GSFA (CX/FA 13/45/19).

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access these documents at *ftp://ftp.fao.org/codex/meetings/CCFA/CCFA45*.

Public Meeting

At the February 11, 2013, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 45th Session of the CCFA, Dr. Susan Carberry at the following address: *ccfa@fda.hhs.gov*. Written comments should state that they relate to activities of the 45th Session of the CCFA.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*.

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on: January 30, 2013.

MaryFrances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2013–02470 Filed 1–31–13; 4:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest; Buckhorn Planning Subunit; Lincoln County, Montana; Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of commercial and non-commercial vegetation management activities, prescribed burning, and watershed improvement activities. Access management changes and other design features are included to protect resources and facilitate management activities. The project is located in the Buckhorn Planning Subunit on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, and north of Troy, Montana.

DATES: Comments concerning the scope of the analysis must be received within 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Send written comments to Kirsten Kaiser; District Ranger, Three Rivers Ranger District, 12858 US Hwy 2, Troy, MT 59935. Comments may also be sent via email to *comments-northern-kootenai-three-rivers@fs.fed.us;* or via facsimile to (406) 295–7410.

FOR FURTHER INFORMATION CONTACT: Contact Pat Shira, Project Team Leader, Three Rivers Ranger District, 12858 US Hwy 2, Troy, MT 59935. Phone: (406) 295–4693. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The project area is approximately 56,000 acres in size and is located about 27 miles north of Troy, Montana in the Yaak River Valley and includes the following drainages: Spread Creek, Hellroaring Creek, and Meadow Creek. The legal description includes Townships 35 and 36 North, Ranges 34 and 33 West, Lincoln County, Montana; and Township 64 North, Range 3 East, Boundary County, Idaho.

Purpose and Need for Action

The purpose and need for this project is: (1) Promote resilient vegetation conditions by managing towards charactertic landscape-level vegetation patterns, structure, patch size, fuel loading and species composition; (2) maintain or improve water quality and native aquatic species habitat; and, (3) provide wood products to contribute to local and regional economies.

Proposed Action

The proposed action includes timber harvest and associated fuels treatments, prescribed burning and watershed work to address the purpose and need. The proposed action includes:

(1) Approximately 1,300 acres of regeneration harvest that would initially produce foraging opportunities for

wildlife species including big game and grizzly bear, which would transition into seedling and pole sized stands that provide young forest habitat before the stands further develop mature forest characteristics. Grouping of some units would create large areas of openings within a matrix of leave areas to mimic a stand replacing fire. There are nine units proposed that would create openings larger than 40 acres and requires a 60-day public review and Regional Forester approval (FSM 2471.1). This notice serves as the beginning of the 60-day public review. The largest of these treatment units would be approximately 280 acres. The openings are designed to provide no greater than 600 feet distance to cover for grizzly bear and big game species. All riparian areas will be identified by the Interdisciplinary Team and excluded from harvest units. Approximately 414 acres are proposed for treatments within the Wildland Urban Interface (WUI).

(2) About 94 acres of intermediate harvest is proposed to improve stand conditions and increase huckleberry growth in the understory.

(3) In an effort to return fire to the landscape and promote increased huckleberry growth and foraging opportunities, approximately 12,127 acres of prescribed burning is being proposed with up to 17,793 acres considered as part of the maximum allowable burn area. Approximately 1,096 acres of burning will occur in the Wildland Urban Interface (WUI). Approximately 7,195 acres of this burning will occur within two Inventoried Roadless Areas (IRAs) located in and adjacent to the project area. To achieve burn objectives of reducing canopy cover in portions of the proposed burn units, hand slashing would occur within the IRAs to create a fuel bed which helps carry fire through the burn area and meet objectives. In areas of suitable whitebark pine habitat, slashing of other encroaching conifers around existing live whitebark pine may occur before burning. Whitebark pine seedlings may be planted after the burns are completed. Whitebark pine is listed as a sensitive species in Region One and is a Candidate species for listing as threatened under the endangered species act (ESA). The US Fish and Wildlife Service found that whitebark pine is ''warranted but precluded'' from listing at this time.

(4) It is estimated that two temporary roads, totaling 0.7 miles would be constructed to accomplish the timber harvest and associated fuel reduction work and would be obliterated following activities. Approximately 26 miles of haul routes would receive Best Management Practices (BMPs) and road maintenance work to meet State BMP requirements for water quality.

(5) Approximately 28 miles of road have been identified for stabilization to reduce the potential for sediment delivery to streams. This work includes, but is not limited to the removal of culverts, removal of log stream crossing structures, water bars and removing unstable fill material. A Travel Analysis has been completed for the Project Area. Roads identified in the Travel Analysis, as needed for long-term management of the National Forest would be put into intermittent stored service. Roads identified in the Travel Analysis, as not needed for long-term management would be decommissioned. All road decommissioning and intermittent stored services work is proposed on roads currently closed to motor vehicle access. Coordination with recreational users (snowmobilers, mountain bikers, hikers and stock users) would be ongoing through analysis and implementation to maintain popular access routes.

Possible Alternatives

The Forest Service will consider a range of alternatives. One of these will be the ''no action'' alternative in which none of the proposed action would be implemented. Additional alternatives may be included in response to issues raised by the public during the scoping process or due to additional concerns for resource values identified by the Interdisciplinary Team.

Responsible Official

The Forest Supervisor of the Kootenai National Forest, 31374 US Highway 2, Libby, MT 59923–3022, is the Responsible Official. As the Responsible Official, I will decide if the proposed action will be implemented. I will document the decision and rationale for the decision in the Record of Decision. I have delegated the responsibility for preparing the DEIS and FEIS to the District Ranger, Three Rivers Ranger District.

Nature of Decision To Be Made

Based on the purpose and need, the Responsible Official reviews the proposed action, the other alternatives, the environmental consequences, and public comments on the analysis in order to make the following decision:

(1) Whether to implement timber harvest and associated fuels treatments, prescribed burning, and watershed work, including the design features and potential mitigation measures to protect resources; and if so, how much and at what specific locations;

(2) What, if any, specific project monitoring requirements are needed to assure design features and potential mitigation measures are implemented and effective, and to evaluate the success of the project objectives. Preliminary project monitoring needs identified include pre- and post-treatment huckleberry production, effectiveness of BMP work, and retention of coarse woody debris. A project specific monitoring plan will be developed.

Preliminary Issues

Initial analysis by the Interdisciplinary Team has brought forward two issues that may affect the design of the project.

(1) There are nine units proposed that would create openings larger than 40 acres. This action requires a 60 day public review and Regional Forester approval (FSM 2471.1) This document serves as the beginning of the 60 day public review period.

(2) Based on the nine units proposed that would create openings larger than 40 acres, a site-specific Forest Plan amendment for MA 12 (big game summer range) may be required for Wildlife Standard 7, Forest Plan page III–49, which states that generally harvest unit size should not exceed 40 acres in elk and mule deer habitat or 20 acres in size for moose and whitetail deer habitat. Potentially, maintaining two sight distances between openings as movement corridors for wildlife may also be an issue. The larger openings are designed to mimic the effects of a stand replacing fire and to meet the purpose and need for the project.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Interdisciplinary Team will continue to seek information, comments, and assistance from Federal, State, and local agencies, Tribal governments, and other individuals or organizations that may be interested in, or affected by, the proposed action. There are several collaborative groups in the area that the Interdisciplinary Team will interact with during the analysis process.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly

articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will become part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: January 24, 2013.

Paul Bradford,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 2013–02418 Filed 2–4–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

First Phase of the Forest Planning Process for the Bio-Region; Correction

AGENCY: USDA, Forest Service.

ACTION: Notice; correction.

SUMMARY: The Department of Agriculture (USDA), Forest Service, Pacific Southwest Region, published a notice in the **Federal Register** of January 24, 2013, (78 FR 5165) which concerned initiating a forest planning process under the new planning rule entitled *First Phase of the Forest Planning Process for the Bio-Region.* The document contained incorrect wording describing the Notice as a Notice of Intent and introducing terms associated with National Environmental Policy Act (NEPA) process, and extraneous material not associated with the forest planning revision process.

FOR FURTHER INFORMATION CONTACT: Ronald L. Pugh, Deputy Director, Ecosystem Planning, 707–562–8951. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Correction

In the **Federal Register** of January 24, 2013, in FR doc. 2013–1254, on page 5165, in the first column, correct the **SUMMARY** to read:

The Department of Agriculture (USDA), Forest Service, Pacific Southwest Region is initiating the first phase of the forest planning process pursuant to the 2012 Forest Planning Rule. This process results in Forest Land Management Plans which describe the strategic direction for management of forest resources for the next ten to fifteen years on these National Forests. The first phase of the process, the assessment phase, has begun on the Sequoia, Sierra, and Inyo National Forests and that interested parties are invited to contribute in the development of the assessment (36 CFR 219.6), and that associated NEPA processes will be initiated after its completion.

In the **Federal Register** of January 24, 2013, in FR doc. 2013–1254, on page 5165, in the second column, correct the **DATES** to:

The assessments for the Inyo, Sequoia, and Sierra National Forests will be completed by December 31, 2013. Following completion of the assessments each forest will initiate procedure pursuant to the NEPA and prepare forest plan revisions.

In the **Federal Register** of January 24, 2013, in FR doc. 2013–1254, on page 5165, in the second column, correct the **SUPPLEMENTARY INFORMATION** to read:

The National Forest Management Act (NFMA) of 1976 requires that every National Forest System (NFS) unit develop a land management plan (LMP). On April 9, 2012, the Forest Service finalized its land management planning rule (2012 Planning Rule), which provides broad programmatic direction to National Forests and National Grasslands for developing and implementing their land management plans (LMPs). Forest plans describe the strategic direction for management of forest resources for ten to fifteen years, and are adaptive and amendable as conditions change over time. Under the 2012 Planning Rule, the assessment of ecological, social, and economic trends and conditions is the first stage of the planning process. The second stage is a development and decision process guided, in part, by the National Environment Policy Act (NEPA) and includes the preparation of Draft Environmental Impact Statement and Revised Forest Plan for public review and comment, and the preparation of the Final Environmental Impact Statement and Revised Forest Plan. The third stage of the process is monitoring and feedback, which is ongoing over the life of the revised forest plans.

The Pacific Southwest Region of the Forest Service, United States Department of Agriculture, along with the Sierra, Inyo, and Sequoia National Forests, is preparing assessments pursuant to 2012 Forest Planning Rule. The assessments will rapidly evaluate existing information about relevant ecological, economic, and social conditions, trends, and sustainability and their relationship to land management plans within the context of the broader landscape. The assessments will identify existing information relevant to the planning areas and build common understanding of that information prior to initiating formal plan revision processes. The process to develop these assessments will be carried out using an open, collaborative, and transparent public engagement process. With this notice, the agency invites other governments, non-governmental parties, and the public to contribute in assessment development. The intent of public engagement during development of the assessment is to identify as much relevant information as possible to inform the land management plan development process. We encourage contributors to share material about existing conditions, trends, and perceptions of social, economic, and ecological systems relevant to the planning process. Public participation in the assessment process supports the development of relationships of key stakeholders throughout the plan development process and is a first step to understanding current conditions, available data, and feedback needed to support a strategic, efficient planning process.

Due to commonality of issues and the broader landscape to consider, these assessment processes will begin with a larger geographic or regional assessment. This broader area evaluation will not only provide a landscape scale context for the revision of the Inyo, Sequoia, and Sierra National Forests, it will provide information that will be used as the agency moves into the revision process for adjacent forests in the near future, and provide for a more comprehensive and efficient process.

We are committed to collaboration and to strengthening public engagement throughout the process. Collaboration and communication plans are being developed with the help of stakeholders at the regional and forest levels. Each plan is unique to the needs of the people and communities being served. Regional and forest specialists have begun collecting information and working with stakeholders to describe existing resource conditions and trends. If you would like to contribute to the process or for more information, please contact Ronald L. Pugh, Deputy Director, Ecosystem Planning of the Pacific Southwest Region, 707–562–8951 or visit intranet site: *www.ourforestplace.ning.com.* The projected completion date for the assessments for the Inyo, Sequoia, and Sierra National Forests is December 31, 2013.

Dated: January 31, 2013.

Randy Moore,

Regional Forester.

[FR Doc. 2013–02588 Filed 2–1–13; 11:15 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Proposed Information Collection; Comment Request; Application for Investment Assistance

AGENCY: Economic Development Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before April 8, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kerstin Millius, 202–482–3280, *kerstin.millius@eda.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The mission of the Economic Development Administration (EDA) is to lead the Federal economic agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. In order to effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance.

The Application for Investment Assistance is required to apply for EDA investment assistance under its Public Works, Economic Adjustment, Technical Assistance, Research, and Planning programs. This collection of information is required to ensure that the application meets the requirements for EDA assistance set out in EDA's regulations at 13 CFR Chapter III.

II. Method of Collection

Paper and electronic submissions.

III. Data

OMB Control Number: 0610–0094.

Form Number(s): ED–900.

Type of Review: Regular submission (extension of a currently approved collection).

Affected Public: Not-for-profit institutions; Federal government; State, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 1,261.

Estimated Time Per Response: 24 hours.

Estimated Total Annual Burden Hours: 29,949.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 30, 2013.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–02410 Filed 2–4–13; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–812]

Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on steel wire garment hangers from the Socialist Republic of Vietnam (''Vietnam'').

DATES: *Effective Date:* February 5, 2013.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On December 26, 2012, the Department published its affirmative final determination of sales at less than fair value in the antidumping duty investigation of steel wire garment hangers from Vietnam.[1] On January 28, 2013, pursuant to section 735(d) of the Tariff Act of 1930, as amended (''the Act''), the ITC notified the Department of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of steel wire garment hangers from Vietnam.[2] In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of steel wire garment hangers from Vietnam that are subject to the Department's final affirmative critical circumstances finding. Pursuant to section 736(a) of the Act, the Department is publishing an antidumping duty order on the subject merchandise.

Scope of the Order

The merchandise subject to this order is 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.

[1] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances,* 77 FR 75980 (December 26, 2012) (''*Vietnam Hangers Final Determination*'').

[2] *See Steel Wire Garment Hangers from Vietnam,* Investigation Nos. 701–TA–487 and 731–TA–1198, USITC Pub. 4371 (January 2013) (Final).

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 millimeters (''mm'') or greater.

The products subject to the investigation are currently classified under U.S. Harmonized Tariff Schedule (''HTSUS'') subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Antidumping Duty Order

As stated above, on January 28, 2013, in accordance with section 735(d) of the Act, the ITC notified the Department of its final determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of less-than-fair-value imports of steel wire garment hangers from Vietnam. Because the ITC determined that imports of steel wire garment hangers from Vietnam are materially injuring a U.S. industry, all unliquidated entries of such merchandise from Vietnam, entered or withdrawn from warehouse, are subject to the assessment of antidumping duties.

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price or constructed export price of the merchandise for all relevant entries of steel wire garment hangers from Vietnam. These antidumping duties will be assessed on all unliquidated entries of steel wire garment hangers from Vietnam entered, or withdrawn from warehouse, for consumption on or after August 2, 2012, the publication date of the *Preliminary Determination* [3] in the **Federal Register**, but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on all entries of steel wire garment hangers from Vietnam. We will also instruct CBP to require cash deposits equal to the amounts as indicated below. These instructions suspending liquidation will remain in effect until further notice.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP, pursuant to section 736(a)(3) of the Act, will require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated dumping margins listed below. The estimated dumping margins for imports of subject merchandise from Vietnam will be adjusted for export subsidies found in the final determination of the companion countervailing duty investigation of this merchandise imported from the Vietnam.[4]

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of the exporters that accounted for a significant proportion of exports of the subject merchandise in the investigations of steel wire garment hangers from Vietnam, we extended the four-month period to no more than six months.[5]

In this investigation, the six-month period beginning on the date of the publication of the preliminary determination (*i.e.,* August 2, 2012) ended on January 29, 2013. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination. Therefore, in accordance with section 733(d) of the Act, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of steel wire garment hangers from Vietnam entered, or withdrawn from warehouse, for consumption on or after January 30, 2013, and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**. Suspension of liquidation will resume on or after the date of publication of the ITC's final injury determination in the **Federal Register**.

The dumping margins are as follows:

Exporter	Producer	Margin (percent)
CTN Limited Company	CTN Limited Company	157.00
Ju Fu Co., Ltd	Ju Fu Co., Ltd	157.00
Triloan Hangers, Inc	Triloan Hangers, Inc	157.00
Vietnam-Wide Entity [6]		220.68

With regard to the ITC's negative critical circumstances determination on

[3] *See Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 77 FR 46044 (August 2, 2012) (''*Preliminary Determination*'').

[4] *See Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 77 FR 75973 (December 26, 2012); *see also Vietnam Hangers Final Determination,* 77 FR at 75984.

[5] *See Preliminary Determination,* 77 FR at 46054–55; and *Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Critical Circumstances in the Antidumping Duty Investigation,* 77 FR 51514 (August 24, 2012).

[6] The Vietnam-wide entity includes South East Asia Hamico Export Joint Stock Company, the TJ Group (consisting of the Pre-Supreme Entity, Infinite Industrial Hanger Limited, and TJ Co., Ltd.) and the following companies: Acton Co., Ltd.; Angang Clothes Rack Manufacture Co.; Asmara Home Vietnam; B2B Co., Ltd.; Capco Wai Shing Viet Nam Co., Ltd.; Dai Nam Investment JSC; Diep Son Hangers One Member Co. Ltd.; Dong Nam A Co., Ltd.; Dong Nam A Trading Co.; EST Glory Industrial Ltd.; Focus Shipping Corp.; Godoxa Viet Nam Ltd.; HCMC General Import And Export Investment JSC; Hongxiang Business And Product Co., Ltd.; Linh Sa Hamico Company, Ltd.; Minh Quang Steel Joint Stock Company; Moc Viet Manufacture Co., Ltd.; Nam A Hamico Export Joint Stock; N-Tech Vina Co., Ltd.; NV Hanger Co., Ltd.

imports of steel wire garment hangers from Vietnam, we will instruct CBP to lift suspension and to refund any cash deposit made, to secure the payment of estimated antidumping duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after May 4, 2012 (*i.e.,* 90 days prior to the publication date of the *Preliminary Determination*), but before August 2, 2012, the publication date of the *Preliminary Determination.*

This notice constitutes the antidumping duty order with respect to steel wire garment from Vietnam, pursuant to section 736(a) of the Act. Interested parties may find an updated list of antidumping duty orders currently in effect at *http://ia.ita.doc.gov/stats/iastats1.html.*

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: January 30, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–02637 Filed 2–4–13; 8:45 am]

BILLING CODE 3510–DS–P

(A/K/A Nguyen Hoang Vu Co., Ltd.); Ocean Star Transport Co., Ltd.; Quoc Ha Production Trading Service; Quyky (Factory); Quyky Group/Quyky Co., Ltd./Quyky-Yanglei International Co., Ltd.; S.I.I.C.; Tan Minh Textile Sewing Trading Co., Ltd.; Thanh Hieu Manufacturing Trading Co. Ltd.; The Xuong Co., Ltd.; Thien Ngon Printing Co., Ltd.; Top Sharp International Trading Limited; Trung Viet My Joint Stock Company; Viet Anh Imp-Exp Joint Stock Co.; Viet Hanger Investment, LLC/Viet Hanger; Vietnam Hangers Joint Stock Company; VNS/VN Sourcing/Vietnam Sourcing; and Yen Trang Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–552–813]

Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the Department) and the U.S. International Trade Commission (ITC), the Department is issuing a countervailing duty order on certain steel wire garment hangers from the Socialist Republic of Vietnam (Vietnam).

DATES: *Effective Date:* February 5, 2013.

FOR FURTHER INFORMATION CONTACT: John Conniff or Robert Copyak, AD/CVD Operations, Office 8, Import Administration, U.S. Department of Commerce, Room C–100, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202–482–1009 and 202–482–2209, respectively.

SUPPLEMENTARY INFORMATION:

Case History

In accordance with section 705(d) of the Tariff Act of 1930, as amended (the Act), on December 26, 2012, the Department published its final determination in the countervailing duty investigation of certain steel wire garment hangers from Vietnam.[1] On January 28, 2013, the ITC notified the Department of its final determination pursuant to sections 705(b)(1)(A)(ii) and 705(d) of the Act, that a U.S. industry is materially injured by reason of imports of steel wire garment hangers from Vietnam.[2] In addition, the ITC notified the Department of its final determination that critical circumstances do not exist with respect to imports of steel wire garment hangers from Vietnam that are subject to the Department's final affirmative critical circumstances finding. Pursuant to section 706(a) of the Act, the Department is publishing a countervailing duty order on the subject merchandise.

Scope of the Order

The merchandise subject to this order is 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/or whether or not fashioned with paper covers or capes (with or without printing) and/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 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 3.4mm or greater.

The products subject to the order are currently classified under U.S. Harmonized Tariff Schedule (HTSUS) subheadings 7326.20.0020 and 7323.99.9080. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Countervailing Duty Order

On January 28, 2013, the ITC notified the Department of its final determination, pursuant to section 705(b)(1)(A) of the Act, that an industry in the United States is materially injured as a result of subsidized imports from Vietnam. Pursuant to section 706(a) of the Act, the Department is publishing a countervailing duty order on the subject merchandise.

As a result of the ITC's final determination, in accordance with section 706(a) of the Act, the Department will direct CBP to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of certain steel wire garment hangers from Vietnam entered, or withdrawn from warehouse, for consumption on or after June 4, 2012, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**, and before October 2, 2012, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of certain steel wire garment hangers from Vietnam made on or after October 2, 2012, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties, due to the Department's discontinuation, effective October 2, 2012, of the suspension of liquidation.

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of certain steel wire garment hangers from Vietnam, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further advice from the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this

[1] *See Certain Steel Wire Garment Hangers From the Socialist Republic of Vietnam: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 77 FR 75973, (December 26, 2012).

[2] *See Steel Wire Garment Hangers from Vietnam* (Investigation Nos. 701–TA–487 and 731–TA–1198 (Final), USITC Publication 4371, January 2013).

merchandise, a cash deposit equal to the rates noted below:

Producer/exporter	Net subsidy ad valorem rate (percent)
South East Asia Hamico Export Joint Stock Company (SEA Hamico), Nam A Hamico Export Joint Stock Company (Nam A), and Linh Sa Hamico Company Limited (Linh Sa) (collectively, the Hamico Companies)	31.58
Infinite Industrial Hanger Limited (Infinite) and Supreme Hanger Company Limited (Supreme) (collectively, the Infinite Companies)	90.42
All Others	31.58

With regard to the ITC's negative critical circumstances determination on imports of steel wire garment hangers from Vietnam, we will instruct CBP to lift suspension and to refund any cash deposit made, to secure the payment of estimated countervailing duties with respect to entries of the merchandise entered, or withdrawn from warehouse, for consumption on or after March 6, 2012 (*i.e.,* 90 days prior to the publication date of the *Preliminary Determination*), but before June 4, 2012, the publication date of the *Preliminary Determination.*

This notice constitutes the countervailing duty order with respect to steel wire garment hangers from Vietnam pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect.

This countervailing duty order is issued and published in accordance with sections 705(c)(2) and 706(a) of the Act, and 19 CFR 351.211.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–02635 Filed 2–4–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

NextGen Solutions Vendors Guide

AGENCY: International Trade Administration, Commerce.

ACTION: Notice and request for response.

SUMMARY: This notice sets forth a request for responses from U.S. vendors capable of exporting goods or services for the implementation of Next Generation Air Transportation System (NextGen) solutions that meet the requirements of the International Civil Aviation Organization's (ICAO) Aviation System Block Upgrade (ASBU) initiative. The NextGen solutions address the ICAO ASBU-designated performance improvement areas of: (a) Airport operations, (b) globally interoperable systems and data, (c) optimum capacity and flexible flights, and (d) efficient flight paths. In addition, this request seeks responses from (e) the knowledge and service providers who can facilitate these solutions. The International Trade Administration (ITA) of the Department of Commerce is developing a web-based *NextGen Solutions Vendors Guide* intended to be used by foreign air navigation service providers, airport operators, and governmental authorities to identify U.S. goods and services that can be used to help implement ICAO-consistent NextGen solutions. The guide will highlight the U.S. producers and suppliers who indicate that they have products that can be used to implement one or more of the listed NextGen solutions. The NextGen Solutions Vendors Guide will support the President's National Export Initiative by fostering export opportunities for the U.S. air navigation equipment and services industry.

DATES: U.S. vendors capable of exporting goods or services relevant to the NextGen solutions outlined above that are interested in participating in the NextGen Solutions Vendors Guide should self-identify by March 29, 2013, at 5:00 p.m. Eastern Daylight Time (EDT).

ADDRESSES: Please indicate interest in participating in the NextGen Solutions Vendors Guide by post or email to the attention of Jonathan Alvear, Office of Transportation and Machinery, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Ave. NW., Room 4036, Washington, DC 20230; 202–482–4125; email *NextGenVendors@trade.gov.* Electronic responses should be submitted in Microsoft Word format.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Alvear, Office of Transportation and Machinery (OTM), International Trade Administration, Room 4036, 1401 Constitution Avenue NW., Washington, DC 20230. (Phone: 202–482–4125; email: *Jonathan.Alvear@trade.gov*).

SUPPLEMENTARY INFORMATION: The development of the *NextGen Solutions Vendors Guide* requires the identification of U.S. vendors capable of supplying relevant goods and services to foreign buyers. United States vendors of NextGen goods and services interested in being listed on the Vendors Guide Web site should submit their company's name, Web site address, contact information, and aviation solution category (or categories) of interest from the following list:

(a) Airport operations
  Example: Airport Accesibility—Optimization of Approach Procedures including vertical guidance
(b) Globally interoperable systems and data
  Example: Digital Aeronautical Information Management—Service Improvement through Integration of all Digital ATM Information
(c) Optimum capacity and flexible flights
  Example: Optimum Flight Levels—Improved Access to Optimum Flight Levels through Climb/Descent Procedures using ADS–B
(d) Efficient flight paths
  Example: Trajectory-Based Operations—Improved Safety and Efficiency through the initial application of Data Link En-Route
(e) Knowledge and service providers (related to aviation system upgrades)
  Example: Engineering Services

More information on the four ICAO ASBU-designated performance improvement areas can be found at *http://www.icao.int/Meetings/anconf12/Documents/ASBU.en.july%202012.pdf*

Responding to this notice will serve as a certification that the vendor named in the response is a United States exporter, as defined by 15 U.S.C. 4721(j), and seeks to export NextGen solutions that fall within the category or categories indicated in the response.

For purposes of this certification, ''United States exporter'' has the meaning found in 15 U.S.C. 4721(j), which provides: ''United States exporter means (A) a United States citizen; (B) a corporation, partnership, or other association created under the laws of the United States or of any State; or (C)

a foreign corporation, partnership, or other association, more than 95 percent of which is owned by persons described in subparagraphs (A) and (B), that exports, or seeks to export, goods or services produced in the United States.''

Responding to this notice constitutes consent to participate in the Vendors Guide and to the public sharing of the vendor's name. It also constitutes consent to the inclusion of the name of the vendor on the Vendors Guide Web site. The vendor name will be listed next to the self-identified aviation solution category(ies) indicated in the response, along with a link to the vendor-specific Web site included in the response. No additional vendor information will be posted.

The NextGen Solutions Vendors Guide is intended to refer users in foreign markets to U.S. producers and suppliers that seek to promote U.S. exports related to one or more of the listed NextGen solutions that can help to fulfill the requirements of the ICAO ASBU initiative. The Vendors Guide Web site will note that it is not an exhaustive list of all U.S. vendors in this sector and that listing on the web site does not constitute endorsement of the vendor or business or its products, services or technology by ITA. ITA reserves the right not to list any vendor.

Dated: January 30, 2013.

Thomas Sobotta,

Director (Acting), Office of Transportation and Machinery.

[FR Doc. 2013–02406 Filed 2–4–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Advisory Committee on Earthquake Hazards Reduction Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Earthquake Hazards Reduction (ACEHR or Committee), will hold an open meeting via teleconference on Thursday, February 28, 2013 from 3 p.m. to 5 p.m. Eastern Time. The primary purpose of this meeting is to finalize the Committee's draft letter report to the NIST Director. Any draft meeting materials will be posted prior to the meeting on the National Earthquake Hazards Reduction Program (NEHRP) web site at *http://nehrp.gov/.* Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number.

DATES: The ACEHR will hold a meeting via teleconference on Thursday, February 28, 2013, from 3 p.m. until 5 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: Questions regarding the meeting should be sent to National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Dr. Jack Hayes, National Earthquake Hazards Reduction Program Director, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8604, Gaithersburg, Maryland 20899–8604. Dr. Hayes' email address is *jack.hayes@nist.gov* and his phone number is (301) 975–5640.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the requirements of Section 103 of the NEHRP Reauthorization Act of 2004 (Pub. L. 108–360). The Committee is composed of 14 members appointed by the Director of NIST, who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting the National Earthquake Hazards Reduction Program. In addition, the Chairperson of the U.S. Geological Survey (USGS) Scientific Earthquake Studies Advisory Committee (SESAC) serves in an ex-officio capacity on the Committee. The Committee assesses:

- Trends and developments in the science and engineering of earthquake hazards reduction;
- the effectiveness of NEHRP in performing its statutory activities;
- any need to revise NEHRP; and
- the management, coordination, implementation, and activities of NEHRP.

Background information on NEHRP and the Advisory Committee is available at *http://nehrp.gov/.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the ACEHR will hold an open meeting via teleconference on Thursday, February 28, 2013, from 3 p.m. until 5 p.m. Eastern Time. There will be no central meeting location. Interested members of the public will be able to participate in the meeting from remote locations by calling into a central phone number. The primary purpose of this meeting is to finalize the Committee's draft letter report to the NIST Director. Any meeting materials will be posted prior to the meeting on the NEHRP Web site at *http://nehrp.gov/.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request detailed instructions on how to dial in from a remote location to participate in the meeting by contacting Michelle Harman. Michelle Harman's email address is *michelle.harman@nist.gov,* and her phone number is 301–975–5324. Approximately 15 minutes will be reserved from 4:45 p.m.–5:00 p.m. Eastern Time for public comments; speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about three minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated, and those who were unable to participate are invited to submit written statements to the ACEHR, National Institute of Standards and Technology, 100 Bureau Drive, MS 8604, Gaithersburg, Maryland 20899–8604, via fax at (301) 975–4032, or electronically by email to *info@nehrp.gov.*

All participants of the meeting are required to pre-register. Anyone wishing to participate must register by 5 p.m. Eastern Time, Monday, February 25, 2013, in order to be included. Please submit your full name, email address, and phone number to Michelle Harman. After registering, participants will be provided with detailed instructions on how to dial in from a remote location in order to participate. Michelle Harman's email address is *michelle.harman@nist.gov,* and her phone number is (301) 975–5324.

Dated: January 30, 2013.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2013–02486 Filed 2–4–13; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC480

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 33 data scoping conference call for Gulf of Mexico gag grouper (Mycteroperca microlepis) and greater amberjack (Seriola dumerili).

SUMMARY: The SEDAR 33 assessment of the Gulf of Mexico gag grouper and greater amberjack fisheries will consist of: a Data Workshop; and a series of Assessment process webinars; and a Review Workshop. This notice pertains to a conference call to take place prior to the Data Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 33 data scoping conference call will be held on March 1, 2013 at 10 a.m.

ADDRESSES:

Meeting address: The toll free phone number for the conference call is 1–888–205–5513. The pass code for the conference call is 221256.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, SEDAR Coordinator; telephone: (813) 348–1630; email: *ryan.rindone@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment process consisting of a series of webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the data scoping call are as follows:

Data sets necessary for adequately assessing Gulf of Mexico gag grouper and greater amberjack fisheries will be identified. This call serves as the starting point for collecting known data sets and is non-decisional in nature with respect to the outcome of the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

Dated: January 30, 2013.

William D. Chappell,

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

[FR Doc. 2013–02403 Filed 2–4–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC483

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public workshop.

SUMMARY: The North Pacific Fishery Management Council (NPFMC) will hold a Crab Assessment Workshop.

DATES: The meeting will be held on February 26–March 1, 2013, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Hilton Hotel, Birch/Willow room, 500 West 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, Alaska 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The workshop meeting agenda includes: review and make recommendations on developing stock assessment models for Aleutian Islands golden king crab and Norton Sound red king crab.

The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations:

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: January 30, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–02419 Filed 2–4–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC479

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meetings

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

ACTION: Notice of SEDAR 31 Gulf of Mexico red snapper assessment webinars.

SUMMARY: The SEDAR 31 assessment of the Gulf of Mexico red snapper fishery will consist of a series of workshops and supplemental webinars. This notice is for webinars associated with the Assessment portion of the SEDAR process. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 31 Assessment Workshop webinars will be held on: February 21, 2013; February 28, 2013; March 7, 2013; March 14, 2013; and March 21, 2013. All webinars are scheduled from 1 p.m. until 5 p.m. EDT.

ADDRESSES:

Meeting address: The webinars will be held via a GoToWebinar Conference. The webinars are open to members of the public. Those interested in participating should contact Ryan Rindone at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request meeting information at least 24 hours in advance.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Ryan Rindone, SEDAR Coordinator; telephone: (813) 348–1630; email: *ryan.rindone@gulfcouncil.org.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process including a workshop and webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the Assessment Workshop webinars are as follows:

Panelists will continue deliberations and discussions regarding modeling methodologies for the Gulf of Mexico Red Snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: January 30, 2013.

William D. Chappell,

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

[FR Doc. 2013–02402 Filed 2–4–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC478

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Space Vehicle and Test Flight Activities From Vandenberg Air Force Base, CA

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a letter of authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force (USAF), to take four species of seals and sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California, a military readiness activity.

DATES: Effective February 7, 2013, through February 6, 2014.

ADDRESSES: The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, by telephoning one of the contacts listed here (**FOR FURTHER INFORMATION CONTACT**) or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. The National Defense Authorization Act (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations for a ''military readiness activity.'' Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of Pacific harbor seals (*Phoca vitulina richardsi*), northern elephant seals (*Mirounga angustirostris*), California sea lions (*Zalophus californianus*), and northern fur seals (*Callorhinus ursinus*), by harassment, incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at VAFB, were issued on February 6, 2009 (74 FR 6236), and remain in effect until February 6, 2014. In April 2011, the USAF requested a deviation from the precise language contained in the 2009 final rule regarding the annual number of missile and rocket launches. On February 1, 2012 (77 FR 4917), NMFS issued final regulations that revised the number of missile and rocket launches that the USAF could conduct from VAFB on an annual basis. Instead of the 30 missile and 20 rocket launches authorized per year in 2009, the USAF's specified activity now includes 15 missile and 35 rocket launches per year. However, the total number of annual launches remains at 50. This regulatory amendment does not change the analyses of marine mammal impacts conducted in the original final rule. For detailed information on the USAF's activities and potential impacts, please refer to those documents. These regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile and rocket launches at VAFB.

This LOA is effective from February 7, 2013, through February 6, 2014, and authorizes the incidental take, by Level B harassment only, of the four marine mammal species listed here that may result from the launching of up to 15 missiles and up to 35 rockets annually from VAFB, as well as from aircraft and helicopter operations. Harbor seals haul-out on several sites on VAFB, and harbor seals, California sea lions, elephant seals, and northern fur seals are found on various haul-out sites and rookeries on San Miguel Island (SMI). Currently, six space launch vehicle programs use VAFB to launch satellites into polar orbit: Delta II; Taurus; Atlas V; Delta IV; Falcon; and Minotaur. Also a variety of small missiles, several types of interceptor and target vehicles, and fixed-wing aircrafts are launched from VAFB.

The activities under these regulations create two types of noise: continuous (but short-duration) noise, due mostly to combustion effects of aircraft and launch vehicles, and impulsive noise, due to sonic boom effects. Launch operations are the major source of noise on the marine environment from VAFB. The operation of launch vehicle engines produces significant sound levels. The noise generated by VAFB activities may result in the incidental harassment of pinnipeds, both behaviorally and in terms of physiological (auditory) impacts. The noise and visual disturbances from space launch vehicle and missile launches and aircraft and helicopter operations may cause the animals to move towards or enter the water. Take of pinnipeds will be minimized through implementation of the following mitigation measures: (1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries; (2) missile and rocket launches must, whenever possible, not be conducted during the harbor seal pupping season of March through June; (3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during the primary pinniped pupping seasons of March through June; and (4) monitoring methods will be reviewed by NMFS if post-launch surveys determine that an injurious or lethal take of a marine mammal occurred. VAFB will also use monitoring surveys, audio-recording equipment, and time-lapse video to monitor the animals before, during, and after rocket launches, and to measure sound levels generated by the launches. Reports will be submitted to NMFS after each LOA expires, and a final comprehensive report, which will summarize all previous reports and assess cumulative impacts, will be submitted before the rule expires.

Summary of Request

On December 10, 2012, NMFS received a request for a LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of marine mammals, by harassment, incidental to space vehicle and test flight activities at VAFB. Summary of Activity and Monitoring Under the 2012 LOA

In compliance with the 2012 LOA, VAFB submitted an annual report on the activities at VAFB, covering the period of December 1, 2011, through November 30, 2012. A summary of the 2012 report (MMCG and SAIC, 2012) follows.

During the reporting period covered by the 2012 report, there were a total of four launches from VAFB: two space vehicle launches and two missile launches. The dates, locations, and whether or not monitoring was required for the launches are summarized in Table 1 next.

TABLE 1—SUMMARY OF SPACE VEHICLE AND MISSILE LAUNCHES FROM VAFB IN 2012

Vehicle	Date (2012)	Launch site	Monitored
Minuteman III GT–203GM	25–Feb	LF–10	No.
Delta IV NROL–25	3–Apr	SLC–6	Yes (boom and time-lapse only).
Atlas V NROL–36	13–Sep	SLC–3E	Yes (boom and acoustics only).

TABLE 1—SUMMARY OF SPACE VEHICLE AND MISSILE LAUNCHES FROM VAFB IN 2012—Continued

Vehicle	Date (2012)	Launch site	Monitored
Minuteman III GT–206GM	14–Nov	LF–10	No.

The Delta IV launch occurred during the harbor seal pupping season, requiring monitoring on VAFB. Sonic boom modeling was conducted for both space vehicle launches. The modeling indicated that a sonic boom of greater than 1 lb/ft^2 (psf) would occur at SMI as a result of the Atlas V launch, requiring acoustical and biological monitoring.

Neither of the missile launches required monitoring at SMI because the westerly trajectory of these launches. Similarly, both missile launches occurred outside of the VAFB harbor seal pupping season; therefore, no biological or acoustical monitoring was required or performed on VAFB for these two launches.

During the reporting period, 651 fixed-wing aircraft and helicopter operations were conducted from the VAFB airfield. Most of these consisted of training exercises involving ''touch and goes''. There were no observed impacts to pinnipeds from these activities.

Delta IV Launch (April 3, 2012)

Counts of harbor seals done between March 26 and April 2, 2012, recorded from 2 to 111 adult and sub-adult seals. From 0 to 16 pups were observed, along with one California sea lion. One dead pup with wounds suggestive of a shark attack washed ashore on March 26. The next day, a dead, newly born pup with its umbilicus still attached was noted at one of the sites. Both sightings occurred prior to the actual launch. Post-launch counts ranged from 88 to 144 adult and sub-adult seals and from 8 to 12 pups. The 2-week follow-up count revealed up to 154 adult and sub-adult harbor seals and up to 25 pups.

Time-lapse video monitoring was conducted of this launch. The footage revealed that all 42 harbor seals hauled out at the monitoring location (First Ledge on south VAFB) were alerted by the noise and moved rapidly toward the sea. All but two scurried into the water. Up to 10 animals soon returned but went back in the ocean as the tide rose (MSRS, 2012).

In summary, based on post-launch analysis, there was no evidence of injury, mortality, or abnormal behavior in any of the monitored pinnipeds on VAFB as a result of this launch.

Atlas V Launch (September 13, 2012)

Biological monitoring for this launch was required at SMI, since the sonic boom models predicted overpressures in excess of 1 psf there. Monitoring for this launch was conducted at Cardwell Point. California sea lions, northern elephant seals, and Pacific harbor seals were present during the pre- and post-monitoring counts and on the day of the launch. No pups of any species were observed at this location. Counts on the days prior to the launch ranged from 209–912 for California sea lions, from 0–101 for northern elephant seals, and from 0–35 for harbor seals. On the day of the launch, 186–240 sea lions, 50–78 northern elephant seals, and 0–36 harbor seals were sighted. The same or higher numbers of sea lions and northern elephant seals were seen on the two days after the launch. No harbor seals were seen the following day, likely because of a very large surf with heavy surges and backwashes, preventing harbor seals from hauling out, although they were present just outside the breakers.

No reactions were noted on the part of the sea lions and elephant seals to the sonic boom. Of the 36 harbor seals present at the time of the boom, 20 dashed into the water. They began returning to shore within 30 min of the launch.

Acoustic monitoring was also conducted for this launch. The peak unweighted sound level was 122.8 dB re 20 μPa. During the 15 min before and the 15 min after the launch, the lowest ambient noise was 82.7 dB re 20 μPa, while the highest sounds—not associated with the launch—were 113.1 dB re 20 μPa.

In summary, there was no evidence of injury, mortality, or abnormal behavior of the monitored pinnipeds on SMI as a result of this launch.

Authorization

The USAF complied with the requirements of the 2012 LOA, and NMFS has determined that the marine mammal take resulting from the 2012 launches is within that analyzed in and anticipated by the associated regulations. Accordingly, NMFS has issued an LOA to the 30th Space Wing, USAF, authorizing the take by harassment of marine mammals incidental to space vehicle and test flight activities at VAFB. Issuance of this LOA is based on findings described in the preamble to the final rule (74 FR 6236, February 6, 2009) and supported by information contained in VAFB's 2012 annual report that the activities described under this LOA will have a negligible impact on marine mammal stocks. The provision requiring that the activity not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: January 31, 2013.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–02447 Filed 2–4–13; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau or CFPB), 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 a proposed information collection, as required by the Paperwork Reduction Act of 1995 (PRA). The Bureau is soliciting comments concerning its proposed information collection titled, ''Quantitative Testing of Integrated Mortgage Loan Disclosure Forms.'' The proposed collection has been submitted to the Office of Management and Budget (OMB) for review and approval. A copy of the submission, including copies of the proposed collection, may be obtained by contacting the agency contact listed below.

DATES: Written comments are encouraged and must be received on or before March 7, 2013 to be assured of consideration.

ADDRESSES: You may submit comments, identified by agency name and proposed collection title—''Quantitative Testing

of Integrated Mortgage Loan Disclosure Forms''— to:

• *Agency:* Bureau of Consumer Financial Protection (Attention: Darrin King, PRA Office), 1700 G Street NW., Washington, DC 20552; (202) 435–9575; and *CFPB_Public_PRA@cfpb.gov.*

• *OMB:* Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Consumer Financial Protection (Attention: PRA Office), 1700 G Street, NW., Washington, DC 20552, (202) 435–9575, or through the internet at *CFPB_Public_PRA@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Title: Quantitative Testing of Integrated Mortgage Loan Disclosure Forms.

OMB Number: 3170–XXXX.

Type of Review: New Clearance Request.

Abstract: This is a request by the CFPB for clearance from OMB to collect information as part of quantitative research related to residential mortgage loan disclosures. The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, Title X, requires the CFPB to publish disclosures that integrate separate disclosures concerning residential mortgage loans that are required under the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA). The Bureau conducted qualitative testing of prototype integrated disclosures, *see* OMB No. 1505–0233 and OMB No. 3170–0003, prior to issuing a proposed rule regarding such disclosures. *See* 77 FR 51116 (Aug. 23, 2012). The proposed information collection will involve quantitative testing of the integrated disclosures proposed by the Bureau that would be given in connection with the application and consummation of the mortgage loan transaction. The purpose of the quantitative testing will be to examine whether the disclosures aid consumers in understanding the terms of the mortgage loan that is the subject of the disclosure.

The quantitative research will involve testing the mortgage loan disclosures currently provided under TILA and sections 4 and 5 of RESPA, to assess the performance of the proposed integrated disclosures in comparison to the current disclosure. The CFPB will collect quantitative data through the use of a structured questionnaire that consists of multiple choice and open-ended questions regarding several sample disclosures. The quantitative data will inform the Bureau's evaluation of the proposed integrated disclosures. The research will result in an assessment of the performance of the integrated disclosures with respect to comprehension, comparison, and choice of mortgage loan transactions.

The research activities will be conducted primarily by external contractors employing quantitative research methodologies. The contractors will select participants via screening questionnaires to ensure they qualify for the study according to specified criteria. All information will be collected on a voluntary basis. This approach has been demonstrated to be feasible and valuable by other Federal agencies in developing disclosures and other forms. The planned research activities will be conducted during FY 2013 through FY 2014 with the goal of creating effective disclosures.

Affected Public: Individuals or Households.

Process	Estimated number of respondents	Estimated average burden per response (minutes)	Total estimated burden hours
Study Respondents	850	60	850
Screening	3,000	10	500
Travel Time and Administration at Site	900	80	1,200
Total:			2,550

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

The Bureau issued a 60-day **Federal Register** notice on March 28, 2012, 77 FR 18793. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 29, 2013.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2013–02427 Filed 2–4–13; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2013–0003]

Request for Information Regarding Financial Products Marketed to Students Enrolled in Institutions of Higher Education

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: Section 1021 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) charges the Consumer Financial Protection Bureau (Bureau or CFPB) with ''collecting, researching, monitoring and publishing information'' about consumer financial products and services. The Bureau seeks information on how current and future partnerships or other arrangements between institutions of higher education (including their affiliated entities) and financial institutions could be structured to promote positive financial decision-making among young consumers. We also seek information to develop a clearer picture of the financial products and services that are being offered to college students, as well as consumers' experiences using those products and services. The Bureau

encourages comments from the public; including student and parent consumers, institutions of higher education, and financial institutions.

DATES: Comments must be received on or before March 18, 2013.

ADDRESSES: You may submit responsive information and other comments, identified by Docket No. CFPB–2013–0003, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Instructions: The Bureau encourages the early submission of comments. All submissions must include the document title and docket number. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. Please note the number associated with any question to which you are responding at the top of each response (you are not required to answer all questions to receive consideration of your comments). In general, all comments received will be posted without change to *http://www.regulations.gov.* Please do not include personal information in your comment that you do not wish to be made publicly available. In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Standard Time. You can make an appointment to inspect the documents by telephoning 202–435–7275.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Submissions will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of the Executive Secretary, at 202–435–7275.

Authority: 12 U.S.C. 5511(c).

SUPPLEMENTARY INFORMATION: Section 1021 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) charges the Consumer Financial Protection Bureau (Bureau or CFPB) with ''collecting, researching, monitoring and publishing information'' about consumer financial products and services. The Bureau seeks information on how current and future partnerships or other arrangements between institutions of higher education (including their affiliated entities) and financial institutions can be structured to promote positive financial decision-making and building of money management skills among young consumers. We also seek information to develop a clearer picture of the financial products and services that are being offered to college students, as well as consumers' experiences using those products and services. The deadline for submission of comments is March 18, 2013.

The Bureau encourages comments from the public, including:

- Student and parent consumers;
- Institutions of higher education;
- Alumni associations;
- Providers of financial aid disbursement services;
- Financial institutions; and
- Other interested parties.

The Bureau is interested in receiving comments that could bear on its analysis of the student financial product and services market. The Bureau is therefore interested in responses to the questions outlined below.

Please note that the Bureau is not soliciting individual student account information in response to this notice and request for information, nor is the Bureau seeking personally identifiable information (PII) regarding student accounts from the parties or any third party. Responses should not contain account numbers, Social Security numbers or other personal information that could be used to reveal personally identifiable information. Below are some general areas for which information is being sought. Please feel free to respond to any or all of the questions below:

(1) Products marketed through campus affinity relationships.

Campus affinity products are generally financial products and services that carry an endorsement (either explicit or implicit) or mark of an institution of higher education. Examples of these products include those that that display the name or mark of the institution, are bundled with student identification cards, and cards on which students can receive disbursements of financial aid or other funds from the institution of higher education.

In the past, relationships between financial institutions and institutions of higher education have drawn scrutiny and led to legislative action. For example, in 2007, former New York Attorney General Andrew Cuomo pursued action to address the steering of students to certain lenders of federal and private student loans in exchange for remuneration. For years, institutions of higher education provided access to financial institutions to market credit cards to students. Congress addressed school preferred lender arrangements and marketing of campus credit cards on college campuses in legislation enacted in 2008 and 2009.

However, institutions of higher education may be uniquely positioned to create a beneficial environment for students in the selection of financial products and services. The Bureau is interested in better understanding the types of campus affinity products being offered, how institutions of higher education are defining these relationships, and the experience of students using these products. The Bureau seeks information on how partnerships between institutions of higher education (including their affiliated entities) and financial institutions might be structured to promote positive financial decision-making among young consumers.

(a) What types of campus affinity products are being offered to students (e.g., financial aid disbursement accounts, student banking, prepaid cards, and credit cards)?

(b) What are the features of these campus affinity products (e.g., online bill pay, mobile check deposit)?

(c) In what ways are campus-affiliated products marketed to students (e.g., included in campus admissions and/or financial aid offer letters, orientation materials, advertising at college sporting events)?

(d) What information about students is provided by institutions of higher education to financial institutions (e.g., email address, date of birth, program of study)?

(e) How are card or other products offered to students (e.g., mandatory, opt-out, opt-in)? Does the student have a choice to decline the product? If so, what steps are required to exercise that choice? Are there any consequences to the student for declining the product?

(f) What percentage of students at a college or university use the affinity product (e.g., financial aid disbursement, student checking accounts)? What percentage of financial aid recipients use the affinity product?

(g) To what extent are students able to choose a product other than the affinity banking product associated with the institution of higher education? What percentage of students do so?

(h) What types of fees are being charged in association with these products (e.g., overdraft and/or swipe fees)? What are the typical fee amounts? What are the terms and conditions of these products?

(i) To what extent are students able or not able to readily access funds from affinity products while on campus? Does the financial institution provide multiple ATMs? Where are those ATMs located (e.g., on campus, near campus)? Are ATMs also located on branch campuses? Do ATMs charge fees for withdrawal? If so, what are the fees and how are they assessed?

(j) What is the nature, number, and frequency of complaints related to these campus affinity products? Please do not include account numbers, Social Security numbers or other personal information that could be used to reveal personally identifiable information.

(k) Please describe the student experience in contacting the providers of campus affinity products with questions, errors, concerns, and complaints. What level of service do students receive? Have students been treated in a fair, clear, and timely manner? Please provide examples.

(l) What challenges do institutions of higher education face when setting up these agreements?

(m) What terms do institutions of higher education agree to when they affiliate with a financial institution to offer students financial products and services? Please feel free to submit copies of any specific affinity agreements. Please ensure that any specific agreements do not contain any personally identifiable information.

(n) What types of limitations, if any, do these affinity agreements include with respect to the fees that will be charged to student users of the products?

(o) What additional information would have been helpful to the institution of higher education before setting up an affinity agreement?

(p) How much revenue do institutions of higher education generally receive annually in connection with these agreements? How does that revenue break down between student checking accounts, credit cards and other products and services? Is the revenue based on a per student basis, by number and/or volume of transactions by students, level of student account balances, fee revenue, or other measures?

(q) Does an institution of higher education save in operating costs or generate revenue by contracting with a financial aid disbursement vendor? If so, in what amounts?

(r) What are best practices or model terms for institutions that are looking to set up and/or renegotiate an agreement with financial institutions to offer products and services?

(s) What types of incentives do affinity agreements offer institutions of higher education?

(t) What types of incentives, if any, do students receive for choosing an affinity product?

(u) To what extent do institutions of higher education solicit requests for proposal for affinity agreements? What are some examples of an institution's request for proposal?

(v) Do institutions of higher education provide access to campus property to financial institutions in order to market products or provide workshops?

(w) To what extent are financial products bundled with student ID cards? What percentage of students utilize these bundled financial products (e.g., a student ID card that doubles as a debit card, or closed-loop meal card accepted by local business)? Are there any charges or fees associated with the use of the bundled financial product? If yes, how are they assessed?

(x) To what extent are affinity financial products also bundled with financial education programs? What is the utilization of these education programs and how does it affect student behavior?

(y) How do campus affinity products compare with banking products available to college students that are offered by financial institutions not affiliated with the institution of higher education?

(2) Other financial products marketed to students.

For many students, choosing a bank account is one of their first significant financial decisions, especially since the first banking relationship may last long after graduation. Students who understand how banking products work and when fees will be charged can save hundreds of dollars in fees each year. For example, according to a 2008 FDIC report, while half of young Americans manage to avoid overdraft fees, the other half incurs approximately seven overdrafts each per year.[1]

(a) What types of financial products are tailored to the student consumer segment?

(b) What factors do students and parents consider when choosing financial products tailored for students? Which are the most important factors?

(c) What type of information is helpful in making that decision?

(d) How do financial institutions market these products to students and parents? Do financial institutions purchase enrollment information from third parties? Do financial institutions engage marketing consultants who specialize in the student consumer segment?

(e) What types of discounts and benefits are offered to students who sign up for a student banking account?

(f) What percentage of students sign up for student banking from banks and credit unions that are located on or in close proximity to the campus?

(g) What types of issues/complaints do students/parents have with these accounts?

(h) On average, how much does a student pay in fees per year?

(i) Which fees do students get charged most often?

(j) What are the features of the different types of financial products and services that banks and credit unions offer to students? Are these financial products marketed as free checking for students?

(k) What restrictions do consumers need to satisfy in order to qualify for the student banking product or services? For example, does a student need to be enrolled in school full time or attend a particular institution? How is a student's status verified (e.g., student ID, transcript, notice of enrollment)?

(l) Are the terms and conditions of student banking products (including, for example, amount and frequency of fees or penalties) clearly disclosed, disclosed in a timely manner, and easy to understand? Have students had difficulty understanding and/or complying with these terms and conditions? Please provide examples.

(m) What percentage of student accounts have parents and/or family members as co-signers or joint account holders?

(n) To what extent do students use general purpose reloadable cards? How do institutions of higher education and financial institutions market these cards to students?

(o) How many students opt in to overdraft coverage?

(p) Do students usually sign up for their new account online or through a live interaction?

(q) How many student account holders do financial institutions serve?

(r) What percentage of students maintain an account or relationship with the financial institution after graduation or separation from college? After a student graduates or separates from college how does their relationship with their financial institution change

[1] FDIC, *FDIC Study of Bank Overdraft Programs November 2008,* 79 (2008).

(e.g., do they sign up for additional products and services)?

Dated: January 30, 2013.

Garry Reeder,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2013–02428 Filed 2–4–13; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 13–C0003]

Whalen Furniture Manufacturing, Inc., d/b/a Bayside Furnishings, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Whalen Furniture Manufacturing, Inc., d/b/a Bayside Furnishings, containing a civil penalty of $725,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 20, 2013.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 13–C0003, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Mary B. Murphy, Assistant General Counsel, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7809.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: January 31, 2013.

Todd A. Stevenson,

Secretary.

UNITED STATES OF AMERICA

CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of: WHALEN FURNITURE MANUFACTURING, INC. d/b/a Bayside Furnishings

CPSC Docket No.: 13–C0003

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Whalen Furniture Manufacturing, Inc., d/b/a Bayside Furnishings (''Whalen''), and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') hereby enter into this Settlement Agreement (''Agreement'') under the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2089 (''CPSA''). The Agreement and the incorporated attached Order resolve the Staff's allegations set forth below.

THE PARTIES

2. The Staff is the staff of the Consumer Product Safety Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. §§ 2051–2089.

3. Whalen is a corporation organized and existing under the laws of the State of California, with its principal corporate office located at 1578 Air Wing Road, San Diego, California, 92154.

STAFF ALLEGATIONS

4. Between January 2006 and April 2008, Whalen imported and distributed into the United States approximately 7,739 juvenile beds in the shape of a boat (''Boat Beds'') under the Bayside Furnishings brand. The Boat Beds were sold nationwide, for between $699.00 and $999.00.

5. The Boat Beds included toy chests located as the ''bow'' of each unit with a 20 pound lid that could be placed up and remain in a fully opened or closed position. The Boat Beds are ''consumer products'' ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5), (8) and (11) of the CPSA, 15 U.S.C. § 2052(a)(5), (8) and (11).

6. The Boat Beds are defective because the toy chest lid hinge support mechanism could fail during use, allowing the lid to fall down rapidly. This poses a serious trauma and strangulation hazard and risk of death.

7. On November 2, 2007, Whalen received a report that a toddler died when a toy chest lid fell on his head, trapping his neck and head inside the toy chest.

8. Whalen obtained sufficient information to reasonably support the conclusion that the Boat Beds contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death. Whalen failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. §§ 2064(b)(3) and (4).

9. Despite having information regarding the Boat Bed's defect, Whalen did not file its Full Report with the Commission until March 20, 2008, after the Staff directed Whalen to do so. Whalen knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. § 2068(a)(4) as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

10. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Whalen is subject to civil penalties for its knowing failure to report as required under section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

RESPONSE OF WHALEN FURNITURE MANUFACTURING COMPANY, INC.

11. Whalen denies the Staff's allegations, including but not limited to, that the Boat Beds contained a defect that could create a substantial product hazard or create an unreasonable risk of serious injury or death and that Whalen failed to timely notify the Commission in accordance with section 15(b) of the CPSA, 15 U.S.C. § 2064(b).

12. Whalen believed that the report it received did not represent a legitimate incident. Whalen was aware of no prior injuries involving the lid hinge. The products were tested by a third-party testing agency and passed toy chest safety tests.

AGREEMENT OF THE PARTIES

13. Under the CPSA, the Commission has jurisdiction over this matter and over Whalen.

14. In settlement of the Staff's allegations, Whalen shall pay a civil penalty in the amount of seven hundred twenty-five thousand dollars ($725,000.00) within twenty (20) calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via *www.pay.gov.*

15. The parties enter into this Agreement for settlement purposes only. Neither the Agreement, nor the fact of entering into this Settlement Agreement, constitutes the evidence of, or an admission of, any fault, liability, or

statutory or regulatory violation by Whalen or any admission by Whalen of the accuracy of any allegations made by staff.

16. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the *Federal Register*, in accordance with 16 C.F.R. § 1118.20(f).

17. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Whalen knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) an administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission as to whether Whalen failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

18. The Commission may publicize the terms of the Agreement and the Order.

19. The Agreement and the Order shall apply to and be binding upon Whalen and each of its successors and/or assigns.

20. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Whalen and each of its successors and/or assigns to appropriate legal action.

21. The Agreement may be used in interpreting the Order. Understandings, agreements, representations or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification or alteration is sought to be enforced.

22. If any provision of the Agreement or the Order is held to be illegal, invalid or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Whalen agree that severing the provision materially affects the purpose of the Agreement and the Order.

Dated: January 1, 2013.

WHALEN FURNITURE MANUFACTURING, INC.

By:

Kenneth J. Whalen,

President, Whalen Furniture Manufacturing, Inc., 1578 Air Wing Road, San Diego, CA 92154.

Dated: January 1, 2013.

By:

Sheila A. Millar, Esquire.

Keller and Heckman, LLP,

1001 G Street, NW., Washington, DC 20001, Counsel for Whalen Furniture Manufacturing, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Mary T. Boyle,
Acting General Counsel.

William J. Moore, Jr.,

Trial Attorney, Division of Compliance, Office of the General Counsel.

Dated: January 3, 2013.

By:
Mary B. Murphy,

Assistant General Counsel, Division of Compliance, Office of the General Counsel.

UNITED STATES OF AMERICA

CONSUMER PRODUCT SAFETY COMMISSION

In the Matter of: WHALEN FURNITURE MANUFACTURING, INC. d/b/a Bayside Furnishings

CPSC Docket No.: 13–C0003

ORDER

Upon consideration of the Settlement Agreement entered into between Whalen Furniture Manufacturing, Inc. (''Whalen''), and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Whalen, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ORDERED that the Settlement Agreement be, and is, hereby, accepted; and it is

FURTHER ORDERED that Whalen shall pay a civil penalty in the amount of seven hundred twenty-five thousand dollars ($725,000.00) within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made electronically to the CPSC via *www.pay.gov.* Upon the failure of Whalen to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Whalen at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *31st* day of *January,* 2013.

BY ORDER OF THE COMMISSION:

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2013–02442 Filed 2–4–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of the Notice of Intent To Prepare a Draft and Final Supplemental Environmental Impact Statement for Reach 1A on the Herbert Hoover Dike Major Rehabilitation Project, Martin and Palm Beach Counties

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice; cancellation.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (USACE) hereby cancels its Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS) for Reach 1A on the Herbert Hoover Dike (HHD) Major Rehabilitation Project, as published in the **Federal Register**, March 9, 2009 (74 FR 10038).

The USACE issued a Notice of Availability (NOA) for the Draft SEIS on June 25, 2010 (75 FR 36386). A public meeting was held in Canal Point on July 22, 2010 to present the Draft SEIS.

The cancellation of the subject SEIS is necessitated due to a change in scope of the rehabilitation project. The initial focus of the HHD Major Rehabilitation Report (MRR) from 2000 divided the 143 miles dike into eight Reaches with the initial focus on Reach 1. This Reach by Reach approach is being replaced with a system-wide risk reduction approach as required for safety modifications to dams.

FOR FURTHER INFORMATION CONTACT: Questions may be forwarded to Ms. Angela Dunn, Environmental Branch, Planning Division, Jacksonville District, Corps of Engineers, Post Office Box 4970, Jacksonville, FL 32232–0019, Phone: 904–232–2108.

SUPPLEMENTARY INFORMATION: The supplemental MRR will be replaced with a system-wide Dam Safety Modification (DSM) Report. Environmental documentation will be prepared and coordinated in conjunction with the system wide DSM Report as required by the National Environmental Policy Act.

Dated: January 16, 2013.

Eric P. Summa,

Chief, Environmental Branch.

[FR Doc. 2013–02459 Filed 2–4–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of the Notice of Intent To Prepare a Draft and Final Supplemental Environmental Impact Statement for Reach 1B, C, and D on the Herbert Hoover Dike Major Rehabilitation Project, Martin and Palm Beach Counties

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice; cancellation.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (USACE) hereby cancels its Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS) for Reach 1B, C, and D on the HHD Major Rehabilitation Project, as published in the **Federal Register**, July 28, 2009 (74 FR 37190). The cancellation of the subject SEIS is necessitated due to a change in scope of the rehabilitation project. The initial focus of the HHD Major Rehabilitation Report (MRR) from 2000 divided the 143 miles dike into eight Reaches with the initial focus on Reach 1. This Reach by Reach approach is being replaced with a system-wide risk reduction approach as required for safety modifications to dams.

FOR FURTHER INFORMATION CONTACT: Questions may be forwarded to Ms. Angela Dunn, Environmental Branch, Planning Division, Jacksonville District, Corps of Engineers, Post Office Box 4970, Jacksonville, FL 32232–0019, Phone: 904–232–2108.

SUPPLEMENTARY INFORMATION: The supplemental MRR will be replaced with a system-wide Dam Safety Modification (DSM) Report. Environmental documentation will be prepared and coordinated in conjunction with the system wide DSM Report as required by the National Environmental Policy Act.

Dated: January 16, 2013.

Eric P. Summa,

Chief, Environmental Branch.

[FR Doc. 2013–02460 Filed 2–4–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Cancellation of the Notice of Intent To Prepare a Draft and Final Supplemental Environmental Impact Statement for Reaches 2 and 3 on the Herbert Hoover Dike Major Rehabilitation Project, Palm Beach and Glades Counties, FL

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice; cancellation.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers (USACE) hereby cancels its Notice of Intent (NOI) to prepare a Supplemental Environmental Impact Statement (SEIS) for Reaches 2 and 3 on the HHD Major Rehabilitation Project, as published in the **Federal Register**, August 9, 2006 (71 FR 45539). The USACE issued an NOA for the Draft SEIS on December 22, 2006 (71 FR 77013). A public meeting was held in Clewiston on January 10, 2007 to present the Draft SEIS.

The USACE issued a second NOI, published in the **Federal Register**, August 31, 2009 (74 FR 44828), due to a revision to the preferred alternative discussed and coordinated in the December 2006 Draft SEIS.

The cancellation of the subject SEIS is necessitated due to a change in scope of the rehabilitation project. The initial focus of the HHD Major Rehabilitation Report (MRR) from 2000 divided the 143 miles dike into eight Reaches with the initial focus on Reach 1. This Reach by Reach approach is being replaced with a system wide risk reduction approach as required for safety modifications to dams.

FOR FURTHER INFORMATION CONTACT: Questions may be forwarded to Ms. Angela Dunn, Environmental Branch, Planning Division, Jacksonville District, Corps of Engineers, Post Office Box 4970, Jacksonville, FL 32232–0019, Phone: 904–232–2108.

SUPPLEMENTARY INFORMATION: The supplemental MRR will be replaced with a system wide Dam Safety Modification (DSM) Report. Environmental documentation will be prepared and coordinated in conjunction with the system wide DSM Report.

Dated: January 16, 2013.

Eric P. Summa,

Chief, Environmental Branch.

[FR Doc. 2013–02458 Filed 2–4–13; 8:45 am]

BILLING CODE 3720–58–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: RP13–459–000.
Applicants: Trailblazer Pipeline Company LLC.
Description: 4Q 2012 Penalty Credit Revenue Report.
Filed Date: 1/22/13.
Accession Number: 20130122–5241.
Comments Due: 5 p.m. ET 2/4/13.

Docket Numbers: RP13–473–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Secondary Scheduling Priorities to be effective 4/1/2013.
Filed Date: 1/24/13.
Accession Number: 20130124–5072.
Comments Due: 5 p.m. ET 2/5/13.

Docket Numbers: RP13–474–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 01/24/13 Negotiated Rates—Sequent Energy Management (HUB) 3075–89 to be effective 1/23/2013.
Filed Date: 1/24/13.
Accession Number: 20130124–5104.
Comments Due: 5 p.m. ET 2/5/13.

Docket Numbers: RP13–475–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 01/24/13 Negotiated Rates—United Energy Trading (HUB) 5095–89 to be effective 1/23/2013.
Filed Date: 1/24/13.
Accession Number: 20130124–5106.
Comments Due: 5 p.m. ET 2/5/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–110–001.
Applicants: Discovery Gas Transmission LLC.
Description: NAESB V2.0—2nd Compliance to be effective 12/1/2012.
Filed Date: 1/24/13.
Accession Number: 20130124–5100.
Comments Due: 5 p.m. ET 2/5/13.

Any person desiring to protest in any the above proceedings must file in

accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, 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 January 25, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–02493 Filed 2–4–13; 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: ER10–2331–018; *ER10–2343–018; ER10–2319–017; ER10–2320–017; ER10–2317–016; ER10–2322–018; ER10–2324–017; ER10–2325–016; ER10–2332–017; ER10–2326–018; ER10–2327–019; ER10–2328–017; ER11–4609–016; ER10–2330–018.*

Applicants: J.P. Morgan Ventures Energy Corporation, J.P. Morgan Commodities Canada Corporation, BE Alabama LLC, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Louisiana LLC, BE Rayle LLC, Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., Central Power & Lime LLC, Triton Power Michigan LLC, Utility Contract Funding, L.L.C.

Description: JPMorgan Sellers Notice of Non-Material Change in Status re: Canadian Hills Wind, LLC.

Filed Date: 1/28/13.

Accession Number: 20130128–5245.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER12–540–004; *ER12–539–004; ER10–1414–003; ER11–1881–005; ER10–3166–003; ER12–2159–002; ER11–1890–005; ER11–1882–005; ER10–1821–004; ER10–1346–004; ER10–1406–004; ER10–1348–004; ER12–2205–003; ER11–1883–005; ER11–2534–004; ER11–1885–005; ER10–1416–004; ER11–1892–005; ER11–1886–005; ER11–4475–004; ER11–1893–005; ER11–1887–005; ER11–1889–005; ER11–1894–005.*

Applicants: APDC, Inc., Goshen Phase II LLC, Atlantic Power Energy Services (US) LLC, Auburndale Power Partners, Limited Partnership, Burley Butte Wind Park, LLC, Cadillac Renewable Energy, LLC, Canadian Hills Wind, LLC, Camp Reed Wind Park, LLC, Golden Valley Wind Park, LLC, Frederickson Power LP, Lake Cogen, Ltd., Manchief Power Company LLC, Meadow Creek Project Company LLC, Milner Dam Wind Park, LLC, Morris Cogeneration, LLC, Oregon Trail Wind Park, LLC, Pasco Cogen, Ltd., Payne's Ferry Wind Park, LLC, Pilgrim Stage Station Wind Park, LLC, Rockland Wind Farm LLC, Salmon Falls Wind Park, LLC, Thousand Springs Wind Park, LLC, Tuana Gulch Wind Park, LLC, Yahoo Creek Wind Park, LLC.

Description: Notice of Non-Material Change in Status of APDC, Inc., et al.

Filed Date: 1/28/13.

Accession Number: 20130128–5273.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–353–002.

Applicants: Alcoa Power Generating Inc.

Description: Executed APGI–SMT IA for eTariff to be effective 1/28/2013.

Filed Date: 1/28/13.

Accession Number: 20130128–5083.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–355–002.

Applicants: Alcoa Power Generating Inc.

Description: Executed APGI–TVA IA for eTariff to be effective 1/28/2013.

Filed Date: 1/28/13.

Accession Number: 20130128–5086.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–772–000.

Applicants: NorthWestern Corporation.

Description: SA 576—WKN Montana II LGIA—1st Revised, Amended Update to Redline to be effective N/A.

Filed Date: 1/28/13.

Accession Number: 20130128–5000.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–804–000.

Applicants: Florida Power Corporation.

Description: Revised Rate Schedule No. 218 of Florida Power Corporation to be effective 3/29/2013.

Filed Date: 1/28/13.

Accession Number: 20130128–5057.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–805–000.

Applicants: Duke Energy Carolinas, LLC.

Description: NCEMC NITSA Amendment (2013) to be effective 1/1/2013.

Filed Date: 1/28/13.

Accession Number: 20130128–5095.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–806–000.

Applicants: PJM Interconnection, L.L.C.

Description: Queue Position #W3–032A—Original Service Agreement Nos. 3483 & 3484 to be effective 12/28/2012.

Filed Date: 1/28/13.

Accession Number: 20130128–5097.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–807–000.

Applicants: American Transmission Systems, Incorporation, PJM Interconnection, L.L.C.

Description: ATSI submits Notice of Cancellation of PJM Service Agreement No. 2814 to be effective 1/29/2013.

Filed Date: 1/28/13.

Accession Number: 20130128–5099.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–808–000.

Applicants: PJM Interconnection, L.L.C.

Description: Queue Position #X1–108—Original Service Agreement No. 3478 to be effective 12/11/2012.

Filed Date: 1/28/13.

Accession Number: 20130128–5100.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–809–000.

Applicants: Duke Energy Carolinas, LLC.

Description: DEC OATT SA Nos. 208, 406, 447 and 448 to be effective 1/1/2013.

Filed Date: 1/28/13.

Accession Number: 20130128–5155.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–810–000.

Applicants: Southern California Edison Company.

Description: Amended LGIA for the El Segundo Project to be effective 1/4/2013.

Filed Date: 1/28/13.

Accession Number: 20130128–5159.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–811–000.

Applicants: PacifiCorp.

Description: OATT Revised Attachment S to be effective 4/1/2013.

Filed Date: 1/28/13.

Accession Number: 20130128–5167.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–812–000.

Applicants: Meadow Creek Project Company LLC.

Description: Change in Category Status in NW Region to be effective 3/29/2013.

Filed Date: 1/28/13.

Accession Number: 20130128–5204.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–813–000.

Applicants: Western Massachusetts Electric Company.

Description: Western Massachusetts Electric Company submits tariff filing per 35.13(a)(2)(iii: HG&E Revised Asset

Demarcation Agreement to be effective 12/28/2012.

Filed Date: 1/28/13.

Accession Number: 20130128–5234.

Comments Due: 5 p.m. ET 2/19/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 29, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–02494 Filed 2–4–13; 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: ER10–2566–004; *ER10–1760–004.*

Applicants: Duke Energy Carolinas, LLC, Carolina Power & Light Company.

Description: Notice of Change in Status filing of Duke Energy Carolinas, LLC, et al.

Filed Date: 1/29/13.

Accession Number: 20130129–5121.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–736–001.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Niagara Mohawk Power Corporation submits tariff filing per 35.17(b): Correction to LGIA No. 1145 between National Grid and AG Energy to be effective 6/8/2012.

Filed Date: 1/29/13.

Accession Number: 20130129–5128.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–739–000; *ER13–739–001.*

Applicants: Texpo Power, LP.

Description: Texpo Power, LP submits second supplemental submission to the January 10 and 23, 2013 filings.

Filed Date: 1/29/13.

Accession Number: 20130129–5108.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–740–000; *ER13–740–001.*

Applicants: EnerPenn USA LLC.

Description: EnerPenn USA LLC submits second supplemental submission to the January 10 and 23, 2013 filings.

Filed Date: 1/29/13.

Accession Number: 20130129–5109.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–814–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation-Original SA No. 2858 in Dkt No. ER11–3515–000 to be effective 12/31/2012.

Filed Date: 1/29/13.

Accession Number: 20130129–5032.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–815–000.

Applicants: Tiverton Power Inc.

Description: Tiverton Power Inc. submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 1/18/2013.

Filed Date: 1/29/13.

Accession Number: 20130129–5044.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–816–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement No. 3480; Queue No. W1–107 to be effective 1/3/2013.

Filed Date: 1/29/13.

Accession Number: 20130129–5051.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–817–000.

Applicants: MATL LLP.

Description: MATL LLP submits tariff filing per 35.1: MATL Enbridge Baseline Filing to be effective 1/29/2013.

Filed Date: 1/29/13.

Accession Number: 20130129–5052.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–818–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: Cost Reimbursement Agreement No. 1951 NYPA/NiMo re: mv trnsmssn fclts to be effective 11/9/2012.

Filed Date: 1/29/13.

Accession Number: 20130129–5084.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–819–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Revised Added Facilities Rate for Tie-Line Agreements to be effective 1/1/2013.

Filed Date: 1/29/13.

Accession Number: 20130129–5088.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: ER13–820–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Revisions to Attachment AO—Agreement Establishing External Generation to be effective 3/30/2013.

Filed Date: 1/29/13.

Accession Number: 20130129–5091.

Comments Due: 5 p.m. ET 2/19/13.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA12–4–000.

Applicants: Spring Canyon Energy LLC, Judith Gap Energy LLC, Invenergy TN LLC, Wolverine Creek Energy LLC, Grays Harbor Energy LLC, Forward Energy LLC, Willow Creek Energy LLC, Sheldon Energy LLC, Hardee Power Partners Limited, Spindle Hill Energy LLC, Invenergy Cannon Falls LLC, Beech Ridge Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Vantage Wind Energy LLC, Stony Creek Energy LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Bishop Hill Energy LLC, Bishop Hill Energy III LLC and California Ridge Wind Energy LLC.

Description: Generation Site Report Fourth Quarter 2012 of Spring Canyon Energy LLC, et al.

Filed Date: 1/29/13.

Accession Number: 20130129–5068.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: LA12–4–000.

Applicants: Iberdrola Renewables, LLC, Atlantic Renewable Projects II LLC, Barton Windpower LLC, Big Horn Wind Project LLC, Big Horn II Wind Project LLC, Blue Creek Wind Farm LLC, Buffalo Ridge I LLC, Buffalo Ridge II LLC, Casselman Windpower LLC, Colorado Green Holdings LLC, Dillon Wind LLC, Dry Lake Wind Power, LLC, Dry Lake Wind Power II LLC, Elk River Windfarm, LLC, Elm Creek Wind, LLC, Elm Creek Wind II LLC, Farmers City Wind, LLC, Flat Rock Windpower LLC, Flat Rock Windpower II LLC, Flying Cloud Power Partners, LLC, Groton Wind, LLC, Hardscrabble Wind Power LLC, Hay Canyon Wind LLC, Juniper Canyon Wind Power LLC, Klamath

Energy LLC, Klamath Generation LLC, Klondike Wind Power LLC, Klondike Wind Power II LLC, Klondike Wind Power III LLC, Leaning Juniper Wind Power II LLC, Lempster Wind, LLC, Locust Ridge Wind Farm, LLC, Locust Ridge II, LLC, Manzana Wind LLC, MinnDakota Wind LLC, Moraine Wind LLC, Moraine Wind II LLC, Mountain View Power Partners III, LLC, New England Wind, LLC, New Harvest Wind Project LLC, Northern Iowa Windpower II LLC, Pebble Springs Wind LLC, Providence Heights Wind, LLC, Rugby Wind LLC, San Luis Solar LLC, Shiloh I Wind Project, LLC, South Chestnut LLC, Star Point Wind Project LLC, Streator-Cayuga Ridge Wind Power LLC, Trimont Wind I LLC, Twin Buttes Wind LLC.

Description: Quarterly Land Acquisition Report of Iberdrola Renewables, LLC, et al.

Filed Date: 1/29/13.

Accession Number: 20130129–5089.

Comments Due: 5 p.m. ET 2/19/13.

Docket Numbers: LA12–4–000.

Applicants: Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Power Company.

Description: Quarterly Land Acquisition Report of Southern Company Services, Inc.

Filed Date: 1/29/13.

Accession Number: 20130129–5090.

Comments Due: 5 p.m. ET 2/19/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 29, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–02496 Filed 2–4–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OAR–2013–0020; A–1–FRL–9776–2]

Adequacy Status of Motor Vehicle Emission Budgets for Transportation Conformity Purposes; Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the 2017 and 2025 motor vehicle emissions budgets (MVEBs) in the June 22, 2012 Connecticut State Implementation Plan (SIP) revision are adequate for transportation conformity purposes. The submittal includes MOVES2010 motor vehicle emissions budgets for 2017 and 2025 for the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT fine particle ($PM_{2.5}$) nonattainment area. On March 2, 1999, the D.C. Circuit Court ruled that budgets in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the State of Connecticut can use the MOVES2010 motor vehicle emissions budgets from the submitted plan for future conformity determinations for the Connecticut portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT $PM_{2.5}$ area.

DATES: These motor vehicle emissions budgets are effective February 20, 2013.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Environmental Scientist, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Five Post Office Square, Suite 100 (CAQ), Boston, MA 02109–3912, (617) 918–1668, *cooke.donald@epa.gov*.

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

Today's notice is simply an announcement of a finding that we have already made. EPA New England sent a letter to Connecticut Department of Energy and Environmental Protection on January 8, 2013, stating that the 2017 and 2025 MOVES2010 motor vehicle emissions budgets in the June 22, 2012 State Implementation Plan (SIP) are adequate for transportation conformity purposes. This finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/state resources/transconf/adequacy.htm*, (once there, click on ''What SIP submissions has EPA already found adequate or inadequate?''). The adequate motor vehicle emissions budgets (MVEBs) are provided in the following table:

ADEQUATE MOTOR VEHICLE EMISSIONS BUDGETS

	Direct $PM_{2.5}$ (tons per year)	NO_X (tons per year)
Year 2017 MVEBs for the Connecticut Portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 1997 annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ Area	575.8	12,791.8
Year 2025 MVEBs for the Connecticut Portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 1997 annual $PM_{2.5}$ and 2006 24-hour $PM_{2.5}$ Area	516	9,728.1

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do conform. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted

SIP budgets in a May 14, 1999 memorandum entitled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.'' Additional guidance on EPA's adequacy process was published in a July 1, 2004 **Federal Register** final rulemaking, ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (69 FR 40004). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: January 25, 2013.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2013–02492 Filed 2–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0049; FRL–9377–7]

Rodenticides; Notice of Intent To Cancel Registrations of, and Notice of Denial of Applications for, Certain Rodenticide Bait Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 6(b) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA hereby announces its intent to cancel the registration of 12 rodenticide products identified in this Notice. Pursuant to section 3(c)(6) of FIFRA, EPA hereby announces the denial of applications for registration of 2 products identified in this Notice. This Notice summarizes EPA's basis for these actions, and explains how eligible persons may request a hearing and the consequences of requesting or failing to request such a hearing.

DATES: Affected registrants must request a hearing within 30 days of receiving EPA's Notice of Intent to Cancel, or on or before March 7, 2013, whichever occurs later. Other adversely affected parties must request a hearing on or before March 7, 2013.

ADDRESSES: All persons who request a hearing must comply with the Agency's Rules of Practice Governing Hearings, 40 CFR part 164. Requests for hearing must be filed with the Hearing Clerk in EPA's Office of Administrative Law Judges (OALJ), in conformance with the requirements of 40 CFR part 164. The OALJ uses different addresses depending on the delivery method. Please see Unit VI. for specific instructions.

FOR FURTHER INFORMATION CONTACT: Neil Anderson, Pesticide Re-evaluation Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8187; email address: *anderson.neil@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the agency taking?

EPA is announcing its intent to cancel the registration of each of the pesticide products listed in Table 1:

TABLE 1—PESTICIDE PRODUCTS SUBJECT TO CANCELLATION

Product	EPA Reg. No.	Registrant	Active ingredient	Deficiency
D-Con Concentrate Kills Rats & Mice	3282–3	Reckitt Benckiser, Inc ...	Warfarin	Consumer product in a powder form and packaged without a protective bait station.
D-Con Ready Mixed Kills Rats & Mice.	3282–4	Reckitt Benckiser, Inc ...	Warfarin	Consumer product in a pelleted form and packaged without a protective bait station.
D-Con Mouse Prufe Kills Mice	3282–9	Reckitt Benckiser, Inc ...	Warfarin	Consumer product in a pelleted form and packaged without a protective bait station.
D-Con Pellets Kills Rats & Mice	3282–15	Reckitt Benckiser, Inc ...	Warfarin	Consumer product in a pelleted form and packaged without a protective bait station.
D-Con Mouse Prufe II	3282–65	Reckitt Benckiser, Inc ...	Brodifacoum ..	Consumer product: (1) In a pelleted form and packaged without a protective bait station, and (2) contains a second generation anticoagulant rodenticide (SGAR).
D-Con Pellets Generation II	3282–66	Reckitt Benckiser, Inc ...	Brodifacoum ..	Consumer product: (1) In a pelleted form and packaged without a protective bait station, and (2) containing a SGAR.
D-Con Bait Pellets II	3282–74	Reckitt Benckiser, Inc ...	Brodifacoum ..	Consumer product: (1) In a pelleted form and packaged without a protective bait station, and (2) containing a SGAR.
D-Con Ready Mixed Generation II ...	3282–81	Reckitt Benckiser, Inc ...	Brodifacoum ..	Consumer product: (1) In a pelleted form and packaged without a protective bait station, and (2) containing a SGAR.
D-Con Mouse-Prufe III	3282–85	Reckitt Benckiser, Inc ...	Difethialone ...	Consumer product: (1) In a pelleted form and packaged without a protective bait station, and (2) containing a SGAR.
D-Con Bait Pellets III	3282–86	Reckitt Benckiser, Inc ...	Difethialone ...	Consumer product: (1) In a pelleted form and packaged without a protective bait station, and (2) containing a SGAR.
D-Con II Ready Mix Baitbits III	3282–87	Reckitt Benckiser, Inc ...	Difethialone ...	Consumer product: (1) In a pelleted form and packaged without a protective bait station, and (2) containing a SGAR.
D-Con Bait Packs III	3282–88	Reckitt Benckiser, Inc ...	Difethialone ...	Consumer product: (1) In a pelleted form and packaged without a protective bait station, and (2) containing a SGAR.

EPA is also announcing its denial of the applications for registration of the pesticide products listed in Table 2:

TABLE 2—PESTICIDE PRODUCT REGISTRATIONS SUBJECT TO DENIAL

Product	EPA Application No.	Registrant	Active ingredient	Deficiency
D-Con Bait Station XV Kills Mice	3282–RNU ...	Reckitt Benckiser Inc	Brodifacoum	Consumer product containing a SGAR.
D-Con Bait Station XVI Kills Mice ...	3282–RNL	Reckitt Benckiser Inc	Brodifacoum	Consumer product containing a SGAR.

In addition, this Notice summarizes EPA's basis for these actions (see Unit III.), and explains how eligible persons may request a hearing and the consequences of requesting or failing to request such a hearing (see Unit VI.).

B. What is the Agency's authority for taking these actions?

The Agency's authority is contained in FIFRA sections 3(c)(6) and 6(b), 7 U.S.C. 136a(c)(6) and 136d(b).

C. Who is affected by this action?

This announcement will directly affect the pesticide registrant listed in Tables 1 and 2, and others who may sell, distribute, or use the products listed in Table 1. This announcement may also be of particular interest to a wide range of stakeholders including environmental and human health advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the other specific entities that may be affected by this action.

D. How can I get copies of this document and other related information?

To facilitate public access to this document and additional information supporting this action, EPA has established a docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0049. Please note that this docket provides access to related information, but cannot be used for requesting a hearing. Please see Unit VI. for instructions on submitting a request for a hearing.

The docket is available at *http://www.regulations.gov* and at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket that is available at *http://www.epa.gov/dockets.*

II. Legal Authority

With minor exceptions not at issue here, as provided in FIFRA section 3(a), a pesticide product may not be lawfully sold or distributed in the United States unless and until the product is registered by EPA. 7 U.S.C. 136a(a). A pesticide registration is a license allowing a pesticide product to be sold, distributed, and used for specified uses in accordance with use instructions, precautions, and other terms and conditions established by EPA when it grants the registration.

As a general matter, in order to obtain or maintain a registration for a pesticide under FIFRA, an applicant or registrant must demonstrate that the pesticide satisfies the statutory standard for registration, section 3(c)(5) of FIFRA. 7 U.S.C. 136a(c)(5). That standard requires, among other things, that the pesticide performs its intended function without causing ''unreasonable adverse effects on the environment.'' The term ''unreasonable adverse effects on the environment'' is defined under FIFRA section 2(bb) as ''any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide.'' 7 U.S.C. 136(bb). This standard requires a finding that the risks associated with the use of a pesticide are justified by the benefits of such use, when the pesticide is used in compliance with the terms and conditions of registration or in accordance with commonly recognized practices. *See Defenders of Wildlife* v. *Administrator, EPA,* 882 F.2d 1294, 1298–99 (8th Cir. 1989) (describing FIFRA's required balancing of risks and benefits). The burden of demonstrating that a pesticide product satisfies the statutory criteria for registration is at all times on the proponents of the initial or continued registration, and continues as long as the registration is in effect. 40 CFR 164.80(b). *See also, Industrial Union Dept.* v. *American Petroleum Institute,* 448 U.S. 607, 653 n.61 (1980); *Stearns Electric Paste* v. *EPA* 461 F.2d 293 (7th Cir. 1972); *Environmental Defense Fund* v. *EPA,* 510 F.2d 1292, 1297 (D.C. Cir. 1975)).

Under FIFRA section 6(b), the Agency may issue a Notice of Intent to Cancel the registration of a pesticide product whenever it appears either that:

1. A pesticide or its labeling or other material required to be submitted does not comply with FIFRA, or

2. When used in accordance with widespread and commonly recognized practice, the pesticide generally causes unreasonable adverse effects on the environment. 7 U.S.C. 136d (b).

If a hearing is requested by an adversely affected person, the final order concerning cancellation of the product is not issued until after an administrative hearing.

In the cancellation hearing, the Agency has the burden of going forward to present an affirmative case for cancellation. 40 CFR 164.80(a). However, the ultimate burden of proof is on the proponent of the registration. 40 CFR 164.80(b); *Industrial Union Dept.,* 448 U.S. at 653 n. 61; *Stearns Electric Paste* v. *EPA* 461 F.2d 293, (7th Cir. 1972). Once the Agency makes its *prima facie* case that the risks of the product's continued use fail to meet the FIFRA standard for registration, the responsibility to demonstrate that the product meets the FIFRA standard is upon the proponents of continued registration. 40 CFR 164.80(b); *Dow* v *Ruckelshaus,* 477 F.2d 1317, 1324 (8th Cir. 1973).

FIFRA Section 3(c)(6) provides that where EPA determines that an application for registration does not meet the registration criteria of section 3(c)(5) for registration, the Agency must publish a notice of denial and the reasons therefore. Section 3(c)(6) further provides that upon such notification of the denial, the applicant for registration, or other interested person with the concurrence of the applicant, shall have

the same remedies as provided for in section 6.

III. Basis for Issuance of Notice of Intent To Cancel

EPA has determined that the rodenticide registrations listed in Table 1 should be cancelled because they cause unreasonable adverse effects on the environment. EPA has further determined that the applications for registration listed in Table 2 should be denied because they do not meet the standard for registration under FIFRA. The Agency's rationale for cancellation and denial is set forth more fully in the document ''Statement of Reasons and Factual Basis for Notice of Intent to Cancel and Notice of Denial of Certain Rodenticide Bait Product Registrations and Applications'' dated January 29, 2013. That document can be found in docket EPA–HQ–OPP–2013–0049 at *www.regulations.gov.* While interested parties should consult that document for a more detailed rationale of the bases for cancellation and denial, a short summary of the rationale follows.

The purpose of this action is to protect children, pets, and non-target wildlife from unnecessary, unreasonable exposures to certain consumer-use rodenticides. EPA has determined that all consumer-use rodenticide bait products must be used in, and sold with, protective bait stations reasonably anticipated not to release the rodenticide bait; and has further determined that consumer-use rodenticides must not contain second-generation anti-coagulants as active ingredients. The products subject to this Notice all fail to meet at least one of these criteria, and many fail to meet both.

The rodenticides subject to this Notice are designed to kill commensal mice and rats. As mammalian poisons, they are also highly toxic to other mammals and birds. EPA has been concerned about the risks of consumer-use rodenticides to children, pets, and non-target wildlife for many years. This action is an important step in the Agency's continuing efforts to mitigate unnecessary risks associated with rodenticides, while still assuring that people have multiple effective tools for controlling mice and rats in homes.

A. Bait Stations

For many years, EPA has required rodenticide products used to control commensal mice and rats in and around homes to have label language requiring that the products must be applied in tamper-resistant bait stations if children, pets, domestic animals, or non-target wildlife may be exposed to the product. Unfortunately, that requirement has not proved effective in preventing exposures to children, pets, and wildlife. Separate tamper-resistant bait stations are rarely found in the stores that sell the products subject to this Notice, and thousands of children each year are exposed to rodenticides in the home. Each exposure incident has the potential to cause adverse effects owing to the amount of active ingredient in a single placement of any of the products subject to this Notice. While it is fortunate that children rarely have serious health consequences from exposures to rodenticides used in and around homes, one percent of exposed children (an average of 128 per year from 1999–2005) were reported to have experienced symptoms from the exposure. While EPA is unaware of any fatal or untreatable incidents involving children, pets are not so fortunate, and on average more than 100 pet deaths are reported each year from exposure to rodenticides. And even though children do not routinely suffer significant adverse health consequences, EPA does not believe the great bulk of children's exposures to rodenticides are risk-free or should be taken lightly. To the contrary, the incidence of young children being exposed to rodenticides in the home is unnecessary and poses real risks that should no longer be tolerated.

The risks to young children posed by rodenticide exposure are clearly worthy of regulatory action when compared to other risks Congress has directed EPA to address. In 1996, Congress unanimously adopted the Food Quality Protection Act (FQPA), amending both FIFRA and the Federal Food, Drug, and Cosmetic Act (FFDCA) to assure that children receive special protection from pesticide residues in food, and that such residues not be allowed in food unless EPA can find a reasonable certainty of no harm from exposure to those residues. Under this risk-only standard, no level of economic benefits can justify pesticide residues in food that do not meet the reasonable certainty of no harm standard.

The exposures children can get from eating small amounts of rodenticide bait well exceed the safety standard promulgated in the FQPA. EPA fully appreciates that rodenticides are governed by the FIFRA risk-benefit standard rather than the FFDCA reasonable certainty of no harm standard, and that any hearing on this Notice must consider the benefits of rodenticide use against the risks of such use. Nevertheless, the FFDCA criteria for unsafe exposures to pesticides in food provide a meaningful benchmark. If Congress would not allow these levels of pesticide exposure in food—no matter how beneficial the pesticide use might be to agricultural producers—it is reasonable to infer that children should not suffer the same levels of exposures through other routes absent important countervailing benefits.

EPA has looked at the benefits of allowing continued use of consumer-use rodenticide products not in appropriately protective bait stations reasonably anticipated not to release the rodenticide bait, and has concluded that the benefits of such products are generally minimal, and are insufficient to justify the increased risks to children, pets, and non-target wildlife. It is worth noting at the outset that existing labels of the products subject to this Notice do not allow the use of the products in or around homes if children, pets, or non-target wildlife can get access to the product; in such situations the labels direct users to apply the product only in tamper-resistant bait stations. Unfortunately, in the past this label language has failed to prevent many thousands of unlawful exposures of children, pets, and non-target wildlife to rodenticides. Now, however, consumer-use rodenticide products are commercially available with tamper-resistant bait stations, and in block form that prevents bait from easily escaping the stations. These bait-station products are effective for use against commensal rodents; products similar to these have been widely and successfully used by professional applicators for many years. The great majority of the use of consumer-use rodenticide products is targeted against house mice; bait-station products targeting mice are commercially available at essentially the same price as the products subject to this Notice. There is simply no reason today to allow the continued exposure of children, pets, and non-target wildlife to the rodenticide products subject to this Notice when safer, effective, and economically comparable products are available. These unnecessary, and in most cases unlawful, exposures of children, pets, and non-target wildlife meet the unreasonable risk standard for cancellation and denial.

While there is some increased cost associated with bait station products targeting commensal rats, EPA believes that the increased cost to those consumers who now use unprotected rodenticide baits to control commensal rats in residences where children and pets are never present is acceptable under FIFRA taking into account: The small amount of consumer-use products currently used to target commensal rats; the availability of a number of pesticidal

and non-pesticidal alternatives for effectively controlling commensal rats; the lack of success of existing labels to prevent exposures to children, pets, and non-target wildlife; the risks associated with those exposures; and the difficulties in preventing unprotected ''rat'' products sold in the general consumer market from being diverted to the much more common use against mice. EPA does not believe it appropriate, in making these cancellation and denial decisions, to consider price increases for consumers who are currently using products subject to this Notice inappropriately, in circumstances where children, pets, and/or non-target wildlife can get access to the placed product.

B. Second-Generation Anti-Coagulants

As noted earlier, all rodenticides are highly toxic to non-target mammals and birds. The risks associated with ''primary'' exposure (exposure where non-target wildlife consumes the bait intended for rodents) to consumer-use rodenticides are similar across the various rodenticide active ingredients, and can be significantly reduced for most species by requiring that such rodenticides be placed in tamper-resistant bait stations. Bait stations will not, however, protect non-target wildlife from a significant portion of ''secondary'' exposure to rodenticides; secondary exposures are those where non-target wildlife gets exposed to rodenticides by preying upon or scavenging poisoned rodents or non-target wildlife.

EPA has assessed the secondary risks of rodenticides, and has determined that the class of rodenticides known as second generation anti-coagulants (SGARs) pose significantly greater risks to predators, particularly raptors, than do the other active ingredients contained in consumer-use rodenticide products—bromethalin and first generation anti-coagulants. SGARs pose greater risks of secondary poisoning primarily because of their greater toxicity; their persistence in tissue; and the potential for poisoned rodents to carry ''super-lethal'' doses (although rodents feeding upon SGARs can consume a lethal dose in a single night's feeding, the effects are delayed for a number of days during which time the rodents can continue to consume more poison, resulting in many times the lethal dose being found in poisoned rodents). Incident reports provide further support for the conclusion that consumer-use SGAR products pose significant risks to non-target mammals and raptors, and that these risks are greater than those posed by the other rodenticide active ingredients.

The greater risks of secondary poisoning of non-target mammalian predators and raptors associated with residential consumer use of SGARs are not supported by commensurate benefits. Other rodenticides registered and available for residential consumer use can provide equally effective control of rodents, at similar costs. Non-chemical control methods will remain available, and the use of rodenticides by professional applicators (and agricultural users) is unaffected by this Notice. There are no benefits associated with the residential consumer use of SGARs that justify the significant risks those products pose to non-target wildlife from secondary-poisoning.

IV. Status of Products That Become Cancelled

A. Timing of Cancellation or Denial of Registration

The cancellation or denial of registration for the specific products identified in Table 1 of Unit I.A. of this document will be final and effective on March 7, 2013 unless a valid hearing request is received regarding that specific rodenticide product.

In the event a hearing is held concerning a particular product, the cancellation or denial of the registration for that product will not become effective except pursuant to a final order issued by the Environmental Appeals Board or (if the matter is referred to the Administrator pursuant to 40 CFR 164.2(g)) the Administrator, or an initial decision of the presiding Administrative Law Judge that becomes a final order pursuant to 40 CFR 164.90(b).

B. Existing Stocks Issues

Existing stocks of cancelled pesticides are those products that were ''released for shipment'' under FIFRA before the effective date of cancellation. This provision addresses two issues: Whether questions concerning the treatment of existing stocks can be raised at any cancellation hearing; and how the Agency intends to treat existing stocks when and if products are cancelled pursuant to this Notice.

1. Whether questions concerning the treatment of existing stocks can be raised at the hearing. It is settled law that existing stocks issues are not required to be a part of a cancellation proceeding, and that the treatment of existing stocks issues is only included as an issue in a cancellation proceeding when the Notice giving rise to the right to a hearing voluntarily identifies and includes existing stocks as an issue for examination. *In the Matter of Cedar Chemical Co., et al.,* 2 E.A.D. 584, nn. 7,9, 1988 WL 525242 (June 9, 1988) (Decision of the Administrator). The Administrator's decision in *Cedar Chemical* on whether existing stocks had to be included as an issue in the hearing was affirmed by the United States Court of Appeals for the Ninth Circuit in *Northwest Food Processors Association* v. *Reilly,* 886 F. 2d 1075, 1078 (9th Cir. 1989). In the case of this rodenticide cancellation Notice, EPA has determined not to include existing stocks as an issue in this hearing. Instead, the only issues for hearing under this Notice are whether the subject products should be cancelled, or the applications should be denied.

2. *Treatment of existing stocks in the event of cancellation.* FIFRA section 6(a)(1) allows the Agency to permit the continued sale and use of existing stocks of pesticides whose use has been cancelled, to the extent the Administrator determines that such sale or use would not be inconsistent with the purposes of this Act. 7 U.S.C. 136d(a)(1). The Agency does not believe that it would be appropriate under FIFRA to allow any further sale or distribution by any person of the products identified in this Notice if this Notice results in the cancellation of such products, and it does not intend to allow any such sale or distribution if this Notice results in the cancellation of such products. First and most importantly, the continued sale and distribution of products cancelled in a proceeding pursuant to this Notice would continue to cause unreasonable adverse effects on health and the environment. Second, the regulated community has been on notice since May 28, 2008 that the Agency intended that the sale and distribution of these products by registrants cease by June 4, 2011. During that period, most registrants have amended existing rodenticide products, or registered new rodenticide products, that conform to EPA's May 28, 2008 regulatory decision and consequently pose significantly less risk to health and the environment, and such rodenticide products are widely available. EPA does not believe it to be consistent with the purposes of FIFRA to continue to put registrants who timely complied with the Agency's 2008 decision, and brought safer products to the market, at a competitive disadvantage relative to registrants who declined to improve their products. Accordingly, EPA has determined that the continued sale and distribution of existing stocks of pesticide products cancelled pursuant to this Notice should

not be permitted, except that EPA intends to allow the limited shipment of existing stocks for the sole purposes of lawful export, proper disposal, or return to the person from whom the holder of the existing stock purchased the product.

V. Mandated FIFRA Reviews

When EPA intends to issue a Notice of Intent to Cancel, it must furnish a draft of that Notice and an analysis of the impact of the proposed action on the agricultural economy to the Secretary of the Department of Agriculture (USDA) for comment at least 60 days prior to issuing the Notice (FIFRA section 6(b), 7 U.S.C. 136d(b)). When a public health use is involved, section 6(b) directs EPA to solicit information from the Department of Health and Human Services (HHS) on the impact of the cancellation on public health control efforts. In addition, the Agency must within the same time period submit the proposed cancellation action to the FIFRA Scientific Advisory Panel (SAP) for comment concerning the impact of the proposed action on health and the environment (FIFRA section 25(d), 7 U.S.C. 136w(d)).

In the event that written comments are received from the USDA, HHS or the SAP within 30 days of such referral, the Agency must publish those comments and the Agency's response to the comments.

EPA provided the draft Notice of Intent to Cancel and Notice of Denial of Registration for Certain Rodenticide Bait Products and documents supporting that Notice to the SAP on November 3, 2011, and to USDA and HHS on November 17, 2011. EPA convened a meeting of the SAP on November 28 through December 1, 2011, to review science issues related to the proposed cancellations. EPA received the SAP's comments on December 29, 2011; EPA received minutes from the SAP meeting (SAP Minutes No. 2011–06: A Set of Scientific Issues Being Considered by the Environmental Protection Agency Regarding: Scientific Conclusions Supporting EPA's FIFRA Section 6(b) Notice of Intent to Cancel Twenty Homeowner Rodenticide Bait Products) on January 4, 2012. These documents are available in docket EPA–HQ–OPP–2011–0718 at *www.regulations.gov.*

USDA advised EPA on April 11, 2012 that it had no comments on the proposed cancellation. On April 20, 2012, the Centers for Disease Control and Prevention (CDC) of the Public Health Service submitted comments on behalf of HHS stating they are supportive of requiring bait stations for products used in buildings and of requirements that end residential consumer use of second generation anticoagulants. On April 20, 2012, EPA posted the letters from USDA and CDC in docket EPA–HQ–OPP–2006–0955 at *www.regulations.gov.*

The letters from USDA and CDC require no response from EPA. The Agency has prepared a response to the comments from the SAP; that response, dated January 29, 2013, can be found in docket EPA–HQ–OPP–2013–0049 at *www.regulations.gov.*

VI. Procedural Matters

This unit explains how eligible persons may request a hearing and the consequences of requesting or failing to request such a hearing.

A. Requesting a Hearing

1. *Who can request a hearing?* A registrant or any other person who is adversely affected by a cancellation or denial of registration as described in this Notice may request a hearing.

2. *When must a hearing be requested?* A request for a hearing by a registrant or applicant for registration must be submitted in writing within 30 days after the date of receipt of the Notice of Intent to Cancel, or within 30 days after publication of this announcement in the **Federal Register**, whichever occurs later. A request for a hearing by any other person adversely affected by the Agency's proposed action must be submitted within 30 days of the date of publication of this Notice in the **Federal Register**. See the **DATES** section of this document.

3. *How must a hearing be requested?* All persons who request a hearing must comply with the Agency's Rules of Practice Governing Hearings, 40 CFR Part 164. Among other requirements, these rules include the following:

i. Each hearing request must specifically identify by registration or accession number each individual pesticide product concerning which a hearing is requested, 40 CFR 164.22(a);

ii. Each hearing request must be accompanied by a document setting forth specific objections which respond to the Agency's reasons for proposing cancellation as set forth in this Notice and/or the related ''Statement of Reasons and Factual Basis for Notice of Intent to Cancel and Notice of Denial of Certain Rodenticide Bait Product Registrations and Applications'' dated January 29, 2013, in docket Id number EPA–HQ–OPP–2013–0049, and state the factual basis for each such objection, 40 CFR 164.22(a); and

iii. Each hearing request must be received by the OALJ within the applicable 30-day period (40 CFR 164.5(a)).

Failure to comply with any one of these requirements will invalidate the request for a hearing and, in the absence of a valid hearing request, result in final cancellation or denial of registration for the product in question by operation of law.

iv. *Where does a person submit a hearing request?* Requests for hearing must be submitted to the OALJ. The OALJ uses different addresses depending on the delivery method. Please note that mail deliveries to Federal agencies are screened off-site, and this security procedure can delay delivery. Documents that a party sends using the U.S. Postal Service must be addressed to the following OALJ mailing address: U.S. Environmental Protection Agency, Office of Administrative Law Judges, 1200 Pennsylvania Avenue NW., Mail Code 1900L, Washington, DC 20460–2001.

Documents that a party hand delivers or sends using a courier or commercial delivery service (such as Federal Express or UPS) must be addressed to the following OALJ hand delivery address: U.S. Environmental Protection Agency, Office of Administrative Law Judges, 1099 14th Street NW., Franklin Court Building, Suite 350, Washington, DC 20005.

B. The Hearing

If a hearing concerning any product affected by this Notice is requested in a timely and effective manner, the hearing will be governed by the Agency's Rules of Practice Governing Hearings, 40 CFR Part 164, and the procedures set forth in Unit VI. Any interested person may participate in the hearing, in accordance with 40 CFR 164.31.

Documents and transcripts will be available in the public docket for the hearing, located at U.S. Environmental Protection Agency, Office of Administrative Law Judges, Franklin Court, Suite 350, 1099 14th St. NW., Washington, DC 20005. The references can be viewed from 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

C. Separation of Functions

EPA's Rules of Practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives (40 CFR 164.7). To facilitate compliance with the

ex parte rule, the following are designated as adjudicatory personnel for purposes of this proceeding: The Administrative Law Judges and their staff, the Environmental Appeals Board and its staff, the Administrator and certain members of her immediate office, and the General Counsel and certain members of his immediate office. None of the persons identified as adjudicatory personnel may discuss the merits of the proceeding with any person with an interest in the proceeding, or representative of such person, except in compliance with 40 CFR 164.7.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: January 29, 2013.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2013–02500 Filed 2–4–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9776–3]

Request for Nominations of Experts to the EPA Office of Research and Development's Board of Scientific Counselors

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is seeking nominations for technical experts to serve on its Board of Scientific Counselors (BOSC), a federal advisory committee to the Office of Research and Development (ORD). Submission of nominations is preferred via the BOSC Web site at: *http://www.epa.gov/osp/bosc/nomination.htm.*

DATES: Nominations should be submitted by April 1, 2013, per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public needing additional information regarding this Notice and Request for Nominations may contact Mr. Greg Susanke, Office of Science Policy, Office of Research and Development, Mail Code 8104–R, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; via phone/voice mail at: (202) 564–9945; via fax at: (202) 565–2911; or via email at: *susanke.greg@epa.gov.* General information concerning the BOSC can be found at the following Web site: *http://www.epa.gov/osp/bosc.*

SUPPLEMENTARY INFORMATION:

Background

The BOSC is a chartered Federal Advisory Committee that was established by the EPA to provide independent scientific and technical peer review, advice, consultation, and recommendations about ORD. As a Federal Advisory Committee, the BOSC conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and related regulations.

The BOSC is comprised of an Executive Committee and six supporting subcommittees currently being formed. Each of these subcommittees will focus on one of ORD's research programs: Air, Climate, and Energy Research Program; Chemical Safety for Sustainability Research Program; Homeland Security Research Program; Human Health Risk Assessment Research Program; Safe and Sustainable Water Resources Research Program; and Sustainable and Healthy Communities Research Program. Please visit *http://www.epa.gov/ord/research-programs.htm* to learn more about these programs.

Members of the BOSC are recognized experts in various scientific, engineering, and social science fields. EPA will consider nominees from academia, industry, business, public and private research institutes or organizations, government (federal, state, local, and tribal) and non-government organizations, and other relevant interest areas. Members are appointed by the EPA Administrator for a period of three years and serve as special government employees. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

Expertise Sought

EPA's BOSC Staff Office is seeking nominations of nationally and internationally recognized scientists and engineers having experience and expertise in one or more of the following areas:

- Atmospheric Science
  - —aerosol chemistry
  - —aerosol physical science
  - —air quality modeling
  - —atmospheric chemistry
  - —atmospheric physics
- Biology
  - —biogeochemistry
  - —cell biology
  - —endocrinology (endocrine disruptors)
  - —microbiology/molecular biology
  - —pharmacokinetics
  - —systems biology
- Chemistry
  - —analytical chemistry
  - —combustion chemistry
  - —environmental chemistry
  - —green chemistry
  - —physical chemistry
  - —water chemistry
- Climate Change/Global Change
  - —adaption
  - —modeling
  - —variability
  - —greenhouse gas technology assessment
- Ecology
  - —aquatic ecology (freshwater, wetland)
  - —ecosystem services
  - —hydrology/hydraulics (watershed modeling)
  - —plant/forestry ecology
  - —water resources
  - —soil biogeochemistry
  - —system ecology
  - —landscape ecology
  - —urban ecology
- Engineering
  - —biochemical engineering
  - —bioenvironmental engineering
  - —civil engineering (drinking water treatment and distribution, stormwater treatment, wastewater treatment, storm-, and wastewater infrastructure)
  - —chemical engineering
  - —combustion engineering
  - —environmental engineering (decontamination, clean-up, management)
  - —industrial engineering
  - —mechanical engineering
- Information Science
  - —information technology
  - —information visualization
  - —research communication
  - —spatial analysis
  - —uncertainty analysis
- Nanotechnology
- Public Health
  - —children's health
  - —community health
  - —environmental health
  - —epidemiology/molecular epidemiology
  - —exposure science (assessment, predictive)
- Risk Assessment (cumulative risk assessment, mixtures risk assessment, ecological risk assessment, human health risk assessment)
- Sustainability
  - —community/urban level planning and sustainability
  - —industrial (industrial ecology, life cycle analysis, technology policy,

systems engineering)
—energy
—energy and water relationship
- Toxicology
—computational toxicology (computational biology, genomics, proteomics, metabonomics, computational chemistry, high-throughput bioassays, informatics, bioinformatics, predictive toxicology)
—ecotoxicology
—developmental/reproductive toxicology
—immunotoxicology
—molecular toxicology
—neurotoxicology
—pulmonary/cardiovascular toxicology
—carcinogenesis
- Science Policy/Public Policy
—science policy
—public policy
—environmental justice
—science program evaluation
- Social Science
—community disaster recovery and resiliency
—economics (ecological economics, environmental economics, natural resource economics, human health economics)
—socioeconomics
—sociology
- Behavioral Science
—psychology
—ecopsychology
—environmental psychology
—conservation psychology
—social neuroscience
—risk perception
—risk/crisis communication
—community decision making
- Decision Science
—decision analysis
—value of information
—decision support system

Process and Deadline for Submitting Nominations

Any interested person or organization may nominate themselves or qualified individuals in the areas of expertise described above. Nominations should be submitted via the BOSC Web site (which is preferred over hard copy) at: *http://www.epa.gov/osp/bosc/nomination.htm*. Nominations should be submitted in time to arrive no later than April 1, 2013. To receive full consideration, nominations should include all of the information requested. EPA's BOSC Staff Office requests: Contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; subcommittee preference; the nominee's curriculum vita and/or resume; and additional information that would be useful for considering the nomination such as background and qualifications (e.g., current position, educational background, expertise, research areas), experience relevant to one or more of ORD's research programs, service on other advisory committees and professional societies, and availability to participate as a member of the committee/subcommittee. Persons having questions about the nomination procedures, or who are unable to submit nominations through the BOSC Web site, should contact Mr. Greg Susanke, as indicated above in this notice.

Selection Criteria

The BOSC is a balanced and diverse expert committee. The committee and each of its subcommittees possess necessary domains of expertise, depth and breadth of knowledge, and diverse and balanced scientific perspectives. Nominations will be evaluated on the basis of several criteria including: (a) Scientific and/or technical expertise, knowledge, and experience; (b) availability to serve and willingness to commit time to the committee (approximately one to three meetings per year including both face-to-face meetings and teleconferences); (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working on committees and advisory panels; and (f) background and experiences that would contribute to the diversity of viewpoints on the committee/subcommittees, e.g., workforce sector, geographical location, social, cultural, and educational backgrounds, and professional affiliations.

The BOSC Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government Officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal Advisory Committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address, *http://www.epa.gov/osp/bosc/pdf/EPA_3110-48.pdf.*

Dated: January 29, 2013.

Fred S. Hauchman,

Director, Office of Science Policy.

[FR Doc. 2013–02495 Filed 2–4–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT–IMPORT BANK OF THE UNITED STATES

[Public Notice: 2013–0109]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 million: AP086911XX and AP087599XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

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.

Reference: AP086911XX and AP087599XX.

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of U.S. manufactured commercial aircraft to Israel.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for short-haul passenger air service between Israel and destinations in Europe.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: EL AL Israel Airlines, Ltd.

Guarantor(s): N/A.

Description of Items Being Exported:

Boeing 737 aircraft.

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.

DATES: Comments must be received on or before March 4, 2013 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 Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2013–0009 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0009 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2013–02467 Filed 2–4–13; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK

[Public Notice 2013–0107]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million: AP087679XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

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.

Reference: AP087679XX.

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of U.S.-manufactured cargo aircraft to Dubai, the United Arab Emirates.

Brief non-proprietary description of the anticipated use of the items being exported:

To provide cargo services globally.

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 Supplier: The Boeing Company.

Obligor: Dubai Aerospace Enterprise.

Guarantor(s): N/A.

Description of Items Being Exported:

Boeing 777 aircraft.

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.

DATES: Comments must be received on or before March 4, 2013 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 Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2013–0005 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2013–0005 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2013–02463 Filed 2–4–13; 8:45 am]

BILLING CODE 6690–01–P

EXPORT–IMPORT BANK OF THE UNITED STATES

[Public Notice: 2013–0108]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 million: AP078791XX

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

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.

Reference: AP078791XX

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of U.S. manufactured commercial aircraft to Morocco.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for medium-haul passenger air service between Morocco and destinations in Europe, Africa and the Middle East.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company

Obligor: Compagnie Nationale Royal Air Maroc

Guarantor(s): N/A

Description of Items Being Exported:

Boeing 737 aircraft.

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.

DATES: Comments must be received on or before March 4, 2013 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 Regulations.gov at *WWW.REGULATIONS.GOV.* To submit a comment, enter EIB–2013–0008 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name,

company name (if any) and EIB–2013–0008 on any attached document.

Sharon A. Whitt,

Records Clearance Officer.

[FR Doc. 2013–02466 Filed 2–4–13; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2013–N–01]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2010 eighth round review cycle under the FHFA's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to FHFA.

DATES: Bank members selected for the review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA on or before March 22, 2013.

ADDRESSES: Bank members selected for the 2010 eighth round review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA either by hard-copy mail at the Federal Housing Finance Agency, Ninth Floor, Housing Mission and Goals (DHMG), 400 Seventh Street SW., Washington, DC 20024, or by electronic mail at *hmgcommunity supportprogram@fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: Rona Richardson, Administrative Office Manager, Housing Mission and Goals (DHMG), Federal Housing Finance Agency, by telephone at 202–649–3224, by electronic mail at *Rona.Richardson@FHFA.gov,* or by hard-copy mail at the Federal Housing Finance Agency, Ninth Floor, 400 Seventh Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.,* and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 1290. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 1290.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 1290.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 1290.3(c).

Under the rule, FHFA selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 1290.2(a). FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to FHFA by the March 22, 2013 deadline prescribed in this notice. 12 CFR 1290.2(b)(1)(ii) and (c). On or before February 19, 2013, each Bank will notify the members in its district that have been selected for the 2010 eighth round community support review cycle that they must complete and submit to FHFA by the deadline a Community Support Statement. 12 CFR 1290.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form (OMB No. 2590–0005), which also is available on the FHFA's Web site: *http://www.fhfa.gov/webfiles/2924/FHFAForm060.pdf.* Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

FHFA has selected the following members for the 2010 eighth round community support review cycle:

Federal Home Loan Bank of Boston—District 1

Western Connecticut Federal Credit Union	Bethel	Connecticut.
First Bristol Federal Credit Union	Bristol	Connecticut.
Savings Bank of Danbury	Danbury	Connecticut.
American Eagle Federal Credit Union	East Hartford	Connecticut.
Waterbury Connecticut Teachers Federal Credit Union	Middlebury	Connecticut.
Seasons Federal Credit Union	Middletown	Connecticut.
Darien Rowayton Bank	Rowayton	Connecticut.
Mutual Security Credit Union	Shelton	Connecticut.
Stafford Savings Bank	Stafford Springs	Connecticut.
Stamford Federal Credit Union	Stamford	Connecticut.
Sikorsky Financial Credit Union	Stratford	Connecticut.
Torrington Savings Bank	Torrington	Connecticut.
Webster Bank, N.A.	Waterbury	Connecticut.
Maine State Credit Union	Augusta	Maine.
Biddeford Savings Bank	Biddeford	Maine.
Atlantic Regional Federal Credit Union	Brunswick	Maine.
Rainbow Federal Credit Union	Lewiston	Maine.
Central Maine Federal Credit Union	Lewiston	Maine.
TruChoice Federal Credit Union	Portland	Maine.
Evergreen Credit Union	Portland	Maine.
The Provident Bank	Amesbury	Massachusetts.
Brookline Municipal Credit Union	Brookline	Massachusetts.

Harvard University Employees Credit Union	Cambridge	Massachusetts.
Metropolitan Credit Union	Chelsea	Massachusetts.
Pilgrim Bank	Cohasset	Massachusetts.
Delta-Wye Federal Credit Union	Dorchester	Massachusetts.
First Priority Credit Union	East Boston	Massachusetts.
Everett Co-Operative Bank	Everett	Massachusetts.
St. Anne's Credit Union of Fall River	Fall River	Massachusetts.
I–C Federal Credit Union	Fitchburg	Massachusetts.
Holyoke Credit Union	Holyoke	Massachusetts.
Bank of Cape Cod	Hyannis	Massachusetts.
St. Mary's Credit Union	Marlborough	Massachusetts.
Members Plus Credit Union	Medford	Massachusetts.
Charles River Bank	Medway	Massachusetts.
Merrimac Savings Bank	Merrimac	Massachusetts.
Methuen Co-Operative Bank	Methuen	Massachusetts.
Millbury National Bank	Millbury	Massachusetts.
Greylock Federal Credit Union	Pittsfield	Massachusetts.
Central One Federal Credit Union	Shrewsbury	Massachusetts.
Mass Bay Credit Union	South Boston	Massachusetts.
Freedom Credit Union	Springfield	Massachusetts.
Greater Springfield Credit Union	Springfield	Massachusetts.
Wakefield Co-Operative Bank	Wakefield	Massachusetts.
Webster Five Cents Savings Bank	Webster	Massachusetts.
Patriot Community Bank	Woburn	Massachusetts.
Ledyard National Bank	Hanover	New Hampshire.
Northeast Credit Union	Portsmouth	New Hampshire.
Optima Bank & Trust Company	Portsmouth	New Hampshire.
Woodsville Guaranty Savings Bank	Woodsville	New Hampshire.
Dexter Credit Union	Central Falls	Rhode Island.
People's Credit Union	Middletown	Rhode Island.
Coastway Community Bank	Providence	Rhode Island.
River Valley Credit Union	Brattleboro	Vermont.
Vermont State Employees Credit Union	Montpelier	Vermont.
First National Bank of Orwell	Orwell	Vermont.
Peoples Trust Company of St. Albans	St. Albans	Vermont.
Wells River Savings Bank	Wells River	Vermont.
Opportunities Credit Union	Winooski	Vermont.

Federal Home Loan Bank of New York—District 2

Aspire Federal Credit Union	Clark	New Jersey.
1st Colonial National Bank	Collingswood	New Jersey.
First State Bank	Cranford	New Jersey.
North Jersey Community Bank	Englewood	New Jersey.
Credit Union of New Jersey	Ewing	New Jersey.
Bank of New Jersey	Fort Lee	New Jersey.
Indus American Bank	Iselin	New Jersey.
First Choice Bank	Lawrenceville	New Jersey.
Sun National Bank	Medford	New Jersey.
BankAsiana	Palisades Park	New Jersey.
Valley National Bank	Passaic	New Jersey.
The Bank of Princeton	Princeton	New Jersey.
Saddle River Valley Bank	Saddle River	New Jersey.
Hilltop Community Bank	Summit	New Jersey.
Shore Community Bank	Toms River	New Jersey.
Paragon Federal Credit Union	Township of Walls	New Jersey.
Highlands State Bank	Vernon	New Jersey.
Capital Bank of New Jersey	Vineland	New Jersey.
Alma Bank	Astoria	New York.
Ballston Spa National Bank	Ballston Spa	New York.
Esquire Bank	Brooklyn	New York.
The Dime Savings Bank of Williamsburg	Brooklyn	New York.
Patriot Federal Bank	Canajoharie	New York.
Teachers Federal Credit Union	Farmingville	New York.
NewBank	Flushing	New York.
United International Bank	Flushing	New York.
Community National Bank	Great Neck	New York.
Empire National Bank	Islandia	New York.
Gold Coast Bank	Islandia	New York.
Madison National Bank	Merrick	New York.
Global Bank	New York	New York.
Self Reliance New York Federal Credit Union	New York	New York.
Empire State Bank	Newburgh	New York.
Flushing Commercial Bank	North Hyde Park	New York.
The Stissing National Bank of Pine Plains	Pine Plains	New York.
Advantage Federal Credit Union	Rochester	New York.

Genesee Regional Bank	Rochester	New York.
First National Bank of Scotia	Scotia	New York.
National Bank of Delaware County	Walton	New York.
Merchants Commercial Bank	St. Thomas	Virgin Islands.

Federal Home Loan Bank of Pittsburgh—District 3

Chase Bank USA, National Association	Newark	Delaware.
MidCoast Community Bank	Wilmington	Delaware.
Community National Bank of Northwestern Pennsylvania	Albion	Pennsylvania.
Hometown Bank of Pennsylvania	Bedford	Pennsylvania.
First Keystone Community Bank	Berwick	Pennsylvania.
Team Capital Bank	Bethlehem	Pennsylvania.
Metro Bank	Camp Hill	Pennsylvania.
Clarion Federal Credit Union	Clarion	Pennsylvania.
FNB Bank, National Association	Danville	Pennsylvania.
MileStone Bank	Doylestown	Pennsylvania.
Monument Bank	Doylestown	Pennsylvania.
Marquette Savings Bank	Erie	Pennsylvania.
Vantage Point Bank	Fort Washington	Pennsylvania.
First United National Bank	Fryburg	Pennsylvania.
ACNB Bank	Gettysburg	Pennsylvania.
Colonial American Bank	Horsham	Pennsylvania.
First Commonwealth Bank	Indiana	Pennsylvania.
Farmers & Merchants Bank of Western Pennsylvania	Kittanning	Pennsylvania.
Fulton Bank, National Association	Lancaster	Pennsylvania.
First National Bank of Lilly	Lilly	Pennsylvania.
Victory Bank	Limerick	Pennsylvania.
First Priority Bank	Malvern	Pennsylvania.
Citizens National Bank	Meyersdale	Pennsylvania.
Northumberland National Bank	Northumberland	Pennsylvania.
First Northern Bank and Trust Company	Palmerton	Pennsylvania.
Tioga-Franklin Savings Bank	Philadelphia	Pennsylvania.
Valley Green Bank	Philadelphia	Pennsylvania.
Allegent Community Federal Credit Union	Pittsburgh	Pennsylvania.
TriState Capital Bank	Pittsburgh	Pennsylvania.
Landmark Community Bank	Pittston	Pennsylvania.
Utilities Employees Credit Union	Wyomissing	Pennsylvania.
CNB Bank, Inc	Berkeley Springs	West Virginia.
Bank of Charles Town	Charles Town	West Virginia.
Davis Trust Company	Elkins	West Virginia.
Pendleton Community Bank, Inc	Franklin	West Virginia.
Capon Valley Bank	Wardensville	West Virginia.
Cornerstone Bank, Inc	West Union	West Virginia.
Citizens Bank of Weston, Inc	Weston	West Virginia.

Federal Home Loan Bank of Atlanta—District 4

Vantage Bank of Alabama	Albertville	Alabama.
NobleBank & Trust, National Association	Anniston	Alabama.
The First National Bank of Atmore	Atmore	Alabama.
Keystone Bank	Auburn	Alabama.
Trinity Bank	Dothan	Alabama.
Merchants & Farmers Bank of Greene County Alabama	Eutaw	Alabama.
Progress Bank and Trust	Huntsville	Alabama.
Southern Independent Bank	Opp	Alabama.
River Bank & Trust	Prattville	Alabama.
The Samson Banking Company, Inc	Samson	Alabama.
First Cahawba Bank	Selma	Alabama.
Bryant Bank	Tuscaloosa	Alabama.
Tuscaloosa Credit Union	Tuscaloosa	Alabama.
SouthCity Bank	Vestavia Hill	Alabama.
Wright Patman Congressional Federal Credit Union	Washington	District of Columbia.
Legacy Bank of Florida	Boca Raton	Florida.
Flagship Community Bank	Clearwater	Florida.
Bank of Coral Gables, LLC	Coral Gables	Florida.
BBU Bank	Coral Gables	Florida.
First Bank of Miami	Coral Gables	Florida.
Florida Traditions Bank	Dade City	Florida.
Gateway Bank of Florida	Daytona Beach	Florida.
GulfSouth Private Bank	Destin	Florida.
CBC National Bank	Fernandina Beach	Florida.
Stonegate Bank	Fort Lauderdale	Florida.
Campus USA Credit Union	Gainesville	Florida.
First Bank and Trust Company of Indiantown	Indiantown	Florida.
FirstAtlantic Bank	Jacksonville	Florida.

Jax Federal Credit Union	Jacksonville	Florida.
Jax Metro Credit Union	Jacksonville	Florida.
The Jacksonville Bank	Jacksonville	Florida.
Community National Bank of the South	Lake Mary	Florida.
Bank of Central Florida	Lakeland	Florida.
Community Southern Bank	Lakeland	Florida.
USAmeriBank	Largo	Florida.
Heritage Bank of Florida	Lutz	Florida.
First Capital Bank	Marianna	Florida.
Community Bank of the South	Merritt Island	Florida.
Marquis Bank	North Miami Beach	Florida.
FirstCity Bank of Commerce	North Palm Beach	Florida.
First Avenue National Bank	Ocala	Florida.
Gateway Bank of Central Florida	Ocala	Florida.
Florida Bank of Commerce	Orlando	Florida.
McCoy Federal Credit Union	Orlando	Florida.
Seaside National Bank & Trust	Orlando	Florida.
The Citizens Bank of Oviedo	Oviedo	Florida.
1st Manatee Bank	Parrish	Florida.
National Bank of Southwest Florida	Port Charlotte	Florida.
Calusa National Bank	Punta Gorda	Florida.
Insignia Bank	Sarasota	Florida.
ProBank	Tallahassee	Florida.
First East Side Savings Bank	Tamarac	Florida.
American Momentum Bank	Tampa	Florida.
Central Bank	Tampa	Florida.
GTE Federal Credit Union	Tampa	Florida.
GulfShore Bank	Tampa	Florida.
Florida Shores Bank—Southwest	Venice	Florida.
First Bank of the Palm Beaches	West Palm Beach	Florida.
Wheeler County State Bank	Alamo	Georgia.
The Four County Bank	Allentown	Georgia.
The National Bank of Georgia	Athens	Georgia.
Atlantic Capital Bank	Atlanta	Georgia.
Brookhaven Bank	Atlanta	Georgia.
Capitol City Bank & Trust Company	Atlanta	Georgia.
Midtown Bank & Trust Company	Atlanta	Georgia.
Private Bank of Buckhead	Atlanta	Georgia.
Savannah River Banking Company	Augusta	Georgia.
Peoples Bank & Trust	Buford	Georgia.
United National Bank	Cairo	Georgia.
Columbus Community Bank	Columbus	Georgia.
The Commercial Bank	Crawford	Georgia.
Georgia Heritage Bank	Dallas	Georgia.
Bank of Dawson	Dawson	Georgia.
Bank of Terrell	Dawson	Georgia.
First Citizens Bank of Georgia	Dawsonville	Georgia.
Metro City Bank	Doraville	Georgia.
Signature Bank of Georgia	Dunwoody	Georgia.
State Bank of Georgia	Fayetteville	Georgia.
Peach State Bank & Trust	Gainesville	Georgia.
WestSide Bank	Hiram	Georgia.
KeyWorth Bank	Johns Creek	Georgia.
Citizens State Bank	Kingsland	Georgia.
LaGrange Banking Company	LaGrange	Georgia.
First Landmark Bank	Marietta	Georgia.
Liberty First Bank	Monroe	Georgia.
Touchmark National Bank	Norcross	Georgia.
State Bank and Trust Company	Pinehurst	Georgia.
River City Bank	Rome	Georgia.
Vinings Bank	Smyrna	Georgia.
Bank of Valdosta	Valdosta	Georgia.
Guardian Bank	Valdosta	Georgia.
First Covenant Bank	Woodstock	Georgia.
Monument Bank	Bethesda	Maryland.
Old Line National Bank	Bowie	Maryland.
County First Bank	La Plata	Maryland.
APL Federal Credit Union	Laurel	Maryland.
Bank of Ocean City	Ocean City	Maryland.
NRL Federal Credit Union	Oxon Hill	Maryland.
NASA Federal Credit Union	Upper Marlboro	Maryland.
Forest Commercial Bank	Asheville	North Carolina.
Bank of America, National Association	Charlotte	North Carolina.
Carolina Premier Bank	Charlotte	North Carolina.
NewDominion Bank	Charlotte	North Carolina.
Park Sterling Bank	Charlotte	North Carolina.

New Century Bank	Dunn	North Carolina.
KeySource Commercial Bank	Durham	North Carolina.
Square 1 Bank	Durham	North Carolina.
Patriot State Bank	Fuquay-Varina	North Carolina.
Mountain 1st Bank & Trust Company	Hendersonville	North Carolina.
Union Bank & Trust Company	Oxford	North Carolina.
First-Citizens Bank & Trust Company	Raleigh	North Carolina.
Old Town Bank	Waynesville	North Carolina.
VistaBank	Aiken	South Carolina.
Atlantic Community Bank	Bluffton	South Carolina.
Harbor National Bank	Charleston	South Carolina.
South Carolina State Credit Union	Columbia	South Carolina.
BankGreenville	Greenville	South Carolina.
Pinnacle Bank of South Carolina	Greenville	South Carolina.
South Atlantic Bank	Myrtle Beach	South Carolina.
Carolina Alliance Bank	Spartanburg	South Carolina.
Congaree State Bank	West Columbia	South Carolina.
State Department Federal Credit Union	Alexandria	Virginia.
ABNB Federal Credit Union	Chesapeake	Virginia.
First Virginia Community Bank	Fairfax	Virginia.
Virginia Heritage Bank	Fairfax	Virginia.
Bronco Federal Credit Union	Franklin	Virginia.
Capital One Bank (USA), National Association	Glen Allen	Virginia.
Colonial Virginia Bank	Gloucester	Virginia.
Benchmark Community Bank	Kenbridge	Virginia.
Old Dominion National Bank	North Garden	Virginia.
Citizens Community Bank	South Hill	Virginia.

Federal Home Loan Bank of Cincinnati—District 5

Peoples Bank and Trust Company of Clinton County	Albany	Kentucky.
Town Square Bank, Inc	Ashland	Kentucky.
Appalachian Federal Credit Union	Berea	Kentucky.
Farmers State Bank	Booneville	Kentucky.
American Bank & Trust Company, Inc	Bowling Green	Kentucky.
Citizens First Bank, Inc	Bowling Green	Kentucky.
The First National Bank of Brooksville	Brooksville	Kentucky.
Bank of Buffalo	Buffalo	Kentucky.
Bank of Caneyville	Caneyville	Kentucky.
Hometown Bank of Corbin, Inc	Corbin	Kentucky.
The Bank of Kentucky	Crestview Hill	Kentucky.
Ohio Valley Financial Group, Inc	Henderson	Kentucky.
The First National Bank of Jackson	Jackson	Kentucky.
Bank of Lexington	Lexington	Kentucky.
Louisa Community Bank	Louisa	Kentucky.
Eclipse Bank	Louisville	Kentucky.
The Peoples Bank	Marion	Kentucky.
Security Bank & Trust Co	Maysville	Kentucky.
Citizens Bank of Northern Kentucky, Inc	Newport	Kentucky.
First Farmers Bank & Trust Company	Owenton	Kentucky.
The Paducah Bank and Trust Company	Paducah	Kentucky.
Salyersville National Bank	Salyersville	Kentucky.
Peoples Exchange Bank	Stanton	Kentucky.
The Andover Bank	Andover	Ohio.
Sutton Bank	Attica	Ohio.
Insight Bank	Columbus	Ohio.
Heartland Federal Credit Union	Dayton	Ohio.
The State Bank and Trust Company	Defiance	Ohio.
Cooper State Bank	Dublin	Ohio.
Fremont Federal Credit Union	Fremont	Ohio.
Benchmark Bank	Gahanna	Ohio.
The Ohio Valley Bank	Gallipolis	Ohio.
First Financial Bank, National Association	Hamilton	Ohio.
LCNB National Bank	Lebanon	Ohio.
Buckeye Community Bank	Lorain	Ohio.
The Lorain National Bank	Lorain	Ohio.
The Ohio State Bank	Marion	Ohio.
Minster Bank	Minster	Ohio.
The Mt. Victory State Bank	Mount Victory	Ohio.
First National Bank in New Bremen	New Bremen	Ohio.
The Farmers State Bank	New Madison	Ohio.
Great Lakes Credit Union, Inc	Perrysburg	Ohio.
Portage Community Bank	Ravenna	Ohio.
The Richwood Banking Company	Richwood	Ohio.
The First National Bank of Sycamore	Sycamore	Ohio.
First Bank of Ohio	Tiffin	Ohio.

The National Bank and Trust Company	Wilmington	Ohio.
Community Bank & Trust	Ashland City	Tennessee.
Citizens Bank & Trust Co	Atwood	Tennessee.
Southern Heritage Bank	Cleveland	Tennessee.
Southern Bank of Tennessee	Clinton	Tennessee.
Heritage Bank & Trust	Columbia	Tennessee.
First Alliance Bank	Cordova	Tennessee.
Cumberland County Bank	Crossville	Tennessee.
TriStar Bank	Dickson	Tennessee.
Traditions First Bank	Erin	Tennessee.
Cornerstone Community Bank	Hixson	Tennessee.
Dupont Community Credit Union	Hixson	Tennessee.
First South Bank	Jackson	Tennessee.
CedarStone Bank	Lebanon	Tennessee.
Liberty State Bank	Liberty	Tennessee.
Bank of Perry County	Lobelville	Tennessee.
Trust Company Bank	Mason	Tennessee.
First Tennessee Bank National Association	Memphis	Tennessee.
Paragon National Bank	Memphis	Tennessee.
Tri-State Bank of Memphis	Memphis	Tennessee.
Pinnacle National Bank	Nashville	Tennessee.
Community Trust & Banking Company	Ooltewah	Tennessee.
SmartBank	Pigeon Forge	Tennessee.
First Community Bank	Rogersville	Tennessee.
The Citizens Bank of East Tennessee	Rogersville	Tennessee.
First Vision Bank of Tennessee	Tullahoma	Tennessee.
The Traders National Bank	Tullahoma	Tennessee.
Wayne County Bank	Waynesboro	Tennessee.

Federal Home Loan Bank of Indianapolis—District 6

Central National Bank & Trust Company	Attica	Indiana.
Indiana University Credit Union	Bloomington	Indiana.
United Commerce Bank	Bloomington	Indiana.
Wayne Bank and Trust Company	Cambridge City	Indiana.
Chiphone Federal Credit Union	Elkhart	Indiana.
Inova	Elkhart	Indiana.
The Citizens Exchange Bank	Fairmount	Indiana.
Fire Fighter's City County Federal Credit Union	Fort Wayne	Indiana.
Fort Financial Credit Union	Fort Wayne	Indiana.
Midwest American Federal Credit Union	Fort Wayne	Indiana.
Alliance Bank	Francesville	Indiana.
The Friendship State Bank	Friendship	Indiana.
Indiana Community Bank	Goshen	Indiana.
Indiana Business Bank	Indianapolis	Indiana.
Lafayette Community Bank	Lafayette	Indiana.
The Lynnville National Bank	Lynnville	Indiana.
State Bank of Medora	Medora	Indiana.
First Trust Credit Union	Michigan City	Indiana.
Citizens State Bank of New Castle	New Castle	Indiana.
Notre Dame Federal Credit Union	Notre Dame	Indiana.
1st Source Bank	South Bend	Indiana.
CentreBank	Veedersburg	Indiana.
Northstar Bank	Bad Axe	Michigan.
Omni Community Credit Union	Battle Creek	Michigan.
Nstar Community Bank	Bingham Farms	Michigan.
OSB Community Bank	Brooklyn	Michigan.
Chelsea State Bank	Chelsea	Michigan.
Century Bank & Trust Company	Coldwater	Michigan.
Davison State Bank	Davison	Michigan.
Community Alliance Credit Union	Dearborn	Michigan.
First State Bank	Decatur	Michigan.
Level One Bank	Farmington Heights	Michigan.
Bay Bank	Gladstone	Michigan.
Founders Bank & Trust	Grand Rapids	Michigan.
West Michigan Community Bank	Hudsonville	Michigan.
Miner's State Bank	Iron River	Michigan.
EECU a Community Credit Union	Jackson	Michigan.
First National Bank of Michigan	Kalamazoo	Michigan.
Michigan First Credit Union	Lathrup Villa	Michigan.
The Dart Bank	Mason	Michigan.
Huron Valley State Bank	Milford	Michigan.
Lotus Bank	Novi	Michigan.
Oxford Bank	Oxford	Michigan.
The Bank of Northern Michigan	Petoskey	Michigan.
Public Service Credit Union	Romulus	Michigan.

Family First Credit Union	Saginaw	Michigan.
Old Mission Bank	Sault Sainte Marie	Michigan.
Community State Bank of Saint Charles	St. Charles	Michigan.
Firstbank—Saint Johns	St. Johns	Michigan.
Sterling-Van Dyke Credit Union	Sterling Heights	Michigan.
First Michigan Bank	Troy	Michigan.
Wayne-Westland Federal Credit Union	Westland	Michigan.

Federal Home Loan Bank of Chicago—District 7

Old Second National Bank	Aurora	Illinois.
Tompkins State Bank	Avon	Illinois.
Beardstown Savings S.B	Beardstown	Illinois.
Metrobank	Berwyn	Illinois.
Marine Bank & Trust	Carthage	Illinois.
Buena Vista National Bank	Chester	Illinois.
Chester National Bank	Chester	Illinois.
Lakeside Bank	Chicago	Illinois.
Pacific Global Bank	Chicago	Illinois.
The Northern Trust Company	Chicago	Illinois.
State Bank of Chrisman	Chrisman	Illinois.
The First National Bank of Dieterich	Dieterich	Illinois.
Citizens Bank Of Edinburg	Edinburg	Illinois.
The Bank of Edwardsville	Edwardsville	Illinois.
Legence Bank	Eldorado	Illinois.
First Bank & Trust	Evanston	Illinois.
The Fairfield National Bank	Fairfield	Illinois.
Farmers and Mechanics Bank	Galesburg	Illinois.
Glasford State Bank	Glasford	Illinois.
Goodfield State Bank	Goodfield	Illinois.
Farmers National Bank of Griggsville	Griggsville	Illinois.
PeopleFirst Bank	Joliet	Illinois.
Clay County State Bank	Louisville	Illinois.
HomeStar Bank and Financial Service	Manteno	Illinois.
First FSB of Mascoutah	Mascoutah	Illinois.
Great Lakes Bank, National Association	Matteson	Illinois.
Morton Community Bank	Morton	Illinois.
Town Center Bank	New Lenox	Illinois.
LincolnWay Community Bank	New Lenox	Illinois.
Republic Bank of Chicago	Oak Brook	Illinois.
Community Bank of Oak Park River Forest	Oak Park	Illinois.
TrustBank	Olney	Illinois.
First Bank & Trust, S.B	Paris	Illinois.
Bank of Rantoul	Rantoul	Illinois.
The First National Bank & Trust Company of Rochelle	Rochelle	Illinois.
Northwest Bank of Rockford	Rockford	Illinois.
Gateway Community Bank	Roscoe	Illinois.
Area Bank	Rosiclare	Illinois.
Schaumburg Bank & Trust Company, N.A	Schaumburg	Illinois.
1st Community Bank	Sherrard	Illinois.
National Bank of St. Anne	St. Anne	Illinois.
Streator Home Building & Loan Association	Streator	Illinois.
The First National Bank of Sullivan	Sullivan	Illinois.
Savanna-Thomson State Bank	Thomson	Illinois.
Tempo Bank	Trenton	Illinois.
Heritage Bank of Central Illinois	Trivoli	Illinois.
Waterman State Bank	Waterman	Illinois.
NorStates Bank	Waukegan	Illinois.
State Bank Of Illinois	West Chicago	Illinois.
Golden Eagle Community Bank	Woodstock	Illinois.
AbbyBank	Abbotsford	Wisconsin.
Sterling Bank	Barron	Wisconsin.
RidgeStone Bank	Brookfield	Wisconsin.
Cambridge State Bank	Cambridge	Wisconsin.
Community Bank of Cameron	Cameron	Wisconsin.
Community Bank Of Central Wisconsin	Colby	Wisconsin.
Community Bank CBD	Delavan	Wisconsin.
Charter Bank Eau Claire	Eau Claire	Wisconsin.
Royal Credit Union	Eau Claire	Wisconsin.
Marine Credit Union	Fond Du Lac	Wisconsin.
Grand Marsh State Bank	Grand Marsh	Wisconsin.
Farmers State Bank	Hillsboro	Wisconsin.
First American Bank, N.A	Hudson	Wisconsin.
Citizens State Bank	Hudson	Wisconsin.
The Bank of Kaukauna	Kaukauna	Wisconsin.
Bank First National	Manitowoc	Wisconsin.

Investors Community Bank	Manitowoc	Wisconsin.
Farmers & Merchants Bank & Trust	Marinette	Wisconsin.
The Stephenson National Bank & Trust	Marinette	Wisconsin.
Mayville Savings Bank	Mayville	Wisconsin.
McFarland State Bank	McFarland	Wisconsin.
Lincoln Community Bank	Merrill	Wisconsin.
Brewery Credit Union	Milwaukee	Wisconsin.
Monona State Bank	Monona	Wisconsin.
The First National Bank of Niagara	Niagara	Wisconsin.
Oostburg State Bank	Oostburg	Wisconsin.
United Bank	Osseo	Wisconsin.
Pigeon Falls State Bank	Pigeon Falls	Wisconsin.
The Port Washington State Bank	Port Washington	Wisconsin.
Peoples State Bank	Prairie du Chien	Wisconsin.
Bank of Prairie du Sac	Prairie du Sac	Wisconsin.
Community Financial Bank	Prentice	Wisconsin.
Community First Bank	Rosholt	Wisconsin.
Indianhead Credit Union	Spooner	Wisconsin.
Stratford State Bank	Stratford	Wisconsin.
Bank of Turtle Lake	Turtle Lake	Wisconsin.
Town and Country Bank	Watertown	Wisconsin.
First National Bank	Waupaca	Wisconsin.
Peoples State Bank	Wausau	Wisconsin.
Commerce State Bank	West Bend	Wisconsin.

Federal Home Loan Bank of Des Moines—District 8

First Iowa State Bank	Albia	Iowa.
Greater Iowa Credit Union	Ames	Iowa.
Rolling Hills Bank & Trust	Atlantic	Iowa.
Audubon State Bank	Audubon	Iowa.
Benton County State Bank	Blairstown	Iowa.
First State Bank	Britt	Iowa.
Patriot Bank	Brooklyn	Iowa.
Farmers & Merchants Bank & Trust	Burlington	Iowa.
Carroll County State Bank	Carroll	Iowa.
Ohnward Bank & Trust	Cascade	Iowa.
Center Point Bank and Trust Company	Center Point	Iowa.
Iowa State Bank	Clarksville	Iowa.
Citizens First Bank	Clinton	Iowa.
The Clinton National Bank	Clinton	Iowa.
First State Bank of Colfax	Colfax	Iowa.
Frontier Savings Bank	Council Bluff	Iowa.
Northwest Bank & Trust Company	Davenport	Iowa.
Defiance State Bank	Defiance	Iowa.
Bankers Trust Company	Des Moines	Iowa.
American Trust & Savings Bank	Dubuque	Iowa.
Du Trac Community Credit Union	Dubuque	Iowa.
First Security State Bank	Evansdale	Iowa.
Garnavillo Savings Bank	Garnavillo	Iowa.
Union State Bank	Greenfield	Iowa.
United Bank and Trust Company	Hampton	Iowa.
Shelby County State Bank	Harlan	Iowa.
Iowa State Bank	Hull	Iowa.
United Bank of Iowa	Ida Grove	Iowa.
MidWestOne Bank	Iowa City	Iowa.
University of Iowa Community Credit Union	Iowa City	Iowa.
Community Choice Credit Union	Johnston	Iowa.
Primebank	Le Mars	Iowa.
Luana Savings Bank	Luana	Iowa.
Mediapolis Savings Bank	Mediapolis	Iowa.
Central State Bank	Muscatine	Iowa.
Community State Bank	Paton	Iowa.
The First National Bank of Primghar	Primghar	Iowa.
Pioneer Bank	Sergeant Bluff	Iowa.
The Exchange State Bank	Springville	Iowa.
Central Bank	Storm Lake	Iowa.
Farmers Savings Bank & Trust	Traer	Iowa.
American Savings Bank	Tripoli	Iowa.
Farmers Trust & Savings Bank	Williamsburg	Iowa.
Adrian State Bank	Adrian	Minnesota.
Security State Bank	Aitkin	Minnesota.
Annandale State Bank	Annandale	Minnesota.
First State Bank of Ashby	Ashby	Minnesota.
First National Bank	Bagley	Minnesota.
The First National Bank of Battle Lake	Battle Lake	Minnesota.

Sherburne State Bank	Becker	Minnesota.
State Bank of Belle Plaine	Belle Plaine	Minnesota.
Security BankUSA	Bemidji	Minnesota.
Concorde Bank	Blomkest	Minnesota.
Bonanza Valley State Bank	Brooten	Minnesota.
CenBank	Buffalo Lake	Minnesota.
Western National Bank	Cass Lake	Minnesota.
Root River State Bank	Chatfield	Minnesota.
Hometown Community Bank	Cyrus	Minnesota.
Crow River State Bank	Delano	Minnesota.
Share Advantage Credit Union	Duluth	Minnesota.
The Bank of Elk River	Elk River	Minnesota.
Boundary Waters Bank	Ely	Minnesota.
Elysian Bank	Elysian	Minnesota.
Security State Bank of Fergus Falls	Fergus Falls	Minnesota.
State Bank of Gibbon	Gibbon	Minnesota.
Grand Rapids State Bank	Grand Rapids	Minnesota.
State Bank of Hawley	Hawley	Minnesota.
The First National Bank of Herman	Herman	Minnesota.
Commercial Bank of Minnesota	Heron Lake	Minnesota.
Security State Bank of Hibbing	Hibbing	Minnesota.
Woodlands National Bank	Hinckley	Minnesota.
Stearns Bank Holdingford, N.A	Holdingford	Minnesota.
Riverland Bank	Jordan	Minnesota.
Alliance Bank	Lake City	Minnesota.
State Bank of Lismore	Lismore	Minnesota.
Farmers State Bank of Madelia, Inc	Madelia	Minnesota.
Building Trades Federal Credit Union	Maple Grove	Minnesota.
Pioneer Bank	Mapleton	Minnesota.
Summit Community Bank	Maplewood	Minnesota.
Stonebridge Bank	Minneapolis	Minnesota.
Farmers & Merchants State Bank of New York Mills	New York Mills	Minnesota.
Novation Credit Union	Oakdale	Minnesota.
Platinum Bank	Oakdale	Minnesota.
First State Bank of Okabena, Inc	Okabena	Minnesota.
The First State Bank of Red Wing	Red Wing	Minnesota.
Eastwood Bank	Rochester	Minnesota.
Northview Bank	Sandstone	Minnesota.
First State Bank of Sauk Centre	Sauk Centre	Minnesota.
Minnesota National Bank	Sauk Centre	Minnesota.
First Resource Bank	Savage	Minnesota.
Stearns Bank, National Association	St. Cloud	Minnesota.
The Lake Bank	Two Harbors	Minnesota.
Stearns Bank of Upsala, National Association	Upsala	Minnesota.
The First National Bank of Waseca	Waseca	Minnesota.
FortuneBank	Arnold	Missouri.
Mainstreet Bank	Ashland	Missouri.
Adams Dairy Bank	Blue Springs	Missouri.
Vantage Credit Union	Bridgeton	Missouri.
County Bank	Brunswick	Missouri.
Farmers State Bank	Cameron	Missouri.
First Missouri State Bank of Cape County	Cape Girardeau	Missouri.
Hometown Bank, National Association	Carthage	Missouri.
First State Bank and Trust Company, Inc	Caruthersville	Missouri.
Citizens Bank of Charleston	Charleston	Missouri.
Citizens Bank and Trust Company	Chillicothe	Missouri.
Parkside Financial Bank & Trust	Clayton	Missouri.
First National Bank of Clinton	Clinton	Missouri.
Community Bank of El Dorado Springs	El Dorado Springs	Missouri.
Cornerstone Bank	Fargo	Missouri.
Alliance Credit Union	Fenton	Missouri.
Triad Bank	Frontenac	Missouri.
United Security Bank	Fulton	Missouri.
First Bank of Missouri	Gladstone	Missouri.
Superior Bank	Hazelwood	Missouri.
River Region Credit Union	Jefferson City	Missouri.
Commerce Bank	Kansas City	Missouri.
Table Rock Community Bank	Kimberling City	Missouri.
The Farmers Bank of Lincoln	Lincoln	Missouri.
The Bank of Fairport	Maysville	Missouri.
Community Bank & Trust	Neosho	Missouri.
Citizens Bank	New Haven	Missouri.
Bank Star	Pacific	Missouri.
The Paris National Bank	Paris	Missouri.
Bank Star of the LeadBelt	Park Hills	Missouri.
Phelps County Bank	Rolla	Missouri.

Community Bank of Russellville	Russellville	Missouri.
MRV Banks	Sainte Genevieve	Missouri.
Farmers & Merchants Bank	St. Clair	Missouri.
Scottrade Bank	St. Louis	Missouri.
McIntosh County Bank	Ashley	North Dakota.
First Security Bank—West	Beulah	North Dakota.
Kirkwood Bank and Trust Company	Bismarck	North Dakota.
Dakota Western Bank	Bowman	North Dakota.
First State Bank	Buxton	North Dakota.
United Valley Bank	Cavalier	North Dakota.
Western State Bank	Devils Lake	North Dakota.
Cornerstone Bank	Enderlin	North Dakota.
SouthPoint Federal Credit Union	Enderlin	North Dakota.
BlackRidge Bank	Fargo	North Dakota.
The Citizens State Bank of Finley	Finley	North Dakota.
Garrison State Bank and Trust	Garrison	North Dakota.
Harwood State Bank	Harwood	North Dakota.
Union State Bank of Hazen	Hazen	North Dakota.
Kindred State Bank	Kindred	North Dakota.
Commercial Bank of Mott	Mott	North Dakota.
Farmers Security Bank	Washburn	North Dakota.
First National Bank & Trust Company of Williston	Williston	North Dakota.
First State Bank of Wilton	Wilton	North Dakota.
Citizens State Bank of Arlington	Arlington	South Dakota.
First State Bank	Armour	South Dakota.
Community Bank	Avon	South Dakota.
First Fidelity Bank	Burke	South Dakota.
DNB National Bank	Clear Lake	South Dakota.
Farmers State Bank	Hosmer	South Dakota.
Sunrise Bank Dakota	Onida	South Dakota.
Black Hills Community Bank, National Association	Rapid City	South Dakota.

Federal Home Loan Bank of Dallas—District 9

First Western Bank	Booneville	Arkansas.
Decatur State Bank	Decatur	Arkansas.
First State Bank of DeQueen	DeQueen	Arkansas.
The Bank of Fayetteville	Fayetteville	Arkansas.
Central Bank	Little Rock	Arkansas.
Parkway Bank	Portland	Arkansas.
First State Bank	Russellville	Arkansas.
Legacy National Bank	Springdale	Arkansas.
The First National Bank of Wynne	Wynne	Arkansas.
Business First Bank	Baton Rouge	Louisiana.
Investar Bank	Baton Rouge	Louisiana.
Landmark Bank	Clinton	Louisiana.
Gibsland Bank & Trust Company	Gibsland	Louisiana.
The Highlands Bank	Jackson	Louisiana.
Bank of Jena	Jena	Louisiana.
Midsouth Bank, National Association	Lafayette	Louisiana.
South Lafourche Bank & Trust Company	Larose	Louisiana.
Merchants & Farmers Bank & Trust Company	Leesville	Louisiana.
Resource Bank	Mandeville	Louisiana.
Bank of Montgomery	Montgomery	Louisiana.
Community First Bank	New Iberia	Louisiana.
First NBC Bank	New Orleans	Louisiana.
Community Bank	Raceland	Louisiana.
First American Bank & Trust	Vacherie	Louisiana.
Farmers & Merchants Bank	Baldwyn	Mississippi.
DeSoto County Bank	Horn Lake	Mississippi.
Citizens Bank & Trust Company	Marks	Mississippi.
Pike National Bank	McComb	Mississippi.
Bank of Franklin	Meadville	Mississippi.
United Mississippi Bank	Natchez	Mississippi.
BancorpSouth Bank	Tupelo	Mississippi.
Kirtland Federal Union	Albuquerque	New Mexico.
James Polk Stone Community Bank	Portales	New Mexico.
Anahuac National Bank	Anahuac	Texas.
Horizon Bank, SSB	Austin	Texas.
First Bank Texas, SSB	Baird	Texas.
The Blanco National Bank	Blanco	Texas.
Legend Bank, National Association	Bowie	Texas.
Commercial National Bank	Brady	Texas.
First Star Bank, SSB	Bremond	Texas.
First Bank	Burkburnett	Texas.
First State Bank & Trust Company	Carthage	Texas.

Community National Bank & Trust of Texas	Corsicana	Texas.
Stockmens National Bank	Cotulla	Texas.
Texas Exchange Bank, SSB	Crowley	Texas.
Comerica Bank	Dallas	Texas.
First Associations Bank	Dallas	Texas.
First Private Bank of Texas	Dallas	Texas.
Pavillion Bank	Dallas	Texas.
Signature Bank	Dallas	Texas.
State Bank of Texas	Dallas	Texas.
T Bank, National Association	Dallas	Texas.
Amistad Bank	Del Rio	Texas.
First Bank & Trust East Texas	Diboll	Texas.
Pioneer Bank, SSB	Drippings Springs	Texas.
The First National Bank of Eagle Lake	Eagle Lake	Texas.
NewFirst National Bank	El Campo	Texas.
First National Bank of Emory	Emory	Texas.
Enloe State Bank	Cooper	Texas.
Pecos County State Bank	Fort Stockton	Texas.
RiverBend Bank	Fort Worth	Texas.
Security State Bank & Trust	Fredericksburg	Texas.
Collin Bank	Frisco	Texas.
The First State Bank of Gainesville	Gainesville	Texas.
Moody National Bank	Galveston	Texas.
First National Bank	George West	Texas.
First National Bank of Giddings	Giddings	Texas.
The First National Bank of Gilmer	Gilmer	Texas.
Mills County State Bank	Goldthwaite	Texas.
First State Bank	Graham	Texas.
Grand Bank of Texas	Grand Prairie	Texas.
Farmers State Bank	Groesbeck	Texas.
American First National Bank	Houston	Texas.
Icon Bank of Texas, National Association	Houston	Texas.
Texas Bay Area Credit Union	Houston	Texas.
State National Bank of Texas	Iowa Park	Texas.
TIB—The Independent BankersBank	Irving	Texas.
Westbound Bank	Katy	Texas.
First National Bank Texas	Killeen	Texas.
Citizens Bank, National Association	Knox City	Texas.
First Liberty National Bank	Liberty	Texas.
Texas Trust Credit Union	Mansfield	Texas.
FirstCapital Bank of Texas, National Association	Midland	Texas.
Muenster State Bank	Muenster	Texas.
Nixon State Bank	Nixon	Texas.
First Basin Credit Union	Odessa	Texas.
The Ozona National Bank	Ozona	Texas.
Texas Citizens Bank, National Association	Pasadena	Texas.
InTouch Credit Union	Plano	Texas.
Vista Bank	Ralls	Texas.
Vision Bank—Texas	Richardson	Texas.
1st Community Federal Credit Union	San Angelo	Texas.
Firstmark Credit Union	San Antonio	Texas.
Schertz Bank & Trust	Schertz	Texas.
West Texas State Bank	Snyder	Texas.
Texas Community Bank, National Association	Somerset	Texas.
The First National Bank of Stanton	Stanton	Texas.
Texell Credit Union	Temple	Texas.
Amoco Federal Credit Union	Texas City	Texas.
The First National Bank of Trenton	Trenton	Texas.
Alliance Bank Central Texas	Waco	Texas.
Central National Bank	Waco	Texas.

Federal Home Loan Bank of Topeka—District 10

Air Academy Federal Credit Union	Colorado Springs	Colorado.
American National Bank	Denver	Colorado.
Alpine Bank—Glenwood Springs, CO	Glenwood Springs	Colorado.
First National Bank	Hugo	Colorado.
Mancos Valley Bank	Mancos	Colorado.
High Country Bank	Salida	Colorado.
Colorado Community Bank	Yuma	Colorado.
KansasLand Bank	Americus	Kansas.
New Century Bank, National Association	Belleville	Kansas.
Community National Bank & Trust	Chanute	Kansas.
ESB Financial	Emporia	Kansas.
Home Bank & Trust Company of Eureka	Eureka	Kansas.
The Union State Bank	Everest	Kansas.

Armed Forces Bank, National Association	Fort Leavenworth	Kansas.
The Farmers State Bank	Holton	Kansas.
First Commerce Bank	Marysville	Kansas.
First Security Bank & Trust Company	Norton	Kansas.
The Bank	Oberlin	Kansas.
Bank of the Prairie	Olathe	Kansas.
Bank of Prairie Village	Prairie Village	Kansas.
Riley State Bank of Riley	Riley	Kansas.
First State Bank & Trust—Tonganoxie, KS	Tonganoxie	Kansas.
Capital City Bank—Topeka, KS	Topeka	Kansas.
CoreFirst Bank & Trust	Topeka	Kansas.
Fidelity State Bank & Trust Company	Topeka	Kansas.
First National Bank of Washington	Washington	Kansas.
Meritrust Credit Union	Wichita	Kansas.
Pony Express Community Bank—Elwood, KS	St. Joseph	Missouri.
Carson National Bank of Auburn	Auburn	Nebraska.
Farmers & Merchants State Bank	Bloomfield	Nebraska.
Nebraska State Bank & Trust Company	Broken Bow	Nebraska.
Exchange Bank	Gibbon	Nebraska.
First State Bank	Gothenburg	Nebraska.
Bank of Nebraska	La Vista	Nebraska.
West Gate Bank	Lincoln	Nebraska.
Home State Bank	Louisville	Nebraska.
Bank of Mead	Mead	Nebraska.
First Nebraska Educators Credit Union	Omaha	Nebraska.
UP Connection Federal Credit Union	Omaha	Nebraska.
SAC Federal Credit Union	Omaha	Nebraska.
Nebraska State Bank	Oshkosh	Nebraska.
Plattsmouth State Bank	Plattsmouth	Nebraska.
First State Bank	Randolph	Nebraska.
Cattle National Bank & Trust Co	Seward	Nebraska.
First Tri-County Bank	Swanton	Nebraska.
Charter West National Bank	West Point	Nebraska.
Winside State Bank—Winside, NE	Winside	Nebraska.
Vision Bank, National Association	Ada	Oklahoma.
Alva State Bank & Trust Company	Alva	Oklahoma.
Ameristate Bank	Atoka	Oklahoma.
Bank of Beaver City	Beaver	Oklahoma.
Washita State Bank	Burns Flat	Oklahoma.
Bank of Commerce	Chelsea	Oklahoma.
ACB Bank	Cherokee	Oklahoma.
Shamrock Bank, National Association	Coalgate	Oklahoma.
First State Bank	Commerce	Oklahoma.
Bank of Commerce	Duncan	Oklahoma.
First National Bank	Heavener	Oklahoma.
American Exchange Bank	Henryetta	Oklahoma.
Bank 7	Oklahoma City	Oklahoma.
FAA Employees Credit Union	Oklahoma City	Oklahoma.
Weokie Credit Union	Oklahoma City	Oklahoma.
First National Bank in Pawhuska	Pawhuska	Oklahoma.
First National Bank	Pawnee	Oklahoma.
Firstar Bank, N.A	Sallisaw	Oklahoma.
First National Bank	Seiling	Oklahoma.
First State Bank	Tahlequah	Oklahoma.
Tinker Federal Credit Union	Tinker Air Force Base	Oklahoma.
Peoples Bank	Tulsa	Oklahoma.
First National Bank & Trust Co	Weatherford	Oklahoma.
Welch State Bank—Welch, OK	Welch	Oklahoma.
First National Bank in Wewoka	Wewoka	Oklahoma.

Federal Home Loan Bank of San Francisco—District 11

West Valley National Bank	Avondale	Arizona.
Heritage Bank, N.A	Phoenix	Arizona.
Deer Valley Credit Union	Phoenix	Arizona.
Goldwater Bank, N.A	Scottsdale	Arizona.
Pima Federal Credit Union	Tucson	Arizona.
Vantage West Credit Union	Tucson	Arizona.
Meridian Bank, N.A	Wickenburg	Arizona.
American Plus Bank, N.A	Arcadia	California.
Valley Republic Bank	Bakersfield	California.
Kern Federal Credit Union	Bakersfield	California.
Pacific Oaks Federal Credit Union	Camarillo	California.
First Choice Bank	Cerritos	California.
Northern California National Bank	Chico	California.
Vibra Bank	Chula Vista	California.

Century Housing Corporation	Culver City	California.
Community Valley Bank	El Centro	California.
Folsom Lake Bank	Folsom	California.
Security First Bank	Fresno	California.
Fresno First Bank	Fresno	California.
US Metro Bank	Garden Grove	California.
Pinnacle Bank	Gilroy	California.
Americas United Bank	Glendale	California.
Kings Federal Credit Union	Hanford	California.
First Foundation Bank	Irvine	California.
Pacific Enterprise Bank	Irvine	California.
Plaza Bank	Irvine	California.
California First National Bank	Irvine	California.
California Business Bank	Los Angeles	California.
Open Bank	Los Angeles	California.
Pacific City Bank	Los Angeles	California.
Premier Business Bank	Los Angeles	California.
The Private Bank of California	Los Angeles	California.
Wedbush Bank	Los Angeles	California.
1st Enterprise Bank	Los Angeles	California.
Commonwealth Business Bank	Los Angeles	California.
Partners Bank of California	Mission Viejo	California.
Visterra Credit Union	Moreno Valley	California.
Bank of Napa, N.A	Napa	California.
CommerceWest Bank, N.A	Newport Beach	California.
One PacificCoast Bank, FSB	Oakland	California.
Avidbank	Palo Alto	California.
Heritage Community Credit Union	Rancho Cordova	California.
South County Bank, N.A	Rancho Santa Margarita	California.
Opus Bank	Redondo Beach	California.
Bank of Rio Vista	Rio Vista	California.
Pacific Alliance Bank	Rosemead	California.
Community 1st Bank	Roseville	California.
Sacramento Credit Union	Sacramento	California.
San Bernardino School Employees Federal Credit Union	San Bernardino	California.
San Diego Trust Bank	San Diego	California.
Bofl Federal Bank	San Diego	California.
North County Credit Union	San Diego	California.
Presidio Bank	San Francisco	California.
JPMorgan Bank and Trust Company, N.A	San Francisco	California.
Heritage Bank of Commerce	San Jose	California.
United American Bank	San Mateo	California.
Tri-Valley Bank	San Ramon	California.
Orange County's Credit Union	Santa Ana	California.
American Riviera Bank	Santa Barbara	California.
The Bank of Santa Barbara	Santa Barbara	California.
Lighthouse Bank	Santa Cruz	California.
Community First Credit Union	Santa Rosa	California.
Bank of Agriculture and Commerce	Stockton	California.
Star One Credit Union	Sunnyvale	California.
KeyPoint Credit Union	Sunnyvale	California.
Tustin Community Bank	Tustin	California.
Universal City Studios Credit Union	Universal City	California.
Ventura County Credit Union	Ventura	California.
Suncrest Bank	Visalia	California.
Valley Business Bank	Visalia	California.
Saigon National Bank	Westminster	California.
Yolo Federal Credit Union	Woodland	California.
Sierra Central Credit Union	Yuba City	California.
One Nevada Credit Union	Las Vegas	Nevada.
Wells Fargo Financial, National Bank	Las Vegas	Nevada.
Valley Bank of Nevada	North Las Vegas	Nevada.

Federal Home Loan Bank of Seattle—District 12

Alaska USA Federal Credit Union	Anchorage	Alaska.
Coast360 Federal Credit Union	Hagatna	Guam.
West Oahu Community Federal Credit Union	Barbers Point	Hawaii.
Pacific Rim Bank	Honolulu	Hawaii.
Hawaii Community Federal Credit Union	Kailua-Kona	Hawaii.
Idaho Independent Bank	Coeur d'alene	Idaho.
Idaho First Bank	McCall	Idaho.
Belt Valley Bank	Belt	Montana.
Bank of Bozeman	Bozeman	Montana.
First Madison Valley Bank	Ennis	Montana.
First State Bank of Forsyth	Forsyth	Montana.

Montana State Bank	Plentywood	Montana.
Oregon Community Credit Union	Eugene	Oregon.
Lewis & Clark Bank	Oregon City	Oregon.
Bank of America Oregon, National Association	Portland	Oregon.
Point West Credit Union	Portland	Oregon.
Willamette Valley Bank	Salem	Oregon.
St. Helens Community Federal Credit Union	St. Helens	Oregon.
TLC Federal Credit Union	Tillamook	Oregon.
Pacific West Bank	West Linn	Oregon.
Woodlands Commercial Corporation	Salt Lake City	Utah.
Morgan Stanley Bank, National Association	Salt Lake City	Utah.
Proficio Bank	Salt Lake City	Utah.
University First Federal Credit Union	Salt Lake City	Utah.
Jordan Federal Credit Union	Sandy	Utah.
Foundation Bank	Bellevue	Washington.
Business Bank of Skagit County	Burlington	Washington.
Coastal Community Bank	Everett	Washington.
Mountain Pacific Bank	Everett	Washington.
MountainCrest Credit Union	Everett	Washington.
Northwest Commercial Bank	Lakewood	Washington.
Twin City Bank	Longview	Washington.
Red Canoe Credit Union	Longview	Washington.
UniBank	Lynnwood	Washington.
Thurston First Bank	Olympia	Washington.
Gesa Credit Union	Richland	Washington.
First Sound Bank	Seattle	Washington.
School Employees Credit Union of Washington	Seattle	Washington.
State Bank Northwest	Spokane	Washington.
Commencement Bank	Tacoma	Washington.
Baker-Boyer National Bank	Walla Walla	Washington.
Jonah Bank of Wyoming	Casper	Wyoming.
Cheyenne-Laramie County Employees Federal Credit Union	Cheyenne	Wyoming.
Wyoming Bank & Trust	Cheyenne	Wyoming.
Summit National Bank	Hulett	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before February 19, 2013, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2010 eighth round review cycle. 12 CFR 1290.2(b)(2)(ii). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 1290.2(d). To ensure consideration by FHFA, comments concerning the community support performance of members selected for the 2010 eighth round review cycle must be delivered to FHFA, either by hard-copy mail at the Federal Housing Finance Agency, Ninth Floor, Housing Mission and Goals (DHMG), 400 Seventh Street SW., Washington, DC 20024, or by electronic mail to *hmgcommunitysupportprogram@fhfa.gov* on or before the March 22, 2013 deadline for submission of Community Support Statements.

Dated: January 30, 2013.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2013–02417 Filed 2–4–13; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL MARITIME COMMISSION

Notice of Request for Additional Information

The Commission gives notice that it has formally requested that the parties to the below listed agreement provide additional information pursuant to 46 U.S.C. 40304(d). This action prevents the agreement from becoming effective as originally scheduled. Interested parties may file comments within fifteen (15) days after publication of this notice in the **Federal Register**.

Agreement No.: 011223–048.

Title: Transpacific Stabilization Agreement.

Parties: American President Lines, Ltd. and APL Co. PTE Ltd. (operating as a single carrier); A.P. Moller-Maersk A/S trading as Maersk Line; China Shipping Container Lines (Hong Kong) Company Limited and China Shipping Container Lines Company Limited (operating as a single carrier); CMA CGM, S.A.; COSCO Container Lines Company Ltd; Evergreen Line Joint Service Agreement; Hanjin Shipping Co., Ltd.; Hapag-Lloyd AG; Hyundai Merchant Marine Co., Ltd.; Kawasaki Kisen Kaisha Ltd.; Mediterranean Shipping Company; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Yangming Marine Transport Corp.; and Zim Integrated Shipping Services, Ltd.

Dated: January 30, 2013.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–02429 Filed 2–4–13; 8:45 am]

BILLING CODE 6730–01–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 March 1, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Nicolet Bankshares, Inc.,* Green Bay, Wisconsin; to merge with Mid-Wisconsin Financial Services, Inc., and thereby indirectly acquire Mid-Wisconsin Bank, both in Medford, Wisconsin.

Board of Governors of the Federal Reserve System, January 31, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–02462 Filed 2–4–13; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice-MG-2012-04; Docket 2012–0002]

Sequence 24 Findings of the EISA 436(h) Ad-Hoc Review Group on Green Building Certification Systems

AGENCY: Office of Federal High-Performance Green Buildings; Office of Government-wide Policy, General Services Administration.

ACTION: Request for information.

SUMMARY: GSA and its Federal agency partners in the EISA 436(h) Ad-Hoc Discussion Group are seeking public input regarding possible approaches GSA may take in fulfilling its requirement from the Energy Independence and Security Act (EISA) of 2007 to provide a formal recommendation to the Secretary of Energy that identifies a green building certification system(s) most likely to encourage a comprehensive and environmentally-sound approach to the certification of green Federal buildings. GSA is using the deliberations from the EISA 436(h) Ad-hoc Discussion Group as well as verbal and written public input from previously held listening sessions in June and July 2012 and this **Federal Register** Notice to inform its final recommendation to the Secretary of Energy. The information being asked for in this notice is not for the purpose of a proposed GSA rulemaking or a GSA regulation; GSA is requesting input from the public to better inform its recommendation to the Secretary of Energy on what green building certification system(s) the Federal government should use.

DATES: Interested parties should submit written comments by one of the methods shown below on or before 60 days after publication in the **Federal Register** to be considered in the formation of GSA's recommendation to the Secretary of Energy.

ADDRESSES: Submit comments in response to Notice-MG-2012–04 by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Notice-MG–2012–04''. Select the link ''Submit a Comment'' that corresponds with ''Notice-MG–2012–04.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Notice-MG–2012–04'' on your attached document.
- Fax: 202–501–4067.
- Email: *bryan.steverson@gsa.gov*
- Mail: General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite Notice-MG-2012-04, in all correspondence related to this case. Visit *http://www.gsa.gov/gbcertification review* for more information.

FOR FURTHER INFORMATION CONTACT: GSA Sustainability Program Advisor: Bryan Steverson, 202–501–6115, *bryan.steverson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

GSA and its Federal agency partners in the EISA 436(h) Ad-hoc Discussion Group are seeking public input regarding possible approaches GSA may take to carry out its responsibilities under the Energy Independence and Security Act of 2007 (EISA, Pub. L. 110–140) to evaluate green building certification systems and provide a formal recommendation to the Secretary of Energy on how green building certifications systems and related standards can be most effectively used by the Federal government to advance high performance in buildings.

Section 436 of EISA requires the Director of GSA's Office of Federal High-Performance Green Buildings to evaluate green building certification systems every five years to identify a system and certification level that ''will be most likely to encourage a comprehensive and environmentally sound approach to the certification of green federal buildings.'' EISA requires the GSA Administrator to provide his/her recommendation to the Secretary of Energy, who then consults with the Secretary of Defense and the GSA Administrator, to identify the system(s) appropriate for use in the Federal sector to certify green buildings.

GSA first evaluated certification systems in 2006 focusing on new construction. Based on this 2006 review, GSA recommended the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) to the Secretary of Energy for use in the Federal sector. GSA completed its most recent evaluation of green building certification systems in May 2012 focusing on certification systems for new construction, major renovations, and existing buildings. In this review, three systems were evaluated in depth: Green Building Initiative's Green Globes (2010), U.S. Green Building Council's Leadership in Energy and Environmental Design (2009), and the International Living Building Institute's Living Building Challenge (2011). GSA evaluated the three green building certification systems against 27 new construction and 28 existing building statutory and Executive Order requirements. The study found that Green Globes aligns with more of the Federal requirements for new construction than LEED or Living Building Challenge while LEED aligns with more of the Federal requirements for existing buildings than Green Globes or Living Building Challenge. Ultimately, the 2012 report found that none of the existing green building certification systems as designed meets all of the Federal government's needs for high performance building metrics and conformity assessment, especially when considering the Federal sector's statutory requirements in this area. However, better alignment between Federal requirements and green building certification system metrics and documentation could reinforce and continue the important role that green building certification systems currently play within Federal portfolios and in

harmonizing Federal green building activities with the private sector. To read the full study, please visit *http://www.gsa.gov/gbcertificationreview.*

In recognition that there was a high level of interest in this green building certification system review, both within and outside the Federal sector, GSA asked the Department of Energy and the Department of Defense to co-chair an Interagency Ad-Hoc Discussion Group to work through a set of related questions and issues:

- Interrelationships among green building certification systems and green building code-compliant standards for new construction;
- Federal high performance building design, construction and operations requirements;
- Metrics to inform building performance tracking and reporting;
- How high performance in buildings can reduce the total cost of ownership; and
- The appropriate role of green building certification systems in advancing high performance buildings in the Federal sector.

The EISA 436(h) Ad-hoc Discussion Group included representatives from major Federal real estate portfolio holders, including GSA, the Department of Defense, the Department of Energy, the Department of Agriculture, the Environmental Protection Agency, the Department of State, the Department of Health and Human Services, the Department of Veterans Affairs, and the Department of Justice. The Ad-Hoc Discussion Group met numerous times during May–July 2012 and held two public listening sessions to gather comments. This information and public comments collected from this request for information will be used by GSA to develop possible approaches that could form the basis of the EISA 436(h) recommendation. A full summary of the findings (and recommendations) from the Ad-hoc Discussion Group is available at *http://www.gsa.gov/gbcertificationreview.*

Key Concepts

Based on the deliberations of the EISA 436(h) Ad-Hoc Discussion Group and input received from the two public listening sessions, GSA is offering several key concepts for additional public comment.

1. Green building certification systems maintain robust integrated frameworks of performance metrics, standards and conformity assurance aimed at evaluating building performance. These systems are kept current with market developments, including maintenance of professional training and accreditation systems for designers, engineers, auditors and assessors to ensure professionals maintain their expertise in the evolving market. The Ad-hoc Discussion Group found that, properly aligned with government requirements, use of these systems saves government resources by eliminating the cost to Government of developing its own standards while furthering the policy of reliance on the private sector to supply Government needs for goods and services. GSA seeks public input on this finding.

2. If pursuing certification, an Agency should select the green building certification system that best suits its mission and portfolio needs. However, there are important guidelines that should be applied for use of green building certification systems in the Federal sector:

a. At the national level, guidance should be developed that identifies specific credits/points that all agencies should focus on when seeking certification. These points/credits should be aligned with Federal requirements and considered as ''prerequisites'' for Federal building certification. GSA is requesting public input on this strategy and on which points/credits should be considered as ''prerequisites.''

b. For internal consistency and efficient use of resources, agencies should be encouraged to use only one system at the agency or service level. Effective use of these systems requires a high degree of familiarity with each system as well as the system's application to different building and types. Decisions to use multiple systems within one agency should be based on a finding that the organizational structure supports effective use of training resources, and meets portfolio needs considering broad classes of building and use types. GSA is requesting public input on this strategy and whether there are other tools that should be used in lieu of or in addition to green building certification systems.

c. Federal experience with green building certification systems has demonstrated that the systems are flexible enough to develop applications to all building types if Federal agencies have the right direction about how to use the systems, and that this direction should apply to all buildings, including special building types and building types/uses representing relatively small segments in the Federal portfolio. GSA seeks input on this finding.

3. The Federal sector should formalize a process to maintain currency with the evolution of green building certification systems and underlying standards. GSA requests public input on the proposed process below. Elements of the recommended ''currency'' process include:

a. The Federal sector should maintain currency in the use of any green building rating system and automatically adopt the newest version of any standard or green building certification system within one year after it is finalized, unless there is an overt decision not to adopt the latest version.

b. Representatives from major Federal real property portfolio holders and resource agencies should convene to review any updated green building certification systems and changes to standards critical to building performance in a process similar to the current EISA 436(h) interagency review.

c. GSA's Office of Federal High-Performance Green Buildings should track the evolution of green building certification systems and standards, and work with the Departments of Energy and Defense, and other agencies as appropriate, to review changes and propose any necessary Federal response.

4. Green building certification systems currently serve as a bridge both in supporting the transformation to high-performance within the Federal portfolio, and in harmonizing Federal green building activities with the private sector. The Federal government should strategically engage with green building certification system owners to develop better alignment with Federal agency requirements and needs while continuing the Federal government's role in market leadership. Strategically engaging to develop better alignment with Federal agency requirements and needs could include improving performance metrics and methodologies; addressing fundamental improvements in content such as life cycle impacts and human health and productivity needs; and increasing government efficiency by reducing duplication in documentation for conformity assurance. GSA requests public input into what the Federal role is in evolving green building certification systems, standards, and tools to better address Federal agency requirements and needs and support evolution in the market.

Dated: January 30, 2013.

Kevin Kampschroer

Federal Director, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, U.S. General Services Administration.

[FR Doc. 2013–02408 Filed 2–4–13; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Establishment of the 2015 Dietary Guidelines Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

Authority: Establishment of the 2015 Dietary Guidelines Advisory Committee is authorized under 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended. The Committee will be governed by provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees.

SUMMARY: The U.S. Department of Health and Human Services announces establishment of the 2015 Dietary Guidelines Advisory Committee (hereafter referred to as the Committee or 2015 DGAC). The 2015 DGAC is an expert advisory committee that has been established to assist the Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA) perform a single, time-limited task.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, 2015 DGAC, Richard D. Olson and/or Alternate Designated Federal Officer, 2015 DGAC: Kellie (O'Connell) Casavale, Ph.D., RD; Office of Disease Prevention and Health Promotion, OASH/DHHS; 1101 Wootton Parkway, Suite LL100 Tower Building; Rockville, MD 20852; Telephone (240) 453–8280; Fax: (240) 453–8281. Lead USDA Co-Executive Secretary, Colette I. Rihane, M.S., R.D., Director, Nutrition Guidance and Analysis Division, Center for Nutrition Policy and Promotion; U.S. Department of Agriculture; 3101 Park Center Drive, Room 1034; Alexandria, VA 22302; Telephone: (703) 305–7600; Fax: (703) 305–3300. USDA Co-Executive Secretary, Shanthy A. Bowman, Ph.D.; Nutritionist, Food Surveys Research Group, Beltsville Human Nutrition Research Center, Agricultural Research Service, USDA; 10300 Baltimore Avenue, BARC-West Bldg 005, Room 125; Beltsville, MD 20705–2350; Telephone: 301–504–0619. Additional information about the 2015 DGAC is available on the Internet at *www.dietaryguidelines.gov.*

SUPPLEMENTARY INFORMATION: Under Section 301 of the National Nutrition Monitoring and Related Research Act of 1990 (7 U.S.C. 534), the Secretaries of HHS and USDA are required to publish jointly, at least every five years, a report entitled *Dietary Guidelines for Americans.* Under the referenced legislation, it is stipulated that HHS and USDA are required to work jointly ane collaboratively to publish a report that (1) contains nutritional and dietary information and guidelines for the general public; (2) is based on the preponderance of scientific and medical knowledge current at the at the time of publication; and (3) will be promoted by each Federal agency in carrying out any Federal food, nutrition, or health program.

Dietary Guidelines for Americans was issued voluntarily by HHS and USDA in 1980, 1985, and 1990. Since enactment of the authorizing legislation, the *Dietary Guidelines for Americans* have been published with revisions in 1995, 2000, 2005, and 2010. The Secretaries of HHS and USDA have established and utilized a Dietary Guidelines Advisory Committee to provide advice and make recommendations regarding the *Guidelines* since the 1985 edition.

After appropriate consultation between HHS and the General Services Administration (GSA), it was determined that formation of the 2015 DGAC is in the public interest in connection with the performance of duties imposed on the Department by law, and that such duties can best be performed through the advice and counsel of a federal advisory committee. The Secretary of Health and Human Services approved for the 2015 DGAC to be established as a discretionary Federal advisory committee; the Committee charter was approved by the Secretary on January 9, 2013. To comply with the provisions of FACA, the charter will be filed with the appropriate Congressional committees and the Library of Congress fifteen calendar days after notice of this action being taken has been published in the **Federal Register**.

Objectives and Scope of Activities. The 2015 DGAC will provide independent, science-based advice and recommendations for development of the *Dietary Guidelines for Americans, 2015,* which forms the basis of Federal nutrition programs, nutrition standards, and nutrition education for the general public. A variety of services and tools will be made available to the Committee to support development of recommendations that promote health and reduce chronic disease risk for Americans. The USDA Nutrition Evidence Library will assist the Committee in conducting and creating a transparent database of systematic reviews reflecting the most current research available on a wide range of food and nutrition-related topics to inform its recommendations.

The 2015 DGAC is established to accomplish a single, time-limited task. The Committee will be terminated after delivery of its final report to the Secretaries of HHS and USDA or two years from the date that the Committee charter is filed, whichever comes first.

Membership and Designation. The Committee will consist of not more than 17 members, with the minimum number being 13; one or more members will be selected to serve as the Chair, Vice Chair, and/or Co-Chairs. Individuals will be selected to serve as members of the Committee who are familiar with current scientific knowledge in the field of human nutrition and chronic disease. Expertise will be sought in specific specialty areas that may include but are not limited to cardiovascular disease; type 2 diabetes; overweight and obesity; osteoporosis; cancer; pediatrics; gerontology; maternal/gestational nutrition; epidemiology; general medicine; energy balance, which includes physical activity; nutrient bioavailability; nutrition biochemistry and physiology; food processing science, safety and technology; public health; nutrition education and behavior change; and/or nutrition-related systematic review methodology.

Members will be invited to serve for the duration of the Committee. Individuals who are appointed to serve as members of the Committee will be jointly agreed upon by the Secretaries of HHS and USDA. All appointed members of the 2015 DGAC will be classified as special government employees (SGEs).

Administrative Management and Support. The HHS Assistant Secretary for Health and USDA Under Secretaries of the Food, Nutrition, and Consumer Services (FNCS) and Research, Education and Economics (REE) will provide guidance and oversight for the Committee's function and activities.

Management and support services for the 2015 DGAC primarily will be provided by Office of Disease Prevention and Health Promotion (ODPHP) within the Department of Health and Human Services. The ODPHP is a program office within Office of the Assistant Secretary for Health (OASH), which is a staff division in HHS Office of the Secretary. Responsibility for administrative services will be shared with staffs of the USDA FNCS and REE. USDA administrative leadership and Nutrition Evidence Library support will come from the Center for Nutrition Policy and Promotion within FNCS. REE agencies will provide administrative and data analysis support.

A copy of the charter for the 2015 DGAC can be obtained from the designated contacts. A copy of the charter also will be made available on the FACA database after the document is filed with the appropriate Congressional committees and the Library of Congress. The FACA database is a shared management system that is maintained by the GSA Committee Management Secretariat. The Web site for the FACA database is *http://fido.gov/facadatabase/.*

Dated: January 30, 2013.

Howard K. Koh,

Assistant Secretary for Health.

[FR Doc. 2013–02502 Filed 2–4–13; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Bryan William Doreian, Ph.D., Case Western Reserve University: Based on the admission of the Respondent, ORI found that Dr. Bryan William Doreian, former postdoctoral fellow, Department of Dermatology, Case Western Reserve University (CWRU), engaged in research misconduct in research supported by National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grant T32 HL07887 and National Institute of Neurological Disorders and Stroke (NINDS), NIH, grant R01 NS052123.

ORI found that the Respondent engaged in research misconduct by falsifying data that were included in:

- Doreian, B.W. ''Molecular Regulation of the Exocytic Mode in Adrenal Chromaffin Cells.'' Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy, August 2009; hereafter referred to as the ''Dissertation.''
- Doreian, B.W., Fulop, T.G., Meklemburg, R.L., Smith, C.B. ''Cortical F-actin, the exocytic mode, and neuropeptide release in mouse chromaffin cells is regulated by myristoylated alanine-rich C-kinase substrate and myosin II.'' *Mol Biol Cell.* 20(13):3142–54, 2009 Jul; hereafter referred to as the ''*Mol Biol Cell* paper.''
- Doreian, B.W., Rosenjack, J., Galle, P.S., Hansen, M.B., Cathcart, M.K., Silverstein, R.L., McCormick, T.S., Cooper, K.D., Lu, K.Q. ''Hyper-inflammation and tissue destruction mediated by PPAR-γ activation of macrophages in IL–6 deficiency.'' Manuscript prepared for submission to *Nature Medicine;* hereafter referred to as the ''*Nature Medicine* manuscript.''

As a result of the Respondent's admission, the Respondent will request that the following paper be retracted: *Mol Biol Cell.* 20(13):3142–54, 2009 Jul.

ORI finds that Respondent falsified numerical values in the *Mol Biol Cell* paper, the submitted *Nature Medicine* manuscript, and the Dissertation by altering the number of samples or the experimental results to improve the statistical results. Specifically, ORI finds that Respondent:

1. Falsified the quantification of immunofluorescence for the ratio of phosphorylated to unphosphorylated MARCKS protein in response to different stimuli in Figure 2 of the *Mol Biol Cell* paper and in Figure 12 of the Dissertation by falsifying the sample number as n=15.
2. Falsified the quantification of immunofluorescence for filamentous actin in response to different stimuli in Figure 3 of the *Mol Biol Cell* paper and in Figure 13 of the Dissertation by falsifying the sample number as n=15.
3. Falsified the quantification for the effect of blebbistatin on catecholamine release as determined by patch clamp analysis in Figure 22 of the Dissertation by stating that 14 cells had been assayed when only 8 cells had been assayed.
4. Falsified the Pearson's cross-correlation analysis in Figure 7 of the *Mol Biol Cell* paper and in Figure 25 of the Dissertation, used to calculate the degree of spatial correlation between pan-chromogranin A/B (CgA/B) and the endosomal membrane, by stating that 20 or more cells had been tested for each condition when only 9–18 cells had been tested for each condition.
5. Falsified RT–PCR values for iNOS and TNF-alpha expression recorded on spreadsheets and presented in Figures 5e and 5f of the *Nature Medicine* manuscript showing the effect of hyper-inflammatory macrophage generation on tissue destruction, by falsifying the numeric values to fit the hypothesis of the manuscript.
6. Falsified ELISA graphs for the concentration of TNF-α in the aAB IL–6 mice and their controls in Figure 6j of the *Nature Medicine* manuscript showing the effect of rosiglitazone treatment in the mice, by multiplying the experimental values by 100 to match the magnitude of the values presented in Figures 21, 6h, and 6i of the *Nature Medicine* manuscript.
7. Falsified the RT–PCR results presented in the *Nature Medicine* manuscript for quantification of iNOS and TNF-α RNA expression by claiming that the results represent the rmean of three identical experiments when the three experiments were normalized differently to yield the desired result. Specifically, false results were presented for peritoneal macrophages treated in vivo with rosiglitazone and/or inhibitors of PPARγ signaling Figures 1g, 1h, and 1i, and for iNOS RNA expresssion in IL6$^{-/-}$ macrophages treated in vitro with either SOCS3 antisense oligonucleotides in Figure 2g or the STAT3 decoy in Figure 2j.

Dr. Doreian has entered into a Voluntary Settlement Agreement and has voluntarily agreed for a period of three (3) years, beginning on January 15, 2013:

(1) To have his research supervised; Respondent agreed that prior to the submission of an application for U.S. Public Health Service (PHS) support for a research project on which his participation is proposed and prior to his participation in any capacity on PHS-supported research, Respondent shall ensure that a plan for supervision of his duties is submitted to ORI for approval; the supervision plan must be designed to ensure the scientific integrity of his research contribution; he agreed that he shall not participate in any PHS-supported research until such a supervision plan is submitted to and approved by ORI; Respondent agreed to maintain responsibility for compliance with the agreed upon supervision plan;

(2) That any institution employing him shall submit, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract;

(3) To exclude himself voluntarily from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(4) To request that the following paper be retracted: *Mol Biol Cell.* 20(13):3142–54, 2009 Jul.

FOR FURTHER INFORMATION CONTACT: Director, Office of Research Integrity,

1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8200.

David E. Wright,

Director, Office of Research Integrity.

[FR Doc. 2013–02487 Filed 2–4–13; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Extension of a Currently Approved Information Collection; Comment Request

Proposed Projects

Title: Cross-Site Evaluation of Children's Bureau's Child Welfare Technical Assistance Implementation Centers and National Child Welfare Resource Centers.

OMB No.: 0970–0377.

Background and Brief Description: The Cross-Site Evaluation of the Child Welfare Implementation Centers (ICs) and National Resource Centers (NRCs) is sponsored by the Children's Bureau, Administration for Children and Families, of the U.S. Department of Health and Human Services and involves the conduct of a multi-year cross-site evaluation that examines the service provision of the ICs' and NRCs' and the relation of their training and technical assistance activities to organizational and systems change in State and Tribal child welfare systems. Additionally, the evaluation examines the degree to which networking, collaboration, information sharing, adherence to common principles, and common messaging occurs across members of the Children's Bureau Training and Technical Assistance (T/TA) Network, which is designed to improve child welfare systems and to support States and Tribes in achieving sustainable, systemic change that results in greater safety, permanency, and well-being for children, youth, and families. The Children's Bureau desires to assess the quality and effectiveness of the technical assistance it supports, and several of these programs and projects are required to be evaluated, including those funded under Section 105 of The Child Abuse Prevention and Treatment Act, as amended [42 U.S.C. 5106]. The Children's Bureau T/TA Network is currently comprised of providers funded entirely or partially by the Children's Bureau through grants, contracts, and interagency agreements.

The cross-site evaluation uses a mixed-method, longitudinal approach. Data collection methods that already have been employed are a longitudinal telephone survey of State and Tribal child welfare directors (or their designees), a web-based survey of State and Tribal T/TA recipients, and aggregation of outputs from a web-based technical assistance tracking system (OneNet) that will continue to be used by the ICs and NRCs. A web-based survey also has been administered to members of the T/TA Network to assess their communication, coordination, and how they function as part of the Network. Data collected through these instruments are being used by the Children's Bureau to evaluate the technical assistance delivered to State, local, Tribal, and other publicly administered or publicly supported child welfare agencies and family and juvenile courts. Extension of the follow-up data collection instruments beyond the June 30, 2013 expiration date is necessary so that the Children's Bureau can assess the extent to which its T/TA providers achieve their key objectives and determine the outcomes of the T/TA from the perspective of States and Tribes, incorporating service utilization data from OneNet into these analyses.

Respondents: Respondents to two of the survey instruments will be State and Tribal governments. Respondents to the third survey will be private institutions, including universities, not-for-profit organizations, and private companies. Private institutions, including universities and not-for-profit organizations will be respondents to the forms in the OneNet tracking system.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Agency Results Survey	74	1	1.0	74.00
T/TA Activity Survey	160	3	0.25	120.00
Web-Based Network Survey	15	1	0.25	3.75
OneNet Form: General T/TA Event	17	11.8	0.25	50.00
OneNet Form: T/TA Request	13	12.31	0.40	64.00
OneNet Form: T/TA Assessment and Work Plan	13	6.2	0.28	22.568
OneNet Form: T/TA Activity	12	160	0.30	576.00
OneNet Form: Implementation Project Application	5	1.7	0.40	3.4
OneNet Form: Implementation Project Assessment and Work Plan	5	4.6	0.28	6.44
OneNet Form: Implementation Project T/TA Activity	5	600	0.30	900
OneNet Form: Implementation Project Monthly Report	5	36	0.17	30.60
Estimated Total Annual Burden Hours:				1850.76

Overall, the estimated burden hours have decreased by 284 hours from the original submission (the estimated total annual burden hours were 2135.12). This difference is explained in part due to plans for fewer Network member organizations to complete subsequent surveys. Additional data fields have been added to four of the OneNet forms at the request of respondents, and a few questions on survey instruments have been removed or revised. These minor changes did not increase the total annual burden hours.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 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 information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written

comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–02405 Filed 2–4–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Personal Responsibility Education Program (PREP) Multi-Component Evaluation—Data Collection Related to the Performance Analysis Study and the Impact and the In-depth Implementation Study.

OMB No.: 0970–0398

Description: The Office of Data Analysis, Research, and Evaluation (HHS/ACF/ACYF/ODARE) in the Administration for Children, Youth and Families (ACYF) and the Office of Planning, Research, and Evaluation (HHS/ACF/OPRE) in the Administration for Children and Families (ACF) propose a data collection activity as part of the Personal Responsibility Education Program (PREP) Multi-Component Evaluation. The goals of the PREP Multi-Component Evaluation are to document how PREP programs are designed and implemented in the field, collect performance measure data for PREP programs, and assess the effectiveness of selected PREP-funded programs.

The PREP Multi-Component Evaluation contains three components: the ''Design and Implementation Study,'' the ''Performance Analysis Study,'' and the ''Impact and In-Depth Implementation Study.'' This notice is specific to data collection activities for both the Performance Analysis Study and the Impact and In-Depth Implementation Study.

The Performance Analysis Study component entails the development of performance measures and collection and analysis of performance measure data from PREP and Competitive PREP (CPREP) grantees. Data will be used to determine if PREP and CPREP grantees are meeting performance benchmarks related to the program's mission and priorities.

The Impact and In-depth Study component entails separate random assignment impact analyses accompanied by in-depth implementation analyses of four-to-five specific PREP-funded programs. The Impact and In-Depth Implementation Study will expand available evidence on whether the replication of evidence-based programs, or the substantial incorporation of elements of these programs, funded as part of PREP, are effective at delaying sexual activity, increasing condom or contraceptive use for sexually active youth, or reducing pregnancy among youth.

A description of the activities proposed follows:

Performance Analysis—CPREP Performance Measure Data Collection: Performance measurement data collection instruments will be administered to individuals representing CPREP grantees, CPREP program facilitators, other CPREP program staff, and CPREP program participants.

Impact Analysis—Follow-up Instruments: Two follow-up surveys (one at approximately 6 months post-program and one at approximately 12–24 months post-program) will be administered to study participants. Statistical analyses will be performed with these data to determine program effects.

Impact Analysis—Administrative Data Collection: Data will also be collected from administrative records (e.g. school or state agency data bases) and used to determine program effects.

In-depth Implementation Analysis—Implementation Instruments: Site visits will be conducted at two to three points during the program implementation period. During these site visits, in-person interviews, focus groups, and a web survey of program staff will be conducted. Data collected through these activities will provide an understanding of the selected programs' implementation and context and will allow for a description of each program and the treatment-control contrast to be evaluated in each site. Data will also help in interpreting impact findings.

Respondents: Program applicants (i.e., adolescents); Data managers (e.g., at schools or state agencies); Program administrators and staff; Participating youth; and Community members.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Estimated total burden hours	Estimated annual burden hours
Performance Analysis: Competitive PREP Performance Measure Data Collection					
Participant entry survey	60,420	1	.08333	5,035	1,678
Participant exit survey	48,336	1	.16667	8,056	2,685
Performance reporting system data form	111	1	30	3,330	1,110
Implementation site data collection	900	1	14	12,600	4,200
Estimated Annual Burden—Subtotal for Performance Measure Data Collection					9,673
Impact Analysis: Follow-up Instruments					
First follow-up survey with program applicants	4,800	1	0.75	3,600	1,200
Second follow-up survey with program applicants	2,250	1	0.75	1,688	563
Estimated Annual Burden—Sub-total for Follow-up Instruments					1,763

ANNUAL BURDEN ESTIMATES—Continued

Instrument	Total number of respondents	Number of responses per respondent	Average burden hours per response	Estimated total burden hours	Estimated annual burden hours
Impact Analysis: Administrative Data Collection					
Administrative records	6	1	6	36	12
Estimated Annual Burden—Sub-total for Administrative Data Collection Instrument					12
In-depth Implementation Analysis: Implementation Instruments					
Focus group guide with participants	320	1	1.5	480	160
Semi-structured interview topic guide with program staff and other stakeholders	160	2	1	320	107
Web survey of program staff	100	2	0.5	100	33
Estimated Annual Burden—Sub-total for Implementation Instruments					300
TOTAL Estimated Annual Burden					11,748

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2013–02295 Filed 2–4–13; 8:45 am]

BILLING CODE 4184–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request (30-Day FRN): The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Disease Among Men and Women in Agriculture (NCI)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, 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 December 6, 2012 (Vol. #77, p. 72871) and allowed 60 days for public comment. No public comments have been received. 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.

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 and instruments, contact Jane Hoppin, Sc.D., Epidemiology Branch, National Institute of Environmental Health Sciences, NIH, 111 T.W. Alexander Drive, PO Box 12233, MD A3–05, Research Triangle Park, NC 27709, or call non-toll-free number 919–541–7622, or email your request, including your address to: *hoppin1@niehs.nih.gov.*

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Proposed Collection: The Agricultural Health Study: A Prospective Cohort Study of Cancer and Other Disease Among Men and Women in Agriculture, 0925–0406, Expiration Date 5/31/2013—REVISION—National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

Need and Use of Information Collection: The purpose of this information collection is to continue and complete updating the occupational and environmental exposure information as well as medical history information for licensed pesticide applicators and their spouses enrolled in the Agricultural Health Study. This represents a request to complete phase IV (2013–2015) of the study and to continue and complete the buccal cell collection and the Study of Biomarkers of Exposures and Effects in Agriculture (BEEA). The primary objectives of the study are to determine the health effects resulting from occupational and environmental exposures in the agricultural environment. The phase IV follow up data will be collected by using one of three methods of the cohort member's choosing: Self-administered

computer assisted Web survey (CAWI); self-administered paper-and-pen (Paper/pen); or an interviewer administered computer assisted telephone interview (CATI). Proxy interviews for those cohort members unable to complete the follow up will be completed by using one of the three methods as well. Secondary objectives include evaluating biological markers that may be associated with agricultural exposures and risk of certain types of cancer. Questionnaire data will be collected by using computer assisted telephone interview (CATI) and in-person interview (CAPI) systems for telephone screeners and home visit interviews, respectively. Some respondents will also be asked to participate in the collection of biospecimens including blood, urine, and buccal cells (loose cells from the respondent's mouth). The findings will provide valuable information concerning the potential link between agricultural exposures and cancer and other chronic diseases among agricultural Health Study cohort members, and this information may be generalized to the entire agricultural community.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 10,465.

Estimated Annualized Burden Hours

TABLE A.12–1—ESTIMATES ANNUALIZED BURDEN HOURS

Type of respondent	Form	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Private and Commercial Applicators and Spouses.	Reminder, Missing, and Damaged Scripts for Buccal Cell.	100	1	5/60	8
Private Applicators	BEEA CATI Screener	480	1	20/60	160
Private Applicators	BEEA Home Visit CAPI, Blood, & Urine x 1.	160	1	30/60	80
Private Applicators	BEEA Schedule Home Visit Script	20	3	5/60	5
Private Applicators	BEEA Home Visit CAPI, Blood, & Urine x 3.	20	3	30/60	30
Private Applicators	Paper/pen, CAWI or CATI	13,855	1	25/60	5,773
Spouses	Paper/pen, CAWI or CATI	10,201	1	25/60	4,250
Proxy	Paper/pen, CAWI or CATI	635	1	15/60	159
Total					10,465

Dated: January 30, 2013.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, NCI, NIH.

[FR Doc. 2013–02503 Filed 2–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request: Women's Health Initiative Observational Study

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The Women's Health Initiative (WHI) Observational Study. *Type of Information Collection Request:* Revision OMB #0925–0414. *Need and Use of Information Collection:* This study will be used by the NIH to evaluate risk factors for chronic disease among older women by developing and following a large cohort of postmenopausal women and relating subsequent disease development to baseline assessments of historical, physical, psychosocial, and physiologic characteristics. In addition, the observational study will complement the clinical trial (which has received clinical exemption) and provide additional information on the common causes of frailty, disability and death for postmenopausal women, namely, coronary heart disease, breast and colorectal cancer, and osteoporotic fractures. Continuation of follow-up for ascertainment of medical history update forms will provide essential data for outcomes assessment for this population of aging women. *Frequency of Response:* Annually. *Affected Public:* Individuals or households and health care providers. *Type of Respondents:* Study participants, next-of-kin, and physician's office staff. The annual reporting burden is as follows:

ESTIMATE OF ANNUAL HOUR BURDEN

Type of respondent	Number of respondents	Frequency of response	Average time per response	Annual hour burden
OS Participants	41,495	1	20/60	13,929
Next of kin	936	1	6/60	92
Physician/Office Staff	17	1	5/60	1.4
Totals	42,448			14,023

[1] Annual burden is placed on health care providers and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events.

The annualized cost to respondents is estimated at $308,218, assuming respondents time at the rate of $22 per hour and healthcare provider time at the rate of $53 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) 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) 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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Shari Eason Ludlam, MPH, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7913, Bethesda, MD 20892–7934, or call non-toll-free number 301–402–2900 or Email your request, including your address to: *Ludlams@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: January 25, 2013.

Michael Lauer,

Director, Division of Cardiovascular Sciences, National Heart, Lung, and Blood Institute, National Institutes of Health.

Dated: January 28, 2013.

Lynn W. Susulske,

Government Information Specialist. Freedom of Information and Privacy Act Branch, NHLBI, National Institutes of Health.

[FR Doc. 2013–02505 Filed 2–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request: Recipient Epidemiology and Donor Evaluation Study-III (REDS–III) Request for Generic Clearance

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval the information collection listed below. This proposed information collection was previously published in the **Federal Register** in Volume 77, No. 199/ Monday, October 15, 2012, pages 62518–62519, and allowed 60-days for public comment. No comments have been received. 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: Recipient Epidemiology and Donor Evaluation Study-III (REDS–III). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The objective of the Recipient Epidemiology and Donor Evaluation Study-III (REDS–III) program is to ensure safe and effective blood banking and transfusion medicine practices through a comprehensive, multifaceted strategy involving basic, translational, and clinical research to improve the benefits of transfusion while reducing its risks. The conduct of epidemiologic, survey, and laboratory studies is the cornerstone of REDS–III and its predecessors, the REDS and REDS–II programs. Over the past 20 years, the National Heart, Lung, and Blood Institute (NHLBI) REDS programs have proven to be the premier research programs in blood collection and transfusion safety in the United States. Successive renditions of the REDS programs have built upon the many successes that this research network has realized over the years while being responsive to changing research and clinical needs, and adapting to emerging priorities. Research findings have served to improve the screening of donors and collected blood products, blood banking practices, diagnoses, and the basic science principles of transfusion medicine.

While significant progress has been made, transfusion therapy—a very commonly used therapy affecting about six million recipients annually in the U.S.—remains one of the least understood medical procedures. REDS–II conducted studies of blood donor health but much more needs to be learned, including how donor genetic or environmental factors may affect the quality of collected blood components and influence non-infectious transfusion complications in recipients. Additionally, there is always the potential that a new, emerging or re-emerging infection may pose a threat to the safety of the U.S. blood supply. Much of the success of the REDS programs was due to their ability to respond in a timely fashion to potential blood safety threats such as West Nile Virus (WNV) in 2002 or Xenotropic Murine Leukemia Virus Related Virus (XMRV) in 2009. Globally, the threat of HIV and other blood-borne infections to blood safety remains real and has to be closely monitored. Therefore, continuing collection of new scientific evidence through REDS–III is both critical to public health in the U.S. and to countries struggling with the HIV epidemic where blood safety and availability are major concerns. Additionally, the research areas encompassed in REDS–III have been and continue to be hypothesis generating, leading to the development of new basic and translational research projects with implications well beyond the fields of blood banking and transfusion medicine. REDS–III has also been charged with the tasks of education and training and integration of these components in a transfusion medicine research network.

With this submission, the REDS–III Study seeks approval from OMB to develop research studies with data collection activities using focus groups, cognitive interviews, questionnaires and/or qualitative interviews following all required informed consent procedures for respondents and parents/ caregivers as appropriate. With this generic clearance, study investigators will be able to use the OMB-approved data collection methods where appropriate to plan and implement time sensitive studies. Such studies that fall within the overall scope of this submission will be subjected to expedited review and approval by OMB before their implementation. Additionally, studies are reviewed by an NHLBI Observational Study Monitoring Board (OSMB) and by all relevant IRBs.

Frequency of Response: Once. *Affected Public:* Individuals. *Type of Respondents:* Males and females 16 years old or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 6,882; *Estimated Number of Responses per Respondent:* Focus Groups: 1 per respondent; Cognitive Interviews: 2 per respondent; Respondent Surveys: 3 per respondent. *Average Burden of Hours per Response:* Focus Groups: 1.5 hours per respondent; Cognitive Interviews: 1 hour per respondent; Respondent Surveys: 20 minutes per respondent *Estimated Total Annual Burden Hours Requested:* 7,532. The annualized total costs to all respondents are $66,288. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATED BURDEN HOURS FOR PROPOSED EXAMPLE STUDIES TO BE CONDUCTED UNDER THIS CLEARANCE

Type of collection	Number of respondents	Annual frequency per response	Hours per response	Total hours
Focus Groups	300	1	1.5	450
Cognitive Interviews	500	2	1.0	1,000
Respondent Surveys	6,082	3	.33	6,082
Total	6,882			7,532

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 proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information collected; and (4) Ways to minimize the burden of the collection of information on 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: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Simone Glynn, MD, Project Officer/ICD Contact, Two Rockledge Center, Suite 9142, 6701 Rockledge Drive, Bethesda, MD 20892, or call 301–435–0065, or Email your request to: *glynnsa@nhlbi.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: January 13, 2013.

Keith Hoots,

Director, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH.

Dated: January 13, 2013.

Lynn Susulske,

NHLBI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2013–02480 Filed 2–4–13; 8:45 am]

BILLING CODE 4141–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Comment: Input on Recommendations from the Council of Councils Working Group on Use of Chimpanzees in NIH-Supported Research

SUMMARY: The National Institutes of Health (NIH) Council of Councils received and adopted the recommendations and Report of the NIH Council of Councils Working Group on the Use of Chimpanzees in NIH-Supported Research on January 22, 2013. The report is posted on the NIH Web site at *http://dpcpsi.nih.gov/council/working_group_message.aspx.* The agency will consider the recommendations contained in the report as the agency formulates policy. The NIH also announces the opening of a Request for Comment (RFC) period to collect input on the recommendations from interested parties. Comments will be accepted until Saturday, March 23, 2013, via the comment database at *http://grants.nih.gov/grants/rfi/rfi.cfm?ID=31.* In the interim, NIH will continue to apply its policy on Research Involving Chimpanzees (see NOT–OD–12–025; *http://grants.nih.gov/grants/guide/notice-files/NOT–OD–12–025.html.*)

DATES: Responses to this RFC will be accepted through 11:59 p.m. EST Saturday, March 23, 2013.

ADDRESSES: All comments should be submitted electronically to *http://grants.nih.gov/grants/rfi/rfi.cfm?ID=31.*

FOR FURTHER INFORMATION CONTACT: The Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, National Institutes of Health at *dpcpsi@od.nih.gov.*

SUPPLEMENTARY INFORMATION: The use of animals in biomedical and behavioral research has enabled scientists to identify new ways to treat illness, extend life, and improve health and well-being. Chimpanzees are our closest relatives in the animal kingdom, providing exceptional insights into human biology and requiring special consideration and respect. While used very selectively and in limited numbers for biomedical research, chimpanzees have served an important role in advancing human health in the past. However, new methods and technologies developed by the biomedical community have provided alternatives to the use of chimpanzees in several areas of research.

In December 2010, the NIH commissioned a study by the Institute of Medicine (IOM) to assess whether chimpanzees are or will be necessary for NIH-funded biomedical and behavioral research. A year later on December 15, 2011, the IOM issued its findings, with a primary recommendation that the use of chimpanzees in research be guided by a set of principles and criteria. The committee proposed three principles to analyze current and potential future research using chimpanzees:

1. That the knowledge gained must be necessary to advance the public's health;

2. There must be no other research model by which the knowledge could be obtained, and the research cannot be ethically performed on human subjects; and

3. The animals used in the proposed research must be maintained either in ethologically appropriate physical and social environments (i.e., as would occur in their natural environment) or in natural habitats.

Based on its deliberations, the IOM committee concluded that ''while the chimpanzee has been a valuable animal model in past research, most current use of chimpanzees for biomedical research is unnecessary.'' The committee generated case studies of predominant areas of chimpanzee research exemplifying the committee's vision for applying the criteria it developed. The case studies concluded that the following areas of the research they assessed may continue to require the use of chimpanzees: some ongoing research on monoclonal antibody therapies, research on comparative genomics, and important studies of social and behavioral factors that affect the development, prevention, or treatment of disease. The committee was unable to reach consensus on the necessity of the chimpanzee for the development of prophylactic hepatitis C virus vaccine. It also acknowledged that new, emerging, or re-emerging diseases may present challenges that may require the use of chimpanzees. To assist the NIH in considering future requests to use chimpanzees in research, the IOM committee provided the set of principles and criteria as a framework to guide NIH's assessment.

In December 2011, NIH accepted the IOM Recommendations (*http://www.nih.gov/news/health/dec2011/od-15.htm*) contained in the report *Chimpanzees in Biomedical and Behavioral Research: Assessing the Necessity* and issued interim policy in notice NOT–OD–12–025, which indicated that NIH would not fund any new or other competing projects (renewal and revisions) for research involving chimpanzees and will not allow any new projects to go forward with NIH-owned or -supported chimpanzees. However, currently funded research was allowed to continue. The policy remains in effect until NIH considers and issues policy implementing the IOM recommendations.

NIH assembled a working group of the NIH Council of Councils on February 1, 2012, to provide advice on implementation of the IOM recommendations and to consider the size and placement of the active and inactive populations of NIH-owned or -supported chimpanzees. The Working Group was charged with (1) Developing a plan for implementation of the IOM's guiding principles and criteria; (2) Analyzing currently active NIH-supported research using chimpanzees to advise on which studies currently meet the principles and criteria defined by the IOM report and to advise on the process for closing studies if any do not comply with the IOM recommendations; (3) Advising on the size and placement of active and inactive populations of NIH-owned or -supported chimpanzees that may need to be considered as a result of implementing the IOM recommendations; and (4) Developing a review process for considering whether potential future use of the chimpanzee in NIH-supported research is scientifically necessary and consistent with the IOM principles.

The Working Group's efforts culminated in the report containing 28 recommendations to NIH. In developing its recommendations, the Working Group considered public comments received in response to a previous Request for Information (*http://dpcpsi.nih.gov/council/working_group.aspx#Summary*), considered the scientific use of chimpanzees in currently funded research, obtained advice from external experts, and visited several facilities that house and care for chimpanzees. The Working Group submitted its recommendations and the report to the NIH Council of Councils in open session on January 22, 2013, and the Council of Councils adopted the report. The report is available at *http://dpcpsi.nih.gov/council/working_group_message.aspx.*

Comments Requested: The NIH is seeking input on the recommendations from the Council of Councils from the public and the biomedical research community, including foundations, scientific societies, government and regulatory agencies, industry, and NIH grantee institutions. Input is sought for each of the report's recommendations. Response to this RFC is voluntary. Responders are free to address any or all of the recommendations.

Please note that the government will not pay for response preparation or for the use of any information contained in the comments. The NIH may make all comments available, including name of the responder. In addition, NIH may prepare and make available a summary of all input received that is responsive to this RFC.

How to Submit a Response: All comments should be submitted electronically to *http://grants.nih.gov/grants/rfi/rfi.cfm?ID=31.* Comments should pertain to the specific recommendation for which feedback is requested and should conform to the word limit indicated. You will see an electronic confirmation acknowledging receipt of your response, but will not receive individualized feedback on any suggestions. No basis for claims against the U.S. government shall arise as a result of a response to this request for information or from the government's use of such information.

Dated: January 28, 2013.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2013–02507 Filed 2–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications\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 Cancer Institute Special Emphasis Panel; NCI Omnibus Cancer Biology 1.

Date: March 11–12, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Zhiqiang Zou, MD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8055A, MSC 8329, Bethesda, MD 20892, 301–594–3124, *zouzhiq@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Immunology.

Date: March 15, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8123, MSC 8328, Bethesda, MD 20892, 301–496–2330, *tangd@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Peptide Reagents for Proteomic.
Date: March 19, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Embassy Suites—Old Town Alexandria, 1900 Diagonal Road Alexandria, VA 22314.
Contact Person: Marvin L. Salin, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073 Bethesda, MD, 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Libraries for Reference Standards.
Date: March 20, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Embassy Suites, 1900 Diagonal Road, Alexandria, VA 22314.
Contact Person: Marvin L. Salin, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Wound Healing Materials.
Date: March 21, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Embassy Suites—Old Town 1900 Diagonal Road, Alexandria, VA 22314.
Contact Person: Marvin L. Salin, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329 301–496–0694, *msalin@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02387 Filed 2–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Companion Diagnostics.
Date: March 18–19, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Suite 703, Room 7072, Bethesda, md 20892–8329, 301–594–1408, *Stoicaa2@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Radiation Modulators for Radiotherapy.
Date: March 21, 2013.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Viatcheslav A Soldatenkov, MD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd. Room 8057, Bethesda, MD 20892–8329, 301–451–4758, *soldatenkovv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Standards for Metabolomics Research.
Date: March 21, 2013.
Time: 1:30 p.m. to 4:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, 6116 Executive Boulevard, Room 6006, Rockville, MD 20852, (Telephone Conference Call).
Contact Person: Clifford W. Schweinfest, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8050A, Bethesda, MD 20892–8329, 301–402–9415, *schweinfestcw@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Development of Circulating Tumor Cell Devices with Focus on Downstream Single Cell Molecular Analysis.
Date: March 26–27, 2013.
Time: 8:00 p.m. to 12:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Donald L. Coppock, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 7151, Bethesda, MD 20892, 301–451–9385, *donald.coppock@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02386 Filed 2–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract

proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel; Studies of Environmental Agents to Induce Immunotoxicity.

Date: March 7, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Raleigh-Durham Airport, 4810 Page Creek Lane, Durham, NC 27703.

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752, *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: January 30, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02389 Filed 2–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Training and Workforce Development Subcommittee C.

Date: March 4, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mona R. Trempe, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An12, Bethesda, MD 20892, 301–594–3998, *trempemo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862,Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02388 Filed 2–4–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; Innovative and Early Stage Development of Emerging Technologies in Biospecimen Science.

Date: February 20, 2013.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 707, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Donald L Coppock, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm 7151, Bethesda, MD 20892, 301–451–9385, *donald.coppock@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Management, Epidemiology, and Health Behavior.

Date: February 28–March 1, 2013.

Time: 4:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Ellen K Schwartz, EDD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329, 301–594–1215, *schwarel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Bridge Awards to Accelerate the Development of Commercialization.

Date: March 5, 2013.

Time: 11:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 8057, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Viatcheslav A Soldatenkov, MD, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd. Room 8057, Bethesda, MD 20892–8329, 301–451–4758, *soldatenkovv@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Developmental Therapeutics.

Date: March 5–6, 2013.

Time: 6:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Savvas C Makrides, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8050a, Bethesda, MD 20892, 301–496–7421, *makridessc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Biology-2.

Date: March 7–8, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Eun Ah Cho, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Suite 703, Room 7073, Bethesda, MD 20892, 301–435–1822, *choe@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Provocative Questions: Cancer Therapy and Outcomes.

Date: March 19, 2013.
Time: 7:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Shamala K. Srinivas, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8049, Bethesda, MD 20892, 301–594–1224, *ss537t@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Small Grants Program for Cancer Epidemiology.
Date: March 21–22, 2013.
Time: 3:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The Holiday Inn Express, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Joyce C. Pegues, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, NIH National Cancer Institute, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; R13 Review Teleconference.
Date: April 10, 2013.
Time: 1:00 p.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6116 Executive Boulevard, Room 8041, Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Bratin K. Saha, Ph.D., Scientific Review Officer, Program Coordination and Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8041, Bethesda, MD 20892, (301) 402–0371, *sahab@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Prevention Research Small Grant Program.
Date: April 11, 2013.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Adriana Stoica, Ph.D., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Suite 703, Room 7072, Bethesda, MD 20892–8329, 301–594–1408, *stoicaa2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 30, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–02384 Filed 2–4–13; 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 (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: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Final Rule, 42 CFR Part 51 (OMB No. 0930–0172)—Extension

These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act. The regulations contain information collection requirements. The Act authorizes funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or emotional impairment (children/youth) [42 U.S.C. 10802 (4)]. Only entities designated by the governor of each State, including American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, the Mayor of the District of Columbia, and the tribal councils for the American Indian Consortium (the Hopi and Navajo Nations in the Four Corners region of the Southwest), to protect and advocate the rights of persons with developmental disabilities are eligible to receive PAIMI Program grants [the Act at 42 U.S.C. at 10802 (2)]. These grants are based on a formula prescribed by the Secretary [42 U.S.C. at 10822(a) (1) (A)].

On January 1, each eligible State protection and advocacy (P&A) system is required to prepare a report that describes its activities, accomplishments, and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI Program allotments during the most recently completed fiscal year. The PAIMI Act [at 42 U.S.C. 10824(a)] requires that each P&A system transmit a copy of its annual report to the Secretary (via SAMHSA/CMHS) and to the State Mental Health Agency where the system is located. These annual PAIMI Program Performance Reports (PPR) to the Secretary must include the following information:

- The number of (PAIMI-eligible) individuals with mental illness served;
- A description of the types of activities undertaken;
- A description of the types of facilities providing care or treatment to which such activities are undertaken;
- A description of the manner in which the activities are initiated;
- A description of the accomplishments resulting from such activities;
- A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI Program allotments;
- A description of activities conducted by States to protect and advocate such rights;
- A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights; and,
- A description of the coordination among such systems, activities and mechanisms;
- Specification of the number systems that are public and nonprofit systems established with PAIMI Program allotments;
- Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the need for such activities and services that were not met by the State P&A systems established under the PAIMI Act due to resource or annual program priority limitations.

** The PAIMI Rules [42 CFR Part 51] mandate that each State P&A system may place restrictions on either its case or client acceptance criteria developed as part of its annual PAIMI priorities. Each P&A system is required to inform prospective clients of any such restrictions when they request a service [42 CFR 51.32(b)].

This PAIMI PPR summary must include a separate section, prepared by the PAIMI Advisory Council (PAC) that describes the council's activities and its assessment of the State P&A system's operations [42 U.S.C. 10805(7)].

The burden estimate for the annual State P&A system reporting requirements for these regulations is as follows.

42 CFR citation	Number of respondents	Responses per respondent	Burden per response (hrs.)	Total annual burden
51.(8)(a)(2) Program Performance Report	57	1	26.0	[1] 1,482
51.8(8)(a)(8) Advisory Council Report	57	1	10.0	[1] 570
51.10 Remedial Actions:				
Corrective Action Plans	7	1	8.0	56
Implementation Status Report	7	3	2.0	42
51.23(c) Reports, materials and fiscal data provided to the PAC	57	1	1.0	57
51.25(b)(2) Grievance Procedures	57	1	.5	29
Total	126	8	47.5	184

[1] Burden hours associated with these reports are approved under OMB Control No. 0930–0169.

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 by April 8, 2013.

Summer King,

Statistician.

[FR Doc. 2013–02490 Filed 2–4–13; 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.

Project: Addiction Technology Transfer Centers (ATTC) Network Program Monitoring (OMB No. 0930–0216)—Extension

The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) will continue to monitor program performance of its Addiction Technology Transfer Centers (ATTCs). The ATTCs disseminate current health services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, Agency for Health Care Policy and Research, National Institute of Justice, and other sources, as well as other SAMHSA programs. To accomplish this, the ATTCs develop and update state-of-the-art, research-based curricula and professional development training.

CSAT monitors the performance of ATTC events. The ATTCs hold three types of events: Technical assistance events, meetings, and trainings. An ATTC technical assistance event is defined as a jointly planned consultation generally involving a series of contacts between the ATTC and an outside organization/institution during which the ATTC provides expertise and gives direction toward resolving a problem or improving conditions. An ATTC meeting is defined as an ATTC sponsored or co-sponsored events in which a group of people representing one or more agencies other than the ATTC work cooperatively on a project, problem, and/or a policy. An ATTC training is defined as an ATTC sponsored or co-sponsored event of at least three hours that focuses on the enhancement of knowledge and/or skills. Higher education classes are included in this definition with each course considered as one training event.

CSAT currently uses seven (7) instruments to monitor the performance and improve the quality of ATTC events. Two (2) of these forms, the Meeting Follow-up Form and the Technical Assistance Follow-up Form, are currently approved by the Office of Management and Budget (OMB) through approval for CSAT Government Performance and Results Act (GPRA) Customer Satisfaction instruments (OMB No. 0930–0197). CSAT is not seeking any action related to these two forms at this time. They are merely referenced here to provide clarity and context to the description of the forms CSAT uses to monitor the performance of the ATTCs.

The remaining five (5) instruments for program monitoring and quality improvement of ATTC events are currently approved by the OMB (OMB No. 0930–0216) for use through April 30, 2013. These five forms are as follows: Event Description Form; Training Post Event Form; Training Follow-up Form; Meeting Post Event Form; and Technical Assistance Post Event Form. Sixty percent of the forms are administered in person to participants at educational and training events, who complete the forms by paper and pencil. Ten percent of the training courses are online, and thus, those forms are administered online. The remaining thirty percent is made up

of 30-day follow-up forms that are distributed to consenting participants via electronic mail using an online survey tool. At this time, CSAT is requesting approval to extend the use of these five forms as is, with no revisions. A description of each of these forms follows.

(1) Event Description Form (EDF). The EDF collects descriptive information about each of the events of the ATTC Network. This instrument asks approximately 10 questions of ATTC faculty/staff relating to the event focus and format, as well as publications to be used during the event. It allows the ATTC Network and CSAT to track the number and types of events held. There are no revisions to the form. CSAT is proposing to continue to use the form as is.

(2) Training Post Event Form. This form is distributed to training participants at the end of the training activity, and collected from them before they leave. For training events which take place over an extended period of time, this form is completed after the final session of training. The form asks approximately 30 questions of each individual that participated in the training. Training participants are asked to report demographic information, education, profession, field of study, status of certification or licensure, workplace role, employment setting, satisfaction with the quality of the training and training materials, and to assess their level of skills in the topic area. There are no revisions to the form. CSAT is proposing to continue to use the form as is.

(3) Training Follow-up Form. The Training Follow-up form, which is administered 30-days after the event to 25% of consenting participants, asks about 25 questions. The form asks participants to report demographic information, satisfaction with the quality of the training and training materials, and to assess their level of skills in the topic area. No revisions are being made to the form. CSAT is proposing to continue to use the form as is.

(4) Meeting Post Event Form. This form is distributed to meeting participants at the end of the meeting, and collected from them before they leave. This form asks approximately 30 questions of each individual that participated in the meeting. Meeting participants are asked to report demographic information, education, profession, field of study, status of certification or licensure, workplace role, employment setting, and satisfaction with the quality of the event and event materials, and to assess their level of skills in the topic area. No revisions are being made to the form. CSAT is proposing to continue to use the form as is.

(5) Technical Assistance (TA) Post Event form. This form is distributed to technical assistance participants at the end of the TA event. This form asks approximately 30 questions of each individual that participated in the TA event. TA participants are asked to report demographic information, education, profession, field of study, status of certification or licensure, workplace role, employment setting, and satisfaction with the quality of the event and event materials, and to assess their level of skills in the topic area. No revisions are being made to the form. CSAT is proposing to continue to use the form as is.

The information collected on the ATTC forms will assist CSAT in documenting the numbers and types of participants in ATTC events, describing the extent to which participants report improvement in their clinical competency, and which method is most effective in disseminating knowledge to various audiences. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The chart below summarizes the annualized burden for this project.

Type of respondent	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annual burden hours	Hourly wage cost	Total hour cost
ATTC Faculty/Staff							
Event Description Form	250	1	250	.25	62.50	$19.73	$1,233
Meeting and Technical Assistance Participants							
Post-Event Form	5,000	1	5,000	.12	600	19.73	11,838
Follow-up Form	Covered under CSAT Government Performance and Results Act (GPRA) Customer Satisfaction form (OMB #0930–0197)						
Training Participants							
Post-Event Form	30,000	1	30,000	.16	4,800	19.73	94,704
Follow-up Form	7,500	1	7,500	.16	1,200	19.73	23,676
Total	42,750	.....	42,750	.....	6,662.50	.....	131,451

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 by April 8, 2013.

Summer King,

Statistician.

[FR Doc. 2013–02488 Filed 2–4–13; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0002]

President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management Notice of an Open Federal Advisory Committee Teleconference.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Thursday, February 21, 2013, via conference call. The meeting will be open to the public.

DATES: The NSTAC will meet on Thursday, February 21, 2013, from 2:00 p.m. to 3:00 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held via conference call. For access to the conference bridge, contact Ms. Sue Daage by email at *sue.daage@hq.dhs.gov* by 5:00 p.m. on Thursday, February 14, 2013.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. The documents associated with the topics to be discussed during the conference will be available at *www.ncs.gov/nstac* for review by Monday, February 14, 2013. Written comments must be received by the NSTAC Alternate Designated Federal Officer no later than Wednesday, February 20, 2013, and may be submitted by any one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting written comments.
- Email: *NSTAC@hq.dhs.gov.* Include the docket number in the subject line of the email message.
- Fax: (703) 235–4981
- Mail: Alternate Designated Federal Officer, Stakeholder Engagement and Critical Infrastructure Resilience Division, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 3016B, Arlington, VA 20598–0615.

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 *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket, including all documents and comments received by the NSTAC, go to *www.regulations.gov.*

A public comment period will be held during the meeting on Thursday, February 21, 2013, from 2:20 p.m. to 2:40 p.m. Speakers who wish to participate in the public comment period must register in advance no later than Thursday, February 14, 2013, at 5:00 p.m. by emailing Sue Daage at *sue.daage@hq.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration as time permits. Please note that the public comment period may end before the time indicated, following the last call for comments.

FOR FURTHER INFORMATION CONTACT: Michael A. Echols, NSTAC Alternate Designated Federal Officer, Department of Homeland Security, telephone (703) 235–4218.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness telecommunications policy.

Agenda: The NSTAC members will review and discuss the draft *NSTAC Report to the President on the National Security and Emergency Preparedness Implications of a Nationwide Public Safety Broadband Network.* The report recommends the President advance a set of organizational streamlining, policy changes, technical initiatives, reporting requirements, and funding measures to help implement the nationwide public safety broadband network. The NSTAC will also receive an update on progress made to date by the Secure Government Communications Subcommittee. The Secure Government Communications Subcommittee is examining how commercial-off-the-shelf technologies and private sector best practices can be used to secure unclassified communications between and among Federal civilian departments and agencies.

Dated: January 30, 2013.

Michael A. Echols,

Alternate Designated Federal Officer for the NSTAC.

[FR Doc. 2013–02457 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0005; OMB No. 1660–0017]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collected for the Public Assistance (PA) program eligibility determinations, grants management, and compliance with Federal laws and regulations.

DATES: Comments must be submitted on or before April 8, 2013.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2013–0005. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Clifford Brown, Executive Officer, Recovery Directorate, Public Assistance Division, (202) 646–4136. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email

address: *FEMA-Information-Collections-Management@dhs.gov*.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act),- authorizes grants to assist State, Tribal, and local governments and certain Private Non-Profit entities with the response to and recovery from disasters following Presidentially declared major disasters and emergencies. 44 CFR Part 206 specifies the information collections necessary to facilitate the provision of assistance under the PA Program. 44 CFR 206.202 describes the general application procedures for the PA program.

Collection of Information

Title: Public Assistance Program.

Type of Information Collection: Revision of a currently approved information collection.

FEMA Forms: FEMA Form—009–0–49 Request for Public Assistance; FEMA Form 009–0–91 Project Worksheet (PW); FEMA Form 009–0–91A Project Worksheet (PW)—Damage Description and Scope of Work Continuation Sheet; FEMA Form 009–0–91B Project Worksheet (PW)—Cost Estimate Continuation Sheet; FEMA Form 009–0–91C Project Worksheet (PW)—Maps and Sketches Sheet; FEMA Form 009–0–91D Project Worksheet (PW)—Photo Sheet; FEMA Form 009–0–120 Special Considerations Questions; FEMA Form 009–0–121 PNP Facility Questionnaire; FEMA Form 009–0–123 Force Account Labor Summary Record; FEMA Form 009–0–124 Materials Summary Record; FEMA Form 009–0–125 Rented Equipment Summary Record; FEMA Form 009–0–126 Contract Work Summary Record; FEMA Form 009–0–127 Force Account Equipment Summary Record; FEMA Form 009–0–128 Applicant's Benefits Calculation Worksheet; and FEMA Form 009–0–111, Quarterly Progress Reports.

Abstract: The information collected is utilized by FEMA to make determinations for Public Assistance grants based on the information supplied by the respondents

Affected Public: State, Local or Tribal Government.

Number of Respondents: 56.

Number of Responses: 347,123.

Estimated Total Annual Burden Hours: 341,655 hours.

Estimated Cost: There are no record keeping, capital, start-up maintenance costs associated with this information collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: January 30, 2013.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2013–02434 Filed 2–4–13; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1% annual-chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or the regulatory floodway (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

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

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

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

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

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

These new or modified flood hazard determinations are used to meet the floodplain management requirements of

the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Arizona: Maricopa (FEMA Docket No.: B–1249).	Town of Wickenburg (11–09–3523P).	The Honorable Kelly Blunt, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, AZ 85390.	155 North Tegner Street, Suite A, Wickenburg, AZ 85390.	May 4, 2012	040056
Maricopa (FEMA Docket No.: B–1249).	Unincorporated areas of Maricopa County (11–09–3523P).	The Honorable Don Stapley, District 2 Supervisor, 301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	301 West Jefferson, 10th Floor, Phoenix, AZ 85003.	May 4, 2012	040037
Maricopa (FEMA Docket No.: B–1277).	City of Goodyear (12–09–1467P).	The Honorable Georgia Lord, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	119 North Litchfield Road, Goodyear, AZ 85338.	November 30, 2012	040046
Maricopa (FEMA Docket No.: B–1277).	Unincorporated areas of Maricopa County (12–09–1467P).	The Honorable Max Wilson, Chair, Maricopa County, Board of Supervisors, 301 West Jefferson Street, Phoenix, AZ 85003.	2801 West Durango Street, Phoenix, AZ 85009.	November 30, 2012	040037
Maricopa (FEMA Docket No.: B–1277).	City of Avondale (12–09–1467P).	The Honorable Marie Lopez Rogers, Mayor, City of Avondale, 11465 West Civic Center Drive, Avondale, AZ 85323.	1225 South 4th Street, Avondale, AZ 85323.	November 30, 2012	040038
Maricopa (FEMA Docket No.: B–1277).	Unincorporated areas of Maricopa County (12–09–1031P).	The Honorable Don Stapley, Maricopa County, District 5 Supervisor, 301 West Jefferson Street, Phoenix, AZ 85003.	2801 West Durango Street, Phoenix, AZ 85009.	December 7, 2012	040037
California: Orange (FEMA Docket No.: B–1277).	City of Irvine (12–09–1694P).	The Honorable Sukhee Kang, Mayor, City of Irvine, 1 Civic Center Plaza, Irvine, CA 92606.	1 Civic Center Plaza, Irvine, CA 92606.	November 7, 2012	060222
Ventura (FEMA Docket No.: B–1273).	City of Moorpark (12–09–0985P).	The Honorable Janice Parvin, Mayor, City of Moorpark, 799 Moorpark Avenue, Moorpark, CA 93021.	18 High Street, Moorpark, CA 93021.	July 18, 2012	060712
Colorado: El Paso (FEMA Docket No.: B–1277).	City of Fountain (12–08–0499P).	The Honorable Jeri Howells, Mayor, City of Fountain, 116 South Main Street, Fountain, CO 80817.	116 South Main Street, Fountain, CO 80817.	December 12, 2012	080061
El Paso (FEMA Docket No.: B–1277).	Unincorporated areas of El Paso County (12–08–0499P).	The Honorable Amy Lathen, Chair, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Building Department, 2880 International Circle, Colorado Springs, CO 80910.	December 12, 2012	080059
Connecticut: New Haven (FEMA Docket No.: B–1277).	Town of East Haven (11–01–2488P).	The Honorable Joseph Maturo Jr., Mayor, Town of East Haven, 250 Main Street, East Haven, CT 06512.	461 North High Street, East Haven, CT 06512.	October 5, 2012	090076
New Haven (FEMA Docket No.: B–1277).	City of New Haven (11–01–2488P).	The Honorable John Destefano, Jr., Mayor, City of New Haven, 165 Church Street, New Haven, CT 06510.	200 Orange Street, New Haven, CT 06510.	October 5, 2012	090084
New Haven (FEMA Docket No.: B–1277).	City of Meriden (11–01–2893P).	The Honorable Michael S. Rohde, Mayor, City of Meriden, 142 East Main Street, Meriden, CT 06450.	142 East Main Street, Meriden, CT 06450.	December 7, 2012	090081
Idaho: Ada (FEMA Docket No.: B–1273).	City of Boise (11–10–1081P).	The Honorable David H. Biester, Mayor, City of Boise, 150 North Capitol Boulevard, Boise, ID 83702.	150 North Capitol Boulevard, Boise, ID 83702.	June 15, 2012	160002
Ada (FEMA Docket No.: B–1273).	Unincorporated areas of Ada County (11–10–1081P).	The Honorable Rick Yzaguirre, Chair, Ada County Board of Commissioners, 200 West Front Street, 3rd floor, Boise, ID 83702.	200 West Front Street, 3rd Floor, Boise, ID 83702.	June 15, 2012	160001
Ada (FEMA Docket No.: B–1277).	City of Eagle (12–10–0460P).	The Honorable Jim Reynolds, Mayor, City of Eagle, 660 East Civic Lane, Eagle, ID 83616.	660 East Civic Lane, Eagle, ID 83616.	October 5, 2012	160003
Ada (FEMA Docket No.: B–1277).	Unincorporated areas of Ada County (12–10–0460P).	The Honorable Rick Yzaguirre, Chairman, Ada County Board of Commisioners, 200 West Front Street, Boise, ID 83702.	200 West Front Street, Boise, ID 83702.	October 5, 2012	160001
Blaine (FEMA Docket No.: B–1249).	City of Hailey (11–10–1694P).	The Honorable Rick Davis, Mayor, City of Hailey, 115 Main Street South, Suite H, Hailey, ID 83333.	115 Main Street, Hailey, ID 83333.	May 10, 2012	160022
Blaine (FEMA Docket No.: B–1273).	City of Hailey (12–10–0384P).	The Honorable Fritz Haemmerle, Mayor, City of Hailey, 115 Main Street South, Suite H, Hailey, ID 83333.	115 Main Street South, Suite H, Hailey, ID 83333.	July 5, 2012	160022
Latah (FEMA Docket No.: B–1249).	Unincorporated areas of Latah County (11–10–1485P).	The Honorable Jennifer Barrett, Chair, Latah County Board of Commissioners, 522 South Adams Street, Moscow, ID 83843.	522 South Adams Street, Moscow, ID 83843.	May 11, 2012	160086

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Illinois: DuPage (FEMA Docket No.: B–1277).	City of Elmhurst (12–05–5094P).	The Honorable Peter P. DiCianni, Mayor, City of Elmhurst, 209 North York Street, Elmhurst, IL 60126.	209 North York Street, Elmhurst, IL 60126.	November 30, 2012	170205
Effingham (FEMA Docket No.: B–1273).	City of Effingham (11–05–5866P).	The Honorable Merv Gillenwater, Mayor, City of Effingham, 201 East Jefferson Avenue, Effingham, IL 62401.	201 East Jefferson Avenue, Effingham, IL 62401.	July 24, 2012	170229
Kane (FEMA Docket No.: B–1277).	City of Aurora (12–05–2993P).	The Honorable Thomas Weisner, Mayor, City of Aurora, 44 East Downer Place, Aurora, IL 60507.	44 East Downer Place, Aurora, IL 60507.	November 16, 2012	170320
Kendall (FEMA Docket No.: B–1273).	City of Sandwich (12–05–0175P).	The Honorable Tom Thomas, Mayor, City of Sandwich, 144 East Railroad Street, Sandwich, IL 60548.	144 East Railroad Street, Sandwich, IL 60548.	July 13, 2012	170188
Kendall (FEMA Docket No.: B–1273).	Unincorporated areas of Kendall County (12–05–0175).	Mr. John Purcell Kendall, County Board Chairman, 111 West Fox Street, Yorkville, IL 60560.	111 West Fox Street, Yorkville, IL 60560.	July 13, 2012	170341
McHenry (FEMA Docket No.: B–1249).	City of Crystal Lake (11–05–7872P).	The Honorable Aaron T. Shepley, Mayor, City of Crystal Lake, 100 West Woodstock Street, Crystal Lake, IL 60014.	100 West Woodstock Street, Crystal Lake, IL 60014.	May 21, 2012	170476
McLean (FEMA Docket No.: B–1273).	City of Bloomington (11–05–3513P).	The Honorable Stephen F. Stockton, Mayor, City of Bloomington, 109 East Olive Street, Bloomington, IL 61701.	109 East Olive Street, Bloomington, IL 61701.	July 13, 2012	170490
McLean (FEMA Docket No.: B–1273).	Unincorporated areas of McLean County (11–05–3513P).	The Honorable Matt Sorenson, McLean, County Board Chairman, 115 East Washington Street, Room 401, Bloomington, IL 61701.	115 East Washington Street, Room M102, Bloomington, IL 61701.	July 13, 2012	170931
Tazewell (FEMA Docket No.: B–1273).	City of Washington (11–05–7882P).	The Honorable Gary W. Manier, Mayor, City of Washington, 301 Walnut Street, Washington, IL 61571.	301 Walnut Street, Washington, IL 61571.	July 12, 2012	170655
Will (FEMA Docket No.: B–1273).	Village of Romeoville (11–05–0953P).	The Honorable John Noak, Mayor, Village of Romeoville, 1050 West Romeo Road, Romeoville, IL 60446.	1050 West Romeo Road, Romeoville, IL 60446.	July 20, 2012	170711
Will (FEMA Docket No.: B–1273).	Village of Plainfield (11–05–6606P).	The Honorable Michael P. Collins, President, Village of Plainfield, 24401 West Lockport Street, Plainfield, IL 60544.	24401 West Lockport Street, Plainfield, IL 60544.	June 8, 2012	170771
Will (FEMA Docket No.: B–1273).	Unincorporated areas of Will County (11–05–6606P).	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	58 East Clinton Street, Suite 500, Joliet, IL 60432.	June 8, 2012	170695
Will (FEMA Docket No.: B–1249).	Village of Romeoville (11–05–7401P).	The Honorable John Noak, Mayor, Village of Romeoville, 13 Montrose Drive, Romeoville, IL 60446.	1050 West Romeo Road, Romeoville, IL 60446.	June 1, 2012	170711
Iowa: Black Hawk (FEMA Docket No.: B–1273).	City of Cedar Falls (11–07–1543P).	The Honorable Jon Crews, Mayor, City of Cedar Falls, 220 Clay Street, Cedar Falls, IA 50613.	220 Clay Street, Cedar Falls, IA 50613.	June 8, 2012	190017
Indiana: Allen (FEMA Docket No.: B–1277).	Unincorporated areas of Allen County (12–05–1513P).	The Honorable Nelson Peters, President, Allen County Board of Commissioners, 200 East Berry Street, Suite 410, Fort Wayne, IN 46802.	1 East Main Street, Room 630, Fort Wayne, IN 46802.	November 13, 2012	180302
Lake (FEMA Docket No.: B–1277).	City of New Haven (12–05–1513P).	The Honorable Terry E. McDonald, Mayor, City of New Haven, 815 Lincoln Highway East, New Haven, IN 46774.	815 Lincoln Highway East, New Haven, IN 46774.	November 13, 2012	180004
Lake (FEMA Docket No.: B–1277).	City of Hobart (12–05–0788P).	The Honorable Brian K. Snedecor, Mayor, City of Hobart, 414 Main Street, Hobart, IN 46342.	414 Main Street, Hobart, IN 46342.	December 3, 2012	180136
Kansas: Johnson (FEMA Docket No.: B–1277).	City of Roeland Park (11–07–3430P).	The Honorable Adrienne Foster, Mayor, City of Roeland Park, 4600 West 51st Street, Roeland Park, KS 66205.	4600 West 51st Street, Roeland Park, KS 66205.	November 14, 2012	200176
Johnson (FEMA Docket No.: B–1277).	City of Fairway (11–07–3430P).	The Honorable Jerry Wiley, Mayor, City of Fairway, 4210 Shawnee Mission Parkway, Suite 100, Fairway, KS 66205.	5252 Beliner Road, Fairway, KS 66205.	November 14, 2012	205185
Johnson (FEMA Docket No.: B–1277).	City of Roeland Park (11–07–3422P).	The Honorable Adrienne Foster, Mayor, City of Roeland Park, 4600 West 51st Street, Roeland Park, KS 66205.	4600 West 51st Street, Roeland Park, KS 66205.	November 7, 2012	200176
McPherson (FEMA Docket No.: B–1273).	City of McPherson (12–07–0044P).	The Honorable Thomas A. Brown, Mayor, City of McPherson, 400 East Kansas Avenue, McPherson, KS, 67460.	400 East Kansas Avenue, McPherson, KS 67460.	June 27, 2012	200217
Sedgwick (FEMA Docket No.: B–1273).	City of Wichita (11–07–2738P).	The Honorable Carl Brewer, Mayor, City of Withita, 455 North Main Street, Wichita, KS 67202.	455 North Main Street, Wichita, KS 67202.	June 19, 2012	200328
Sedgwick (FEMA Docket No.: B–1273).	Unincorporated areas of Sedgwick County (11–07–2738P).	The Honorable Tim R. Norton, Sedgwick County Board of Commissioners, 525 North Main Street, Suite 320, Wichita, KS 67203.	1144 South Seneca Street, Wichita, KS 67213.	June 19, 2012	200321
Maine:					

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Washington	Town of Milbridge (12–01–1740P).	The Honorable Lewis M. Pinkham, Town Manager, Town of Milbridge, 22 School Street, Milbridge, ME 04658.	22 School Street, Milbridge, ME 04658.	December 19, 2012	230142
Cumberland	City of Portland (12–01–0692P).	The Honorable Michael Brennan, Mayor, City of Portland, 389 Congress Street, Portland, ME 04101.	389 Congress Street, Room 315, Portland, ME 04101.	November 9, 2012	230051
Penobscot	Town of Hermon (12–01–0085P).	The Honorable Tim McCluskey, Chairman, Town of Hermon Council, 333 Billings Road, Hermon, ME 04401.	333 Billings Road, Hermon, ME 04401.	October 12, 2012	230389
Lincoln (FEMA Docket No.: B–1273).	Town of Southport (11–01–1247P).	The Honorable Gerald Gamage, Town of Southport, Town Selectman, 361 Hendricks Hill Road, Southport, ME 04576.	361 Hendricks Hill Road, Southport, ME 04576.	June 8, 2012	230221
Minnesota:					
Dakota (FEMA Docket No.: B–1249).	City of Inver Grove Heights (11–05–5362P).	The Honorable George Tourville, Mayor, City of Inver Grove Heights, 8150 Barbara Avenue, Inver Grove Heights, MN 55077.	8150 Barbara Avenue, Inner Grove Heights, Minnesota, 55077.	May 21, 2012	270106
Rice (FEMA Docket No.: B–1273).	City of Fairbault (12–05–1808P).	The Honorable John Jasinski, Mayor, City of Fairbault, Fairbault City Hall, 208 1st Avenue Northwest, Fairbault, MN 55021.	208 1st Avenue, Northwest, Fairbault, MN 55021.	July 6, 2012	270404
Washington (FEMA Docket No.: B–1249).	Unincorporated areas of Washington County (11–05–5362P).	The Honorable Gary Kriesel, Chairman, Washington County Board of Commissioners, 14949 62nd Street North, Stillwater, MN 55082.	14949 62nd Street North, Stillwater, MN 55082.	May 21, 2012	270499
Washington (FEMA Docket No.: B–1249).	City of Newport (11–05–5362P).	The Honorable Tim Geraghty, Mayor, City of Newport, 596 7th Avenue, Newport, MN 55055.	596 7th Avenue, Newport, MN 55055.	May 21, 2012	270510
Washington (FEMA Docket No.: B–1249).	City of St. Paul Park (11–05–5362P).	The Honorable John Hunziker, Mayor, City of St. Paul Park, 600 Portland Avenue, St. Paul Park, MN 55071.	600 Portland Avenue, St. Paul Park, MN 55071.	May 21, 2012	270514
Missouri:					
St. Charles (FEMA Docket No.: B–1273).	City of Chesterfield (11–07–3427P).	The Honorable Bruce Geiger, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, MO 63017.	690 Chesterfield Parkway West, Chesterfield, MO 63017.	July 6, 2012	290896
St. Charles (FEMA Docket No.: B–1273).	Unincorporated areas of St. Charles County (11–07–3427P).	The Honorable Steve Ehlmann, St. Charles County Executive, 100 North 3rd Street, St. Charles, MO 63301.	300 North 2nd Street, St. Charles, MO 63301.	July 6, 2012	290315
Jackson (FEMA Docket No.: B–1273).	City of Independence (11–07–2613P).	The Honorable Don B. Remial, Mayor, City of Independence, 111 East Maple Avenue, Independence, MO 64050.	111 East Maple Avenue, Independence, MO 64050.	July 13, 2012	290172
St. Louis (FEMA Docket No.: B–1273).	Unincorporated areas of St. Louis County (11–07–2794P).	The Honorable Charlie A. Dooley, St. Louis, County Executive, 41 South Central Avenue, Clayton, MO 63105.	41 South Central Avenue, Clayton, MO 63105.	July 17, 2012	290327
Ohio:					
Franklin (FEMA Docket No.: B–1249).	City of Reynoldsburg (11–05–8753P).	The Honorable Brad McCloud, Mayor, City of Reynoldsburg, 7232 East Main Street, Reynoldsburg, OH 43068.	7232 East Main Street, Reynoldsburg, OH 43068.	June 4, 2012	390177
Licking (FEMA Docket No.: B–1249).	Village of Granville (11–05–5165P).	The Honorable Melissa Hartfield, Mayor, Village of Granville, 141 East Broadway, Granville, OH 43023.	141 East Broadway, Granville, OH 43023.	May 4, 2012	390330
Licking (FEMA Docket No.: B–1249).	Unincorporated areas of Licking County (11–05–5165P).	The Honorable Timothy Bubb, President, Licking County Commissioners, 20 South Second Street, Newark, OH 43055.	20 South Second Street, Newark, OH 43055.	May 4, 2012	390328
Clinton (FEMA Docket No.: B–1273).	Village of Sabina (12–05–0889P).	The Honorable Dean Carnahan, Mayor, Village of Sabina, 99 North Howard Street, Sabina, OH 45169.	99 North Howard Street, Sabina, OH 45169.	May 3, 2012	390627
Cuyahoga (FEMA Docket No.: B–1273).	City of Beachwood (12–05–2285P).	The Honorable Merle S. Gorden, Mayor, City of Beachwood, 25325 Fairmont Boulevard, Beachwood, OH 44122.	25325 Fairmont Boulevard, Beachwood, OH 44122.	June 29, 2012	390094
Oregon:					
Jackson (FEMA Docket No.: B–1249).	Unincorporated areas of Jackson County (11–10–1732P).	The Honorable Dennis C.W. Smith, Jackson County Chairman, Board of Commissioners, Jackson County Courthouse, Room 214, 10 South Oakdale Avenue, Medford, OR 97501.	Jackson County Courthouse, Room 214, 10 South Oakdale Avenue, Medford, OR 97501.	May 2, 2012	415589
Jackson (FEMA Docket No.: B–1249).	City of Medford (11–10–1732P).	The Honorable Gary H. Wheeler, Mayor, City of Medford, 411 West 8th Street, Medford, OR 97501.	411 West 8th Street, Medford, OR 97501.	May 2, 2012	410096
Washington: DC (FEMA Docket No.: B–1273).	District of Columbia (12–03–0808P).	The Honorable Vincent C. Gray, Mayor, District of Columbia, 1350 Pennsylvania Avenue, Northwest, Washington, DC 20004.	1200 1st Street, Northeast, 5th Floor, Washington, DC 20002.	July 20, 2012	110001

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
West Virginia:					
Jefferson (FEMA Docket No.: B–1249).	City of Ranson (11–03–1484P).	The Honorable A. David Hamill, Mayor, City of Ranson, 312 South Mildred Street, Ranson, WV 25438.	312 South Mildred Street, Ranson, WV 25438.	May 23, 2012	540068
Jefferson (FEMA Docket No.: B–1249).	Unincorporated areas of Jefferson County (11–03–1484P).	The Honorable Patsy Noland, President, Jefferson County Commission, 124 East Washington Street, Charlestown, WV 25414.	124 East Washington Street, Charlestown, WV 25414.	May 23, 2012	540065
Wisconsin:					
Barron (FEMA Docket No.: B–1249).	Unincorporated areas of Barron County (12–05–0299P).	The Honorable James A. Miller, Barron County Board Chairman, 330 East LaSalle Avenue, Barron, WI 54812.	330 East LaSalle Avenue, Barron, WI 54812.	May 10, 2012	550568
Outagamie (FEMA Docket No.: B–1249).	City of Appleton (11–05–7670P).	The Honorable Timothy Hanna, Mayor, City of Appleton, 100 North Appleton Street, Appleton, WI 54911.	100 North Appleton Street, Appleton, WI 54911.	May 9, 2012	555542
Columbia (FEMA Docket No.: B–1249).	City of Columbus (11–05–4519P).	The Honorable Bob Link, Mayor, City of Columbus, 103 Wildwood Drive, Columbus, WI 53925.	105 North Dickason Boulevard, Columbus, WI 53925.	May 29, 2012	550058
Columbia (FEMA Docket No.: B–1249).	Unincorporated areas of Columbia County (11–05–4519P).	The Honorable Robert Westby, Columbia County Board Chairman, 400 DeWitt Street, Portage, WI 53901.	400 DeWitt Street, Portage, WI 53901.	May 29, 2012	550581
Rock (FEMA Docket No.: B–1273).	Unincorporated areas of Rock County (12–05–1647P).	The Honorable J. Russell Podzilni, Chair, Rock County Board of Supervisors, 51 South Main Street, Janesville, WI 53545.	51 South Main Street, Janesville, WI 53545.	July 11, 2012	550363
Racine (FEMA Docket No.: B–1273).	City of Burlington (11–05–2911P).	The Honorable Robert Miller, Mayor, City of Burlington, 300 North Pine Street, Burlington, WI 53105.	300 North Pine Street, Burlington, WI 53105.	June 8, 2012	550348
Racine (FEMA Docket No.: B–1273).	Unincorporated areas of Racine County (11–05–2911P).	The Honorable James A. Ladwig, Racine County Executive, 730 Wisconsin Avenue, Racine, WI 53403.	14200 Washington Avenue, Sturtevant, WI 53177.	June 8, 2012	550347
Walworth (FEMA Docket No.: B–1273).	Unincorporated areas of Walworth County (11–05–4839P).	The Honorable David Bretl, Walworth County Administrator, 100 West Walworth Street, Elkhorn, WI 53121.	100 West Walworth Street, Elkhorn, WI 53121.	June 4, 2012	550462
Washington (FEMA Docket No.: B–1273).	Unincorporated areas of Washington County (11–05–6560P).	The Herbert J. Tennies Washington County Board Chairperson, 432 East Washington Street, Suite 3029, West Bend, WI 53095.	333 East Washington Street, Suite 2300, West Bend, WI 53095.	June 8, 2012	550471

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

James A. Walke,

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

[FR Doc. 2013–02441 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1288]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

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

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are

accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

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

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

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

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Alabama:						
Shelby	City of Chelsea (12–04–5684P).	The Honorable Samuel Earl Niven, Sr., Mayor, City of Chelsea, P.O. Box 111, Chelsea, AL 35043.	City Clerk's Office, 11611 Chelsea Road, Chelsea, AL 35043.	*http://www.bakeraecom.com/index.php/alabama/shelby-2/.*	March 11, 2013	010432
Shelby	Unincorporated areas of Shelby County (12–04–5684P).	The Honorable Corley Ellis, Chairman, Shelby County Commission, P.O. Box 1177, Columbiana, AL 35051.	Shelby County, Engineer's Office, 506 Highway 70, Columbiana, AL 35051.	*http://www.bakeraecom.com/index.php/alabama/shelby-2/.*	March 11, 2013	010191
Arizona: Maricopa	Unincorporated areas of Maricopa County (12–09–2621P).	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.r9map.org/Docs/12–09–2621P–040037–102IC.pdf.*	January 25, 2013	040037
California: San Luis Obispo.	City of San Luis Obispo (12–09–1856P).	The Honorable Jan Howell Marx, Mayor, City of San Luis Obispo, 990 Palm Street, San Luis Obispo, CA 93401.	Engineering Department, 919 Palm Street, San Luis Obispo, CA 93401.	*http://www.r9map.org/Docs/12–09–1856P–060310–102DA.pdf.*	March 25, 2013	060310
Colorado:						
Adams	City of Westminster (12–08–0832P).	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, CO 80031.	Engineering Division, 4800 West 92nd Avenue, Westminster, CO 80031.	*http://www.bakeraecom.com/index.php/colorado/adams/.*	March 15, 2013	080008
Arapahoe	City of Aurora (12–08–0590P).	The Honorable Steve Hogan, Mayor, City of Aurora, 15151 East Alameda Parkway, Aurora, CO 80012.	Engineering Department, 15151 East Alameda Parkway, Aurora, CO 80012.	*http://www.bakeraecom.com/index.php/colorado/arapahoe/.*	March 22, 2013	080002
Boulder	City of Boulder (12–08–0776P).	The Honorable Matthew Appelbaum, Mayor, City of Boulder, P.O. Box 791, Boulder, CO 80306.	Planning and Development Services Department, 1739 Broadway, 3rd Floor, Boulder, CO 80302.	*http://www.bakeraecom.com/index.php/colorado/boulder/.*	March 25, 2013	080024
Florida: Brevard	City of Cocoa Beach (12–04–6118P).	The Honorable Leon "Skip'' Beeler III, MD, Mayor, City of Cocoa Beach, P.O. Box 322430, Cocoa Beach, FL 32932.	Development Services Department, 2 South Orlando Avenue, 2nd Floor, Cocoa Beach, FL 32932.	*http://www.bakeraecom.com/index.php/florida/brevard/.*	March 25, 2013	125097
North Carolina: Mecklenburg.	Town of Huntersville (12–04–5382P).	The Honorable Jill Swain, Mayor, Town of Huntersville, P.O. Box 664, Huntersville, NC 28078.	Planning Department, 101 Huntersville-Concord Road, Huntersville, NC 28070.	*http://www.bakeraecom.com/index.php/northcarolina/mecklenburg-pmr-2/.*	March 11, 2013	370478.
South Carolina:						
Charleston	City of Charleston (12–04–8055P).	The Honorable Joseph P. Riley, Jr. Mayor, City of Charleston, P.O. Box 652, Charleston, SC 29402.	Engineering Department ,75 Calhoun Street, Division 301, Charleston, SC 29401.	*http://www.bakeraecom.com/index.php/southcarolina/charleston-2/.*	March 15, 2013	455412
Charleston	Unincorporated areas of Charleston County (12–04–8055P).	The Honorable Teddie E. Pryor, Sr., Chairman, Charleston County Council, 4045 Bridge View Drive, North Charleston, SC 29405.	Charleston County Building Services Department, 4045 Bridge View Drive, North Charleston, SC 29405.	*http://www.bakeraecom.com/index.php/southcarolina/charleston-2/.*	March 15, 2013	455413

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

James A. Walke,

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

[FR Doc. 2013–02445 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1291]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

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

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

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

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

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

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
New Mexico: Sandoval	Village of Corrales (12–06–1884P).	The Honorable Philip Gasteyer, Mayor, Village of Corrales, 4324 Corrales Road, Corrales, NM 87048.	Village Hall, 4324 Corrales Road, Corrales, NM 87048.	*http://www.rampp-team.com/lomrs.htm.*	April 1, 2013	350094
Pennsylvania: Chester	Township of West Goshen (12–03–1877P).	The Honorable Raymond H. Halvorsen, Chairman, Township of West Goshen Board of Supervisors, 1025 Paoli Pike, West Chester, PA 19380.	West Goshen Township Building, 1025 Paoli Pike, West Chester, PA 19380.	*http://www.rampp-team.com/lomrs.htm.*	April 4, 2013	420293

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Texas:						
Harris	Unincorporated areas of Harris County (12–06–3202P).	The Honorable Ed Emmett, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.rampp-team.com/lomrs.htm.*	April 11, 2013	480287
Lamar	Unincorporated areas of Lamar County (12–06–2815P).	The Honorable Chuck Superville, Jr., Lamar County Judge, 119 North Main Street, Paris, TX 75460.	Lamar County Courthouse, 119 North Main Street, Paris, TX 75460.	*http://www.rampp-team.com/lomrs.htm.*	April 1, 2013	480891
Virginia:						
City of Bristol	City of Bristol (12–03–0985P).	Mr. Dewey P. Cashwell, Jr., Manager, City of Bristol, 300 Lee Street, Bristol, VA 24201.	Virginia City Hall, 300 Lee Street, Bristol, VA 24201.	*http://www.rampp-team.com/lomrs.htm.*	April 11, 2013	510022
Stafford	Unincorporated areas of Stafford County (12–03–0748P).	The Honorable Susan Stimpson, Chairman, Stafford County Board of Supervisors, 1300 Courthouse Road, Stafford, VA 22554.	Stafford County Administration Center, 1300 Courthouse Road, Stafford, VA 22554.	*http://www.rampp-team.com/lomrs.htm.*	April 1, 2013	510154

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

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James A. Walke,

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

[FR Doc. 2013–02443 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1290]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

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

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

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

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR

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

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
New Mexico:						
Sandoval.	City of Rio Rancho (12–06–2669P).	The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, 3200 Civic Center Circle Northeast, Rio Rancho, NM 78144.	City Hall, 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144.	*http://www.rampp-team.com/lomrs.htm.*	March 7, 2013 ..	350146
Pennsylvania:						
Cumberland	Borough of Shiremanstown (13–03–0052P).	The Honorable James E. Reagan, Mayor, Borough of Shiremanstown, 1 Park Lane, Shiremanstown, PA 17011.	1 Park Lane, Shiremanstown, PA 17011.	*http://www.rampp-team.com/lomrs.htm.*	March 14, 2013	420369
Cumberland	Township of Hampden (13–03–0052P).	The Honorable Al Bienstock, President, Hampden Township Board of Commissioners, 230 South Sporting Hill Road, Mechanicsburg, PA 17050.	Township of Hampden, 230 South Sporting Hill Road, Mechanicsburg, PA 17050.	*http://www.rampp-team.com/lomrs.htm.*	March 14, 2013	420360
Cumberland	Township of Lower Allen (13–03–0052P).	The Honorable H. Edward Black, President, Lower Allen Township Board of Commissioners, 2233 Gettysburg Road, Camp Hill, PA 17011.	Township of Lower Allen, 2233 Gettysburg Road, Camp Hill, PA 17011.	*http://www.rampp-team.com/lomrs.htm.*	March 14, 2013	421016
Northumberland	Borough of Snydertown (12–03–1407P).	The Honorable Larry Wary, President, Borough of Snydertown Council, 36 South Main Street, Snydertown, PA 17877.	Borough Building, 36 South Main Street, Snydertown, PA 17877.	*http://www.rampp-team.com/lomrs.htm.*	March 11, 2013	420742
Texas:						
Bexar	City of San Antonio (12–06–1279P).	The Honorable Julian Castro, Mayor, City of San Antonio, 100 Military Plaza, San Antonio, TX 78205.	Municipal Plaza, 114 West Commerce, 7th Floor, San Antonio, TX 78205.	*http://www.rampp-team.com/lomrs.htm.*	March 7, 2013 ..	480045

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Bexar	Unincorporated areas of Bexar County (12–06–2065P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	February 19, 2013.	480035
Bexar	Unincorporated areas of Bexar County, (12–06–2751P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	March 1, 2013	480035
Collin	City of Allen (12–06–1794P).	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, 1st Floor, Allen, TX 75013.	City Hall, Engineering Department, 305 Century Parkway, 1st Floor, Allen, TX 75013.	*http://www.rampp-team.com/lomrs.htm.*	February 8, 2013.	480131
Collin	City of Frisco (12–06–2035P).	The Honorable Maher Maso, Mayor, City of Frisco, 6101 Frisco Square Boulevard, Frisco, TX 75034.	City Hall, 6101 Frisco Square Boulevard, 3rd Floor, Frisco, TX 75034.	*http://www.rampp-team.com/lomrs.htm.*	February 4, 2013.	480134
Collin	City of McKinney (12–06–1512P).	The Honorable Brian Loughmiller, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	222 North Tennessee Street, McKinney, TX 75069.	*http://www.rampp-team.com/lomrs.htm.*	February 22, 2013.	480135
Dallas	City of Garland (12–06–1648P).	The Honorable Ronald E. Jones, Mayor, City of Garland, 200 North 5th Street, Garland, TX 75040.	800 Main Street, Garland, TX 75040.	*http://www.rampp-team.com/lomrs.htm.*	March 18, 2013	485471
Dallas	City of Rowlett (12–06–1648P).	The Honorable Todd W. Gottel, Mayor, City of Rowlett, 4000 Main Street, Rowlett, TX 75088.	City Hall, 4000 Main Street, Rowlett, TX 75088.	*http://www.rampp-team.com/lomrs.htm.*	March 18, 2013	480185
Dallas	City of Sachse (12–06–1648P).	The Honorable Mike Felix, Mayor, City of Sachse, 3815 Sachse Road, Building B, Sachse, TX 75048.	Community Development Department, 3815 Sachse Road, Building B, Sachse, TX 75048.	*http://www.rampp-team.com/lomrs.htm.*	March 18, 2013	480186
Denton	Unincorporated areas of Denton County (12–06–1316P).	The Honorable Mary Horn, Denton County Judge, 110 West Hickory Street, 2nd Floor, Denton, TX 76201.	Denton County Government Center, 1505 East McKinney Street, Suite 175, Denton, TX 76209.	*http://www.rampp-team.com/lomrs.htm.*	March 18, 2013	480774

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Harris	City of Houston (12–06–3459P).	The Honorable Annise D. Parker, Mayor, City of Houston, 900 Bagby Street, Houston, TX 77002.	City Hall, 901 Bagby Street, Houston, TX 77002.	*http://www.rampp-team.com/lomrs.htm.*	March 4, 2013	480296
Harris	City of Southside Place (12–06–3459P).	The Honorable Pat L. Patterson, Mayor, City of Southside Place, 6309 Edloe Avenue, Houston, TX 77005.	City Hall, 6309 Edloe Avenue, Houston, TX 77005.	*http://www.rampp-team.com/lomrs.htm.*	March 4, 2013	480312
Harris	City of West University Place (12–06–3459P).	The Honorable Bob R. Fry, Mayor, City of West University Place, 3800 University Boulevard, West University Place, TX 77005.	Public Works Development Services, 3826 Amherst Street, West University Place, TX 77005.	*http://www.rampp-team.com/lomrs.htm.*	March 4, 2013	480318
Harris	Unincorporated areas of Harris County (12–06–2603P).	The Honorable Ed Emmett, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002.	10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.rampp-team.com/lomrs.htm.*	January 28, 2013.	480287
Harris	Unincorporated areas of Harris County (12–06–3003P).	The Honorable Ed Emmett, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002.	10555 Northwest Freeway, Suite 120, Houston, TX 77092.	*http://www.rampp-team.com/lomrs.htm.*	March 7, 2013	480287
Lubbock	City of Lubbock (12–06–1237P).	The Honorable Glen Robertson, Mayor, City of Lubbock, P.O. Box 2000, Lubbock, TX 79457.	City Hall, 1625 13th Street, Lubbock, TX 79401.	*http://www.rampp-team.com/lomrs.htm.*	March 7, 2013	480452
Lubbock	Unincorporated areas of Lubbock County (12–06–1237P).	The Honorable Tom Head, Lubbock County Judge, 904 Broadway Street, Suite 101, Lubbock, TX 79401.	Lubbock County Courthouse, 904 Broadway Street, Lubbock, TX 79401.	*http://www.rampp-team.com/lomrs.htm.*	March 7, 2013	480915
Tarrant	City of Fort Worth (12–06–1169P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.rampp-team.com/lomrs.htm.*	January 14, 2013.	480596
Tarrant	Town of Westlake (12–06–1796P).	The Honorable Laura Wheat, Mayor, Town of Westlake, 3 Village Circle, Suite 202, Westlake, TX 76262.	3 Village Circle, Suite 202, Westlake, TX 76262.	*http://www.rampp-team.com/lomrs.htm.*	January 14, 2013.	480614
Williamson	Unincorporated areas of Williamson County (12–06–1129P).	The Honorable Dan A. Gattis, Williamson County Judge, 710 South Main Street, Suite 101, Georgetown, TX 78626.	Williamson County Courthouse, 710 South Main Street, Georgetown, TX 78626.	*http://www.rampp-team.com/lomrs.htm.*	January 31, 2013.	481079

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Wilson	City of Floresville (12–06–1541P).	The Honorable Daniel M. Tejada, Mayor, City of Floresville, 1120 D Street, Floresville, TX 78114.	City Hall, 1120 D Street, Floresville, TX 78114.	*http://www.rampp-team.com/lomrs.htm.*	February 21, 2013.	480671
Virginia:						
City of Richmond.	Independent City of Richmond (11–03–1134P).	The Honorable Dwight C. Jones, Mayor, City of Richmond, 900 East Broad Street, Suite 201, Richmond, VA 23219.	Department of Public Works, 900 East Broad Street, Suite 704, Richmond, VA 23219.	*http://www.rampp-team.com/lomrs.htm.*	February 4, 2013.	510129
Loudoun	Town of Leesburg (12–03–0044P).	The Honorable Kristen C. Umstattd, Mayor, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176.	Town Hall, 25 West Market Street, Leesburg, VA 20176.	*http://www.rampp-team.com/lomrs.htm.*	January 31, 2013.	510091
West Virginia: Marion.	Unincorporated areas of Marion County (11–03–2271P).	The Honorable Burley Tennant, President, Marion County Board of Commissioners, 200 Jackson Street, Room 403, Fairmont, WV 26554.	Marion County Courthouse, Planning Department, 200 Jackson Street, Fairmont, WV 26554.	*http://www.rampp-team.com/lomrs.htm.*	January 31, 2013.	540097

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

James A. Walke,

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

[FR Doc. 2013–02440 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1289]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

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

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at

www.floodmaps.fema.gov/fhm/fmx_main.html.

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

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

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

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

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Oklahoma:						
Tulsa	City of Collinsville (12–06–4005P).	The Honorable Herb Weaver, Mayor, City of Collinsville, 106 North 12th Street, Collinsville, OK 74021.	106 North 12th Street, Collinsville, OK 74021.	*http://www.rampp-team.com/lomrs.hrm.*	March 28, 2013	400360
Tulsa	Unincorporated areas of Tulsa County (12–06–4005P).	The Honorable John Smaligo, Chairman, Tulsa County Board of Commissioners, 500 South Denver Avenue, Tulsa, OK 74103.	Tulsa County Annex Building, 633 West 3rd Street, Room 140, Tulsa, OK 74127.	*http://www.rampp-team.com/lomrs.hrm.*	March 28, 2013	400462
Texas:						
Bexar	Unincorporated areas of Bexar County (12–06–2613P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 233 North Pecos-La Trinidad, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.hrm.*	March 25, 2013	480035
Harris	Unincorporated areas of Harris County (12–06–1133P).	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	Harris County, 10555 Northwest Freeway, Houston, TX 77092.	*http://www.rampp-team.com/lomrs.hrm.*	March 28, 2013	480287
Travis	City of Austin (12–06–2306P).	The Honorable Lee Leffingwell, Mayor, City of Austin, P.O. Box 1088, Austin, TX 78767.	Watershed Protection Department, 505 Barton Springs Road, 12th Floor, Austin, TX 78704.	*http://www.rampp-team.com/lomrs.hrm.*	April 1, 2013	480624
Travis	Unincorporated areas of Travis County (12–06–2306P).	The Honorable Samuel T. Biscoe, Travis County Judge, P.O. Box 1748, Austin, TX 78767.	Travis County Permits Counter, 700 Lavaca Street, Suite 547, Austin, TX 78701.	*http://www.rampp-team.com/lomrs.hrm.*	April 1, 2013	481026
Webb	City of Laredo (12–06–2634P).	The Honorable Raul G. Salinas, Mayor, City of Laredo, 1110 Houston Street, Laredo, TX 78040.	1120 San Bernardo Avenue, Laredo, TX 78042.	*http://www.rampp-team.com/lomrs.hrm.*	March 18, 2013	480651
Virginia: Prince William	Unincorporated areas of Prince William County (12–03–0457P).	The Honorable Melissa S. Peacor, County Executive, Prince William County, 1 County Complex Court, Prince William, VA 22192.	Prince William County Watershed Management Branch, 5 County Complex Court, Suite 170, Prince William, VA 22192.	*http://www.rampp-team.com/lomrs.hrm.*	March 18, 2013	510119

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

James A. Walke,

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

[FR Doc. 2013–02446 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of May 16, 2013 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

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

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.:

Community	Community map repository address
Gunnison County, Colorado, and Incorporated Areas Docket No.: FEMA–B–1242	
City of Gunnison.	City Hall, 201 West Virginia Avenue, Gunnison, CO 81230.
Town of Crested Butte.	Town Hall, 507 Maroon Avenue, Crested Butte, CO 81224.
Town of Marble.	Blackstock Government Center, 221 North Wisconsin Street, Gunnison, CO 81230.
Town of Pitkin	Town Hall, 801 State Street, Pitkin, CO 81241.
Unincorporated Areas of Gunnison County.	Gunnison County Courthouse, 200 East Virginia Avenue, Gunnison, CO 81230.
DeKalb County, Georgia, and Incorporated Areas Docket No: FEMA–B–1236	
City of Atlanta	Site Development Office, 55 Trinity Avenue Southwest, Suite 5400, Atlanta, GA 30335.
City of Avondale Estates.	City Hall, 32 North Avondale Plaza, Avondale Estates, GA 30002.
City of Chamblee.	City Hall, 5468 Peachtree Road, Chamblee, GA 30341.
City of Clarkston.	City Hall, 3921 Church Street, Clarkston, GA 30021.
City of Decatur	Engineering Department, 2635 Talley Street, Decatur, GA 30031.
City of Doraville.	City Hall, 3725 Park Avenue, Doraville, GA 30340.
City of Dunwoody.	City Hall, 41 Perimeter Center East, Suite 250, Dunwoody, GA 30346.
City of Lithonia	City Hall, 6980 Main Street, Lithonia, GA 30058.
City of Pine Lake.	Administrative Building, 462 Pine Drive, Pine Lake, GA 30072.
City of Stone Mountain.	City Hall, 922 Main Street, Stone Mountain, GA 30083.
Unincorporated Areas of DeKalb County.	DeKalb County Public Works Department, 4305 Memorial Drive, Decatur, GA 30032.
Bracken County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1247	
City of Augusta.	City Offices, 219 Main Street, Augusta, KY 41002.
City of Brooksville.	City Clerk's Office, 101 Frankfort Street, Brooksville, KY 41004.
City of Germantown.	City Clerk's Office, 219 Main Street, Augusta, KY 41002.
Unincorporated Areas of Bracken County.	Bracken County Courthouse, 116 West Miami Street, Brooksville, KY 41004.
Kenton County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1236	
City of Bromley.	City Building, 226 Boone Street, Bromley, KY 41016.
City of Covington.	City Hall, 638 Madison Avenue, Covington, KY 41011.
City of Crescent Springs.	City Administration Office, 739 Buttermilk Pike, Crescent Springs, KY 41017.
City of Crestview Hills.	City Hall, 50 Town Center Boulevard, Crestview Hills, KY 41017.
City of Edgewood.	City Building, 385 Dudley Road, Edgewood, KY 41017.
City of Elsmere.	City Building, 318 Garvey Avenue, Elsmere, KY 41018.
City of Erlanger.	505 Commonwealth Avenue, Erlanger, KY 41018.
City of Fairview.	Kenton County Clerk's Office, 303 Court Street, Covington, KY 41011.
City of Fort Mitchell.	Administrative Building, 2355 Dixie Highway, Fort Mitchell, KY 41017.
City of Fort Wright.	City Building, 409 Kyles Lane, Fort Wright, KY 41011.
City of Independence.	Kenton County Courthouse, 5292 Madison Pike, Independence, KY 41051.
City of Kenton Vale.	Kenton County Clerk's Office, 303 Court Street, Covington, KY 41011.
City of Lakeside Park.	9 Buttermilk Pike, Lakeside Park, KY 41017.
City of Ludlow	City Office, 51 Elm Street, Ludlow, KY 41016.
City of Park Hills.	1106 Amsterdam Road, Park Hills, KY 41011.
City of Ryland Heights.	10145 Decoursey Pike, Ryland Heights, KY 41015.
City of Taylor Mill.	City Hall, 5225 Taylor Mill Road, Taylor Mill, KY 41015.
City of Villa Hills.	City Building, 720 Rogers Rd, Villa Hills, KY 41017.
City of Walton	City Hall, 40 North Main Street, Walton, KY 41094.
Unincorporated Areas of Kenton County.	Kenton County Clerk's Office, 303 Court Street, Covington, KY 41011.

Community	Community map repository address
Lauderdale County, Mississippi, and Incorporated Areas Docket No.: FEMA–B–1246	
City of Meridian.	City Hall, 601 24th Avenue, Meridian, MS 39302.
Unincorporated Areas of Lauderdale County.	Lauderdale County Courthouse, Tax Assessor's Office, 500 Constitution Avenue, Meridian, MS 39301.

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

James A. Walke,

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

[FR Doc. 2013–02439 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1293]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 6, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1293, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

I. Non-watershed-based studies:

Community	Community map repository address
Bucks County, Pennsylvania (All Jurisdictions)	
Maps Available for Inspection Online at: *www.rampp-team.com/pa.htm*	
Borough of Bristol	Borough Municipal Building, 250 Pond Street, Bristol, PA 19007.
Borough of Chalfont	Borough Hall, 40 North Main Street, Chalfont, PA 18914.
Borough of Doylestown	Borough Hall, 57 West Court Street, Doylestown, PA 18901.
Borough of Hulmeville	Borough Hall, 321 Main Street, Hulmeville, PA 19047.

Community	Community map repository address
Borough of Langhorne	Borough Office, 114 East Maple Avenue, Langhorne, PA 19047.
Borough of Langhorne Manor	Langhorne Manor Borough Municipal Building, 618 Hulmeville Avenue, Langhorne, PA 19047.
Borough of Morrisville	Borough Hall, 35 Union Street, Morrisville, PA 19067.
Borough of New Britain	Borough Hall, 45 Keeley Avenue, New Britain, PA 18901.
Borough of New Hope	Borough Hall, 123 New Street, New Hope, PA 18938.
Borough of Newtown	Pickering, Corts & Summerson, 642 Newtown-Yardley Road, Suite 300, Newtown, PA 18940.
Borough of Penndel	Borough Hall, 300 Bellevue Avenue, Penndel, PA 19047.
Borough of Perkasie	Borough Municipal Building, 620 West Chestnut Street, Perkasie, PA 18944.
Borough of Quakertown	Borough Hall, 35 North 3rd Street, Quakertown, PA 18951.
Borough of Riegelsville	Borough Municipal Building, 615 Easton Road, Riegelsville, PA 18077.
Borough of Sellersville	Borough Municipal Building, 140 East Church Street, Sellersville, PA 18960.
Borough of Silverdale	Borough Hall, 100 West Park Avenue, Silverdale, PA 18962.
Borough of Trumbauersville	Borough Hall, 1 Evergreen Drive, Trumbauersville, PA 18970.
Borough of Tullytown	Borough Municipal Building, 500 Main Street, Tullytown, PA 19007.
Borough of Yardley	Borough Hall, 56 South Main Street, Yardley, PA 19067.
Township of Bedminster	Township Office, 3112 Bedminster Road, Bedminster, PA 18910.
Township of Bensalem	Township Building, 2400 Byberry Road, Bensalem, PA 19020.
Township of Bridgeton	Bridgeton Township Office, 1370 Bridgeton Hill Road, Upper Black Eddy, PA 18972.
Township of Bristol	Township Hall, 2501 Bath Road, Bristol, PA 19007.
Township of Buckingham	Township Office, 4613 Hughesian Drive, Buckingham, PA 18912.
Township of Doylestown	Township Hall, 425 Wells Road, Doylestown, PA 18901.
Township of Durham	Township Municipal Building, 215 Old Furnace Road, Durham, PA 18039.
Township of East Rockhill	East Rockhill Township Hall, 1622 Ridge Road, Perkasie, PA 18944.
Township of Falls	Falls Township Building, 188 Lincoln Highway, Fairless Hills, PA 19030.
Township of Haycock	Haycock Township Municipal Building, 640 Harrisburg School Road, Quakertown, PA 18951.
Township of Hilltown	Township Hall, 13 West Creamery Road, Hilltown, PA 18927.
Township of Lower Makefield	Lower Makefield Township Building, 1100 Edgewood Road, Yardley, PA 19067.
Township of Lower Southampton	Lower Southampton Township Municipal Building, 1500 Desire Avenue, Feastorville, PA 19053.
Township of Middletown	Middletown Township Municipal Center, 3 Municipal Way, Langhorne, PA 19047.
Township of Milford	Milford Township Hall, 2100 Krammes Road, Quakertown, PA 18951.
Township of New Britain	New Britain Township Building, 207 Park Avenue, Chalfont, PA 18914.
Township of Newtown	Township Building, 100 Municipal Drive, Newtown, PA 18940.
Township of Nockamixon	Nockamixon Township Office, 589 Lake Warren Road, Upper Black Eddy, PA 18972.
Township of Northampton	Northampton Township Administrative Building, 55 Township Road, Richboro, PA 18954.
Township of Plumstead	Plumstead Township Hall, 5186 Stump Road, Pipersville, PA 18947.
Township of Richland	Richland Township Municipal Building, 1328 California Road, Suite A, Quakertown, PA 18951.
Township of Solebury	Township Municipal Building, 3092 Sugan Road, Solebury, PA 18963.
Township of Springfield	Springfield Township Hall, 2320 Township Road, Quakertown, PA 18951.
Township of Tinicum	Tinicum Township Municipal Building, 163 Municipal Road, Pipersville, PA 18947.
Township of Upper Makefield	Upper Makefield Township Building, 1076 Eagle Road, Newtown, PA 18940.
Township of Upper Southampton	Upper Southampton Township Building, 939 Street Road, Southampton, PA 18966.
Township of Warminster	Township License and Inspections Department, 910 West Bristol Road, Warminster, PA 18974.
Township of Warrington	Township Building, 852 Easton Road, Warrington, PA 18976.
Township of Warwick	Warwick Township Hall, 1733 Township Greene, Jamison, PA 18929.
Township of West Rockhill	West Rockhill Township Office, 1028 Ridge Road, Sellersville, PA 18960.
Township of Wrightstown	Township Building, 2203 2nd Street Pike, Wrightstown, PA 18940.
City of Norfolk, Virginia (Independent City)	
Maps Available for Inspection Online at: *www.rampp-team.com/va.htm*	
City of Norfolk	Zoning Enforcement Office, 508 City Hall Building, 810 Union Street, Norfolk, VA 23510.

Community	Community map repository address
Rusk County, Wisconsin, and Incorporated Areas	
Maps Available for Inspection Online at: *www.starr-team.com/starr/RegionalWorkspaces/RegionV/RuskWI*	
City of Ladysmith	City Hall, 120 Miner Avenue West, Ladysmith, WI 54848.
Unincorporated Areas of Rusk County	Rusk County Courthouse, 311 East Miner Avenue, Ladysmith, WI 54848.
Village of Bruce	Village Hall, 100 West River Avenue, Bruce, WI 54819.
Village of Conrath	Village Post Office, W7101 Main Street, Conrath, WI 54731.
Village of Glen Flora	Village Hall, N5746 Cedar Street, Glen Flora, WI 54526.
Village of Hawkins	Village Hall, 509 Main Street, Hawkins, WI 54530.
Village of Ingram	Village Hall, N5970 State Highway 73, Ingram, WI 54526.
Village of Sheldon	Village Office, W5594 Main Street, Sheldon, WI 54766.
Village of Tony	Village Hall, N5377 Maple Street, Tony, WI 54563.
Village of Weyerhaeuser	Village Hall, N3840 Second Street, Weyerhaeuser, WI 54895.

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

James A. Walke,

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

[FR Doc. 2013–02444 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1284]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 6, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1284, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each

community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Nye County, Nevada, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.r9map.org/Pages/ProjectDetailsPage.aspx?choLoco=84&choProj=248*	
Unincorporated Areas of Nye County	Nye County Department of Planning, 1114 Globe Mallow, P.O. Box 1531, Tonopah, NV 89049.
City of Newport News, Virginia (Independent City)	
Maps Available for Inspection Online at: *www.rampp-team.com/va.htm*	
City of Newport News	Department of Engineering, 2400 Washington Avenue, Newport News, VA 23607.
Clark County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/ClarkCoIN/SitePages/Home.aspx*	
City of Charlestown	City Hall, 304 Main Cross Street, Charlestown, IN 47111.
City of Jeffersonville	City Hall, 500 Quartermaster Court, Jeffersonville, IN 47130.
Town of Borden	Town Hall, 129 West Street, Borden, IN 47106.
Town of Clarksville	Town Hall, 2000 Broadway, Clarksville, IN 47129.
Town of Sellersburg	Public Works Building, 103 South New Albany Avenue, Sellersburg, IN 47172.
Town of Utica	Town Hall, 107 North Fourth Street, Utica, IN 47130.
Unincorporated Areas of Clark County	Clark County Government Building, 501 East Court Avenue, Room 416, Jeffersonville, IN 47130.
Pulaski County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7359.htm*	
Town of Medaryville	Town Hall, 409 East Main Street, Medaryville, IN 47957.
Town of Monterey	Town Hall, 7033 North Walnut Street, Monterey, IN 46960.
Town of Winamac	Municipal Offices, 120 West Main Street, Winamac, IN 46996.
Unincorporated Areas of Pulaski County	Pulaski County Building Department, 125 South Riverside Drive, Suite 150, Winamac, IN 46996.
Hennepin County, Minnesota, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/HennepinCoMN/SitePages/Home.aspx*	
City of Bloomington	Engineering Department, 1700 West 98th Street, Bloomington, MN 55431.
City of Brooklyn Center	City Hall, 6301 Shingle Creek Parkway, Brooklyn Center, MN 55430.
City of Brooklyn Park	City Hall, 5200 85th Avenue North, Brooklyn Park, MN 55443.
City of Champlin	City Hall, Building Department, 11955 Champlin Drive, Champlin, MN 55316.
City of Dayton	City Hall, 12260 South Diamond Lake Road, Dayton, MN 55327.
City of Eden Prairie	City Hall, 8080 Mitchell Road, Eden Prairie, MN 55344.
City of Edina	City Hall, 4801 West 50th Street, Edina, MN 55424.
City of Greenfield	City Hall, 7738 Commerce Circle, Greenfield, MN 55373.
City of Hanover	City Hall, 11250 Northeast 5th Street, Hanover, MN 55341.
City of Hopkins	City Hall, Planning and Zoning Office, 1010 1st Street South, Hopkins, MN 55343.
City of Independence	City Hall, 1920 County Road 90, Independence, MN 55359.
City of Long Lake	City Hall, 450 Virginia Avenue, Long Lake, MN 55356.
City of Minneapolis	City Hall, Public Works Office, 350 South 5th Street, Minneapolis, MN 55415.
City of Minnetonka	City Hall, 14600 Minnetonka Boulevard, Minnetonka, MN 55345.
City of Minnetrista	City Hall, 7701 County Road 110 West, Minnetrista, MN 55364.
City of Orono	City Hall, 2750 Kelley Parkway, Orono, MN 55356.
City of Plymouth	City Hall, 3400 Plymouth Boulevard, Plymouth, MN 55447.
City of Richfield	City Hall, 6700 Portland Avenue, Richfield, MN 55423.
City of Rockford	City Hall, 6031 Main Street, Rockford, MN 55373.
City of Rogers	City Hall, 22350 South Diamond Lake Road, Rogers, MN 55374.
City of St. Bonifacius	City Hall, 8535 Kennedy Memorial Drive, St. Bonifacius, MN 55375.
City of St. Louis Park	City Hall, Community Development, 5005 Minnetonka Boulevard, St. Louis Park, MN 55416.
City of Wayzata	City Hall, 600 Rice Street East, Wayzata, MN 55391.

Community	Community map repository address
Harris County, Texas, and Incorporated Areas	
Maps Available for Inspection Online at: *http://riskmap6.com/Community.aspx?cid=350&sid=5*	
City of Houston	Public Works and Engineering Department, 611 Walker Street, Houston, TX 77002.
City of Humble	City Permit Department, 114 West Higgins, Humble, TX 77338.
City of Jersey Village	Public Works Department, 16501 Jersey Drive, Jersey Village, TX 77040.
Unincorporated Areas of Harris County	Harris County PID, A&E Division, Permit Office, 10555 Northwest Freeway, Suite 120, Houston, TX 77092.
Rockingham County, Virginia, and Incorporated Areas	
Maps Available for Inspection Online at: *www.rampp-team.com/va.htm*	
Town of Bridgewater	Town Hall, 201 Green Street, Bridgewater, VA 22812.
Unincorporated Areas of Rockingham County	Rockingham County Administration Center, 20 East Gay Street, Harrisonburg, VA 22802.

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

James A. Walke,

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

[FR Doc. 2013–02449 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2013–0002; Internal Agency Docket No. FEMA–B–1281]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report, once effective, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings.

DATES: Comments are to be submitted on or before May 6, 2013.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–1281, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after the FIRM and FIS report become effective.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation

process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *http://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the tables. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Community	Community map repository address
Fairbanks North Star Borough, Alaska, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionX/FairbanksMM/Preliminary%20Maps/Forms/AllItems.aspx*	
Fairbanks North Star Borough	Department of Community Planning, Borough Administrative Center, 809 Pioneer Road, Fairbanks, AK 99701.
Blackford County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/6476.htm*	
City of Hartford City	Blackford County Area Planning and Zoning Office, Blackford County Courthouse, 110 West Washington Street, Hartford City, IN 47348.
City of Montpelier	Blackford County Area Planning and Zoning Office, Blackford County Courthouse, 110 West Washington Street, Hartford City, IN 47348.
Unincorporated Areas of Blackford County	Blackford County Area Planning and Zoning Office, Blackford County Courthouse, 110 West Washington Street, Hartford City, IN 47348.
Hamilton County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/5775.htm*	
City of Carmel	Department of Community Services, One Civic Square, Carmel, IN 46032.
City of Noblesville	City Hall, Department of Planning and Zoning, 16 South 10th Street, Noblesville, IN 46060.
City of Westfield	City Hall, 130 Penn Street, Westfield, IN 46074.
Town of Cicero	Utility Office, 150 West Jackson Street, Cicero, IN 46034.
Town of Fishers	Administrative Offices, One Municipal Drive, Fishers, IN 46038.
Town of Sheridan	Town Hall, 506 South Main Street, Sheridan, IN 46069.
Unincorporated Areas of Hamilton County	Hamilton County Government and Judicial Center, One Hamilton County Square, Noblesville, IN 46060.
Madison County, Indiana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.in.gov/dnr/water/7378.htm*	
City of Anderson	City Hall, 120 East Eighth Street, Anderson, IN 46016.
Town of Chesterfield	Town Hall, 17 Veterans Boulevard, Chesterfield, IN 46017.
Town of Ingalls	Town Hall, 247 North Meridian Street, Ingalls, IN 46048.
Town of Pendleton	Town Hall, 100 West State Street, Pendleton, IN 46064.
Unincorporated Areas of Madison County	Madison County Government Center, 16 East 9th Street, Room 200, Anderson, IN 46016.
Kittson County, Minnesota, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.starr-team.com/starr/RegionalWorkspaces/RegionV/KittsonCoMN/SitePages/Home.aspx*	
City of Hallock	City Hall, 163 South Third Street, Hallock, MN 56728.
City of Humboldt	City Hall, 204 Ramsey Street, Humboldt, MN 56731.
City of Kennedy	City Office, 414 North Atlantic Avenue, Suite 100, Kennedy, MN 56733.
City of Lake Bronson	City Hall, 112 Main Street, Lake Bronson, MN 56734.
City of Lancaster	City Clerk Office, 100 Second Street West, Lancaster, MN 56735.
City of St. Vincent	City Clerk, 142 South Eighth Street, St. Vincent, MN 56755.
Unincorporated Areas of Kittson County	Kittson County Courthouse, 410 Fifth Street South, Suite 104, Hallock, MN 56728.
Broadwater County, Montana, and Incorporated Areas	
Maps Available for Inspection Online at: *http://www.bakeraecom.com/index.php/montana/broadwater/*	
City of Townsend	110 Broadway Street, Townsend, MT 59644.
Unincorporated Areas of Broadwater County	Broadwater County Treasurer, 515 Broadway Street, Townsend, MT 59644.

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

James A. Walke,

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

[FR Doc. 2013–02455 Filed 2–4–13; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0053]

Agency Information Collection Activities: Request for Certification of Military or Naval Service, Form N–426; Extension, Without Change, of a Currently Approved Collection

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on October 30, 2012, at 77 FR 65707 allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 7, 2013. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* The comments submitted to the OMB USCIS Desk Officer may also be submitted to DHS via the Federal eRulemaking Portal Web site at *http://www.regulations.gov* under e-Docket ID number USCIS–2007–0016 or via email at *uscisfrcomment@uscis.dhs.gov.* All submissions received must include the agency name and the OMB Control Number 1615–0038.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. For additional information please read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Certification of Military or Naval Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–426; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* USCIS uses the information collected through Form N–426 to request a verification of the military or naval service claim by an applicant filing for naturalization on the basis of honorable service in the U.S. armed forces.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 respondents for form N–426 with an estimate of .333 hours per response. This is a change from the information published in the 60-day **Federal Register** at 77 FR 65707.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,330 Hours. This is a change from the information published in the 60-day **Federal Register** at 77 FR 65707.

If you need a copy of the information collection instrument with supplementary documents, or need additional information, please visit *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2134; Telephone 202–272–8377.

Dated: January 30, 2013.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2013–02395 Filed 2–4–13; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Address Change for Filing Annual Election to Average for Motor Vehicles

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces an address change for Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, for filing annual election to average for motor vehicles. The new address for Regulatory Audit, Office of International Trade, U.S. Customs and Border Protection, is as follows: U.S. Customs and Border Protection, Office of International Trade, Regulatory Audit, 1717 H Street NW., (6th Floor), Washington, DC 20229–1141. Telephone number: 202–325–7960. Fax number 202–325–7980.

DATES: Effective February 5, 2013.

SUPPLEMENTARY INFORMATION: Regulatory Audit of the Office of International Trade has moved to a new office

location. Accordingly, all filings for the annual election to average for motor vehicles under Section 11 of Appendix to Part 181, Rules of Origin Regulations of North American Free Trade Agreement, must be submitted to the above address.

Dated: January 14, 2013.

Cynthia A. Covell,

Executive Director, Regulatory Audit, Office of International Trade.

[FR Doc. 2013–02433 Filed 2–4–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–FHC–2013–N026; FVHC98130406900–XXX–FF04G01000]

DEEPWATER HORIZON Oil Spill; Final Phase II Early Restoration Plan and Environmental Review

AGENCY: Interior.

ACTION: Notice of availability of final report.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), and the Framework Agreement for Early Restoration Addressing Injuries Resulting from the DEEPWATER HORIZON Oil Spill (Framework Agreement), notice is hereby given that the Federal and State natural resource trustee agencies (Trustees) have approved the Phase II Early Restoration Plan and Environmental Review (Phase II ERP/ER) describing the second set of restoration projects selected by the Trustees to continue the process of restoring natural resources and services injured or lost as a result of the DEEPWATER HORIZON oil spill, which occurred on or about April 20, 2010 in the Gulf of Mexico. The purpose of this notice is to inform the public of the availability of the Phase II ERP/ER.

ADDRESSES: *Obtaining Documents:* You may download the Phase II ERP/ER and the Framework Agreement at *http://www.doi.gov/deepwaterhorizon.* You may also review hard copies of the Phase II ERP/ER at any of the public repositories listed at *http://www.gulfspillrestoration.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Spears, at *fw4coastalDERPcomments@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On or about April 20, 2010, the mobile offshore drilling unit DEEPWATER HORIZON, which was being used to drill a well for BP Exploration and Production, Inc. (BP) in the Macondo prospect (Mississippi Canyon 252—MC252), experienced a significant explosion, fire and subsequent sinking in the Gulf of Mexico, resulting in discharges of oil and other substances from the rig and from the wellhead on the seabed. An estimated 4.9 million barrels (210 million gallons) of oil were released from the well into the Gulf of Mexico over a period of 87 days. In addition, approximately 1.84 million gallons of dispersants were applied to the waters of the spill area in an attempt to minimize impacts from spilled oil. Affected resources include ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas.

Federal and State Trustees (listed below) are conducting the natural resource damage assessment for the DEEPWATER HORIZON oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies and Indian tribes may act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the damages required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship.

The Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Department of Defense (DOD);
- U.S. Environmental Protection Agency (USEPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- For the State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

Background

On April 20, 2011, BP agreed to provide up to $1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the DEEPWATER HORIZON oil spill. This early restoration agreement, entitled ''Framework for Early Restoration Addressing Injuries Resulting from the DEEPWATER HORIZON Oil Spill'' (Framework Agreement), represents a preliminary step toward the restoration of injured natural resources. The Framework Agreement is intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. The Framework Agreement provides a mechanism through which the Trustees and BP can work together ''to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable'' prior to the resolution of the Trustees' natural resource damages claim.

The Trustees actively solicited public input on restoration project ideas through a variety of mechanisms, including public meetings, electronic communication, and creation of a Trustee-wide public Web site and database to share information and receive public project submissions. Their key objective in pursuing early restoration is to secure tangible recovery of natural resources and natural resource services for the public's benefit while the longer-term process of fully assessing injury and damages is underway. As the first step in this accelerated process, the Trustees released, after public review of a draft, a Phase I Early Restoration Plan/Environmental Assessment (Phase I ERP/EA) in April 2012. The Phase I ERP is currently being implemented.

In a continuation of the early restoration process, the Trustees proposed two additional early restoration projects in a Phase II Draft Early Restoration Plan and Environmental Review (Phase II DERP/ER) to address response injuries from the DEEPWATER HORIZON oil spill. They address injuries to the nesting habitats of beach-nesting birds and loggerhead sea turtles that resulted from response activities to the oil spill (e.g., efforts to prevent oil from reaching beaches and to remove oil from beaches). These projects address a

number of specific public comments on the Phase I ERP/EA that requested development of additional habitat and wildlife-based early restoration projects. Because loggerhead sea turtles and beach-nesting birds begin nesting along the Northeast Gulf coast in February, the Trustees recognized the need to implement these two projects in a timely manner to be effective during the 2013 breeding season and so expedited their proposal. The Trustees continue to work with BP to develop additional restoration projects in accordance with the Framework Agreement. The Alternatives within this plan are not intended to, and do not fully, address all injuries caused by the spill or provide the extent of restoration needed to satisfy claims against BP.

Notice of availability of the Phase II DERP/ER was published in the **Federal Register** on November 6, 2012. (77 FR 66626, November 6, 2012) The public was afforded 30 days to review and comment on the Phase II DERP/ER. During that review period, the Trustees also held a public meeting in Pensacola, Florida, on November 13, 2012, to facilitate public comment on the Phase II DERP/ER.

The Trustees considered the public comments received on the Phase II DERP/ER prior to finalizing selection of the Phase II Early Restoration projects. The public comments received and the Trustees' responses are addressed in Chapter 5 of the Phase II ERP/_ER.

Overview of the Phase II ERP/ER

Early Restoration Plan Alternatives, Including the Selected Alternative

The Phase II ERP/ER describes two early restoration alternatives: No Action—Natural Recovery (required for consideration by OPA) and Selected Alternative—Phase II Early Restoration Projects. Under the No Action alternative, the Trustees would not implement early restoration projects as described in the Phase II ERP/ER. Rather, the No Action approach would result in delaying protection and improvement of important nesting habitats injured by response actions during the oil spill.

The Selected Alternative includes two projects that meet the selection criteria, as described in the Phase II ERP/ER.

Selected Early Restoration Alternative

The Selected Alternative includes two projects intended to protect and enhance beach nesting habitats used by birds and sea turtles. The selected projects will, among other things, protect bird-nesting habitat with symbolic fencing and signs and reduce the presence of harmful lighting on certain beaches as described in the plan. The projects are: (1) Enhanced Management of Avian Breeding Habitat Injured by Response in the Florida Panhandle, Alabama, and Mississippi; and (2) Improving Habitat Injured by Spill Response: Restoring the Night Sky. Each of these projects will benefit coastal nesting habitats injured by response to the DEEPWATER HORIZON oil spill.

This Phase II ERP/ER represents the second set of projects selected as part of the early restoration process. Planning for additional early restoration actions is continuing. Neither the Phase II ERP/ER nor any subsequent plan for early restoration is intended to or will fully address all injuries caused by the spill or provide the extent of restoration needed to satisfy claims against responsible parties. Further comprehensive restoration will still be required to fully compensate the public for natural resource losses from the oil spill.

Administrative Record

The documents comprising the Administrative Record can be viewed electronically at *http://www.doi.gov/deepwaterhorizon*

Author

The primary author of this notice is James Haas (*james_haas@nps.gov*).

Authorities

The authorities of this action are the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.),* the implementing Natural Resource Damage Assessment regulations found at 15 CFR Part 990, and the Framework Agreement.

Cynthia K. Dohner,

DOI Authorized Official.

[FR Doc. 2013–02430 Filed 2–4–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2012–N293; FXES11130100000C4–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews of 44 Species in Oregon, Hawaii, Guam, and the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of reviews; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year status reviews for 44 species in Oregon, Hawaii, Guam, and the Northern Mariana Islands, under the Endangered Species Act of 1973, as amended (Act). A 5-year status review is based on the best scientific and commercial data available at the time of the review; therefore, we are requesting submission of any new information on these species that has become available since the last review for that particular species.

DATES: To ensure consideration in our reviews, we are requesting submission of new information no later than April 8, 2013. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For the 42 species in Hawaii, Guam, and the Northern Mariana Islands (see Table 1 below), submit information to: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Blvd., Room 3–122, Box 50088, Honolulu, Hawaii 96850.

For the Oregon chub and Hutton tui chub, submit information to: Field Supervisor, Attention: 5-Year Review, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266. Information on Oregon species can also be submitted by email to: *fw1or5yearreview@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Kristi Young, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **ADDRESSES**), 808–792–9400 (for species in Hawaii, Guam, and the Northern Mariana Islands); or Jeff Dillon, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 503–231–6179 (for Oregon chub and Hutton tui chub). Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at (800) 877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Why do we conduct 5-year reviews?

Under the Act (16 U.S.C. 1531 *et seq.*), we maintain Lists of Endangered and Threatened Wildlife and Plants (which we collectively refer to as the List) in the Code of Federal Regulations (CFR) at 50 CFR 17.11 (for animals) and 17.12 (for plants). Section 4(c)(2)(A) of the Act requires us to review each listed species' status at least once every 5 years. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species under active review.

What information do we consider in the review?

A 5-year review considers all new information available at the time of the review. In conducting these reviews, we consider the best scientific and commercial data that has become available since the listing determination or most recent status review, such as:

(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

(B) Habitat conditions, including, but not limited to amount, distribution, and suitability;

(C) Conservation measures that have been implemented that benefit the species;

(D) Threat status and trends in relation ot the five listing factors (as defined in section 4(a)(1) of the Act); and

(E) Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Any new information will be considered during the 5-year review and will also be useful in evaluating the ongoing recovery programs for the species.

What species are under review?

This notice announces our active review of the 44 species listed in the table below.

SPECIES FOR WHICH WE ARE INITIATING A 5-YEAR STATUS REVIEW

Common name	Scientific name	Status	Where listed	Final listing rule
ANIMALS				
Warbler, nightingale reed	*Acrocephalus luscinia*	Endangered	Western Pacific Ocean—U.S.A (Guam, Alamagan, Saipan).	35 FR 8491; 06/02/1970.
Swiftlet, Mariana gray (=Guam swiftlet).	*Aerodramus vanikorensis bartschi.*	Endangered	Western Pacific Ocean—U.S.A (Guam, Rota, Tinian, Saipan, Agiguan).	49 FR 33881; 08/27/1984.
Duck, Hawaiian	*Anas wyvilliana*	Endangered	U.S.A (HI)	32 FR 4001; 03/11/1967.
Chub, Oregon	*Oregonichthys crameri*	Threatened	U.S.A (OR)	58 FR 53804; 10/18/1993.
Chub, Hutton tui	*Gila bicolor* ssp.	Threatened	U.S.A (OR)	50 FR 12305; 03/28/1985.
Crow, Hawaiian	*Corvus hawaiiensis*	Endangered	U.S.A (HI)	32 FR 4001; 03/11/1967.
Coot, Hawaiian	*Fulica alai*	Endangered	U.S.A (HI)	35 FR 16047; 10/13/1970.
Moorhen (=Gallinule), Mariana common.	*Gallinula chloropus guami*	Endangered	Western Pacific Ocean—U.S.A (Guam, Tinian, Saipan, Pagan).	49 FR 33881; 08/27/1984.
Moorhen (=Gallinule), Hawaiian common.	*Gallinula chloropus sandvicensis.*	Endangered	U.S.A (HI)	32 FR 4001; 03/11/1967.
‘Akiapola‘au	*Hemignathus munroi*	Endangered	U.S.A (HI)	32 FR 4001; 03/11/1967.
Palila	*Loxioides bailleui*	Endangered	U.S.A (HI)	32 FR 4001; 03/11/1967.
‘Akepa, Hawaii	*Loxops coccineus coccineus*	Endangered	U.S.A (HI)	35 FR 16047; 10/13/1970.
Creeper, Hawaii	*Oreomystis mana*	Endangered	U.S.A (HI)	40 FR 44151; 09/25/1975.
‘O‘u	*Psittirostra psittacea*	Endangered	U.S.A (HI)	32 FR 4001; 03/11/1967.
Bat, little Mariana fruit	*Pteropus tokudae*	Endangered	Western Pacific Ocean—U.S.A (Guam).	49 FR 33881; 08/27/1984.
White-eye, Rota bridled	*Zosterops rotensis*	Endangered	Western Pacific Ocean—U.S.A (Commonwealth of the Northern Mariana Islands).	69 FR 3022; 01/22/2004.
PLANTS				
No common name	*Achyranthes mutica*	Endangered	U.S.A (HI)	61 FR 53108; 10/10/1996.
Pendant kihi fern	*Adenophorus periens*	Endangered	U.S.A (HI)	59 FR 56333; 11/10/1994.
Mauna Loa silversword	*Argyroxiphium kauense*	Endangered	U.S.A (HI)	58 FR 18035; 04/07/1993.
Uhiuhi	*Caesalpinia kavaiensis*	Endangered	U.S.A (HI)	51 FR 24675; 07/08/1986.
‘Oha wai	*Clermontia lindseyana*	Endangered	U.S.A (HI)	59 FR 10305; 03/04/1994.
‘Oha wai	*Clermontia peleana*	Endangered	U.S.A (HI)	59 FR 10305; 03/04/1994.
Kauila	*Colubrina oppositifolia*	Endangered	U.S.A (HI)	59 FR 10305; 03/04/1994.
Haha	*Cyanea hamatiflora* ssp. *carlsonii.*	Endangered	U.S.A (HI)	59 FR 10305; 03/04/1994.
Haha	*Cyanea shipmanii*	Endangered	U.S.A (HI)	59 FR 10305; 03/04/1994.
Asplenium-leaved diellia	*Diellia erecta*	Endangered	U.S.A (HI)	59 FR 56350; 11/10/1994.
Hau kuahiwi	*Hibiscadelphus giffardianus*	Endangered	U.S.A (HI)	61 FR 53152; 10/10/1996.
Hau kuahiwi	*Hibiscadelphus hualalaiensis*	Endangered	U.S.A (HI)	61 FR 53152; 10/10/1996.
Hilo ischaemum	*Ischaemum byrone*	Endangered	U.S.A (HI)	59 FR 10305; 03/04/1994.
Wahine noho kula	*Isodendrion pyrifolium*	Endangered	U.S.A (HI)	59 FR 10305; 03/04/1994.
Kio‘ele	*Kadua coriacea (=Hedyotis coriacea).*	Endangered	U.S.A (HI)	57 FR 20787; 05/15/1992.
Koki‘o	*Kokia drynarioides*	Endangered	U.S.A (HI)	49 FR 47400; 12/04/1984.
Alani	*Melicope zahlbruckneri*	Endangered	U.S.A (HI)	61 FR 53152; 10/10/1996.
No common name	*Neraudia ovata*	Endangered	U.S.A (HI)	61 FR 53152; 10/10/1996.
No common name	*Phyllostegia parviflora*	Endangered	U.S.A (HI)	61 FR 53123; 10/10/1996.
Loulu	*Pritchardia schattaueri*	Endangered	U.S.A (HI)	61 FR 53152; 10/10/1996.
‘Ohai	*Sesbania tomentosa*	Endangered	U.S.A (HI)	59 FR 56350; 11/10/1994.
No common name	*Silene hawaiiensis*	Threatened	U.S.A (HI)	59 FR 10305; 03/04/1994.
No common name	*Silene lanceolata*	Endangered	U.S.A (HI)	57 FR 46339; 10/08/1992.

SPECIES FOR WHICH WE ARE INITIATING A 5-YEAR STATUS REVIEW—Continued

Common name	Scientific name	Status	Where listed	Final listing rule
Popolo ku mai	*Solanum incompletum*	Endangered	U.S.A (HI)	59 FR 56350; 11/10/1994.
No common name	*Spermolepis hawaiiensis*	Endangered	U.S.A (HI)	59 FR 56350; 11/10/1994.
No common name	*Vigna o-wahuensis*	Endangered	U.S.A (HI)	59 FR 56350; 11/10/1994.
A'e	*Zanthoxylum dipetalum* var. *tomentosum.*	Endangered	U.S.A (HI)	61 FR 53152; 10/10/1996.
A'e	*Zanthoxylum hawaiiense*	Endangered	U.S.A (HI)	59 FR 10305; 03/04/1994

Request for New Information

To ensure that a 5-year review is complete and based on the best available scientific and commercial information, we request new information from all sources. See ''What Information Do We Consider in Our Review?'' for specific criteria. If you submit information, please support it with documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

If you wish to provide information for any species listed above, please submit your comments and materials to the appropriate contact in either the Oregon or Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

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.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the offices where the comments are submitted.

Completed and Active Reviews

A list of all completed and currently active 5-year reviews addressing species for which the Pacific Region of the Service has lead responsibility is available at: *http://www.fws.gov/pacific/ecoservices/endangered/recovery/5year.html.*

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 31, 2012.

Chris McKay,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 2013–02453 Filed 2–4–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO2600000 L10600000 XQ0000]

Notice of Wild Horse and Burro Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet on Monday, March 4, 2013, from 8 a.m. until 5 p.m. and on Tuesday, March 5, 2013, from 8 a.m. until 12 p.m. local time. This will be a one and a half day meeting.

ADDRESSES: This Advisory Board meeting will take place at the Sheraton Oklahoma City Hotel, 1 North Broadway Avenue, Oklahoma City, Oklahoma 73102, 405–235–2780. Written comments pertaining to the March 4–5, 2013, Advisory Board meeting can be mailed to National Wild Horse and Burro Program,WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, NV 89502–7147, or sent electronically to the BLM through the Wild Horse and Burro Web site at: *http://www.blm.gov/wo/st/en/prog/whbprogram/recent_news_and_information/enhanced_feedback_form.html.*

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the BLM Director, the Secretary of Agriculture, and the Chief of the Forest Service on matters pertaining to the management and protection of wild, free-roaming horses and burros on the Nation's public lands. The Wild Horse and Burro Advisory Board operates under the authority of 43 CFR 1784. The tentative agenda for the 2-day event is:

I. Advisory Board Public Meeting

Monday, March 4, 2013 (8 a.m.–5 p.m.)

8:00 p.m. Welcome and Introductions
8:30 a.m. Approval of October 2012 Minutes
10:45 a.m. WHB Program Updates
12:00 p.m. Lunch
1:45 p.m. BLM Formed Work Groups (Comprehensive Animal Welfare Program; Increasing Adoptions; Eco-sanctuaries; and Population Suppression).
3:30 p.m. Public Comment Period Begins
4:30 p.m. Public Comment Period Ends
5:00 p.m. Adjourn

Tuesday, March 5, 2013 (8 a.m.–12 p.m.)

8:00 a.m. Advisory Board Formed Work Groups (Ecotourism; Herd Area Repopulation; Financial; Public Comments; and Director's Challenge Opportunities)
9:15 a.m. Board Member's Concerns and Issues
10: 00 a.m. Break
10:15 a.m. Board Recommendations to the BLM
12:00 p.m. Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or

materials in an alternate format, must notify Ms. DeLorme 2 weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations at 41 CFR 101–6.1015(b), requires the BLM to publish in the **Federal Register** notice of a public meeting 15 days prior to the meeting date.

II. Public Comment Procedures

On Monday, March 4, 2013 at 3:30 p.m., members of the public will have the opportunity to make comments to the Board on the Wild Horse and Burro Program. Persons wishing to make comments during the Monday meeting should register in person with the BLM by 2 p.m. on March 4, 2013, at the meeting location. Depending on the number of commenters, the Advisory Board may limit the length of comments. At previous meetings, comments have been limited to 3 minutes in length; however, this time may vary. Commenters should address the specific wild horse and burro-related topics listed on the agenda. Speakers are requested to submit a written copy of their statement to the address listed in the **ADDRESSES** section above or bring a written copy to the meeting. There may be a webcam present during the entire meeting and individual comments may be recorded.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments. The BLM considers comments that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations to be the most useful and likely to influence the BLM's decisions on the management and protection of wild horses and burros.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: January 30, 2013.

Gregory P. Shoop,

Deputy Assistant Director, Renewable Resources and Planning.

[FR Doc. 2013–02381 Filed 2–4–13; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTG021.14300000.EU0000; UTU–89282]

Notice of Realty Action: Proposed (Non-Competitive) Direct Sale of Public Land in Carbon County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) is considering the (non-competitive) direct sale of 280 acres of public land in Carbon County, Utah, at not less than the appraised fair market value to Hunt Consolidated, Inc.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by *March 22, 2013.*

ADDRESSES: Address all written comments concerning this notice to the BLM, Price Field Office, Attn: Connie Leschin, 125 S. 600 W., Price, Utah, 84501.

FOR FURTHER INFORMATION CONTACT: Connie Leschin, Realty Specialist, 435–636–3610, at the above address or email to *cleschin@blm.gov.* Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following described public lands in Carbon County, Utah, are proposed for direct sale, subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) and 43 CFR Parts 2711 and 2720:

Salt Lake Meridian, Utah

T. 14 S., R. 15 E.,
Sec. 8, SE¼SE¼;
Sec. 28, E½NE¼;
Sec. 33, SE¼SW¼, N½SE¼, SW¼SE¼.

The area described contains 280 acres, according to the official plat of the survey of the said land, on file with the BLM.

The proposed sale is in conformance with the BLM Price Field Office Resource Management Plan (PFO RMP) that was approved in October 2008. The parcels are identified for disposal in the PFO RMP on page 7 of Appendix R–11. The lands would be offered to Hunt Consolidated, Inc. on a non-competitive basis due to the lack of public access and their ownership of the surrounding lands, pursuant to 43 CFR 2711.3–3(a)(4). Conveyance of the identified public land would be subject to valid existing rights and encumbrances of record. Conveyance of any mineral interests pursuant to Section 209 of FLPMA will be analyzed during processing of the proposed sale. On February 5, 2013, the above-described land will be segregated from all forms of appropriation under the public land laws, including the mining laws and the mineral leasing laws, except for the sale provisions of the FLPMA. The lands were previously segregated from appropriation under the mining laws pursuant to Executive Order 5327 and Public Land Order 4522. Executive Order 5327 was revoked by PLO 7725 to the extent that the withdrawn lands were opened to operation of the public land laws and development activities under Section 21 of the Mineral Leasing Act, but not to operation of the 1872 Mining Law. Until completion of the sale action, the BLM is no longer accepting land use applications affecting the identified public lands. The temporary segregation will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on February 2, 2015, unless extended by the BLM Utah State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

For a period until March 22, 2013, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to the Field Manager, BLM Price Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this notice. Electronic mail (email) will also be accepted and should be sent to *BLM_UT_PR_Comments@blm.gov* with ''Price Land Sale'' inserted in the subject line. Comments, including names and street addresses of respondents, will be available for public review at the BLM Price Field Office during regular business hours, except holidays.

Before including your address, telephone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2 and 43 CFR 2720.1–1(b).

Kent Hoffman

Acting State Director.

[FR Doc. 2013–02100 Filed 1–30–13; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–LARO–11986] [PPWLARO00–PPMPRLE1Z.Y00001]

Acceptance of Concurrent Jurisdiction

AGENCY: National Park Service, Interior.

ACTION: Notice of Concurrent Jurisdiction.

SUMMARY: On behalf of the United States, the National Park Service has accepted concurrent legislative jurisdiction from the State of Washington over lands and waters administered by the National Park Service within the boundaries of Lake Roosevelt National Recreation Area.

DATES: *Effective Date:* Concurrent legislative jurisdiction within Lake Roosevelt National Recreation Area became effective on December 10, 2012.

FOR FURTHER INFORMATION CONTACT: Marty Huseman, Chief Ranger, Lake Roosevelt National Recreation Area, 1008 Crest Drive, Coulee Dam, WA 99116; telephone 509–633–9441, extension 123.

SUPPLEMENTARY INFORMATION: On December 10, 2012, acting in accordance with the provisions of 40 U.S.C. 3112 and Revised Code of Washington Section 37.04.020, Jonathan B. Jarvis, Director of the National Park Service, accepted concurrent legislative jurisdiction from the Honorable Christine Gregoire, Governor of the State of Washington, over lands and waters administered by the National Park Service within the boundaries of Lake Roosevelt National Recreation Area.

Dated: January 10, 2013.

Cameron H. Sholly,

Associate Director, Visitor and Resource Protection.

[FR Doc. 2013–02483 Filed 2–4–13; 8:45 am]

BILLING CODE 4310–FF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–GUIS–10929; 5017–7129–409]

Notice of Intent To Prepare an Environmental Impact Statement for Personal Watercraft Use at Gulf Islands National Seashore, Florida and Mississippi

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) to analyze the impacts of Personal Watercraft (PWC) use at Gulf Islands National Seashore (GUIS).

Personal Watercraft use emerged at GUIS in the 1980s and was permitted in units of the national park system under the same regulations as other motorized watercraft. However, on March 21, 2000, the NPS published a regulation governing PWC use within all units of the national park system (65 FR 15077, codified at 36 CFR 3.24). This regulation prohibits PWC use in all national park units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives.

In 2004, the NPS prepared an Environmental Assessment (EA) for a special regulation to allow continued PWC use at GUIS. The purpose of the EA was to evaluate a range of alternatives and strategies for the management of PWC use at GUIS to ensure the protection of park resources and values, while offering recreational opportunities as provided for in the GUIS enabling legislation, purpose, mission, and goals. A Finding of No Significant Impact (FONSI) was signed on January 25, 2006. The NPS published the final regulation for PWC use at GUIS in the **Federal Register** on May 4, 2006 (71 FR 26232).

On May 15, 2008, a lawsuit was filed claiming that the PWC EA was deficient and violated NEPA, the NPS Organic Act, and the Administrative Procedure Act. On July 8, 2010, the U.S. District Court for the District of Columbia found that the impact analysis in the EA was inadequate. The court did not vacate the current PWC rule at GUIS, but remanded the case to the NPS ''so that it may have an opportunity to provide adequate reasoning for its conclusions.'' The special regulation remains in effect at GUIS and PWC are currently still allowed to operate under the restrictions identified in the park's special regulation. At this time, the NPS intends to address the deficiencies identified by the court by preparing an EIS for PWC use at GUIS, which will include supplemental documentation, impact analyses not present in the earlier EA, and may include additional alternatives.

DATES: Interested individuals, organizations, and agencies are encouraged to provide written comments regarding the scope of issues to be addressed in the EIS. The NPS will accept comments from the public for 60 days from the date that this Notice of Intent is published in the **Federal Register** or 15 days after the last public scoping meeting, whichever is later. NPS intends to hold public scoping meetings on the PWC EIS in the vicinity of GUIS, including both the Florida (Gulf Breeze/Pensacola Beach Area) and Mississippi (Ocean Springs/Biloxi/Pascagoula Area) Districts during this scoping period. Specific dates, times, and locations will be made available in the local media and on the NPS's Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/guis-PWC-EIS.* The scoping meetings will also be announced via a park press release and through email notification to the individuals and organizations on the park's mailing list. The NPS will provide additional opportunities for the public to provide written comments upon publication of the draft EIS.

ADDRESSES: Information will be available for public review online at *http://parkplanning.nps.gov/guis-PWC-EIS* and in the office of the Superintendent, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563.

FOR FURTHER INFORMATION CONTACT: Daniel Brown, Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563; telephone (850) 916–3023.

SUPPLEMENTARY INFORMATION: If you wish to comment during the scoping process, you may use any one of several methods. The preferred method for submitting comments is on the NPS PEPC Web site at *http://parkplanning.nps.gov/guis-PWC-EIS.* You may also mail or hand-deliver your

comments on the PWC EIS to the Superintendent, Gulf Islands National Seashore, 1801 Gulf Breeze Parkway, Gulf Breeze, FL 32563. Oral statements and written comments will also be accepted during scheduled public meetings. Comments will not be accepted by fax, email, or in any other method than those specified above. Comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. 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.

The responsible official for this Notice of Intent is the Regional Director, Southeast Region, NPS, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: January 11, 2013.

Gordon Wissinger,

Acting Regional Director, Southeast Region.

[FR Doc. 2013–02482 Filed 2–4–13; 8:45 am]

BILLING CODE 4310–X8–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0088]

Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore North Carolina—Call for Information and Nominations (Call); Reopening of Comment Period

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Call for Information and Nominations; Reopening of Comment Period.

SUMMARY: BOEM is reopening the comment period announced in the Call for Information and Nominations for Commercial Leasing for Wind Power Offshore North Carolina (Call), published on December 13, 2012 (77 FR 7204).

DATES: BOEM must receive your nomination describing your interest in obtaining a commercial wind lease in one or more, or any portion of, the Call Areas, postmarked by March 7, 2013 for your nomination to be considered. BOEM requests comments or submissions of information to be postmarked or delivered by this same date. BOEM will consider only those nominations received that conform to this requirement.

Submission Procedures: You may submit nominations, comments, and other information by one of two methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov*. In the entry entitled ''Enter Keyword or ID,'' enter BOEM–2012–0088, and then click ''search.'' Follow the instructions to submit comments and view supporting and related materials available for this notice.

2. U.S. Postal Service or other delivery service. Send your comments and information to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170.

FOR FURTHER INFORMATION CONTACT: Will Waskes, Oceanographer, BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1320 or *Will.Waskes@boem.gov.*

SUPPLEMENTARY INFORMATION:

Background: On December 13, 2012, BOEM published the Call in the **Federal Register** with a 45-day comment period. The Call invited nominations from potential offshore wind developers describing commercial leasing interest and requested comments and information pertaining to the Call areas.

Because of requests received from the public, we are hereby reopening the comment period until March 7, 2013. As stated in the Call, BOEM will use the nominations received in response to this Call to gauge specific interest in commercial development of OCS wind resources in the areas described, as required by 43 U.S.C. 1337(p)(3). Parties wishing to submit a nomination should submit detailed and specific information in response to the requirements described in the section of the Call entitled, ''Required Nomination Information.'' BOEM also invites all interested and affected parties to comment and provide information—including information on multiple uses of the area, environmental issues and data—that will be useful in the consideration of the appropriateness of all or portions of the Call areas for commercial wind energy development. Please refer to the Call published in the **Federal Register** on December 13, 2012, for further information. Comments already submitted in response to the Call do not need to be resubmitted.

Dated: January 29, 2013.

Walter D. Cruickshank,

Deputy Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–02411 Filed 2–4–13; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0090]

Commercial Wind Leasing and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore North Carolina; Reopening of Comment Period

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Intent to Prepare an Environmental Assessment; Reopening of Comment Period.

SUMMARY: BOEM is reopening the comment period announced in the Notice of Intent to Prepare an Environmental Assessment (EA) for Commercial Wind Leasing and Site Assessment Activities on the OCS Offshore North Carolina.

FOR FURTHER INFORMATION CONTACT: Michelle Morin, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1340 or *Michelle.Morin@boem.gov.*

SUPPLEMENTARY INFORMATION:

Background: On December 13, 2012, BOEM published the Notice in the **Federal Register** (77 FR 74218) inviting Federal, state, local government agencies, tribal governments, and other interested parties to send their written comments regarding environmental issues and the identification of reasonable alternatives related to the proposed action (i.e., the issuance of renewable energy leases within all or some of the Call Areas identified offshore North Carolina, and the approval of site assessment activities on those leases). The Notice requested submissions by January 28, 2013.

Because of requests received from the public, we are hereby reopening the comment period until March 7, 2013. As stated in the Notice, BOEM will use the responses to identify alternatives to be considered in the EA, as well as environmental and/or socioeconomic issues to be analyzed. Please refer to the Notice published in the **Federal Register** on December 13, 2012, for further information. The Notice and a map of the Call Areas identified offshore North Carolina can be found at: *http://*

www.boem.gov/Renewable-Energy-Program/State-Activities/North-Carolina.aspx.

Comments: You may submit your comments by one of two methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* In the entry entitled ''Enter Keyword or ID,'' enter BOEM–2012–0090, and then click ''search.'' Follow the instructions to submit public comments and view supporting and related materials for this notice.

2. U.S. Postal Service or other delivery service. Send your comments and information to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170.

Comments should be submitted no later than March 7, 2013.

Comments already submitted in response to the Notice do not need to be resubmitted.

Dated: January 29, 2013.

Walter D. Cruickshank,

Deputy Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–02409 Filed 2–4–13; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–868]

Certain Wireless Devices With 3G and/or 4G Capabilities and Components Thereof; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on January 2, 2013, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of InterDigital Communications, Inc. of King of Prussia, Pennsylvania; InterDigital Technology Corporation of Wilmington, Delaware; IPR Licensing, Inc. of Wilmington, Delaware; and InterDigital Holdings, Inc. of Wilmington, Delaware. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wireless devices with 3G and/or 4G capabilities and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,190,966 (''the '966 patent''); U.S. Patent No. 7,286,847 (''the '847 patent''); U.S. Patent No. 8,009,636 (''the '636 patent''); U.S. Patent No. 7,706,830 (''the '830 patent''); U.S. Patent No. 7,941,151 (''the '151 patent''); U.S. Patent No. 7,616,970 (''the '970 patent''); and U.S. Patent No. 7,502,406 (''the '406 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainants request that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained 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 at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2012).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 30, 2013, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wireless devices with 3G and/or 4G capabilities and components thereof by reason of infringement of one or more of claims 1, 3, and 6–12 of the '996 patent; claims 1–3 and 5–11 of the '847 patent; claims 1–18 of the '970 patent; claims 1–6, 8, 9, 16–21, 23, and 24 of the '151 patent; claims 1–3, 5–8, 10, 16–18, 20–23, and 25 of the '830 patent; claims 1–4, 6–9, and 29–31 of the '636 patent; and claims 1, 2, 6–9, 13, 15, 16, 20–22, 26, 28–30, 34–36, and 40 of the '406 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to Commission Rule 210.50(b)(1), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties and other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors, 19 U.S.C. 1337(d)(1), (f)(1), (g)(1);

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

InterDigital Communications, Inc., 781 Third Avenue, King of Prussia, PA 19406

InterDigital Technology Corporation, 200 Bellevue Parkway, Suite 300, Wilmington, DE 19809

IPR Licensing, Inc., 200 Bellevue Parkway, Suite 300, Wilmington, DE 19809

InterDigital Holdings, Inc., 200 Bellevue Parkway, Suite 300, Wilmington, DE 19809

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., 416 Maetan-3dong, Yeongtong-gu, Suwon-city, Gyeonggi-do, Republic of Korea 443–742

Samsung Electronics America, Inc., 105 Challenger Road, Ridgefield Park, NJ 07660

Samsung Telecommunications America, LLC, 1301 East Lookout Drive, Richardson, TX 75082

Nokia Corporation, Keilalahdentie 2–4, FIN–00045 Group, Espoo, Finland

Nokia Inc., 102 Corporate Park Drive, White Plains, NY 10604

ZTE Corporation, ZTE Plaza, No. 55 Hi-Tech Road South, Shenzhen, Guangdong Province 518057, China

ZTE (USA) Inc., 2425 N. Central Expressway, Suite 600, Richardson, TX 75080

Huawei Technologies Co., Ltd., Bantian, Longgang District, Shenzhen, Guangdong Province 518129, China

Huawei Device USA, Inc., 5700 Tennyson Parkway, Suite #600, Plano, TX 75024

Future Wei Technologies, Inc., d/b/a Huawei Technologies (USA), 5700 Tennyson Parkway, Suite #500, Plano, TX 75024

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: January 30, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–02473 Filed 2–4–13; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Education and Human Resources Project Monitoring Clearance

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 USC U.S.C. 3506(c)(2)(A)), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation invites the general public and other Federal agencies to take this opportunity to comment on this information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 77 FR 56234 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by email to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR ADDITIONAL INFORMATION: Contact Suzanne Plimpton, the NSF Reports Clearance Officer, phone (703) 292–7556, or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

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.

SUPPLEMENTARY INFORMATION:

Title of Collection: A Survey of Program Evaluation of the National Science Foundation's Discovery Research K–12 (DR K–12) Program

OMB Approval Number: 3145–NEW.

Type of Request: Intent to seek approval to establish an information collection.

Abstract: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of the Director, the National Science Foundation (NSF), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

A Survey of Principal Investigators for the National Science Foundation's Discovery Research K–12 (DR K–12) program. Type of Information Collection Request: New collection. Need and Use of Information Collection: This study will assess the implementation of resources, models, and technologies to determine how and why implementation affects STEM learning, to inform program improvement, and to enhance understanding of both what the program is accomplishing and how. The primary objectives of the study are to conduct a survey of principal investigators of the DR–K12 programs to understand the impact and influence of the DRK–12 program and to identify the links between the DR K–12 program and other NSF programs. The findings will provide valuable information concerning the impacts and influences of the granting program and grantees and the extent to which DR K–12 program influence broader American society.

Frequency of Response: Once.

Affected Public: Individuals.

Type of Respondents: DR K–12 Principal Investigators. There are no Capital Costs to report.

Estimated Number of Respondents: 388; *Estimated Number of Responses per Respondent:* 1: *Average Burden Hours Per Response:* .30. *Estimated Total Annual Burden Hours Requested:* 194.00 and the annualized cost to respondents is estimated at $6208.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; (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.

Dated: January 30, 2013.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2013–02379 Filed 2–4–13; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting; Audit Committee Meeting of the Board of Directors

TIME & DATE: 2:00 p.m., Monday, February 11, 2013.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call to Order
II. External Auditors' Presentation
III. Executive Session with External Auditors
IV. Executive Session: Audit Committee
V. Executive Session with Internal Audit Director
VI. Executive Session with Officers
VII. Acceptance of the FY2012 Audited Financial Statements
VIII. Internal Audit Report with Management's Response
IX. Notation Vote Policy on Internal Audit Reports
X. Internal Audit Status Reports
XI. Other External Audit Status Reports
XII. National Foreclosure Mitigation Counseling (NFMC)/Emergency Homeowners Loan Program (EHLP) Compliance Update
XIII. OHTS Watch List
XIV. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2013–02602 Filed 2–1–13; 4:15 pm]

BILLING CODE 7570–02–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting; Finance, Budget & Program Committee Meeting of the Board of Directors

TIME & DATE: 2:00 p.m., Wednesday, February 13, 2013.

PLACE: 1325 G Street NW., Suite 800, Boardroom, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call To Order
II. Budget Update
III. Financial Report
IV. Preliminary Presentation of Grant Request for CHC and NC
V. MHA/Treasury Initiative
VI. Lease and Move
VII. FY 13 Corporate Milestone Report and Dashboard
VIII. NFMC and EHLP
IX. NeighborhoodLIFT & CityLIFT
X. Training Presentation
XI. FY13 Grants Report
XII. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2013–02604 Filed 2–1–13; 4:15 pm]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0476; Docket No. 52–008 Early Site Permit No. ESP–003]

In the Matter of Virginia Electric and Power Company, and Old Dominion Electric Cooperative; ESP for North Anna ESP Site; Order Approving Direct Transfer of Early Site Permit and Approving Conforming Amendment

I

Virginia Electric and Power Company, doing business as Dominion Virginia Power (DVP), and Old Dominion Electric Cooperative (ODEC), hold Early Site Permit 003 (ESP–003) for North Anna Site issued on November 27, 2007, pursuant to section 52.24 of Title 10 of the *Code of Federal Regulations* (10 CFR) ''Issuance of Early Site Permit.'' The permit expires on November 27, 2027.

II

By application dated March 1, 2012, DVP requested, on its own behalf and behalf of ODEC, pursuant to 10 CFR 50.80, that the U.S. Nuclear Regulatory Commission (NRC) consent to the transfer of ODEC's undivided ownership interest in ESP–003 from ODEC to DVP, with DVP becoming the sole permit holder. As a result of this transfer, DVP will assume all of ODEC's rights and obligations, including all rights and obligations under the ESP.

A notice entitled, Approval of Transfer of Early Site Permit (ESP) and Conforming Amendment, Virginia Electric and Power Company, North Anna ESP Site, was published in the **Federal Register** on September 10, 2012 (77 FR 55507). No comments or hearing requests were received.

Under 10 CFR 50.80, no ESP, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the ESP, unless the Commission shall give its consent in writing. Upon review of the information in the application, and other information before the Commission, the NRC staff has determined that DVP is qualified to hold the ESP–003 to the extent proposed to permit the transfer of ODEC's interest in ESP–003, and that the transfer of the ESP–003 is otherwise consistent with the applicable provisions of law, regulations, and orders issued by the NRC, pursuant thereto. The NRC staff has further found that the application for the proposed conforming amendment to the ESP–003 complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Chapter I; activities at the site will be in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed conforming amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed conforming amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed conforming amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The findings set forth above are supported by a safety evaluation dated January 30, 2013.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the proposed direct ESP transfer is approved:

It is further ordered that consistent with 10 CFR 2.1315(b), the conforming amendment that makes a change, as indicated in Enclosure 2 to the cover letter forwarding this Order, to reflect the subject direct transfer, is approved. The amendment shall be issued and made effective immediately.

All actions necessary for the proposed direct transfer action have been completed, and this Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated March 1, 2012, (Agencywide Documents Access and Management System (ADAMS) Accession No. ML12072A091), and the Safety Evaluation dated January 30, 2013, which are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland this 30th day of January 2013.

For the Nuclear Regulatory Commission.

Glenn M. Tracy,

Director, Office of New Reactors.

[FR Doc. 2013–02471 Filed 2–4–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–0036; NRC–2009–0278]

Exemption of Material for Proposed Disposal Procedures for the Westinghouse Electric Company, LLC., Hematite Decommissioning Project, License No. SNM–33, Festus, MI

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; availability.

ADDRESSES: Please refer to Docket ID NRC–2009–0278 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2009–0278. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in Section IV of this notice entitled, Further Information.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John J. Hayes, Senior Project Manager, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: 301–415–5928; email: *John.Hayes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated January 16, 2012, the U.S. Nuclear Regulatory Commission (NRC) received a license amendment application from Westinghouse Electric Company LLC (WEC or the licensee), pertaining to its planned disposal of NRC-licensed source, byproduct, and special nuclear materials. Regarding this material, WEC seeks approval, pursuant to section 20.2002 of Title 10 of the *Code of Federal Regulations* (10 CFR), of proposed disposal procedures which are not otherwise authorized by NRC regulations. WEC holds NRC License No. SNM–33, which authorizes the licensee to conduct decommissioning activities at its former fuel cycle facility located in Festus, Missouri. Since the fuel cycle facility operations have ceased, the Hematite site is undergoing decommissioning. The facility is now referred to as the Hematite Decommissioning Project (HDP). The amendment request seeks authorization allowing WEC to transfer decommissioning waste to U.S. Ecology Idaho, Inc. (USEI), a Resource Conservation and Recovery Act Subtitle C disposal facility located near Grand View, Idaho. This facility is regulated by the Idaho Department of Environmental Quality, and is not an NRC-licensed facility. Pursuant to 10 CFR 30.11 and 10 CFR 70.17, WEC's application also requested exemptions from the licensing requirements of 10 CFR 30.3 and 10 CFR 70.3 for the byproduct and special nuclear material it seeks to transfer. These exemptions are necessary because the disposal of byproduct and special nuclear material must occur at a facility licensed to possess such material, and the USEI facility has no NRC license.

On October 4, 2012, USEI requested that they be considered a party to WEC's January 16, 2012, alternate disposal request and also requested exemptions from the requirements of 10 CFR 30.3 and 10 CFR 70.3.

On March 19, 2012 (77 FR 16077), the NRC published in the **Federal Register** a Notice of Opportunity for Hearing on the January 16, 2012, WEC license amendment request ADAMS Accession Nos. ML12017A188, ML12017A189 and ML12017A190. The NRC relied upon the information provided in the January 16, 2012, license amendment request and supporting documentation and other sources as noted in the Environmental Assessment's (EA) references section, in preparing the EA.

II. Environmental Assessment Summary

Under 10 CFR 20.2002, WEC proposes to dispose of about 23,000 m^3 (30,000 yd^3) of low-level waste (LLW) from the HDP that contains source, byproduct and special nuclear material at the USEI hazardous waste disposal facility near Grand View, Idaho. The LLW will be generated from building slabs, asphalt, soils, buried piping and miscellaneous equipment associated with HDP.

In 2002, WEC and the Missouri Department of Natural Resources (MDNR) entered into a Letter Agreement, which, among other things, provided for MDNR oversight of certain studies and response actions in accordance with the National Oil and Hazardous Substances Pollution Contingency Plan under the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq. (Westinghouse MDNR Review Draft Remedial Design Work Plan, 2002 (ADAMS Accession No. ML020880266)).

Subsequently, Missouri and WEC entered into a Consent Decree, and the Letter Agreement was terminated. The Consent Decree provides for MDNR oversight of those portions of the investigation and selection of the remedy for Operable Units at the site that are not preempted by the Atomic Energy Act of 1954, as amended. The Selected Remedy for Operable Unit 1 at the HDP is Alternative 4: Removal, Treatment of Volatile Organic

Compound Waste, and Off-site Disposal of Low-Level Radioactive Waste (LLRW) and Non-Hazardous Treatment Residues.

The no-action alternative involves discontinuing ongoing decommissioning activities at the HDP and leaving decommissioning waste, including concrete slabs, asphalt, soil, buried piping and miscellaneous equipment such as ductwork and air filters at the HDP site. This action would require an exemption from the requirement in 10 CFR 70.38(d) that decommissioning of facilities specifically licensed for possession and use of special nuclear material be completed and approved by the NRC after licensed activities cease. The no-action alternative would result in leaving approximately 23,000 m^3 of total waste volume onsite.

Some of the radiologically contaminated remediation waste, regulated by the NRC is co-mingled with chemically contaminated waste regulated under CERCLA. The ''no action alternative'' would not be in accordance with the July 2009, CERCLA Record of Decision for removal and subsequent treatment of the chemically contaminated waste.

The no action alternative would not allow the WEC to meet the requirements of 10 CFR 20.1402 for unrestricted release. Selection of this alternative would require the WEC to continue environmental monitoring/surveillance and to maintain administrative and engineered controls to ensure facility safety and security. Environmental impacts of the no-action alternative would be similar to the impacts which existed prior to the start of decommissioning and could escalate if groundwater contamination spreads and material such as Tc-99 continues to leach from the limestone at the site. The environmental impacts which were occurring prior to the advent of decommissioning were those associated with the maintenance of the Hematite facility. During that time there were discharges from the sanitary waste facility, traffic associated with workers traversing to and from the site and vehicular traffic associated with entities providing services and supplies to the Hematite facility and their associated emissions.

Another alternative to the proposed action is to dispose of the low activity LLRW in a facility licensed by an NRC Agreement State for the storage and/or disposal of LLRW. For this EA, the NRC evaluated the Energy*Solutions,* LLC (Energy*Solutions*) Clive, Utah facility as the alternative disposal site for the radioactive and chemically hazardous waste. This is the same facility that was evaluated as an alternative disposal site in the 10 CFR 20.2002 request approved in Hematite License Amendment 58.

The Energy*Solutions* LLRW disposal facility at Clive, Utah is located 128 kilometers (80 miles) west of Salt Lake City, Utah and 70 kilometers (45 miles) east of Wendover Nevada. The site is arid with an annual precipitation of approximately 20 centimeters (8 inches). The facility is licensed by the State of Utah to dispose of Class A radioactive waste only (Utah License 2300249) and 11e.(2) byproduct material (UT2300478) and is issued a Part B Resource Conservation and Recovery Act solid waste permit (EPA ID No. UTD982598898).

The Energy*Solutions* LLRW facility routinely manages the disposal of Class A LLRW containing low concentrations of special nuclear material (SNM) in above ground disposal cells. SNM quantities, below what the NRC would consider to be a critical mass (i.e., 350 grams of U–235) do not require an NRC SNM license under 10 CFR Part 70. In this particular case, regulation would be by the State of Utah, as an agreement state authorized under 10 CFR Part 150, ''*Exemptions and Continued Regulatory Authority in Agreements States and in Offshore Waters Under Section 274.*'' Energy*Solutions,* however, operates under a concentration based SNM limit instead of a total mass limit of 350 grams of SNM. This revision to the Energy*Solutions* license was approved after the NRC independently confirmed that the concentration limits ensured that all potential criticality safety concerns had been met. The SNM concentration limits are specified in the facility's radioactive materials license (Utah License 2300249). The U–235 concentration limit is 1,900 pCi/g for enrichments below 10% and 1,190 pCi/g for enrichments above 10% thus allowing the facility to routinely operate above a mass limit of 350 grams of SNM.

The selection of this alternative would allow WEC to meet the requirements of 10 CFR 20.1402 for unrestricted release. In addition, this site is environmentally similar to USEI. However, this alternative was not selected by the licensee.

III. Finding of No Significant Impact

On the basis of the EA, the NRC has concluded that there are no significant environmental impacts and the issuance of a license amendment does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the letter requesting the amendment and supporting documentation are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* The ADAMS accession numbers for the documents related to this notice are:

(1) Hematite Decommissioning Project Alternate Disposal Request (ML12017A188, ML12017A189 and ML12017A190

(2) Environmental Assessment (ML12321A147); and

(3) Notice of Opportunity for Hearing (ML120240752).

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's Public Document Room (PDR) Reference staff at 800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 25th day of January, 2013.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2013–02469 Filed 2–4–13; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2013–0020]

Biweekly Notice

Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment

to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 10 to January 23, 2013. The last biweekly notice was published on January 22, 2013 (78 FR 4469).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0020. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0020. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0020 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0020.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0020 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in section 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a

notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at h*ttp://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-

free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina; and Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: May 31, 2012.

Description of amendment request: The amendments would revise the technical specifications to modify the end of cycle (EOC) moderator temperature coefficient (MTC) Surveillance Requirement (SR) by allowing an exemption to the SR if certain conditions are met. This conditional exemption from the SR will be determined on a cycle-specific basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1: Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The probability or consequences of accidents previously evaluated in the Updated Final Safety Analysis Report (UFSAR) are unaffected by this proposed change. There is no change to any equipment response or accident mitigation scenario, and this change results in no additional challenges to fission product barrier integrity. The proposed change does not alter the design, configuration, operation, or function of any plant structure, system, or component. Further, the existing limits on MTC established by the Technical Specifications (TS), based on assumptions in the safety analyses, remain unchanged and continue to be satisfied. As a result, the outcomes of previously evaluated accidents are unaffected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2: Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. The proposed change does not challenge the performance or integrity of any safety-related system. The proposed change neither installs nor removes any plant equipment, nor alters the design, physical configuration, or mode of operation of any plant structure, system, or component. The MTC is a variable that must remain within prescribed limits, but it is not an accident initiator. No physical changes are being made to the plant, so no new accident causal mechanisms are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The margin of safety associated with the acceptance criteria of any accident is unchanged. The proposed change will have no effect on the availability, operability, or performance of the safety-related systems and components. The proposed change does not alter the design, configuration, operation, or function of any plant structure, system, or component. The ability of any operable structure, system, or component to perform its designated safety function is unaffected by this change. A change to an SR is proposed based on an alternate method of confirming that the surveillance is met.

The TS and the Core Operating Limits Report (COLR) establish limits for the MTC based on assumptions in the accident analyses. Applying the conditional exemption from the MTC measurement changes the method of meeting the SR; however, this change does not modify the COLR values and ensures adherence to the current COLR limits. The basis for the derivation of the MTC Limiting Condition for Operation (LCO) and SR limits from the MTC assumed in the accident analyses is unchanged.

Therefore, the margin of safety as defined in the TS is not reduced and the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Robert J. Pascarelli.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: September 25, 2012.

Description of amendment request: The proposed amendments would change selected atmospheric relative concentration values for use in control room radiological dose analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This proposed amendment submits [atmosphere relative concentration values] x/Qs that were accurately calculated and in conformance with NRC guidance. Meteorological inputs that were previously submitted to the NRC and used to calculate these X/Qs were not revised or updated nor has any of the dose release points changed. Accident mitigation procedures and controls are in no way affected by this amendment. Duke Energy has also ensured that the control room doses determined with these re-calculated X/Qs are within the 10 CFR 50.67 AST limits.

As such, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This proposed amendment is analytical in nature. It does not involve a plant modification or a change in how the plant is operated. No new accident causal mechanisms are created as a result of this proposed amendment. No changes are being made to any structure, system, or component which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators and does not impact any safety analysis.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed re-calculation of the X/Qs will have no affect on the performance of these barriers. This proposed amendment does not involve an addition or modification to any plant system, structure, or component. This proposed amendment will not affect the post accident operation of any plant system, structure, or component as directed in plant procedures.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Robert J. Pascarelli.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: September 14, 2012, as supplemented by letter dated December 17, 2012.

Description of amendment request: The proposed amendment would revise the Standby Service Water (SSW) Passive Failure Methodology as described in the Updated Final Safety Analysis Report (UFSAR) to be consistent with SECY–77–439, ''NRC Information Paper on Single Failure Criterion,'' dated August 1, 1977. In this SECY paper, the NRC stated that credible passive SSW failures that result in a loss-of-fluid in post-accident scenarios, can be limited to pump or valve seal leakage. In a UFSAR change made in 1987 under 10 CFR 50.59, the licensee adopted this language, but during a recent NRC Component and Design Basis Inspection, the NRC staff concluded that such a change requires NRC staff review and approval and, therefore, the licensee has proposed this amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Grand Gulf Nuclear Station (GGNS) proposes the utilization of limited size breaks (through-wall leakage cracks) in the analysis of passive failures of Standby Service Water (SSW) piping during the post-LOCA [loss-of-coolant accident] phase of an accident. Postulating passive pipe ruptures and heat exchanger tube ruptures, and pipe fitting (tee, elbow, reducer, etc) ruptures in the SSW piping is overly conservative. SECY 77–439 underscores the fact that the probability of failure of the service water piping during the critical 24-hour period after a loss of coolant accident (LOCA) is so low that it does not constitute a credible event.

Additionally, crack locations and sizes postulated under the guidance of Standard Review Plan (SRP) (NUREG 0800) Sections 3.6.1 and 3.6.2 are applicable and bounding in terms of the consideration of passive failures as addressed in SECY 77–439, and are thus applicable to the Grand Gulf Nuclear Station pipe failure analysis.

Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of a previously evaluated accident are not significantly increased. The proposed change does not affect the performance of any equipment credited to mitigate the radiological consequences of an accident. Evaluation of the proposed UFSAR changes demonstrated that the availability of credited equipment is not significantly affected because of the adoption of revised methodology for postulating single phase failures of the Standby Service Water (SSW) to be consistent with NRC guidance published in References 2 and 3 [of the licensee's letter dated December 17, 2012].

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed UFSAR change allows GGNS to be consistent with NRC guidance published in References 2 and 3 [of the licensee's letter dated December 17, 2012] which state that credible passive SSW failures that can result in a loss of fluid post-accident are limited to pump or valve seal leakage, not ruptures of SSW system piping. The proposed UFSAR change does not introduce any failure mechanisms of a different type than those previously evaluated, since there are no physical changes being made to the facility.

No new or different equipment is being installed. No installed equipment is being

operated in a different manner. As a result, no new failure modes are being introduced. The way surveillance tests are performed remains unchanged.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed revision of the Updated Final Safety Analysis Report (UFSAR) to describe the use of revised methodology for postulating single phase failures of the Standby Service Water (SSW) to be consistent with NRC guidance published in References 2 and 3 [of the licensee's letter dated December 17, 2012] which state that credible passive SSW failures that can result in a loss of fluid post-accident are limited to pump or valve seal leakage, not ruptures of SSW system piping. The impact of the change on system availability is not significant, based on the frequency of the testing being unchanged, the existence of redundant systems and equipment, and overall system reliability. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not result in any hardware changes or in any changes to the analytical limits assumed in accident analyses. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to these changes. The proposed change does not impact any safety analysis assumptions or results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: November 9, 2012.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to support the correction of a non-conservative TS allowable value in TS Table 3.3.6.1–1, ''Allowable Value for Primary Containment and Drywell Isolation Instrumentation,'' Function 3.c, ''Reactor Core Isolation Cooling (RCIC) Steam Supply Line Pressure—Low.'' This TS allowable value will be changed from greater than or equal to 53 pounds per square inch gauge (psig) to greater than or equal to 57 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS allowable value change involves a change in the margin between the allowable value and the setpoint. The proposed TS change does not change the trip setpoint. The proposed TS change does not degrade the performance of, or increase the challenges to, any safety systems assumed to function in the accident analysis. The proposed TS change does not impact the usefulness of the SRs in evaluating the operability of required systems and components, or the way in which the surveillances are performed. In addition, the [sic] trip setpoint for the associated TRM function is not considered an initiator of any analyzed accident, nor does a revision to the allowable value introduce any accident initiators. Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of a previously evaluated accident are not significantly increased. The proposed change does not affect the performance of any equipment credited to mitigate the radiological consequences of an accident. Evaluation of the proposed TS changes demonstrated that the availability of credited equipment is not significantly affected because of the reduction in margin between the allowable value and the trip setpoint.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change involves a change in the allowable value setting to correct a non-conservative value. The proposed TS change does not introduce any failure mechanisms of a different type than those previously evaluated, since there are no physical changes being made to the facility.

No new or different equipment is being installed. No installed equipment is being operated in a different manner. As a result, no new failure modes are being introduced. The way surveillance tests are performed remains unchanged.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed TS change involves a change in the allowable value setting to correct a non-conservative value. The impact of the change on system availability is not significant, based on the frequency of the testing being unchanged, the existence of redundant systems and equipment, and overall system reliability. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change does not result in any hardware changes or in any changes to the analytical limits assumed in accident analyses. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to these changes. The proposed change does not impact any safety analysis assumptions or results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: November 21, 2012.

Description of amendment request: The amendment would revise Technical Specification (TS) 3.4.12, ''Low Temperature Overpressure Protection (LTOP) System,'' to reflect the mass input transient analysis that assumes an emergency core cooling system centrifugal charging pump and the normal charging pump capable of injecting into the reactor coolant system during the TS 3.4.12 Applicability.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or

consequences of an accident previously evaluated?

Response: No.

The proposed change revises TS 3.4.12 to allow an ECCS [emergency core cooling system] CCP [centrifugal charging pump] and the NCP [normal charging pump] to be capable of injecting into the RCS [reactor coolant system] during low RCS pressures and temperatures. The Limiting Condition for Operation provides RCS overpressure protection by having a minimum coolant input capability and have adequate pressure relief capability. Analyses have demonstrated that one power operated relief valve (PORV) or one residual heat removal (RHR) suction relief valve or an RCS vent of at least 2.0 square inches is capable of limiting the RCS pressure excursions below the 10 CFR Part 50, Appendix G limits for the design basis LTOP limits.

The NRC has previously evaluated the allowance for an ECCS CCP and the NCP being capable of injecting into the RCS during the TS 3.4.12 Mode of Applicability. In the safety evaluation dated December 7, 1999 related to Wolf Creek Generation Station, Unit 1, Amendment No. 130, the NRC concluded:

The operability of two PORVs or two RHR suction relief valves or an RCS vent opening of at least 2 square inches ensure adequate flow capacity to protect the RCS from overpressurization from either (1) the start of a centrifugal charging pump and/or the normal charging pump injecting into the RCS, or (2) the start of the idle RCP [reactor coolant pump] with the secondary water temperature of the steam generator less than or equal to 50 °F above the RCS cold leg temperature.

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed change does not adversely affect the ability of structures, systems, and components (SSC) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change does not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of any accident previously evaluated. Further, the proposed change does not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposure.

Therefore, the proposed change does not represent a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises TS 3.4.12 to allow an ECCS CCP and the NCP to be capable of injecting into the RCS during low RCS pressures and temperatures. The Limiting Condition for Operation provides RCS overpressure protection by having a minimum coolant input capability and have adequate pressure relief capability. Analyses have demonstrated that one power operated relief valve (PORV) or one residual heat removal (RHR) suction relief valve or an RCS vent of at least 2.0 square inches is capable of limiting the RCS pressure excursions below the 10 CFR Part 50, Appendix G limits for the design basis LTOP limits.

The proposed change will not physically alter the plant (no new or different type of equipment will be installed) or change the methods governing normal plant operation. The proposed change does not introduce new accident initiators or impact assumptions made in the safety analysis. Testing requirements continue to demonstrate that the Limiting Conditions for Operation are met and the system components are functional.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by this change. The proposed change will not result in plant operation in a configuration outside the design basis.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037.

NRC Branch Chief: Michael T. Markley.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit 3, New London County, Connecticut

Date of amendment request: July 31, 2012, as supplemented by letter dated August 28, 2012.

Description of amendment request: The proposed amendment revised the Millstone Power Station, Unit 3 Technical Specification requirements regarding steam generator tube inspections and reporting as described in TSTF–510, Revision 2, ''Revision to Steam Generator Program Inspection Frequencies and Tube Sample Selection''; however, Dominion Nuclear Connecticut, Inc. is proposing minor variations and deviations from TSTF–510.

Date of issuance: January 11, 2013.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 256.

Renewed Facility Operating License No. NPF–49: Amendment revised the License and Technical Specifications.

*Date of initial notice in **Federal Register:*** September 429, 2012 (77 FR 53927).

The supplemental letter contains clarifying information, did not change the scope of the license amendment request, did not change the NRC staff's initial proposed finding of no significant hazards consideration determination, and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 2013.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: August 29, 2012.

Brief description of amendments: The amendments modified the Technical Specification (TS) requirements for inoperable snubbers by adding Limiting Condition for Operation (LCO) 3.0.8. The amendments also made conforming changes to TS LCO 3.0.1 to reference TS LCO 3.0.8. The proposed changes are based on the Nuclear Regulatory Commission (NRC) approved Technical Specification Task Force (TSTF) standard TS change TSTF–372, Revision 4. A notice of availability for this TS improvement using the consolidated line item improvement process was published by the NRC staff in the **Federal Register** on May 4, 2005 (70 FR 23252).

Date of issuance: January 22, 2013.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendments Nos.: 285 and 288.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: The amendments revised the License and TSs.

*Date of initial notice in **Federal Register:*** October 2, 2012 (77 FR 60150).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 22, 2013.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 25th day of January 2013.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–02352 Filed 2–4–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS)

Meeting of the Joint ACRS Subcommittees on Thermal Hydraulic Phenomena and Materials, Metallurgy and Reactor Fuels; Notice of Meeting

The Joint ACRS Subcommittees on Thermal Hydraulic Phenomena and Materials, Metallurgy and Reactor Fuels will hold a meeting on February 20, 2013, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is propriety pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

Wednesday, February 20, 2013—8:30 a.m. until 5:00 p.m.

The Subcommittees will review and discuss the thermal conductivity degradation (TCD) issue, how TCD impacts legacy fuel mechanical design codes, and how TCD affects plant safety analysis. The Subcommittees will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Weidong Wang (Telephone 301–415–6279 or Email: *Weidong.Wang@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: January 30, 2013.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–02481 Filed 2–4–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on US–APWR; Notice of Meeting

The ACRS Subcommittee on US–APWR will hold a meeting on February 21–22, 2013, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance with the exception of portions that may be closed to protect information that is propriety pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

Thursday, February 21, 2013—8:30 a.m. until 5:00 p.m.; Friday, February 22, 2013—8:30 a.m. until 5:00 p.m.

The Subcommittee will review Chapter 16, ''Technical Specifications; ''Chapter 17, ''Quality Assurance and Reliability Assurance;'' and Chapter 19, ''Probabilistic Risk Assessment and Severe Accident Evaluation,'' of the Safety Evaluation Reports (SERs) associated with the US–APWR design certification and the Comanche Peak

Combined License Application (COLA). The subcommittee will also review the ''Loss of Large Areas (LOLA) of the Plant due to Explosions or Fires,'' for the Comanche Peak Combined License Application (COLA). The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Mitsubishi Heavy Industries, Luminant Generation Company, LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Girija Shukla (Telephone 301–415–6855 or Email: *Girija.Shukla@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: January 29, 2013.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2013–02478 Filed 2–4–13; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2013–0001]

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of February 4, 11, 18, 25, March 4, 11, 2013.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 4, 2013

Thursday, February 7, 2013

1:00 p.m. Briefing on Steam Generator Tube Degradation (Public Meeting) (Contact: Ken Karwoski, 301–415–2752)

This meeting will be webcast live at the web address—*www.nrc.gov*

Week of February 11, 2013—Tentative

There are no meetings scheduled for the week of February 11, 2013.

Week of February 18, 2013—Tentative

Wednesday, February 20, 2013

1:00 p.m. Briefing on Uranium Recovery (Public Meeting) (Contact: Bill von Till, 301–415–0598)

This meeting will be webcast live at the web address—*www.nrc.gov*

Thursday, February 21, 2013

9:30 a.m. Briefing on the Threat Environment Assessment (Closed—Ex. 1)

Week of February 25, 2013—Tentative

There are no meetings scheduled for the week of February 25, 2013.

Week of March 4, 2013—Tentative

There are no meetings scheduled for the week of March 4, 2013.

Week of March 11, 2013—Tentative

There are no meetings scheduled for the week of March 11, 2013.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, or by email at *kimberly.meyer-chambers@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: January 31, 2013.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2013–02619 Filed 2–1–13; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68766; File No. SR–CBOE–2012–116]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to a Proposed Rule Change Relating to Bylaw and Other Changes Concerning the Board of Directors of the Exchange

January 30, 2013.

I. Introduction

On November 30, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') 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 its Bylaws concerning the nomination of Representative Directors, petition candidates, and the size of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange's Board of Directors (''Board''), and to make conforming changes to the CBOE Certificate of Incorporation. On December 19, 2012, the proposed rule change was published for comment in the **Federal Register**.[3] The Commission received no comments on the proposed rule change. This order grants approval to the proposed rule change.

II. Description of the Proposed Rule Change

Compositional Requirements Determined by the Board

In December of 2011, CBOE amended its Bylaws and Certificate of Incorporation to, among other things: (i) eliminate the requirement that its Board of Directors be composed of at least 30% Industry Directors, and (ii) eliminate the requirement in Section 3.2 of the Bylaws that the Representative Directors must be Industry Directors.[4] In connection with these changes, CBOE also amended Section 3.1 of the Bylaws to provide that: ''[T]he Board shall determine from time to time pursuant to resolution adopted by the Board the total number of directors, the number of Non-Industry Directors and Industry Directors (if any), and the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any).'' [5]

CBOE proposed to amend the Bylaws to expressly provide that any person nominated by the Representative Director Nominating Body [6] and any petition candidate nominated pursuant to the Section 3.2 of the Bylaws must satisfy the compositional requirements determined by the Board pursuant to a resolution adopted by the Board in accordance with Section 3.1 designating the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any). CBOE also proposed to amend Section 3.5 of the Bylaws relating to the filling of vacancies on the Board to provide that the Representative Director Nominating Body may only recommend individuals to fill a vacancy in a Representative Director position who satisfy those same compositional requirements.

Board Size Range

Currently, the Bylaws provide that the Board shall consist of not less than 11 and not more than 23 directors. CBOE proposed to change the Board size range such that the Board would consist of not less than 12 and not more than 16 directors.

Conforming Amendments to Certificate of Incorporation

Finally, CBOE proposed to make conforming changes to its Certificate of Incorporation and to include in its Certificate of Incorporation that the Board and/or Nominating and Governance Committee, as applicable, shall make determinations as to whether a director candidate satisfies applicable qualifications for election as a director pursuant to and in accordance with Section 3.1 of the Exchange's Bylaws, which is nearly identical to the current provisions in the Exchange's existing Bylaws.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[8] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; Section 6(b)(3) of the Act,[9] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer (the ''fair representation requirement''); and Section 6(b)(5) of the Act,[10] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to expressly provide that any person nominated by the Representative Director Nominating Body [11] and any petition candidate nominated pursuant to the Section 3.2 of the Bylaws must satisfy the compositional requirements determined by the Board pursuant to a resolution adopted by the Board in accordance with Section 3.1 of the Bylaws, as well as the proposal to amend Section 3.5 of the Bylaws to provide that the Representative Director Nominating Body may only recommend individuals to fill a vacancy in a Representative Director position who satisfy those same compositional requirements, are consistent with Section 6(b) of the Act,[12] including Section 6(b)(3) of the Act.[13] The Exchange's proposal would not impact its current process to ensure fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs as required by Section 6(b)(3) of the Act.[14] Specifically, the proposed changes are consistent with the changes to the Bylaws that CBOE made in December of 2011 and simply reflect the application of those changes. As the Commission noted when it approved that prior proposal, the Commission had previously approved proposals in which an exchange's board of directors was composed of all or nearly all non-industry directors where the process was nevertheless designed to comply with the ''fair representation'' requirement in the selection and election of directors.[15]

In addition, the Commission believes that the Exchange's proposal to change the Board size range to consist of not less than 12 and not more than 16 directors is consistent with Section 6(b) of the Act,[16] including Section 6(b)(3) of

[3] *See* Securities Exchange Act Release No. 68428 (December 13, 2012), 77 FR 75230 (''Notice'').

[4] *See* Securities Exchange Act Release Nos. 65682 (November 3, 2011), 76 FR 69780 (November 9, 2011) (SR–CBOE–2011–099) (noticing for comment); and 65980 (December 15, 2011), 76 FR 79252 (December 21, 2011) (approving SR–CBOE–2011–099).

[5] *See* CBOE Bylaw 3.1. *See also* Securities Exchange Act Release Nos. 65682 (November 3, 2011), 76 FR 69780 at (November 9, 2011) (SR–CBOE–2011–099) (noticing for comment).

[6] The Exchange noted that at all times at least 20% of the directors serving on the Board would be Representative Directors nominated by the Representative Director Nominating Body as provided in Section 3.2 of the Bylaws (or otherwise selected through the petition process). *See* Notice, *supra* note 3, at 75230.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(3).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 6.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(3). Section 6(b)(3) of the Act requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

[14] *See id.*

[15] *See* Securities Exchange Act Release No. 65980 (December 15, 2011), 76 FR 79252 at 79253 (December 21, 2011) (approving SR–CBOE–2011–099) (citing to Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (approving SR–NYSE–2003–34)).

[16] 15 U.S.C. 78f(b).

the Act.[17] The Exchange's proposal would not impact in any manner its current process to ensure fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs as required by Section 6(b)(3) of the Act.[18] Further, the proposed change is consistent with the current size of CBOE's Board and simply narrows the possible size range from 11 to 23 to 12 to 16.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–CBOE–2012–116) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02423 Filed 2–4–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78f(b)(3).

[18] *See id.*

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68761; File No SR–NASDAQ–2013–013]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify Chapter XV, Section 2 of the Rules Governing the NASDAQ Options Market, NASDAQ's Facility for Executing and Routing Standardized Equity and Index Options

January 29, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on January 22, 2013. The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule 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 Rule Change

The NASDAQ Stock Market LLC proposes to modify Chapter XV, Section 2 of the rules governing the NASDAQ Options Market.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM, by limiting the transactions to which ''Customer'' fees and rebates apply and by adding a new ''Broker-Dealer'' category. The Exchange will apply the new Broker-Dealer fees and rebates rather than Customer fees and rebates to transactions for the account of a broker or dealer that are currently assessed at Customer rates. Transactions that are subject to the new Broker-Dealer fee category will no longer be considered ''Customer'' transactions for any purpose in Chapter XV, including rebates.

There is currently NOM pricing for five separate categories of market participants: Customer, Professional, Firm, Non-NOM Market Maker and NOM Market Maker. ''Customer'' pricing currently applies to any transaction that is identified for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of a Professional.[3] NOM now proposes to further limit the ''Customer'' fee category so that it does not apply to transactions identified for clearing in the Customer range at OCC that are for the account of a broker or dealer. Going forward, these transactions for the account of a broker or dealer that are currently charged ''Customer'' fees will be charged under the new ''Broker-Dealer'' fee category.

The new Broker-Dealer category would be an addition to the existing fee categories. Broker-Dealer transactions will be any transactions that do not fall within any of the other categories.[4] As discussed above, transactions currently identified for clearing in the Customer range at OCC for the account of a broker or dealer will fall within the new Broker-Dealer category. The Exchange proposes to charge transactions in the Broker-Dealer category the same fees charged for transactions currently in the Firm category, and to provide the same rebates offered with respect to transactions in the Firm category.

Additionally, the Exchange currently pays NOM Participants a tiered Rebate to Add Liquidity in Penny Pilot Options based on the volume of Customer and Professional orders they execute on the Exchange. Orders for brokers and dealers that currently fall within the Customer pricing category and that will now fall within the Broker-Dealer pricing category will no longer be eligible for this rebate. However, Broker-Dealer orders, just like Firm orders, will count toward Total Volume for purposes of calculating the Tier 5 Rebate to Add Liquidity in Penny Pilot Options.

Section 2(2) is being amended to reflect that, like transactions in the Firm fee category, Broker-Dealer transactions will be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross.

Finally, the Exchange is eliminating Section 2(3), Closing Cross, as unnecessary. The Exchange no longer conducts a closing cross and the fees are no longer applicable to any transactions.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons

[3] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) (''Professional Filing''). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

[4] The other categories are Customer, Professional Firm, Non-NOM Market Maker and NOM Market Maker.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

using any facility or system which NASDAQ operates or controls.

The Exchange believes that assessing for Broker-Dealer transactions executed on the Exchange the same pricing assessed today for Firm transactions executed on the Exchange is reasonable because other options exchanges similarly assess the same transaction fees for Broker-Dealers and Firms. NASDAQ OMX BX, Inc., (''BX''), International Securities Exchange, LLC (''ISE'') and NYSE Arca, Inc. (''NYSE Arca'') also charge Broker-Dealer transactions at the same rates as Firm transactions.

The Exchange believes that the proposed Broker-Dealer fees are reasonable, equitable and not unfairly discriminatory because it is the same pricing uniformly charged by the Exchange with respect to transactions in the Professional, Firm and Non-NOM Market Maker categories. Only Customer and NOM Market Maker transactions receive more favorable fees due to the special benefits they bring to the market. The Exchange believes that Customer order flow brings unique benefits to the market which benefits all market participants through increased liquidity. NOM Market Makers have obligations to the market and regulatory requirements[7] which normally do not apply to other market participants. A NOM Market Maker has the obligation to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The proposed differentiation as between Customers and NOM Market Makers and other market participants recognizes the differing contributions made to the liquidity and trading environment on the Exchange by Customers and NOM Market Makers, as well as the differing mix of orders entered.

The Exchange believes that the proposed Broker-Dealer Rebate to Add Liquidity in Penny Pilot Options is equitable and not unfairly discriminatory because it is the same rebate that is currently applied to Firms, which rebate is lower than that applicable to Customers, Professionals, Non-NOM Market Makers and NOM Market Makers because Customers, Professionals, Non-NOM Market Makers and NOM Market Makers provide benefits to the market which Firms and Broker-Dealers do not. Customers and Professionals provide liquidity which benefits the market. Non-NOM Market Makers and NOM Market Makers have obligations to the market place and regulatory burdens placed on them that other broker-dealers trading for their own account do not currently bear.

The Exchange believes that the lack of a Broker-Dealer Rebate to Add Liquidity in Non-Penny Pilot Options is equitable and not unfairly discriminatory because Professionals, Firms, Non-NOM Market Makers and NOM Market Makers also do not receive any rebate. Only Customers will receive a rebate because Customer order flow brings liquidity to the market which in turn benefits all market participants. The provision of Customer flow is encouraged by the rebate for this reason.

A Customer and Professional Rebate to Add Liquidity in Penny Pilot Options is currently paid to a Participant having Total Volume of 130,000 or more contracts per day in a month (''Tier 5 Total Volume''). The Exchange believes that it is reasonable, equitable and not unfairly discriminatory to count Broker-Dealer orders that previously fell within the ''Customer'' category toward Tier 5 Total Volume because Firm orders as well as orders in all other fee categories uniformly count toward Tier 5 ''Total Volume''.

Finally, the Exchange believes it is reasonable, equitable, and not unfairly discriminatory to remove outdated references to fees assessed on closing cross transactions because doing so will make the fee schedule more up to date and accurate.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

While the Exchange's proposal would result in higher fees for Broker-Dealers than Customers, the Exchange does not believe the proposed fees would result in any intramarket burden on competition as between market participants. The Exchange believes that the proposed Broker-Dealer pricing does not misalign fees and rebates as between market participants. The Exchange proposes to assess certain fees and pay certain rebates to Broker-Dealers which pricing is consistent with fees and rebates currently assessed on other options exchanges today.

The Exchange operates in a highly competitive market, comprised of eleven exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the Exchange described in the above proposal are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[8] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of 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

[7] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–013 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–013. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at NASDAQ's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–013, and should be submitted on or before February 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02479 Filed 2–4–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68765; File No. SR–CFE–2013–002]

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Market-Wide Trading Halts

January 30, 2013.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 17, 2013 CBOE Futures Exchange, LLC (''CFE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC''). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'') [2] on January 17, 2013.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

CFE proposes to amend CFE Rules 417A(e) and 1602(i) to coordinate the adoption and effectiveness of market-wide trading halt provisions applicable to Individual Stock Based and Exchange-Traded Fund Based Volatility Index (''Volatility Index'') security futures traded on CFE with the implementation of corresponding market-wide trading halt provisions by the national securities exchanges.[3] The text of the proposed rule change is available on the Exchange's Web site at *http://www.cfe.cboe.com,* on the Commission's Web site at *http://www.sec.gov,* 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, CFE 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. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend CFE Rules 417A(e) and 1602(i) to coordinate the adoption and effectiveness of market-wide trading halt provisions applicable to Volatility Index security futures traded on CFE with the implementation of corresponding market-wide trading halt provisions by the national securities exchanges.

In October 2012, CFE adopted CFE Rule 417A and amended CFE Rule 1602(i) to incorporate, effective on February 4, 2013, market-wide trading halt provisions that would be consistent with the market-wide trading halt provisions which were anticipated to be adopted by the national securities exchanges on February 4, 2013.[4] CFE understands that the national securities exchanges are now delaying the implementation of their market-wide trading halt provisions.

Because CFE Rules 417A and 1602(i) were coordinated with the previously planned February 4, 2013 adoption and effective date of the market-wide trading halt regime on national securities exchanges, CFE is now amending those rules by deleting references to the February 4, 2013 date and replacing them with references to the date on which the corresponding market-wide trading halt regime becomes effective on national securities exchanges. CFE will issue a circular advising its Trading Privilege Holders of the effective date of the new market-wide trading halt provisions prior to their effectiveness.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

[3] The scope of this filing is limited solely to the application of the rule changes to security futures traded on CFE and the only security futures currently traded on CFE are traded under Chapter 16 of CFE's Rulebook which is applicable to Volatility Index security futures.

[4] *See* Securities Exchange Act Release No. 68100 (October 24, 2012), 77 FR 65747 (October 30, 2012) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt and Amend Certain Rules that are Applicable to Security Futures) (SR–CFE–2012–001).

[5] 15 U.S.C. 78f(b).

6(b)(5)[6] in particular in that it is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Specifically, the proposed change would promote uniformity across securities and futures markets concerning when and how to halt trading in relation to equity-based products as a result of extraordinary market volatility which in turn facilitates the protection of investors and the public interest. Having trading halts apply across markets that operate under different regulatory regimes will benefit the public interest because similar products will be subject to consistent market-wide trading halt rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[7] The Exchange believes that the proposal will strengthen competition because coordination of market-wide trading halts among securities and futures markets for equity-based products avoids the competitive disadvantage that would exist if some exchanges trading equity-based products halted in a coordinated fashion due to extraordinary market volatility and others did not.

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 proposed rule change will become operative on February 4, 2013. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[8]

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–CFE–2013–002 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–CFE–2013–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CFE–2013–002, and should be submitted on or before February 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02422 Filed 2–4–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78a *et seq.*

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68771; File No. SR–BOX–2013–07]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To List and Trade Option Contracts Overlying 10 Shares of Certain Securities

January 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 22, 2013, BOX Options Exchange LLC (''BOX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade option contracts overlying 10 shares of a security (''mini-options contracts''). The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add Interpretive Material to Rule 3120 (Position Limits) and Rule 5050 (Series of Options Contracts Open for Trading), and amend Rule 3130 (Exemptions from Position Limits) and Rule 7040 (Meaning of Premium Quotes and Orders) so that BOX may list and trade Mini Options overlying five (5) high-priced securities for which the standard contract overlying the same security exhibits significant liquidity. Specifically, the Exchange proposes to list Mini Options on SPDR S&P 500 (''SPY''), Apple, Inc. (''AAPL''), SPDR Gold Trust (''GLD''), Google Inc. (''GOOG'') and Amazon.com Inc. (''AMZN'').[3] The Exchange believes that this proposal would allow investors to select among options on various high-priced and actively traded securities, each with a unit of trading ten times lower than that of the regular-sized options contracts, or 10 shares.

For example, with Apple Inc. (''AAPL'') trading at $638.17 on October 8, 2012, ($63,817 for 100 shares underlying a standard contract), the 640 level call expiring on October 19 was trading at $8.30. The cost of the standard contract overlying 100 shares would be $830, which is substantially higher in notional terms than the average equity option price of $255.02.[4] Proportionately equivalent mini-options contracts on AAPL would provide investors with the ability to manage and hedge their portfolio risk on their underlying investment, at a price of $83.00 per contract. In addition, investors who hold a position in AAPL at less than the round lot size would still be able to avail themselves of options to manage their portfolio risk. For example, the holder of 50 shares of AAPL could write covered calls for five mini-options contracts. The table below demonstrates the proposed differences between a mini-options contract and a standard contract with a strike price of $125 per share and a bid or offer of $3.20 per share:

	Standard	Mini
Share Deliverable Upon Exercise	100 shares	10 shares
Strike Price	125	125
Bid/Offer	3.20	3.20
Premium Multiplier	$100	$10
Total Value of Deliverable	$12,500	$1,250
Total Value of Contract	$320	$32

BOX currently lists and trades standardized option contracts on a number of equities and Exchange-Traded Funds (''ETFs'') each with a unit of trading of 100 shares. Except for the difference in the number of deliverable shares, the proposed Mini Options would have the same terms and contract characteristics as regular-sized equity and ETF options, including exercise style. All existing Exchange rules applicable to options on equities and ETFs would apply to Mini Options, except with respect to position and exercise limits and hedge exemptions to those position limits, which would be tailored for the smaller size. Pursuant to proposed Interpretive Material to Rule 3120 (IM–3120–3), position limits applicable to a regular-sized option contract would also apply to the Mini Options on the same underlying security, with 10 Mini Option contracts counting as one regular-sized contract. Positions in both the regular-sized option contract and Mini Options on the same security will be combined for purposes of calculating positions. Further, hedge exemptions will apply pursuant to Rule 3130(b), which the Exchange proposes to revise to provide that 10 (as opposed to 100) shares of the underlying security is the appropriate hedge for Mini Options and to make clear that the hedge exemptions apply to the position limits set forth in IM–3120–3.[5]

Also, of note, NYSE Arca, Inc. (''NYSE Arca'') lists and trades option contracts overlying a number of shares other than 100.[6] Moreover, the concept of listing and trading parallel options products of reduced values and sizes on the same underlying security is not novel. For example, parallel product pairs on a full-value and reduced value basis are currently listed on the S&P 500 Index (''SPX'' and ''XSP,'' respectively), the Nasdaq 100 Index (''NDX'' and ''MNX,'' respectively) and the Russell 2000 Index (''RUT'' and ''RMN,'' respectively).

The Exchange believes that the proposal to list Mini Options will not lead to investor confusion. There are two important distinctions between Mini Options and regular-sized options that are designed to ease the likelihood of any investor confusion. First, the premium multiplier for the proposed Mini Options will be 10, rather than 100, to reflect the smaller unit of trading. To reflect this change, the Exchange proposes to add Rule 7040(c) which notes that bids and offers for an option contract overlying 10 shares would be expressed in terms of dollars per 1/10th part of the total value of the contract. Thus, an offer of ''.50'' shall represent an offer of $5.00 on an option contract having a unit of trading consisting of 10 shares. Second, the Exchange intends to designate Mini Options with different trading symbols than those designated for the regular-sized contracts. For example, while the trading symbol for regular option contracts for Apple, Inc. is AAPL, the Exchange proposes to adopt AAPL7 as the trading symbol for Mini Options on that same security.

The Exchange proposes to add Interpretive Material IM–5050–10 to Rule 5050 (Series of Options Contracts

[3] These issues were selected because they are priced greater than $100 and are among the most actively traded issues, in that the standard contract exhibits average daily volume (''ADV'') over the previous three calendar months of at least 45,000 contracts, excluding LEAPS and FLEX series. The Exchange notes that any expansion of the program would require that a subsequent proposed rule change be submitted to the Commission.

[4] 2012 Year-to-date through September 28. A high priced underlying security may have relatively expensive options, because a low percentage move in the share price may mean a large movement in the options in terms of absolute dollars. *See http://www.theocc.com/webapps/monthly-volume-reports?reportClass=equity.*

[5] Exchange Rule 3140 (Exercise Limits) refers to exercise limits that correspond to aggregate positions as described in Rule 3120 (Position Limits). Today, the position limits established in a given option under Rule 3120 is also the exercise limit for such option. Thus, although the proposed rule change would not amend the text of Rule 3140 (Exercise Limits) itself, the proposed change to add IM–3120–3 would have a corresponding effect on the exercise limits.

[6] *See* Securities Exchange Act Release No. 44025 (February 28, 2001) 66 FR 13986 (March 8, 2001) (approving SR–PCX–01–12).

Open for Trading) to reflect that strike prices for Mini Options shall be set at the same level as for regular options. For example, a call series strike price to deliver 10 shares of stock at $125 per share has a total deliverable value of $1,250, and the strike price will be set at 125. Further, pursuant to proposed new IM–5050–10, the Exchange proposes to not permit the listing of additional series of Mini Options if the underlying is trading at $90 or less to limit the number of strikes once the underlying is no longer a high priced security. The Exchange proposes a $90.01 minimum for continued qualification so that additional series of Mini Options that correspond to standard strikes may be added even though the underlying has fallen slightly below the initial qualification standard. In addition, the underlying security must be trading above $90 for five consecutive days before the listing of Mini Option contracts in a new expiration month. This restriction will allow the Exchange to list strikes in Mini Options without disruption when a new expiration month is added even if the underlying has had a minor decline in price. The same trading rules applicable to existing equity and ETF options would apply, including Market Maker obligations, to Mini Options.[7]

The Exchange notes that by listing the same strike price for Mini Options as for regular options, the Exchange seeks to keep intact the long-standing relationship between the underlying security and an option strike price thus allowing investors to intuitively grasp the option's value, *i.e.,* option is in the money, at the money or out of the money. The Exchange believes that by not changing anything but the multiplier and the option symbol, as discussed above, retail investors will be able to grasp the distinction between regular option contracts and Mini Options. The Exchange notes that The Options Clearing Corporation (''the OCC'') Symbology is structured for contracts that have a deliverable of other than 100 shares to be designated with a numeric added to the standard trading symbol. Further, the Exchange believes that the contract characteristics of Mini Options are consistent with the terms of the Options Disclosure Document.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of Mini Options. The Exchange has further discussed the proposed listing and trading of Mini Options with the OCC, which has represented that it is able to accommodate the proposal. In addition, the Exchange would file a proposed rule change to adopt transaction fees specific to Mini Options. The Exchange notes that the current Fee Schedule will not apply to the trading of mini-options contracts. The Exchange will not commence trading of mini-option contracts until specific fees for mini-options contracts trading have been filed with the Commission.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and with Section 6(b)(5) of the Act,[9] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that investors would benefit from the introduction and availability of Mini Options by making options on high priced securities more readily available as an investing tool at more affordable prices, particularly for average retail investors, who otherwise may not be able to participate in trading options on high priced securities. The Exchange intends to adopt a different trading symbol to distinguish Mini Options from its currently listed option contracts and therefore, eliminate investor confusion with respect to product distinction. Moreover, the proposed rule change is designed to protect investors and the public interest by providing investors with an enhanced tool to reduce risk in high priced securities. In particular, Mini Options would provide retail customers who invest in SPY, AAPL, GLD, GOOG and AMZN in lots of less than 100 shares with a means of protecting their investments that is currently only available to those who have positions of 100 shares or more. Further, the proposed rule change is limited to just five high priced securities to ensure that only securities that have significant options liquidity and therefore, customer demand, are selected to have Mini Options listed on them.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that offering these products on BOX similar to other exchanges will provide investors with various venues in which to trade Mini Options. The Exchange notes that the rule change is being proposed as a competitive response to recently approved NYSE Arca and ISE filings and believes this proposed rule change is necessary to permit fair competition among the options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, 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[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it can list and trade the proposed mini-option contracts as soon as it is able.[12]

[7] *See* BOX Rules 8040 (Obligations of Market Makers) and 8050 (Market Maker Quotations).

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). 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.

[12] The Commission notes that the Exchange's current Fee Schedule will not apply to the trading of mini-option contracts, and the Exchange will not

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[13] The Commission notes the proposal is substantively identical to proposals that were recently approved by the Commission, and does not raise any new regulatory issues.[14] For these reasons, the Commission designates the proposed rule change as operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2013–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2013–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–07 and should be submitted on or before February 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

commence trading of mini-option contracts until specific fees for mini-option contracts trading have been filed with the Commission.

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] *See* Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60735 (October 4, 2012) (SR–NYSEArca–2012–64 and SR–ISE–2012–58).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68770; File No. SR–CBOE–2013–011]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Delay the Operative Date of a Rule Change To Exchange Rule 6.3B

January 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on January 28, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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 Rule Change

The Exchange proposes to delay the operative date of a rule change to Exchange Rule 6.3B, which provides for methodology for determining when to halt trading in all stocks due to extraordinary market volatility, from the date of February 4, 2013, until April 8, 2013.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission [sic].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.3B, which provides the methodology for determining when to halt trading in all stocks due to extraordinary market volatility,[3] to delay the operative date of the pilot by which such Rule operates from the current scheduled date of February 4, 2013, until April 8, 2013, to coincide with the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility (''LULD Plan'').[4] As proposed, the pilot period

[3] Exchange Rule 6.3B does not currently contain any reference to the specific levels of decline in the DJIA that would trigger a market-wide trading halt. Instead, the rule was amended in 1997 to provide that a market-wide halt will be triggered on the Exchange whenever a market-wide halt is in effect on the New York Stock Exchange LLC (''NYSE''). *See* Securities Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997)(SR–CBOE–96–78).

[4] The Exchange adopted the proposed changes to the market-wide circuit breakers on a pilot basis for a period that corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together. *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531

Continued

will begin and end at the same time [sic] the pilot period for the LULD Plan. The current Rule 6.3B would remain in effect until April 8, 2013. If the pilot is not either extended or approved permanently at the end of the pilot period, the current version of Rule 6.3B would be in effect.

Current Rule 6.3B

In its current form,[5] the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 [sic] are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The NYSE disseminates the new trigger levels quarterly to the media and via an Information Memo and [sic] is available on NYSE's Web site.[6] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

anytime before 2:00 p.m.—one hour;

at or after 2:00 p.m. but before 2:30 p.m.—30 minutes;

at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

anytime before 1:00 p.m.—two hours;

at or after 1:00 p.m. but before 2:00 p.m.—one hour;

at or after 2:00 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

at any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a trading halt for stocks that comprise the DJIA.

Amended Rule 6.3B

The Exchange amended Rule 6.3B to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility (''market-wide circuit breakers'').[7] The Exchange, other equities, options, and futures markets, and FINRA amended the market-wide circuit breakers to take into consideration the recommendations of the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange amended Rule 6.3B as follows: (i) replaced the DJIA with the S&P 500; (ii) replaced the quarterly calendar recalculation of Rule 6.3B triggers with daily recalculations; (iii) replaced the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modified the length of the trading halts associated with each market decline level; and (v) modified the times when a trading halt may be triggered. The Exchange believes that these amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of Rule 6.3B: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

The Exchange adopted the proposed changes to the market-wide circuit breakers on a pilot basis for a period that corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together.[8] In addition, in order for the markets and the single plan processors responsible for the consolidation of information pursuant to Rule 603(b) of Regulation NMS under the Securities Exchange Act of 1934 to make the necessary technological changes to implement both the changes to the market-wide circuit breakers and the proposed LULD Plan, the Exchange established that the implementation date for the proposed rule changes should be the same date that the LULD Plan is implemented. The Exchange anticipates that the initial date of LULD Plan operations will be changed to April 8, 2013. For the same reasons as stated above, the Exchange proposes to delay the operative date of the market-wide circuit breakers pilot to April 8, 2013 in order for the implementation date for the market-wide circuit breakers pilot would remain the same date as for the LULD Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation [sic] transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Additionally, delaying the operative date of the market-wide circuit breakers pilot until the initial date of operations of the LULD Plan would allow the pilot to begin and end at the same time of the LULD Plan so that the Exchange and the Commission could further assess the impact of the two pilots on the marketplace or whether other initiatives should be adopted in lieu of the pilots, which contributes to the protection of investors and the public interest.

(June 6, 2012) (SR–CBOE–2011–087). The Exchange anticipates that the initial date of LULD Plan operations will be changed to April 8, 2013. The proposal would delay the operative date of the market-wide circuit breakers pilot to April 8, 2013 in order for the implementation date for the market-wide circuit breakers pilot would remain the same date as for the LULD Plan.

[5] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR–Amex–98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR–Phlx–98–15).

[6] *See e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

[7] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–CBOE–2011–087).

[8] *See id.*

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are being made to delay the operation of the market-wide circuit breakers pilot until April 8, 2013 to allow the pilot period to begin and end at the same time as the LULD Plan, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same methodology for determining when to halt trading in all stocks due to extraordinary market volatility and the same requirements specified in the LULD Plan. Thus, the proposed changes will not impose any burden on competition while providing that the market-wide circuit breakers pilot period corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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 [12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will delay the operative date of the market-wide circuit breakers pilot until the initial date of operations of the LULD Plan, thereby allowing the pilot to run simultaneously with the LULD Plan, providing an opportunity to properly assess the impact of the two pilots on the marketplace and evaluate the pilots' effectiveness. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–011 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–011 and should be submitted on or before February 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68769; File No. SR–C2–2013–006]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Operative Date of a Rule Change to Exchange Rule 6.32.03

January 30, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b-4 thereunder,[2] notice is hereby given that, on January 28, 2013, C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[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 Rule Change

The Exchange proposes to delay the operative date of a rule change to Exchange Rule 6.32.03, which provides for methodology for determining when to halt trading in all stocks due to extraordinary market volatility, from the date of February 4, 2013, until April 8, 2013.

The text of the proposed rule change is available on the Exchange's Web site (*http://www.c2exchange.com/Legal/*), at the Exchange's Office of the Secretary, and at the Commission [sic].

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.32.03, which provides the methodology for determining when to halt trading in all stocks due to extraordinary market volatility,[3] to delay the operative date of the pilot by which such Rule operates from the current scheduled date of February 4, 2013, until April 8, 2013, to coincide with the initial date of operations of the Regulation NMS Plan to Address Extraordinary Market Volatility (''LULD Plan'').[4] As proposed, the pilot period will begin and end at the same time [sic] the pilot period for the LULD Plan. The current Rule 6.32.03 would remain in effect until April 8, 2013. If the pilot is not either extended or approved permanently at the end of the pilot period, the current version of Rule 6.32.03 would be in effect.

Current Rule 6.32.03

In its current form,[5] the rule provides for Level 1, 2, and 3 declines and specified trading halts following such declines. The values of Levels 1, 2 and 3 [sic] are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the DJIA for the month prior to the beginning of the quarter. Each percentage calculation is rounded to the nearest fifty points to create the Levels' trigger points. The NYSE disseminates the new trigger levels quarterly to the media and via an Information Memo and is available on NYSE's Web site.[6] The values then remain in effect until the next quarterly calculation, notwithstanding whether the DJIA has moved and a Level 1, 2, or 3 decline is no longer equal to an actual 10%, 20%, or 30% decline in the most recent closing value of the DJIA.

Once a circuit breaker is in effect, trading in all stocks halt for the time periods specified below:

Level 1 Halt

anytime before 2:00 p.m.—one hour;

at or after 2:00 p.m. but before 2:30 p.m.—30 minutes;

at or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

anytime before 1:00 p.m.—two hours;

at or after 1:00 p.m. but before 2:00 p.m.—one hour;

at or after 2:00 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

at any time—trading shall halt and not resume for the rest of the day.

Unless stocks are halted for the remainder of the trading day, price indications are disseminated during a trading halt for stocks that comprise the DJIA.

Amended Rule 6.32.03

The Exchange amended Rule 6.32.03 to revise the current methodology for determining when to halt trading in all stocks due to extraordinary market volatility (''market-wide circuit breakers'').[7] The Exchange, other equities, options, and futures markets, and FINRA amended the market-wide circuit breakers to take into consideration the recommendations of the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues, and to provide for more meaningful measures in today's markets of when to halt trading in all stocks. Accordingly, the Exchange amended Rule 6.32.03 as follows: (i) Replaced the DJIA with the S&P 500; (ii) replaced the quarterly calendar recalculation of Rule 6.32.03 triggers with daily recalculations; (iii) replaced the 10%, 20%, and 30% market decline percentages with 7%, 13%, and 20% market decline percentages; (iv) modified the length of the trading halts associated with each market decline level; and (v) modified the times when a trading halt may be triggered. The Exchange believes that these amendments update the rule to reflect today's high-speed, highly electronic trading market while still meeting the original purpose of Rule 6.32.03: to ensure that market participants have an opportunity to become aware of and respond to significant price movements.

The Exchange adopted the proposed changes to the market-wide circuit breakers on a pilot basis for a period that corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together.[8] In addition, in order for the markets and the single plan processors responsible for the consolidation of information pursuant to Rule 603(b) of Regulation NMS under the Securities Exchange Act of 1934 to make the necessary technological changes to implement both the changes to the market-wide circuit breakers and the proposed LULD Plan, the Exchange established that the implementation date for the proposed rule changes should be the same date that the LULD Plan is implemented. The Exchange anticipates that the initial date of LULD Plan operations will be changed to April 8, 2013. For the same reasons as stated

[3] Exchange Rule 6.32.03 does not currently contain any reference to the specific levels of decline in the DJIA that would trigger a market-wide trading halt. Instead, the rule provides that a market-wide halt will be triggered on the Exchange whenever a market-wide halt is in effect on the New York Stock Exchange (''NYSE'').

[4] The Exchange adopted the proposed changes to the market-wide circuit breakers on a pilot basis for a period that corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together. *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–C2–2011–024). The Exchange anticipates that the initial date of LULD Plan operations will be changed to April 8, 2013. The proposal would delay the operative date of the market-wide circuit breakers pilot to April 8, 2013 in order for the implementation date for the market-wide circuit breakers pilot would [sic] remain the same date as for the LULD Plan.

[5] The rule was last amended in 1998, when declines based on specified point drops in the DJIA were replaced with the current methodology of using a percentage decline that is recalculated quarterly. *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (SR–NYSE–98–06, SR-Amex-98–09, SR–BSE–98–06, SR–CHX–98–08, SR–NASD–98–27, and SR-Phlx–98–15).

[6] *See e.g.,* NYSE Regulation Information Memos 11–19 (June 30, 2011) and 11–10 (March 31, 2011).

[7] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–C2–2011–024).

[8] *See id.*

above, the Exchange proposes to delay the operative date of the market-wide circuit breakers pilot to April 8, 2013 in order for the implementation date for the market-wide circuit breakers pilot would remain the same date as for the LULD Plan.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, this rule proposal supports the objectives of perfecting the mechanism of a free and open market and the national market system because it promotes uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Additionally, delaying the operative date of the market-wide circuit breakers pilot until the initial date of operations of the LULD Plan would allow the pilot to begin and end at the same time of the LULD Plan so that the Exchange and the Commission could further assess the impact of the two pilots on the marketplace or whether other initiatives should be adopted in lieu of the pilots, which contributes to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed changes are being made to delay the operation of the market-wide circuit breakers pilot until April 8, 2013 to allow the pilot period to begin and end at the same time as the LULD Plan, which contributes to the protection of investors and the public interest. Other competing equity exchanges are subject to the same methodology for determining when to halt trading in all stocks due to extraordinary market volatility and the same requirements specified in the LULD Plan. Thus, the proposed changes will not impose any burden on competition while providing that the market-wide circuit breakers pilot period corresponds to the pilot period for the LULD Plan so that the impact of the two proposals can be reviewed together.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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[12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Doing so will delay the operative date of the market-wide circuit breakers pilot until the initial date of operations of the LULD Plan, thereby allowing the pilot to run simultaneously with the LULD Plan, providing an opportunity to properly assess the impact of the two pilots on the marketplace and evaluate the pilots' effectiveness. Therefore, the Commission designates the proposal operative upon filing.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2013–006 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–C2–2013–006. 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

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78s(b)(2)(B).

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–C2–2013–006 and should be submitted on or before February 26, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02484 Filed 2–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68768; File No. SR–FINRA–2012–052]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Require Members To Report to TRACE the ''Factor'' in Limited Instances Involving Asset-Backed Security Transactions

January 30, 2013.

On November 29, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 require FINRA members to report to the Trade Reporting and Compliance Engine (''TRACE'') the Factor used to determine the size (volume) of each transaction in an Asset-Backed Security ''(ABS'') (except ABS traded To Be Announced (''TBA'')), in the limited instances when members effect such transactions as agent and charge a commission.[3] The proposed rule change was published for comment in the **Federal Register** on December 18, 2012.[4] The Commission received one comment on the proposal and a response to the comment from FINRA.[5]

Section 19(b)(2) of the Act[6] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is February 1, 2013. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change, the comment received, and the response to the comment submitted by FINRA. Therefore, the Commission is extending this 45-day time period.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[7] designates March 18, 2013, as the date by which the Commission should either approve or disapprove or institute proceedings to determine whether to disapprove the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02425 Filed 2–4–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68767; File No. SR–C2–2012–039]

Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Granting Approval to a Proposed Rule Change Relating to Bylaw and Other Changes Concerning the Board of Directors of the Exchange

January 30, 2013.

I. Introduction

On November 30, 2012, the C2 Options Exchange, Incorporated (''Exchange'' or ''C2'') 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 its Bylaws concerning the nomination of Representative Directors, petition candidates, and the size of the Exchange's Board of Directors (''Board''), and to make conforming changes to the C2 Certificate of Incorporation. On December 19, 2012, the proposed rule change was published for comment in the **Federal Register**.[3] The Commission received no comments on the proposed rule change. This order grants approval to the proposed rule change.

II. Description of the Proposed Rule Change

Compositional Requirements Determined by the Board

In December of 2011, C2 amended its Bylaws and Certificate of Incorporation to, among other things: (i) Eliminate the requirement that its Board of Directors be composed of at least 30% Industry Directors, and (ii) eliminate the requirement in Section 3.2 of the Bylaws that the Representative Directors must be Industry Directors.[4] In connection with these changes, C2 also amended Section 3.1 of the Bylaws to provide that: ''[T]he Board shall determine from time to time pursuant to resolution adopted by the Board the total number of directors, the number of Non-Industry Directors and Industry Directors (if any), and the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any).''[5]

C2 proposed to amend the Bylaws to expressly provide that any person nominated by the Representative Director Nominating Body[6] and any petition candidate nominated pursuant to the Section 3.2 of the Bylaws must satisfy the compositional requirements

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The terms ''Asset-Backed Security,'' ''To Be Announced,'' and ''Factor'' are defined in FINRA Rules 6710(m), (u), and (w), respectively.

[4] *See* Securities Exchange Act Release No. 68414 (December 12, 2012), 77 FR 74896 (''Notice'').

[5] *See* comment from Mark Sokolow, Attorney at Law, dated December 18, 2012 (''Sokolow Comment''); *see also* response letter from Kathryn Moore, Assistant General Counsel, FINRA, to Elizabeth M. Murphy, Secretary, Commission, dated January 11, 2013 (''FINRA Letter'').

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(31).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68429 (December 13, 2012), 77 FR 75237 (''Notice'').

[4] *See* Securities Exchange Act Release Nos. 65681 (November 3, 2011), 76 FR 69783 (November 9, 2011) (SR–C2–2011–031) (noticing for comment); and 65979 (December 15, 2011), 76 FR 79239 (December 21, 2011) (approving SR–C2–2011–031).

[5] *See* C2 Bylaw 3.1. *See also* Securities Exchange Act Release Nos. 65681 (November 3, 2011), 76 FR 69783 (November 9, 2011) (SR–C2–2011–031) (noticing for comment).

[6] The Exchange noted that at all times at least 20% of the directors serving on the Board would be Representative Directors nominated by the Representative Director Nominating Body as provided in Section 3.2 of the Bylaws (or otherwise selected through the petition process). *See* Notice, *supra* note 3, at 75237.

determined by the Board pursuant to a resolution adopted by the Board in accordance with Section 3.1 designating the number of Representative Directors that are Non-Industry Directors and Industry Directors (if any). C2 also proposed to amend Section 3.5 of the Bylaws relating to the filling of vacancies on the Board to provide that the Representative Director Nominating Body may only recommend individuals to fill a vacancy in a Representative Director position who satisfy those same compositional requirements.

Board Size Range

Currently, the Bylaws provide that the Board shall consist of not less than 11 and not more than 23 directors. C2 proposed to change the Board size range such that the Board would consist of not less than 12 and not more than 16 directors.

Conforming Amendments to Certificate of Incorporation

Finally, C2 proposed to make conforming changes to its Certificate of Incorporation and to include in its Certificate of Incorporation that the Board and/or Nominating and Governance Committee, as applicable, shall make determinations as to whether a director candidate satisfies applicable qualifications for election as a director pursuant to and in accordance with Section 3.1 of the Exchange's Bylaws, which is nearly identical to the current provisions in the Exchange's existing Bylaws.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[8] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; Section 6(b)(3) of the Act,[9] which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer (the ''fair representation requirement''); and Section 6(b)(5) of the Act,[10] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's proposal to expressly provide that any person nominated by the Representative Director Nominating Body [11] and any petition candidate nominated pursuant to the Section 3.2 of the Bylaws must satisfy the compositional requirements determined by the Board pursuant to a resolution adopted by the Board in accordance with Section 3.1 of the Bylaws, as well as the proposal to amend Section 3.5 of the Bylaws to provide that the Representative Director Nominating Body may only recommend individuals to fill a vacancy in a Representative Director position who satisfy those same compositional requirements, are consistent with Section 6(b) of the Act,[12] including Section 6(b)(3) of the Act.[13] The Exchange's proposal would not impact its current process to ensure fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs as required by Section 6(b)(3) of the Act.[14] Specifically, the proposed changes are consistent with the changes to the Bylaws that C2 made in December of 2011 and simply reflect the application of those changes. As the Commission noted when it approved that prior proposal, the Commission had previously approved proposals in which an exchange's board of directors was composed of all or nearly all non-industry directors where the process was nevertheless designed to comply with the ''fair representation'' requirement in the selection and election of directors.[15]

In addition, the Commission believes that the Exchange's proposal to change the Board size range to consist of not less than 12 and not more than 16 directors is consistent with Section 6(b) of the Act,[16] including Section 6(b)(3) of the Act.[17] The Exchange's proposal would not impact in any manner its current process to ensure fair representation of its Trading Permit Holders in the selection of its directors and administration of its affairs as required by Section 6(b)(3) of the Act.[18] Further, the proposed change is consistent with the current size of C2's Board and simply narrows the possible size range from 11 to 23 to 12 to 16.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–C2–2012–039) be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–02424 Filed 2–4–13; 8:45 am]

BILLING CODE 8011–01–P

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(1).

[9] 15 U.S.C. 78f(b)(3).

[10] 15 U.S.C. 78f(b)(5).

[11] *See supra* note 6.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(3). Section 6(b)(3) of the Act requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer.

[14] *See id.*

[15] *See* Securities Exchange Act Release No. 65979 (December 15, 2011), 76 FR 79239 at 79241 (December 21, 2011) (approving SR–C2–2011–031) (citing to Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (approving SR–NYSE–2003–34)).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(3).

[18] *See id.*

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0071]

Social Security Ruling, SSR 13–1p; Titles II and XVI: Agency Processes for Addressing Allegations of Unfairness, Prejudice, Partiality, Bias, Misconduct, or Discrimination by Administrative Law Judges (ALJs); Correction

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Ruling; Correction.

SUMMARY: The Social Security Administration published a document in the **Federal Register** of January 29, 2013, in FR Doc. 2013–01833, on page 6168, in the third column, the fourth line under the ''Summary'' heading, change ''SSR–13–Xp'' to ''SSR–13–1p''

Dated: January 30, 2013.

Paul Kryglik,

Director, Office of Regulations, Social Security Administration.

[FR Doc. 2013–02456 Filed 2–4–13; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8175]

Bureau of Political-Military Affairs; Statutory Debarment Under the Arms Export Control Act and the International Traffic in Arms Regulations

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations (''ITAR'') (22 CFR parts 120 to 130) on persons convicted of violating, or conspiracy to violate, Section 38 of the Arms Export Control Act, as amended, (''AECA'') (22 U.S.C. 2778). Further, a public notice was published in the **Federal Register** on Tuesday, July 24, 2012, listing persons statutorily debarred pursuant to the ITAR; this notice makes one correction to that notice.

DATES: *Effective Date:* The effective date is the date of this notice.

FOR FURTHER INFORMATION CONTACT: Lisa Aguirre, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 632–2798.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778(g)(4), prohibits the Department of State from issuing licenses or other approvals for the export of defense articles or defense services where the applicant, or any party to the export, has been convicted of violating certain statutes, including the AECA. The statute permits limited exceptions to be made on a case-by-case basis. In implementing this provision, Section 127.7 of the ITAR provides for ''statutory debarment'' of any person who has been convicted of violating or conspiring to violate the AECA. Persons subject to statutory debarment are prohibited from participating directly or indirectly in the export of defense articles, including technical data, or in the furnishing of defense services for which a license or other approval is required.

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a United States Court, and as such the administrative debarment procedures outlined in Part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary for Political-Military Affairs based on the underlying nature of the violations, but will generally be for three years from the date of conviction. Export privileges may be reinstated only at the request of the debarred person followed by the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by Section 38(g)(4) of the AECA. Unless export privileges are reinstated, however, the person remains debarred.

Department of State policy permits debarred persons to apply to the Director, Office of Defense Trade Controls Compliance, for reinstatement beginning one year after the date of the debarment. Any decision to grant reinstatement can be made only after the statutory requirements of Section 38(g)(4) of the AECA have been satisfied.

Exceptions, also known as transaction exceptions, may be made to this debarment determination on a case-by-case basis at the discretion of the Assistant Secretary of State for Political-Military Affairs, after consulting with the appropriate U.S. agencies. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: Whether an exception is warranted by overriding U.S. foreign policy or national security interests; whether an exception would further law enforcement concerns that are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist that are consistent with the foreign policy or national security interests of the United States, and that do not conflict with law enforcement concerns. Even if exceptions are granted, the debarment continues until subsequent reinstatement.

Pursuant to Section 38(g)(4) of the AECA and Section 127.7(c) of the ITAR, the following persons are statutorily debarred as of the date of this notice (Name; Date of Conviction; District; Case No.; Month/Year of Birth):

(1) Luis Alejandro Yanez Almeida; December 8, 2012; U.S. District Court, Southern District of Texas; Case No. 7:12CR00275–001; October, 1988.

(2) Freddy Arguelles; October 5, 2012; U.S. District Court, Southern District of Florida; Case No. 0:12–20478–CR–DIMITROULEAS–002; October 1974.

(3) Victor Brown; October 9, 2012; U.S. District Court, Southern District of Florida; Case No. 0:12–20479–CR–DIMITROULEAS–002; September 1956.

(4) Fidel Ignacio Cisneros; November 2, 2012; U.S. District Court, Middle District of Florida; Case No. 6:12–cr–123–Orl–28TBS; April 1970.

(5) Victor Dobrogaiev, (aka Viktor Dobrogaiev); July 30, 2012; U.S. District Court, District of Arizona; Case No. CR 10–00233–002–PHX–FJM; August 1963.

(6) Kirk Drellich; October 29, 2012; U.S. District Court, Southern District of Florida; Case No. 1:12–cr–20477–RSR–1; April 1963.

(7) Raul Garcia-Nevarez; July 20, 2012; U.S. District Court, Western District of Texas; Case No. EP–09–CR–3418–DB; August 1955.

(8) Martin Guillen-Cruz; September 10, 2012; U.S. District Court, Southern District of Texas; Case No. 7:10CR01446–001; August 1991.

(9) Benjamin Raul Hernandez; November 26, 2012; U.S. District Court, Western District of Texas; Case No. DR–11–CR–1354(1)–AM; July 1983.

(10) Ryan Mathers; July 3, 2012; U.S. District Court, District of Hawaii; Case No. 1:08CR00655–001; November 1987.

(11) Diana Siboney Navarro-Hinojosa; February 24, 2012; U.S. District Court, Southern District of Texas; Case No. 7:10–cr–01440; August 1983.

(12) Arturo Guillermo Nino Palacios, (aka Arturo Guillermo Nino); June 12, 2012; U.S. District Court, Western District of Texas; Case No. W–11–CR–200(03); June 1983.

(13) Carlos Javier Paez-Renteria; July 21, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR00164–001; September 1989.

(14) Yusuf Kutbuddin Patanwala; November 30, 2012; U.S. District Court, Western District of Texas; Case No. W–12–CR–020(01); April 1950.

(15) Alberto Pichardo; September 20, 2012; U.S. District Court, Southern District of Florida; Case Nos. 0:12–20478–CR–DIMITROULEAS–001 and 0:12–20479–CR–DIMITROULEAS–001; November 1972.

(16) Juan Ricardo Puente-Paez; May 29, 2012; U.S. District Court, Southern District of Texas; Case No. 7:12CR00083–001; April 1978.

(17) Pablo Reducindo-Chavez; September 27, 2012; U.S. District Court, Southern District of Texas; Case No. 7:11CR00019–001; October 1965.

(18) Geoffrey B. Roose; July 13, 2012; U.S. District Court, Western District of Washington; Case No. 2:12CR00043JCC–001; May 1984.

(19) Mario Salinas-Lucio; January 9, 2012; U.S. District Court, Southern District of Texas; Case No. 1:09CR00824–001; January 1968.

(20) Leoncio Sanchez; June 22, 2012; U.S. District Court, Southern District of Texas; Case No. 1:11CR01100–002; August 1989.

(21) Andro Telemi; November 30, 2012; U.S. District Court, Northern District of Illinois; Case No. 09 CR 736–2; June 1970.

(22) Guillermo Enrique Villarreal; June 22, 2012; U.S. District Court, Southern District of Texas; Case No. 1:11CR01100–001; October 1974.

As noted above, at the end of the three-year period following the date of this notice, the above named persons/entities remain debarred unless export privileges are reinstated.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (see e.g., sections 120.1(c) and (d), and 127.11(a)). Also, under Section 127.1(d) of the ITAR, any person who has knowledge that another person is subject to debarment or is otherwise ineligible may not, without disclosure to and written approval from the Directorate of Defense Trade Controls, participate, directly or indirectly, in any ITAR-controlled export in which such ineligible person may benefit there from or have a direct or indirect interest therein.

Further, **Federal Register** document 2012–18043, published at 77 FR 43414, Tuesday, July 24, 2012, is corrected on page 43415, by deletion in its entirety of lines 66 through 70, inclusive. That notice of statutory debarment incorrectly included as a debarred party the following record:

''(33) Balraj Naidu; December 20, 2010; U.S. District Court, District of Maryland, Case No. CCB–1–08–CR–0091–002; February, 1967.''

Mr. Naidu was indicted under seal in February, 2008, for, *inter alia,* conspiracy to violate, and violation of, the AECA. The judgment filed by the court and dated December 20, 2010 and relied on for purposes of statutory debarment stated as the nature of the offense for which judgment was entered ''Conspiracy to Violate the Arms Export Control Act'' and cited to U.S. Code Title and Sections ''18:371 & 22:2778.'' Subsequently, the court filed an amended judgment dated May 16, 2012, to correctly identify as the nature of the offense for which judgment was entered ''Conspiracy to Provide Material Support to a Foreign Terrorist Organization'' and cited to U.S. Code Title and Sections ''18 USC 2339B(a)(1); 18 USC 2339A(b)(1).'' As Mr. Naidu was not, in fact, convicted of violating, or conspiracy to violate, the AECA, the provisions of Section 127.7(c) of the ITAR are not applicable.

This notice is provided for purposes of making the public aware that the persons listed above are prohibited from participating directly or indirectly in activities regulated by the ITAR, including any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk for the U.S. District Courts mentioned above and by citing the court case number where provided.

Dated: January 16, 2013.

Andrew J. Shapiro,

Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 2013–02491 Filed 2–4–13; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (formerly Subpart Q) during the Week Ending January 12, 2013. The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2013–0006.

Date Filed: January 7, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 28, 2013.

Description: Application of Sirio S.p.A. requesting a foreign air carrier permit and exemption authority to engage in the following operations using small aircraft: (a) Foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Community via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any Member State of the European Common Aviation Area; (c) foreign charter cargo air transportation between any point and points in the United States and any other point or points; and (d) charter transportation consistent with any future, additional rights that may be granted to foreign air carriers of the Member States of the European Community.

Docket Number: DOT–OST–2009–0010.

Date Filed: January 8, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 29, 2013.

Description: Application of 1263343 Alberta Inc. d/b/a enerjet (''enerjet'') requesting that the Department amend its foreign air carrier permit to enable it to engage in scheduled air transportation of persons, property, and mail between Canada and the United States as more specifically: enerjet seeks authority to (i) conduct scheduled foreign air transportation of persons, property, and mail from points behind Canada, via Canada and intermediate points, to a point or points in the United States and beyond, co-extensive with that provided for in Annex 1, Section 1.B of the Open Skies Agreement (the ''Air Transport Agreement'') between Canada and the United States signed on March 12, 2007 and (ii) scheduled and charter foreign air transportation of cargo between any point or points in the United States and any other point or points; in addition to maintaining its existing authority.

Docket Number: DOT–OST–2008–0105 and DOT–OST–2011–0076.

Date Filed: January 10, 2013.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 31, 2013.

Description: Application of Federal Express Corporation (''FedEx Express'') requesting renewal of its certificate of public convenience and necessity for Route 568, authorizing FedEx Express to engage in scheduled foreign all-cargo air transportation between a point or points

in the United States, and certain named points in Mexico.

Barbara J. Hairston,

Acting Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2013–02452 Filed 2–4–13; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release From Quitclaim Deed and Federal Grant Assurance Obligations for Delano Municipal Airport, Delano, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Request to Release Airport Land.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application for a release of approximately 9.89 acres of airport property at Delano Municipal Airport, Delano, California from all conditions contained in the Quitclaim Deed and Grant Assurances since the parcels of land are not needed for airport purposes. The property will be conveyed at its fair market value for the benefit of the airport. The use of the land by the City of Delano will remain the same and represents a continued compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation.

DATES: Comments must be received on or before March 7, 2013.

FOR FURTHER INFORMATION CONTACT: Comments on the request may be mailed or delivered to the FAA at the following address: Tony Garcia, Airports Compliance Program Manager, Federal Aviation Administration, Airports Division, Federal Register Comment, 15000 Aviation Boulevard, Lawndale, CA 90261. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Roman Dowling, Public Works Director, City of Delano, 1015 Eleventh Avenue, P.O. Box 3010, Delano, California 93216–3010.

SUPPLEMENTARY INFORMATION: In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The City of Delano, California requested a release from the conditions contained in the Quitclaim Deed and Grant Assurance obligations for approximately 9.89 acres of airport land. The property is located on the west and north sides of the airport in the vicinity of Lexington Street. A City public works facility occupies 7.8 acres, while 2.09 acres serve as part of the city golf course. The land has not served an airport purpose and will not be needed for future airport purposes. The land will be conveyed to the City for its fair market value. The property will continue to be used for the same purpose, so it will remain a compatible use that will not interfere with airport operations. The conveyance will not prevent development of the airport, thereby serving the interests of civil aviation.

Issued in Hawthorne, California, on January 29, 2013.

Brian Armstrong,

Manager, Safety and Standards, Airports Division, Western-Pacific Region.

[FR Doc. 2013–02475 Filed 2–4–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds—Change In Business Address and Redomestication: American Fire and Casualty Company (NAIC #24066) and The Ohio Casualty Insurance Company (NA1C #24074)

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570, 2012 Revision, published July 2, 2012, at 77 FR 39322.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: Notice is hereby given by the Treasury that the above-named companies formally changed their ''BUSINESS ADDRESS'' to ''62 Maple Avenue, Keene, NH 03431'' effective immediately. In addition, the above-named companies have redomesticated from the state of Ohio to the state of New Hampshire effective October 1, 2012. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''Circular''), 2012 Revision, to reflect these changes.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570*.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: January 14, 2013.

Kevin McIntyre,

Acting Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 2013–02294 Filed 2–4–13; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is announcing an update to the entry of an entity on OFAC's SDN List by adding an alias to the entity's entry. The addition of the alias by the Director of OFAC, pursuant to Executive Order 13382, is effective on January 24, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 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.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14,

1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On January 24th, 2013, the Director of OFAC amended the designation record for KOREA MINING DEVELOPMENT TRADING CORPORATION to include a new alias. The updated entry on the SDN List is as follows:

Entity:

1. KOREA MINING DEVELOPMENT TRADING CORPORATION (a.k.a. CHANGGWANG SINYONG CORPORATION; a.k.a. EXTERNAL TECHNOLOGY GENERAL CORPORATION; a.k.a. KOREA KUMRYONG TRADING COMPANY; a.k.a. NORTH KOREAN MINING DEVELOPMENT TRADING CORPORATION; a.k.a. ''KOMID''), Central District, Pyongyang, Korea, North [NPWMD].

Dated: January 24, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–02472 Filed 2–4–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, Treasury Department.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing on OFAC's list of Specially Designated Nationals and Blocked Persons (''SDN List'') the names of three entities and three individuals, whose property and interests in property are blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.'' The designations by the Director of OFAC, pursuant to Executive Order 13382, were effective on January 24, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 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.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On January 24, 2013, the Director of OFAC, in consultation with the Departments of State, Justice, and other relevant agencies, designated one entity and two individuals whose property and interests in property are blocked pursuant to Executive Order 13382.

The list of additional designees is as follows:

1. KIM, Kwang-Il, Beijing, China; nationality Korea, North; Tanchon Commercial Bank Deputy Representative to Beijing, China (individual) [NPWMD].

2. RA, Kyong-Su, Beijing, China; Tanchon Commercial Bank Representative to Beijing, China (individual) [NPWMD].

3. LEADER (HONG KONG) INTERNATIONAL TRADING LIMITED (a.k.a. LEADER INTERNATIONAL TRADING LIMITED), Room 1610 Nan Fung Tower, 173 Des Voeux Road, Hong Kong [NPWMD].

Dated: January 28, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–02474 Filed 2–4–13; 8:45 am]

BILLING CODE 4810–AL–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 Minimum Tax—Tax Benefit Rule.

DATES: Written comments should be received on or before April 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, at (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Minimum Tax—Tax Benefit Rule.

OMB Number: 1545–1093. *Regulation Project Number:* IA–56–87 and IA–53–87 (TD 8416).

Abstract: Section 58(h) of the Internal Revenue Code provides that the Secretary of the Treasury shall prescribe regulations that adjust tax preference items where such items provided no tax benefit for any taxable year. This regulation provides guidance for situations where tax preference items did not result in a tax benefit because of available credits or refund of minimum tax paid on such preferences.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 40.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–02437 Filed 2–4–13; 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 Employers' Qualified Educational Assistance Programs.

DATES: Written comments should be received on or before April 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson at (202) 622–3869, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employers' Qualified Educational Assistance Programs.

OMB Number: 1545–0768.

Regulation Project Number: EE–178–78 (TD 7898).

Abstract: Internal Revenue Code section 127(a) provides that the gross income of an employee does not include amounts paid or expenses incurred by an employer if furnished to the employee pursuant to a qualified educational assistance program. This regulation requires that a qualified educational assistance program must be a separate written plan of the employer and that employees must be notified of the availability and terms of the program. Also, substantiation may be required to verify that employees are entitled to exclude from their gross income amounts paid or expenses incurred by the employer.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 5,200.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 615.

The following paragraph applies to all of the collections of 1information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–02435 Filed 2–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8879–C and Form 8879–I

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 8879–C, IRS *e-file* Signature Authorization for Form 1120, and Form 8879–I, IRS e-file Signature Authorization for Form 1120–F.

DATES: Written comments should be received on or before April 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: IRS *e-file* Signature Authorization for Form 1120; IRS *e-file* Signature Authorization for Form 1120–F.

OMB Number: 1545–1864.

Form Number: 8879–C; 8879–I.

Abstract: The Form 8879–C, IRS e-file Signature Authorization for Form 1120, and Form 8879–I, IRS e-file Signature Authorization for Form 1120–F, will be used in the Modernized e-File program. Form 8879–C authorizes an officer of a corporation and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return and, if applicable, Electronic Funds Withdrawal Consent. Form 8879–I authorizes a corporate officer and an electronic return originator (ERO) to use a personal identification number (PIN) to electronically sign a corporation's electronic income tax return.

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: Businesses or other for-profit organizations.

	Number of responses	Time per response	Total hours
Form 8879–C	7,760	6.29	48,811
Form 8879–I	7,500	6.29	47,175
Total	15,260		95,986

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–02412 Filed 2–4–13; 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 Cash Reporting by Court Clerks.

DATES: Written comments should be received on or before April 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Martha R. Brinson, at (202) 622–3869, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC0224, or through the internet, at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cash Reporting by Court Clerks.

OMB Number: 1545–1449.

Regulation Project Number: IA–57–94 (TD 8652).

Abstract: This regulation concerns the information reporting requirements of the Federal and State court clerks upon receipt of more than $10,000 in cash as bail for any individual charged with a specified criminal offense. The Internal Revenue Service will use the information to identify individuals with large cash incomes. Clerks must also furnish the information to the United States Attorney for the jurisdiction in which the individual charged with the crime resides and to each person posting the bond whose name is required to be included on for 8300.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Federal, state, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–02436 Filed 2–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 97–66

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 97–66, Certain Payments Made Pursuant to a Securities Lending Transaction.

DATES: Written comments should be received on or before April 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Martha R. Brinson at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certain Payments Made Pursuant to a Securities Lending Transaction.

OMB Number: 1545–1566.

Notice Number: Notice 97–66.

Abstract: Notice 97–66 modifies final regulations which were effective November 14, 1997. The notice relaxes the statement requirement with respect to substitute interest payments relating to securities loans and sale-repurchase transactions. It also provides a withholding mechanism to eliminate excessive withholding on multiple payments in a chain of substitute dividend payments.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 383,500.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 62,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper

performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–02414 Filed 2–4–13; 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 Continuity of Interest.

DATES: Written comments should be received on or before April 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Martha R. Brinson, (202) 622–3869, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Continuity of Interest.

OMB Number: 1545–1691.

Regulation Project Number: REG–120882–97 (TD 8898).

Abstract: Taxpayers who entered into a binding agreement on or after January 28, 1998 (the effective date of § 1.368–1T), and before the effective date of the final regulations under § 1.368–1(e) may request a private letter ruling permitting them to apply § 1.368–1(e) to their transaction. A private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS, that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes with respect to the applicability of § 1.368–1(e) to the transaction.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This regulation is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 150 hours.

Estimated Total Annual Burden Hours: 1,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 23, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–02415 Filed 2–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–H

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–H, Health Coverage Tax Credit (HCTC) Advance Payments.

DATES: Written comments should be received on or before April 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Health Coverage Tax Credit (HCTC) Advance Payments.

OMB Number: 1545–1813.

Form Number: Form 1099–H.

Abstract: Form 1099–H is used to report advance payments of health insurance premiums to qualified recipients for their use in computing the allowable health insurance credit on Form 8885.

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: Business or other for-profit organizations.

Estimated Number of Responses: 110,000.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 33,000.

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: January 23, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–02413 Filed 2–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–OID

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–OID, Original Issue Discount.

DATES: Written comments should be received on or before April 8, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Original Issue Discount.

OMB Number: 1545–0117.

Form Number: 1099–OID.

Abstract: Form 1099–OID is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.

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: Businesses or other for-profit organizations.

Estimated Number of Responses: 5,906,965.

Estimated Time per Response: 12 min.

Estimated Total Annual Burden Hours: 1,142,324.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 19, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–02438 Filed 2–4–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Availability of Report of 2012 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act, and 5 U.S.C. section 552b, the Government in the Sunshine Act, a report summarizing the closed meeting activities of the Art Advisory Panel during 2012 has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management.

DATES: *Effective Date:* This notice is effective February 5, 2013.

ADDRESSES: The report is available for public inspection and requests for copies should be addressed to: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue NW., Washington, DC 20224, telephone number (202) 622–5164 (not a toll free number). The report is also available at *www.irs.gov*.

FOR FURTHER INFORMATION CONTACT: Ruth Vriend, AP:SO:ART, Internal Revenue Service/Appeals, 1111 Constitution Ave. NW., Ste. 700, Washington, DC 20224, telephone (202) 435–5739 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION: It has been determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact

analysis therefore, is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Christopher Wagner,

Chief, Appeals.

[FR Doc. 2013–02138 Filed 2–4–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Federal Communications Commission

47 CFR Parts 1, 2, 25, Et al.

Service Rules for Advanced Wireless Services in the 2000–2020 MHz and 2180–2200 MHz Bands, etc.; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 25, 27, and 101

[WT Docket Nos. 12–70 and 04–356; ET Docket No. 10–142; FCC 12–151]

Service Rules for Advanced Wireless Services in the 2000–2020 MHz and 2180–2200 MHz Bands, etc.

AGENCY: Federal Communications Commission.

ACTION: Final rule; order of proposed modification.

SUMMARY: In this document, the Federal Communications Commission (''Commission'') increases the Nation's supply of spectrum for mobile broadband by adopting flexible use rules for up to 40 megahertz of spectrum in the 2 GHz band (2000–2020 MHz and 2180–2200 MHz), which we term the AWS–4 band. In so doing, we carry out a recommendation in the *National Broadband Plan* that the Commission enable the provision of stand-alone terrestrial services in the 2 GHz Mobile Satellite Service (MSS) spectrum band. Specifically, we remove unnecessary regulatory barriers to mobile broadband use of this spectrum, and adopt service, technical, and licensing rules that will encourage innovation and investment in mobile broadband and provide a stable regulatory regime in which broadband deployment can develop.

DATES: Effective March 7, 2013, except amendments to 47 CFR 1.949, 27.14, 27.17, 27.1131, 27.1134, 27.1136, 27.1166, 27.1168, 21.1170, 101.69, and 101.73(d), which contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. A copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to Judith B. Herman, Federal Communications Commission, Room 1–B441, 445 12th Street SW., Washington, DC 20554 or via the Internet at *Judith B. Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Kevin Holmes, Wireless Telecommunications Bureau, Broadband Division, at (202) 418–BITS or by email at *Kevin.Holmes@fcc.gov.* For additional information concerning Paperwork Reduction Act information collection requirements contained in this document, contact Judith B. Herman at (202) 418–0214, or via the Internet at *PRA@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order and Order of Proposed Modification,* FCC 12–151, adopted on December 11, 2012, and released on December 17, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. The complete text of the *Report and Order and Order of Proposed Modification* and related Commission documents may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300 or (800) 387–3160, contact BCPI at its Web site: *http://www.bcpiweb.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, FCC 12–151. The complete text of the *Report and Order and Order of Proposed Modification* is also available on the Commision's Web site at *http://wireless.fcc.gov/edocs_public/attachment/FCC–12–151A1doc.* This full text may also be downloaded at: *http://wireless.fcc.gov/releases.html.* Alternative formats (computer diskette, large print, audio cassette, and Braille) are available by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or via email to *bmillin@fcc.gov.*

I. Introduction

1. With this *Report and Order,* we increase the Nation's supply of spectrum for mobile broadband by adopting flexible use rules for 40 megahertz of spectrum in the 2 GHz band (2000–2020 MHz and 2180–2200 MHz), which we term the AWS–4 band. In so doing, we carry out a recommendation in the *National Broadband Plan* that the Commission enable the provision of stand-alone terrestrial services in the 2 GHz Mobile Satellite Service (MSS) spectrum band, thus dramatically increasing the value of this spectrum to the public. Specifically, we remove regulatory barriers to mobile broadband use of this spectrum, and adopt service, technical, and licensing rules that will encourage innovation and investment in mobile broadband and provide certainty and a stable regulatory regime in which broadband deployment can rapidly occur.

2. To create a solid and lasting foundation for the provision of terrestrial services in this spectrum and to make this spectrum available efficiently and quickly for flexible, terrestrial use, such as mobile broadband, we will assign the spectrum to the incumbent MSS operators. Thus, together with this *Report and Order,* we issue an *Order of Proposed Modification,* proposing to replace the incumbent MSS operators' Ancillary Terrestrial Component (ATC) authority with full flexible use terrestrial authority. Additionally, we decline to adopt the alternative band plan proposals presented in the *AWS–4 Notice of Proposed Rulemaking and Notice of Inquiry* (*''AWS–4 NPRM''* and *''AWS–4 NOI''*), 77 FR 22720, April 17, 2012, and 77 FR 22737, April 17, 2012, including shifting the AWS–4 uplink spectrum up five or ten megahertz or further exploring the larger and more complex 2 GHz Extension Band Concept.

II. Background

A. The Growing Spectrum Demands of Mobile Broadband Services

3. Demand for wireless broadband services and the network capacity associated with those services is surging, resulting in a growing demand for spectrum to support these services.

B. The Spectrum Act

4. In February 2012, Congress enacted Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012) (the ''Spectrum Act''). The Spectrum Act includes several provisions to make more spectrum available for commercial use, including through auctions, and to improve public safety communications. Among other things, the Spectrum Act requires the Commission, by February 23, 2015, to allocate the 1915–1920 MHz band and the 1995–2000 MHz band (collectively, the ''H Block'') for commercial use, and to auction and grant new initial licenses for the use of each spectrum band, subject to flexible use service rules. Congress provided, however, that if the Commission determined that either of the bands could not be used without causing harmful interference to commercial licensees in 1930–1995 MHz (PCS downlink), then the Commission was prohibited from allocating that specific band for commercial use or licensing it. *See* 47 U.S.C. 1451(b)(4). Additionally, sections 6401(f) and 6413 of the Spectrum Act specify that the proceeds from an auction of licenses in the 1995–2000 MHz band and in the 1915–1920

MHz band shall be deposited in the Public Safety Trust Fund and then used to fund the Nationwide Public Safety Broadband Network (''FirstNet''). *See* 47 U.S.C. 309(j)(8)(D)(iii), 1457. The H block spectrum could be the first spectrum specified by the Spectrum Act to be licensed by auction, and thus could represent the first inflow of revenues toward this statutory goal.

5. In March 2012, the Commission adopted the *AWS–4 NPRM,* which consisted of a Notice of Proposed Rulemaking and Notice of Inquiry. In the *AWS–4 NPRM,* the Commission proposed to increase the Nation's supply of spectrum for mobile broadband by removing barriers to flexible use of spectrum currently assigned to the MSS. The Commission proposed terrestrial service rules for the 2 GHz band that would generally follow the Commission's part 27 flexible use rules, modified as necessary to account for issues unique to the particular spectrum bands. The proposed rules were designed to provide for flexible use of this spectrum, to encourage innovation and investment in mobile broadband, and to provide a stable regulatory environment in which broadband deployment could develop. The proposed rules also included aggressive build-out requirements and concomitant penalties for failure to build out designed to ensure timely deployment of wireless, terrestrial broadband in the band. Additionally, in the Notice of Inquiry, the Commission sought comment on potential ways to free up additional valuable spectrum to address the Nation's growing demand for mobile broadband spectrum, including through examination of alternative band plans incorporating the Federal 1695–1710 MHz band.

6. Comments on the *AWS–4 NPRM* were due by May 17, 2012 and reply comments were due by June 1, 2012. Thirty-four comments and twenty-one reply comments were filed in response to the *AWS–4 NPRM.* In addition, as permitted under our rules, there have been *ex parte* presentations.

III. Report and Order: AWS–4

7. In this *AWS–4 Report and Order,* we build on the Commission's recent actions to increase the availability of spectrum by enabling terrestrial mobile broadband service in 40 megahertz of spectrum in the 2000–2020 MHz and 2180–2200 MHz spectrum bands. As explained below, we adopt AWS–4 terrestrial service, technical, and licensing rules that generally follow the Commission's Part 27 flexible use rules, modified as necessary to account for issues unique to the AWS–4 bands. First, we establish 2000–2020 MHz paired with 2180–2200 MHz as the AWS–4 band plan.

8. Second, we adopt appropriate technical rules for operations in the AWS–4 band. This includes rules governing the relationship of the AWS–4 band to other bands. For example, as explained below, we require the licensees of AWS–4 operating authority to accept some limited interference from operations in the adjacent upper H block at 1995–2000 MHz, and impose more stringent out-of-band emission (OOBE) limits and power limits on these licensees to protect future operations in 1995–2000 MHz. With respect to adjacent operations at 2200 MHz, we permit operator-to-operator agreements to address concerns regarding interference and also establish default rules to protect against harmful interference. Further, we require licensees of AWS–4 authority to comply with the OOBE limits contained in a private agreement entered into with the Global Positioning Systems (GPS) industry.

9. Third, mindful that AWS–4 spectrum is now allocated on a co-primary basis for Mobile Satellite and for terrestrial Fixed and Mobile services and that MSS licensees already have authorizations to provide service in the band, we determine that the AWS–4 rules must provide for the protection of 2 GHz MSS systems from harmful interference caused by AWS–4 systems. In addition, consistent with our determination below to grant AWS–4 terrestrial operating authority to the incumbent 2 GHz MSS licensees, we propose to assign terrestrial rights by modifying the MSS operators' licenses pursuant to section 316 of the Communications Act.

10. Fourth, we adopt performance requirements for the AWS–4 spectrum. Specifically, licensees of AWS–4 operating authority will be subject to build-out requirements that require a licensee to provide terrestrial signal coverage and offer terrestrial service to at least 40 percent of its total terrestrial license areas' population within four years, and to at least 70 percent of the population in each of its license areas within seven years, and will be subject to appropriate penalties if these benchmarks are not met.

11. Fifth, we adopt a variety of regulatory, licensing, operating, and relocation and cost sharing requirements for licensees of AWS–4 operating authority.

12. Sixth, we eliminate the ATC rules for the 2 GHz MSS band and propose to modify the 2 GHz MSS operators' licenses to eliminate their ATC authority.

13. Seventh, consistent with the scope of the *AWS–4 NPRM,* we take no action on the Commission's ATC rules for other MSS bands.

14. In reaching these conclusions below, we consider other possible outcomes for this spectrum, proposed in the *AWS–4 NPRM* or by commenters in response thereto, but ultimately decline to adopt them. For example, we decline to adopt any of the proposed alternative band plans, including shifting the AWS–4 uplink spectrum or pursuing the 2 GHz Extension Band Concept that was set forth in the *AWS–4 NOI.* Similarly, we reject calls to reduce or take back spectrum allocated to the 2 GHz MSS licensees and decline to assign AWS–4 terrestrial rights through an auction. We also decline to adopt the interim build-out benchmarks and their associated penalties as proposed in the *AWS–4 NPRM.* Further, we decline to impose restrictions on transferring or assigning AWS–4 spectrum beyond the general requirements applicable to Wireless Radio Service spectrum generally. Nor do we impose any roaming or wholesale obligations beyond those contained in the Commission's rules, or ''use it or share it'' obligations. Rather, the rules we adopt today represent the Commission's efforts to make more spectrum available for terrestrial flexible use, including for mobile broadband, in the public interest, without imposing undue restrictions on the use of the spectrum.

15. We emphasize that we find the rules we adopt and the actions we take and propose to take today to be in the public interest based on the totality of the facts and circumstances before us considered as a whole.

A. AWS–4 Band Plan

16. Band plans establish parameters and provide licensees with certainty as to the spectrum they are authorized to use. As explained below, based on the record before us, we adopt as the AWS–4 band plan 2000–2020 MHz paired with 2180–2200 MHz, configured in two consistently-spaced 10 megahertz blocks. Further, we will license the blocks on an EA basis.

1. AWS–4 Frequencies and Paired Spectrum (uplink/downlink)

17. We adopt the band plan and spectrum pairing proposed in the *AWS–4 NPRM,* and establish the AWS–4 spectrum band as 2000–2020 MHz uplink band paired with 2180–2200 MHz downlink band.

a. AWS–4 Frequencies

18. We establish the AWS–4 band as 2000–2020 MHz and 2180–2200 MHz. After considerable analysis of the facts and the record before us, we conclude that this band plan will result in the most efficient use of spectrum for mobile broadband and, when paired with appropriate technical rules, will not impair the future use of the 1995–2000 MHz band, thereby enabling us to best fulfill our obligations under the Spectrum Act and our general obligation to maximize the benefits of the spectrum for the public interest.

19. Establishing these frequencies for AWS–4 terrestrial spectrum is the culmination of several years of Commission effort exploring this path. In July 2010, the Commission adopted the *MSS NPRM and NOI* in which it proposed to add co-primary Fixed and Mobile allocations for this spectrum, 75 FR 49871, Aug. 16, 2010. In April 2011, the Commission added these terrestrial allocations, thereby ''lay[ing] the foundation for more flexible use of the band * * * [and] promoting investment in the development of new services and additional innovative technologies,'' 76 FR 31252, 31254, May 31, 2011. In that order, the Commission also stated its intent to initiate a rulemaking—this proceeding—to explore ''service rule changes that could increase investment and utilization of the band in a manner that serves the public interest * * * [including examining] potential synergies with neighboring bands,'' 76 FR 31254, May 31, 2011. The record before us demonstrates nearly unanimous support to add terrestrial rights to the 2 GHz MSS band generally.

20. We adopt this band plan because, of the options available to us, it should enable the use of the spectrum for mobile broadband in the most expeditious and efficient manner. Setting the AWS–4 band as 2000–2020 MHz and 2180–2200 MHz mirrors the existing 2 GHz MSS band. Because the existing 2 GHz MSS licensees will have AWS–4 operating authority, under this band plan they will be able to offer both terrestrial and satellite service using the same spectrum. In contrast, because the 2020–2025 MHz band is not allocated for MSS, shifting the AWS–4 band up to include this spectrum would necessarily create a mismatch between the spectrum available to provide terrestrial service and the spectrum available to provide satellite service.

21. We decline to adopt our alternative proposals to shift the spectrum in the lower portion of the AWS–4 band plan. We acknowledge that setting the lower AWS–4 band at 2000–2020 MHz gives rise to potential interference issues between the AWS–4 band and the 1995–2000 MHz band (AWS–2 upper H block). This raises particular concerns because, as discussed below, Congress has directed the Commission to assign licenses in the 1995–2000 MHz band through a system of competitive bidding—a system that, among other things, promotes efficient and intensive use of that spectrum and recovers a portion of the value of the spectrum resource. Regulatory actions that might compromise the utility of the 1995–2000 MHz band cannot easily be reconciled with the purposes of the Spectrum Act's mandate that this band be licensed through a system of competitive bidding. We find, however, that the tension between this mandate and the public interest benefits of the band plan we are adopting can be resolved by promulgating appropriate technical rules for the AWS–4 band, as described below.

22. Because we resolve these interference issues through technical rules, we decline to adopt any of the three alternative band plans proposed in the *AWS–4 NPRM:* (1) 2005–2025 MHz paired with 2180–2200 MHz; (2) 2010–2025 MHz paired with 2180–2200 MHz; and (3) the alternative NOI proposal, as well as any of the alternative band plan proposals presented by commenters. We decline to shift the band because we find that the technical rules we adopt below offer a better solution than shifting the band. Further, nothing in the record has convinced us that the 2020–2025 MHz band cannot be put to productive use in the future. We decline to pursue the alternative NOI proposal for the reasons discussed in section VI. below. Finally, we decline at this time to adopt more aggressive proposals that would reduce the amount of MSS spectrum or return licenses to the Commission, because we believe the approach adopted herein will lead to faster and more efficient terrestrial deployment in the AWS–4 band.

b. Paired Spectrum

23. For the AWS–4 band plan, we adopt the same uplink and downlink pairing designations as those currently used in the 2 GHz MSS band. Specifically, for AWS–4 spectrum, the lower band (2000–2020 MHz) will be the uplink band and the upper band (2180–2200 MHz) will be the downlink band. As we noted in the *AWS–4 NPRM,* ''[a]dopting the same uplink/downlink pairing approach for AWS–4 as for 2 GHz MSS may facilitate the continued use of existing satellites for MSS,'' 77 FR 22722, April 17, 2012. Thus, it is consistent with our determination, *infra,* to require AWS–4 operators to protect 2 GHz MSS operations from harmful interference. Stated otherwise, having the AWS–4 band parallel the spectrum pairing of the 2 GHz MSS band, in terms of their uplink and downlink designations, will minimize the possibility that AWS–4 operations could interfere with 2 GHz MSS operations and will offer the greatest opportunity for synergies between the two mobile services. Our finding is supported by the record and no commenter objected to this pairing of uplink and downlink spectrum.

2. Spectrum Block Size and Duplex Spacing

24. We determine to license the AWS–4 spectrum in two paired 10 + 10 megahertz blocks, but, in doing so, we adopt a consistent (*i.e.,* non-variable) duplex spacing. The AWS–4 band will therefore consist of two paired 10 + 10 megahertz blocks as follows: Block A pairs 2000–2010 MHz with 2180–2190 MHz and Block B pairs 2010–2020 MHz with 2190–2200 MHz.

25. *Block Size.* We adopt 10 megahertz blocks as the block size for the AWS–4 band. This block size has several advantages. First, it mirrors the current MSS/ATC block size. Second, spectrum bands of this size will encourage technologies that utilize wider bandwidth, and will encourage the adoption of and use of next generation technologies. This is particularly the case in a band, such as this one, where large contiguous blocks are readily configurable. We expect that use of wide, contiguous blocks of spectrum will support continued innovation and deployment of mobile broadband technologies, such as Long Term Evolution (''LTE''), to meet higher data rates and wider bandwidths. Additionally, 10 + 10 megahertz blocks allow for the possibility that multiple providers may make use of the spectrum (including through the operation of secondary markets), but can also be used as a single 20 + 20 megahertz block if a single operator controls both blocks in a market. The record supports both the 10 + 10 MHz blocks and the ability for a single operator to combine both blocks into a 20 + 20 MHz block. Further, no one submitted comments in opposition to the 10 + 10 block size for AWS–4 terrestrial licenses. However, AT&T argued that the MSS allocation be reduced to one single 10 + 10 MHz block. We decline to pursue AT&T's request that we reallocated part of the 2 GHz band. As the Commission stated in 2011 in the *2 GHz Band Co-Allocation Report and Order* when adding the co-primary fixed and mobile allocations to

the band, ''MSS remains co-primary in the 2 GHz MSS band * * * Both of the MSS licensees in the band will continue to operate under the terms of their existing licenses,'' 76 FR 31252, 31254, May 31, 2011. Thus, to support the continued innovation of mobile broadband technologies by providing wide, contiguous channels, we adopt our proposal to license the AWS–4 spectrum in paired 10 + 10 megahertz blocks.

26. In the *AWS–4 NPRM,* the Commission proposed that, in the event that a single licensee holds both the A and the B Blocks, that licensee should be permitted to combine the blocks into one paired 20 + 20 megahertz block. We adopt this proposal. We find it consistent with the record, with our decision to permit flexible use of AWS–4 spectrum, and with our technical findings below. The rules adopted herein will allow a licensee holding all paired 20 + 20 megahertz of AWS–4 spectrum to make use of that spectrum as it sees fit, so long as such use otherwise complies with the Commission's rules, including the technical and interference rules established herein. Thus, we will provide a licensee holding AWS–4 terrestrial authority with the opportunity to design its network in a manner that enables it to best respond to its business and technical needs. For example, combining these blocks may enable a licensee to benefit from establishing larger channel bandwidths, such as paired 15 + 15 megahertz or 20 + 20 megahertz blocks, which can result in greater spectral efficiency and network capacity and, consequently, improved customer experiences.

27. *Duplex Spacing.* We find that the paired 10 megahertz blocks should operate with a consistent duplex spacing. Thus, block A will pair 2000–2010 MHz with 2180–2190 MHz and Block B will pair 2010–2020 MHz with 2190–2200 MHz. We license the AWS–4 spectrum such that duplex spacing of the spectrum blocks will be uniform. Although some commenters support using the existing 2 GHz MSS duplex spacing for AWS–4, we concur with other parties, such as AT&T, that to ''facilitate the deployment of terrestrial AWS–4 service, the Commission should adopt an A–B/A–B configuration, similar to the consistent duplex spacing used in other AWS and 3GPP standards.'' AT&T Comments to WT Docket No. 12–70, ET Docket No. 10–142, WT Docket No. 04–356, at page 5. Further, this is consistent with the recent change by 3rd Generation Partnership Project (''3GPP'') in band class 23 to shift from an A–B/B–A pairing to an A–B/A–B pairing. Thus, to promote uniformity among mobile wireless bands and to maintain consistency with standards setting bodies, we find it appropriate to license AWS–4 spectrum bands in A–B/A–B paired blocks.

28. *Changes to MSS Duplex Spacing.* Currently, the two MSS licenses in the band are arranged with one license authorized to use of 2000–2010 MHz as uplink paired with 2190–2200 MHz as downlink, and the other authorized to use 2010–2020 MHz uplink paired with 2180–2190 MHz downlink. That is, there are effectively two blocks, each 10 + 10 megahertz, paired A–B/B–A. As discussed above, we are establishing the AWS–4 blocks in an A–B/A–B pairing, rather than an A–B/B–A pairing. There remains, however, a need to coordinate between MSS and AWS–4 operations. In fact, as discussed below, we have found that the assignment of AWS–4 terrestrial use rights must be made to the existing MSS authorization holders to allow coordination and prevention of harmful interference. Therefore, we determine to also align the MSS blocks with the AWS–4 blocks. Because, as AT&T states, the MSS satellites should be ''capable of providing service under a modified A–B/A–B configuration,'' this rearrangement should be feasible and not present a significant burden on the MSS licensees. Consequently, we adopt a rearrangement of the 2 GHz MSS blocks as follows: the first block shall be 2000–2010 MHz uplink paired with 2180–2190 MHz downlink, and the second block shall be 2010–2020 MHz paired with 2190–2200 MHz. This rearrangement results in the first MSS block aligning with the AWS–4 A block, and the second MSS block aligning with the AWS–4 B block.

29. *Interoperability.* The *AWS–4 NPRM* also sought comment on whether the Commission should take action to ensure that equipment for the AWS–4 band is interoperable across both paired blocks. No commenters discussed this issue. As the AWS–4 spectrum will be licensed to the existing 2 GHz MSS licensees, and the commenter controlling both licensees has stated its desire to operate across the entire band, we anticipate that its operations would result in devices that operate across the entire AWS–4 band. We therefore take no action at this time on this issue. We observe, however, that the Commission is investigating interoperability issues in other contexts. We continue to believe that interoperability is an important aspect of future deployment of mobile broadband services. We will closely examine any actions taken that have the potential to undermine the development of interoperability in the AWS–4 band and may take action on this issue if it is warranted in the future.

3. Geographic Area Licensing

30. We will assign terrestrial spectrum use rights in the AWS–4 band on a geographic-area basis. A geographic-area licensing approach is well suited for the types of fixed and mobile services we expect to be deployed in this band. Further, geographic-area licensing will maintain consistency between the AWS–4 band and the AWS–1 band.

31. Having examined the record, which is mixed on this issue, we will award terrestrial rights for the AWS–4 spectrum on an Economic Area (''EA'') basis. We adopt an EA licensing area scheme. We do so for four reasons. First, addressing the concerns of those seeking larger license areas, EA license areas are a useful and appropriate geographic unit that Commission has used for similar bands. Notably, AWS–1 Blocks B and C spectrum is licensed on an EA basis. EA licenses can be aggregated up to larger license areas, including into MEAs or larger units, including nationwide. Any such aggregation, however, would not relieve a licensee from obligations that are based on the original EA license area, such as, importantly, build-out requirements. Second, EA-based licensing is consistent with the other requirements adopted herein, most notably the performance requirements discussed below, which establish EA-based build-out requirements. Third, licensing AWS–4 on an EA basis best balances the Commission's goals of encouraging the offering of broadband service both to broad geographic areas and to sizeable populations. For example, as one commenter notes, licensing in smaller geographic blocks averts the phenomenon of huge tracts of licensed territory being left unserved. Finally, contrary to one commenter's unsubstantiated claim, we do not believe that licensing on an EA basis impairs nationwide operations. Indeed, other than the PCS G block, all other major terrestrial spectrum bands are licensed in discrete geographic areas, including AWS–1, several blocks of which are licensed on an EA-basis. These bands have not proven unduly difficult for licensees to administer. Consequently, because EAs allow licensees to build their geographic coverage as needed, are consistent with the other requirements established for this band, and promote the Commission's goal of widespread broadband service, we adopt the proposal in the *AWS–4 NPRM* to assign AWS–4 spectrum rights on an EA basis.

32. *Gulf of Mexico.* In the *AWS–4 NPRM,* the Commission sought comment on how to include the Gulf of Mexico in its licensing scheme. The Commission questioned if the Gulf should be licensed in a similar fashion as the Upper 700 MHz band, where the Gulf was included as part of larger service areas, or whether the Gulf should be licensed separately. The Commission has addressed the issue of licensing the Gulf of Mexico in other proceedings and we will follow the established policy on this issue. Therefore, because we are adopting an EA-based licensing scheme, and the Commission received no comments directly addressing this issue, we will license the Gulf of Mexico as EA licensing area 176. As we did in licensing other Part 27 services, the Gulf of Mexico service area is comprised of the water area of the Gulf of Mexico starting 12 nautical miles from the U.S. Gulf coast and extending outward.

B. Technical Issues

33. Pursuant to its statutory direction in the Communications Act, the Commission adopts rules for commercial spectrum in a manner that furthers and maximizes the public interest. For example, allowing spectrum to be repurposed for its highest and best use serves this end as more efficient spectrum use, among other things, spurs investment and benefits consumers through better performance and lower prices. Deciding how best to further and maximize the public interest, moreover, is not an assessment that is made in a vacuum. Notably, when developing policies for a particular band, the Commission looks at other bands that might be affected, particularly the adjacent bands. In revising its rules, therefore, the Commission often must strike a balance among competing interests of adjacent bands, and between sometimes competing public interest considerations.

34. The rules for one band, particularly the interference protection rules, affect the use and value of other bands and thus the public interest benefits that can be realized through the use of those adjacent bands. Moreover, the public interest analysis, and the balancing of interests across bands, does not necessarily reduce to an inquiry about the amount of spectrum that is or could be made available in the relevant bands. Not all spectrum use has equal value or leads to the same public interest benefits. For example, as explained below, wireless providers tend to use more downlink than uplink spectrum. Therefore, it is not clear that the loss of some uplink spectrum would diminish the value of, or the public's interest in, a large paired band when compared to the value that would be created in enabling a smaller full power downlink band. Indeed, the public interest benefits of a fully usable new downlink spectrum band likely are substantially greater than a fully usable equal sized addition of uplink spectrum that is a part of a larger band. The balancing between adjacent bands may be weighted further if one band will enable the combination of spectrum bands, including the aggregation of smaller bands, while the other band does not.

35. In this section, we adopt the technical operating rules (*e.g.,* interference rules) that will govern AWS–4 operations and licensees. In general, our aim in establishing technical rules is to maximize the flexible use of spectrum while appropriately protecting operations in neighboring bands. We also specifically consider here our statutory obligations set forth in the Spectrum Act with respect to the 1995–2000 MHz band. We base the technical rules we adopt below on the rules for AWS–1 spectrum, with specific additions or modifications designed to protect operations in adjacent bands from harmful interference. These bands include (1) the existing 1930–1995 MHz broadband PCS service; (2) future services operating in the 1995–2000 MHz band; and (3) Federal operations in the 2200–2290 MHz band.

1. OOBE Limits

36. In this section we adopt interference rules for operations between AWS–4 blocks within the AWS–4 band and between AWS–4 blocks and adjacent and nearby bands. In the event that, once individual systems are deployed and operational, it is determined that these limitations do not prevent an AWS–4 fixed or mobile transmitter from causing harmful interference, we shall, at our discretion, require the licensee of that transmitter to provide greater emission attenuation consistent with the typical treatment of Part 27 services.

a. Interference Between Services in Adjacent AWS–4 Blocks

37. We require fixed and mobile transmitters operating in 2000–2020 MHz and 2180–2200 MHz bands to attenuate emissions outside the licensed channels in these bands by 43 + 10 $\log_{10}$(P) dB, unless all affected parties agree otherwise. This limit of 43 + 10 $\log_{10}$(P) dB is consistent with other CMRS bands, including the AWS–1 band that forms the basis for many of the technical rules we adopt herein. This specific emission limit, as well as the principle of adopting the same limits across multiple CMRS bands, is supported by the record. Further, we disagree with the assertion that permitting unified operations in the band makes it unnecessary for us to establish emissions levels between adjacent block AWS–4 operations. We observe, however, that to the extent a service provider establishes unified operations across the AWS–4 blocks, that operator may choose not to observe this emission level strictly between its adjacent block AWS–4 licenses in a geographic area, so long as it complies with other Commission rules and is not adversely affecting the operations of other parties by virtue of exceeding the emission limit.

38. Additionally, we adopt the measurement procedures found in § 27.53(h) to AWS–4 mobile and base stations. Specifically, we require a measurement bandwidth of 1 MHz or greater, with an exception allowing a smaller measurement bandwidth within the first megahertz outside the channel. In sum, after reviewing the record and finding it supports the Commission's proposals, we conclude that the potential benefits of our proposals would outweigh any potential costs and adopt the proposed OOBE limit and measurement procedures.

b. Interference with Services in Adjacent and Other Bands

39. Having established interference rules for operations between adjacent AWS–4 blocks, we next set rules for AWS–4 operations relative to operations in adjacent and nearby spectrum bands. In so doing, wherever possible, we establish rules that permit flexible use of the AWS–4 band, while effectively protecting adjacent and nearby bands from harmful interference resulting from AWS–4 emissions. As a preliminary matter, we observe that the Commission frequently applies a minimum attenuation level of 43 + 10 $\log_{10}$(P) dB to protect operations in adjacent frequency bands.

(i) Interference with operations below 1995 MHz

40. We conclude that fixed and mobile transmitters operating in the 2000–2020 MHz AWS–4 uplink band must attenuate emissions below 1995 MHz by 70 + 10 $\log_{10}$(P) dB. We also apply the existing measurement procedure contained in § 27.53(h) of our rules, whereby a measurement bandwidth of 1 MHz or greater is required, with an exception allowing a

smaller measurement bandwidth in the first megahertz outside the channel. This emission level is supported by the record. AT&T, CTIA, Sprint, and T-Mobile all support the need to protect PCS operations below 1995 MHz. DISH, Greenwood, Motorola, Nokia, and Sprint all support our proposed OOBE limit of 70 + 10 $\log_{10}$(P) dB below 1995 MHz for AWS–4 emissions. No commenters opposed this OOBE limit. We observe that DISH and Sprint have disagreed as to the technical standards that the 3GPP had established to protect operations in 1990–1995 MHz from interference from 2 GHz MSS/ATC operators. This disagreement was resolved on November 13, 2012 in 3GPP as −40 dBm/MHz, equivalent to 70 + 10 $\log_{10}$(P) dB, although DISH has expressed concern that Sprint might reopen this issue. We decline to insert ourselves into this dispute before an external standards organization. Given the record before us, we therefore conclude that the potential benefits of our proposals would outweigh any potential costs and adopt this out-of-band emission limit below 1995 MHz for all fixed and mobile transmitters operating in the AWS–4 uplink band.

(ii) Interference with operations in 1995–2000 MHz

41. *General Considerations.* In considering the rules that should govern potential interference between the spectrum being repurposed—here, AWS–4 spectrum—and the adjacent bands, to maximize the public interest, the Commission must consider the value of potential uses in both bands. We are thus generally disinclined to treat an adjacent band as a permanent guard band, which, by definition, would preclude most use of that spectrum for the provision of full flexible use service to the public, or as a limited use band, which would have considerably less economic value than would a full flexible use band.

42. Here, one of the adjacent bands—the 1995–2000 MHz portion of the H block—is not in use today, but Congress has directed that it be licensed via a system of competitive bidding by February 2015. As explained below, this adjacent band raises particularly difficult technical issues because it may result in an uplink band (2000–2020 MHz) adjacent to a downlink band (1995–2000 MHz). In 2004, the Commission determined to pair the 1915–1920 MHz band with the 1995–2000 MHz band, and contemplated that the lower band would be used for mobile transmissions. In particular, the Commission determined that these bands were comparable to the 1910–1915 MHz and 1995–2000 MHz PCS bands, which are used as uplink and downlink bands, respectively. The technical rules we adopt today, therefore, are designed to protect future operations in the 1995–2000 MHz band from harmful interference by future operations in the repurposed AWS–4 band. Moreover, enabling full flexible use of the 1995–2000 MHz band may lead to the pairing of this band with the 1915–1920 MHz band, which would thereby maximize the public interest benefit of both of these five megahertz bands. Furthermore, we recognize that in establishing rules that allow the 1995–2000 MHz spectrum band to be put to its highest and best use, we also further Congress's objectives related to the use of public safety broadband spectrum in the 700 MHz band. The Spectrum Act directs that the proceeds from the auction of licenses in the 1995–2000 MHz band be deposited into the Public Safety Trust Fund, which will be used to fund FirstNet.

43. In considering the rules that should govern potential interference between the 1995–2000 MHz band, which the Commission envisions as a downlink band, and the adjacent AWS–4 uplink band, the Commission must consider the public interest benefits associated with potential uses in both bands, including, but not limited to, the net effect on the economic values of these bands, and adopt technical rules accordingly. The public interest in the 1995–2000 MHz band is almost certainly maximized if the band is used as an additional PCS band. DISH, conversely, argued first that the Commission should effectively treat the 1995–2000 MHz band as a guard band, which would eliminate most of its value. DISH then argued that the H block should not be made available for full power use, and instead could be auctioned for air-to-ground or small cell use, although both of these uses would, in our assessment, have considerably less economic value and other public interest benefits than an additional PCS downlink band. Limiting the use of the band to air-to-ground operations would be inconsistent with the Spectrum Act's direction to license the 1995–2000 MHz band for flexible use. Additionally, both the air-to-ground and small cell proposals, by precluding the possibility of full power cellular operations, would restrict the value of the band in a way that we believe does not promote the public interest in this particular instance given specific characteristics of the band and the available alternative of higher power use. All four nationwide wireless providers have broadband PCS spectrum, as do regional and rural providers, and any of these providers could use additional PCS spectrum to expand capacity. One analyst projected that the value of the paired H block would be $2–3 billion, which implies a price of at least $0.67–$1.00 per MHz POP, or $1–$1.5 billion for the downlink band. We note that economists frequently consider it a rule of thumb that the public benefit of a licensed spectrum band typically equates to about ten times its value at auction. Although as a matter of practice the Commission does not predict auction prices, we reference these figures as an indicator of the economic value or public benefit that could be derived from the spectrum, if it is usable for high power commercial services.

44. The public interest benefits of the AWS–4 spectrum, including its economic value, will also increase significantly once it is available for terrestrial use. The largest increase in value would occur if AWS–4 operations did not need to protect any adjacent bands. But that is not the case here. For example, AWS–4 operations need to comply with technical rules designed to prevent harmful interference below 2180 MHz and above 2200 MHz. However, DISH argues that, while licensees of AWS–4 authority should also be subject to technical rules for operations below 2000 MHz, these rules should not restrict AWS–4 operations even if they limit the efficient use of the spectrum below 2000 MHz. DISH identifies certain costs associated with such technical rules, including the claimed loss of the ability to use 5 MHz of uplink spectrum. Sprint suggests that this impact can be mitigated through base station receive filters, co-location of base stations, and LTE interference mitigations. DISH counters that filters would require 5 megahertz of transition band, co-location is not possible in all cases, and the LTE features mentioned by Sprint are more effective for UE-to-UE interference than base-to-base interference. DISH has not attempted to quantify the economic value of its possible loss of some of the use of this 5 MHz to society, but simply argues that there is no net gain in spectrum because the Commission would be trading 5 MHz of AWS–4 uplink spectrum for 5 MHz of H block downlink spectrum. This argument ignores the possibility of the Commission pairing 1995–2000 MHz with 1915–1920 MHz, as previously proposed and proposed again in the *H Block NPRM,* in which case making the 1995–2000 MHz band available may enable a total of 10 megahertz of spectrum by completing

the pairing. Moreover, the 1915–1920 MHz and 1995–2000 MHz bands could be used by PCS operators to expand, for example, from 5 + 5 megahertz blocks to 10 + 10 megahertz blocks, or to otherwise aggregate PCS blocks. Also, as explained below, the technical rules we adopt do not prevent the use of 5 megahertz of spectrum; rather, they merely limit its use, and make provisions for improving its usability.

45. More importantly, as explained above, the amount of spectrum is not the only question that the Commission must consider as we evaluate the rules that will govern the AWS–4 band. Rather, we must evaluate how best to serve and maximize the public interest with respect to all relevant bands. Because, as explained below, companies tend to use more downlink than uplink spectrum today, it is not clear that the loss of some uplink spectrum would significantly diminish the utility (and economic value) of the paired AWS–4 spectrum. At a minimum, it appears that the public interest benefit (including economic value) of a fully usable 1995–2000 MHz band, which the Commission envisions as a downlink PCS band, is substantially greater than that of a fully usable additional 5 MHz of AWS–4 uplink—perhaps an order of magnitude greater. This may be particularly so if the 1995–2000 MHz band is ultimately paired with the 1915–1920 MHz band and the paired band is combined with other PCS spectrum to create, for example, 10+10 megahertz of PCS spectrum.

46. Further, the Spectrum Act does not preclude auctioning the 1995–2000 MHz band. We do not reach any conclusions on the specific future use of the 1995–2000 MHz band in this proceeding; such determinations are outside its scope. However, in our role as spectrum managers we do establish rules for AWS–4 that do not preclude uses of the 1995–2000 MHz band, or prejudge it to be unusable. And, although we do not make a final determination on the use of 1995–2000 MHz, we note that arguments that it may not be auctioned under the Spectrum Act have several flaws. First, many commenters on the H block proceeding have suggested that with appropriate technical limitations, the 1915–1920 MHz band will not interfere with the 1930–1995 MHz band. Thus, such interference may not present a problem, or, if it does, the problem may be partially overcome. Second, although the Commission has proposed pairing 1915–1920 MHz with 1995–2000 MHz, the Spectrum Act does not require this, and a finding that 1915–1920 MHz cannot be auctioned due to interference with 1930–1995 MHz does not, in and of itself, release us from our obligation to auction the 1995–2000 MHz band.

47. DISH has put forward a technical proposal that it feels balances the usability of the 1995–2000 MHz band with the usability of the AWS–4 uplink band, while also speeding deployment in AWS–4 by minimizing the impact of our rulemaking on the 3GPP standards body. This proposal includes DISH voluntarily designating 2000–2005 MHz as a terrestrial guard band, proposing the Commission set an emissions limit of 60 + 10 $\log_{10}$(P) dB for AWS–4 emissions into the 1995–2000 MHz band, and asking the Commission to limit any emissions from the 1995–2000 MHz band by 79 + 10 $\log_{10}$(P) dB above 2005 MHz. As discussed further below, we decline to adopt this proposal because we find that it will not speed deployment of the AWS–4 band or allow for full flexible use of the 1995–2000 MHz band. Moreover, DISH's request that we establish OOBE limits for the 1995–2000 MHz band is not within the scope of this proceeding. Rather these limits will be addressed in our companion *H Block NPRM.*

48. Consequently, while the Commission has not adopted rules for the 1995–2000 MHz band, we are adopting technical rules for the AWS–4 uplink band that we predict will, in light of the record and of our assessment of the nature and characteristics of both bands, ensure efficient use of the AWS–4 band while preserving our ability to auction licenses for operations in the 1995–2000 MHz band. Moreover, we find that the approach and the technical rules we adopt will best serve the public interest by striking an appropriate balance that will enable both the AWS–4 band and the 1995–2000 MHz band that is adjacent to the AWS–4 uplink band (2000–2020 MHz) to be used for providing flexible use services in the most efficient manner possible. In this way, we further and fully comply with our statutory mandates, including our responsibilities under the Communications Act to manage the spectrum in the public interest and Congress's specific direction regarding the 1995–2000 MHz band in the Spectrum Act. Furthermore, we recognize that in establishing rules that will enable the 1995–2000 MHz spectrum to be put to its highest and best use, we also further Congress's objectives related to the use of public safety broadband spectrum in the 700 MHz band. The Spectrum Act directs that the proceeds from the auction of licenses in the H Block, including 1995–2000 MHz, be deposited into the Public Safety Trust Fund, which will be used to fund FirstNet.

49. Therefore, as explained below, we establish carefully calibrated, limited technical restrictions on AWS–4 operations in 2000–2005 MHz, the lowest five megahertz of the AWS–4 uplink band. In particular, as explained below, we are imposing (1) increased OOBE limits at and below 2000 MHz, (2) reduced power limits for mobile terrestrial operations in 2000–2005 MHz, and (3) requirements that a licensee of AWS–4 terrestrial rights or of 2 GHz MSS rights must accept harmful OOBE interference, if any occurs, from future operations in the 1995–2000 MHz band into the 2000–2005 MHz portion of the AWS–4 and 2 GHz MSS uplink bands and harmful overload interference, if any occurs, from operators in the 1995–2000 MHz band into the AWS–4 and 2 GHz MSS uplink bands. We do this to protect future operations in the 1995–2000 MHz band from harmful interference; to ensure the possibility of flexible commercial use of that band, consistent with Congressional direction; and to strike a balance in ensuring the efficient use of both the AWS–4 and the 1995–2000 MHz bands. The Communications Act established ''that the Commission's powers are not limited to the engineering and technical aspects of radio communications.'' Rather, the Communications Act directs the Commission to ''encourage the larger and more effective use of radio in the public interest'' and to adopt ''such rules and regulations and prescribe such restrictions and conditions * * * as may be necessary to carry out the provisions of this Act.'' As explained below, we deem it necessary to set these technical limits to best maximize AWS–4 and 1995–2000 MHz spectrum for flexible terrestrial use by minimizing harmful interference between the bands. We believe that the technical rules we adopt today to protect against harmful interference will promote more effective and efficient use of the 1995–2000 MHz band and the AWS–4 band and we believe that the benefits of these rules will outweigh any restrictions on the use of a portion of the AWS–4 uplink band. Moreover, any restrictions on the use of a portion of the AWS–4 band would be more than offset by the considerable increase in flexibility that the authorization holders will receive in obtaining overall terrestrial use rights under the Commission's part 27 flexible use rules instead of under the existing ATC rules.

50. Finally, we adopt rules that allow for the restrictions specified above to be modified by private agreement, thereby providing a licensee of AWS–4

operating authority with the ability to utilize this five megahertz of spectrum through deployment of higher performance technologies, commercial agreements with future 1995–2000 MHz band licensees, or other means. This will also provide greater flexibility to any operators that obtain licenses for both the AWS–4 A block and the 1995–2000 MHz band, as could be the case for a licensee of AWS–4 authority who bids on the 1995–2000 MHz band.

51. *Discussion.* For AWS–4 operations in 2000–2020 MHz, we adopt an OOBE limit of 70 + 10 $\log_{10}$(P) dB at and below 2000 MHz. This limit promotes the public interest for several reasons: (1) It promotes the best and highest use of spectrum, (2) it fulfills our statutory obligations, (3) it provides consistent levels of protection for the adjacent 1990–1995 MHz and 1995–2000 MHz downlink bands, and (4) it maintains consistency with past Commission actions.

52. *Best and highest use of adjacent spectrum.* DISH has stated that a required attenuation of 70 + 10 $\log_{10}$(P) dB below 2000 MHz would have a negative impact on operations in the AWS–4 uplink band. While this is correct, we seek to balance this negative impact on a portion of the AWS–4 uplink spectrum with the positive impact on the usability of the 1995–2000 MHz band, to obtain the most efficient use of both bands, and to maximize the overall public interest. To this end, we observe that mobile broadband uses far more downlink than uplink spectrum. For example, at an FCC forum on the future of wireless band plans, Nokia Siemens Networks presented data showing a typical LTE network producing 13 times more downlink data than uplink data, while Alcatel Lucent showed 17 to 30 times more downlink data than uplink data. Accordingly, there is a more pressing need for downlink spectrum than for uplink spectrum. Therefore, a possible limited reduction in uplink capacity may not present a hardship to a licensee of AWS–4 operating authority. In addition, as discussed further below, while some of the uplink spectrum may be restricted in power, our rules do not eliminate the use of any uplink spectrum. Furthermore, extensions of existing bands can typically be put to use more cost-effectively than new bands. Finally, to the extent some spectrum may have reduced utility to address interference issues, a fixed spectrum impact will represent a larger fraction of the 5 megahertz band from 1995 to 2000 MHz than of the lower 10 megahertz block in the 2000–2020 MHz band. Therefore, because 1995–2000 MHz can be used as a small downlink expansion of the existing PCS band, while 2000–2020 MHz is the larger uplink of a new band, these factors indicate that more efficient use of spectrum can be realized by promoting usability of 1995–2000 MHz even if it decreases the usability of a limited portion of the 2000–2020 MHz AWS–4 band.

53. *Statutory obligations.* We find this OOBE limit, combined with the mobile power limits and requirement to accept interference within the 2000–2005 MHz band from lawful operations in the 1995–2000 MHz band, which we establish below, allows us to fulfill our spectrum manager role under the Communications Act by balancing the public interest goals of enabling efficient use of both the 1995–2000 MHz band and the AWS–4 band. Moreover, this limit enables us to fulfill our obligations under the Spectrum Act with regard to the 1995–2000 MHz band. The Spectrum Act requires the Commission, among other things, to make available via a system of competitive bidding the 1995–2000 MHz band. We believe it is consistent with Congress's specific direction to auction this spectrum to preserve our ability to reach a possible finding that this band should support the deployment of full, robust, commercial service—including for mobile broadband. DISH suggests that we could restrict an auction of 1995–2000 MHz to small cell operations or as part of a paired air-to-ground/ground-to-air band. We decline to so limit the potential uses of the 1995–2000 MHz band at this time, because this would likely diminish the efficiency and usefulness of the spectrum given the significant value we believe exists for high power uses in the 1995–2000 MHz band. Further, the Spectrum Act specifically calls for flexible use of 1995–2000 MHz, and limiting the band to be suitable only for small cell or air-to-ground services may improperly curtail such flexible use if full terrestrial use remains a reasonable possibility for the band. While flexible use rules that permit higher power terrestrial use could also permit small cell or air-to-ground services, the reverse is not true—a band limited to either of those uses could not also be used for full power terrestrial operations. DISH fails to explain how we can fulfill our statutory obligation to make the 1995–2000 MHz band available for flexible use via a system of competitive bidding without a strong OOBE limit. Moreover, it is not clear if either small cell or air-to-ground use would result in an improved interference environment as compared to full power use. Should the Commission ultimately determine, in the forthcoming proceeding on this band, to limit the permissible services in this band, DISH or any other party is free to petition us to revisit the technical rules we adopt herein.

54. *Consistent Protection Levels.* To promote more effective and efficient use of the 1995–2000 MHz band, we believe the same OOBE limit the Commission adopted to protect current PCS operations below 1995 MHz—70 + 10 $\log_{10}$(P) dB—will be both necessary and sufficient to protect future operations in the 1995–2000 MHz band. This creates consistency in our rules, by affording the 1995–2000 MHz band the same protections as the existing PCS band.

55. *Past Commission Actions.* The Commission has long sought to put the 1995–2000 MHz band to productive commercial use. In 2004, 2007, and 2008, the Commission undertook efforts to make this spectrum available for full flexible use. We therefore reject the approach advocated by some that the 1995–2000 MHz band should be used as a guard band between the extended PCS downlink band from 1990–1995 MHz and the AWS–4 uplink band. Setting aside this block for no use is directly at odds with the Commission's past actions. Further, in 2010, the National Broadband Plan recommended that the Commission make this band available through auction. Thus, the public has long been on notice that the 1995–2000 MHz band is not intended for use as a guard band. Such notice significantly predates the current MSS licensee's acquisition of DBSD and TerreStar in 2011.

56. *The Record.* The proposed OOBE limit of 70 + 10 $\log_{10}$(P) dB at and below 2000 MHz received some support in the record. For example, Sprint supports this OOBE level as necessary to protect the 1995–2000 MHz band. U.S. Cellular proposed a limit of 70 + 10 $\log_{10}$(P) dB at and below 2000 MHz to protect the 1995–2000 MHz band. Several other commenters indirectly support an OOBE limit of 70 + 10 $\log_{10}$(P) at 2000 MHz, which will be five megahertz away from full power use of the AWS–4 uplink band, by stating that this level is necessary to protect PCS operations below 1995 MHz without assuming any reduction in power between 2000–2005 MHz. To achieve this level of protection for the 1995–2000 MHz band without applying this OOBE limit at 2000 MHz and lower power limits in 2000–2005 MHz, we would need to create frequency separation between the 1995–2000 MHz band and the AWS–4 uplink band. For the reasons explained above,

however, we decline to shift the AWS–4 uplink band up 5 megahertz (or more) to 2005–2025 MHz. DISH makes several arguments objecting to this OOBE limit as unprecedented, unnecessary, and restrictive. DISH also asserts that this limit would affect AWS–4 operations, including negative impacts for AWS–4 devices, rendering 25% of the AWS–4 uplink unusable, slowing DISH's deployment due to delays in the 3GPP standards process, requiring as many as 15–30% additional sites for licensees of AWS–4 authority, and not creating a net gain of spectrum for broadband. DISH proposed that we instead adopt an OOBE limit of 43 + 10 $\log_{10}$(P) dB at 2000 MHz and separately that we adopt an OOBE limit of 60 + 10 $\log_{10}$(P) dB at 2000 MHz. We are not persuaded by these arguments.

57. We adopt the specific level of 70 + 10 $\log_{10}$(P) dB because it provides a reasonable level of protection for the 1995–2000 MHz band, there is directly applicable precedent in the existing protection of the PCS G block from MSS/ATC, and it is superior to other attenuation levels raised in the record. As DISH correctly notes, the interference from the AWS–4 uplink to operations in the 1995–2000 MHz band is likely to be mobile-to-mobile interference, and is therefore probabilistic, meaning the probability of interference depends on the likelihood of the interfering and victim mobiles passing close enough to each other under the right conditions. However, determining that interference is probabilistic does not mean that it should be ignored; rather, it means that rules should be set to ensure that the probability of interference is reasonably low. To evaluate this probability, we make reasonable assumptions about interference and look at the separation needed between mobile devices to prevent interference with those assumptions. A larger resulting separation indicates a higher likelihood of interference. In its comments on this proceeding, Motorola proposes assumptions for the protection of the 1930–1995 MHz band that we find reasonable, with one modification, and applicable to the 1995–2000 MHz band. Using the proposed assumptions with this modification, 70 + 10 $\log_{10}$(P) dB yields a separation of 1.4 meters (under 5 feet), similar to the separation of 2 meters (about 6 feet) proposed by Motorola and the separations typically used in 3GPP standards. 70 + 10 $\log_{10}$(P) dB is also the level that Sprint recommends as necessary to protect the 1995–2000 MHz band. As another reference point, 3GPP adopts a similar but more stringent level of 80 + 10 $\log_{10}$(P) dB for the protection of mobile receivers from mobile transmitters in most cases.

58. DISH's initial proposal of 43 + 10 $\log_{10}$(P) dB does not provide adequate protection to the 1995–2000 MHz band. Applying the same calculations to the level of 43 + 10 $\log_{10}$(P) dB yields a separation of 32 meters (over 100 feet). This represents a dramatic increase in the probability in interference, because it is far more likely that two mobiles will pass within 100 feet of each other, rather than 5 feet of each other.

59. Although DISH provides more technical support for its later proposal of 60 + 10 $\log_{10}$(P) dB, including references to two 3GPP submissions, from Qualcomm and Intel respectively, and one CEPT (European Conference of Postal and Telecommunications Administrations) study that proposed levels less stringent than 60 + 10 $\log_{10}$(P) dB in various situations, we observe that applying the above assumptions to the 60 + 10 $\log_{10}$(P) dB level would result in a separation of 14 meters (about 46 feet), an unacceptably high separation compared to industry norms. In addition, each of these studies considers a different case than we consider here, and thus is not directly applicable. Finally, we note that despite these studies, 3GPP has adopted the level of 80 + 10 $\log_{10}$(P) dB for the protection of the vast majority of bands, and offering a level of only 60 + 10 $\log_{10}$(P) dB may not allow full use of the 1995–2000 MHz band. Further, DISH argues that independent of the OOBE level, interference can only occur 0.25% of the time. However, DISH offered no data to support its conclusions. In sum, contrary to DISH's assertions that this emission limit is not necessary to protect the 1995–2000 MHz band, we find attenuating OOBE in 1995–2000 MHz by a factor of 70 + 10 $\log_{10}$(P) dB will provide needed protection to the 1995–2000 MHz band.

60. In addition to providing reasonable protection from interference, 70 + 10 $\log_{10}$(P) dB is the level the Commission has already determined appropriate for protection of PCS operations below 1995 MHz, and given the expected similarity of operations in the 1995–2000 MHz band, this level is also applicable to AWS–4 emissions into the 1995–2000 MHz band. DISH suggests that this is not an applicable precedent because it was previously applied at 5 megahertz separation from the MSS/ATC band, not at the band edge. DISH suggests that precedents such as 60 + 10 $\log_{10}$(P) dB, 55 + 10 $\log_{10}$(P) dB, or 43 + 10 $\log_{10}$(P) dB are more relevant. We disagree with DISH because we find that the interference in the 1995–2000 MHz band will be driven by the AWS–4 OOBE into the 1995–2000 MHz band itself, not by the emission levels of the transmissions outside these frequencies. Therefore, the frequency separation from the band edge is not determinative of establishing the OOBE limit. In addition, the 60 + 10 $\log_{10}$(P) dB level is from a study of TDD to FDD interference released by the Commission's Office of Engineering and Technology (OET), which did not result in the adoption of this limit into our rules. Although this study considers a similar case of mobile-to-mobile interference, the difference results from differing assumptions, including assumptions that the victim handset is using UMTS and can tolerate an interfering signal 11.8 dB stronger than its desired signal. LTE mobiles, however, cannot necessarily tolerate such high levels of interference, and we find, in agreement with the modified Motorola assumptions discussed above, that the interfering signal should be no stronger than the mobile's noise floor. Applying this one change to the assumptions of the OET study would result in level of at least 71 + 10 $\log_{10}$(P) dB. DISH also argues that the 55 + 10 $\log_{10}$(P) level, used in BRS, is a similar case of TDD to FDD interference. There are many differences between the BRS band and the 1995–2000 MHz band, including the flexibility of BRS operators to synchronize their systems to avoid interference and the greater ease of achieving frequency separations in a 194 megahertz band. In addition, we note that the BRS rules apply a level of 67 + 10 $\log_{10}$(P) to fixed stations in the event of interference complaints, much closer to the 70 +10 $\log_{10}$(P) level we adopt here. Further, as discussed above, the 43 + 10 $\log_{10}$(P) dB level does not provide adequate protection from interference in this case and so is not appropriate here.

61. Although applying this limit of 70 +10 $\log_{10}$(P) dB at the edge of the AWS–4 band may be more restrictive than applying it at 1995 MHz and below, we find DISH's assertions that adopting this limit at and below 2000 MHz would increase the cost of mobile devices, require significant power reductions, and require a roll-off region to be poorly supported and unpersuasive. DISH did not quantify these hardships with specific cost numbers, filter insertion losses, power reduction requirements, or the amount of spectrum impacted. Nor did DISH explain what factors would increase the cost of the mobile devices, so it is not clear if these impacts would be independent of or

additive to one another. For example, there is a trade-off between filter roll-off and filter cost (and therefore device cost), so it may not be reasonable to assert both hardships will result. Further, we note that to the extent there is a roll-off region or power reduction region, these reduce the power in the lower part of the AWS–4 uplink band, but do not necessarily render it unusable. For example, if there is reduced coverage in the first 5 megahertz, it may still be usable for capacity in areas of good coverage. In fact, with technological advancements it may be put to use dynamically. For example, a base station scheduler using a 10 megahertz carrier in 2000–2010 MHz could assign mobiles in good signal conditions (and therefore requiring less power to close the link) to the lower 5 megahertz, and mobiles in poor signal conditions (requiring higher power) to the upper 5 megahertz, thereby making use of all of the spectrum.

62. Similarly, we find to be flawed DISH's arguments that the limit of 70 + 10 $\log_{10}$(P) dB at and below 2000 MHz would render 25% of the AWS–4 uplink spectrum unusable and increase AWS–4 deployment costs by 15–30% DISH's argument for rendering 25% of the uplink unusable actually asserts that base station operations in the 1995–2000 MHz band would potentially overload its AWS–4 base station receivers; DISH does not make an argument based on the AWS–4 uplink OOBE limit. Therefore, this argument is not relevant to the OOBE limits on AWS–4 devices. However, we do discuss potential interference from the 1995–2000 MHz band to AWS–4 base stations below. Similarly, DISH argues that the anticipated OOBE from 1995–2000 MHz band transmitters above 2005 MHz will require additional site builds where colocation is not possible, and makes some high-level, general statements that the impact represents about a 15% increase in the number of sites to be built. This is also not relevant to the limit of 70 + 10 $\log_{10}$(P) dB at 2000 MHz for the AWS–4 uplink. The technical requirements for base stations in the 1995–2000 MHz band are outside the scope of this Report and Order and will be addressed in the *H Block NPRM.*

63. We also find for the reasons stated above that, to the extent imposing a limit of 70 +10 $\log_{10}$(P) dB at and below 2000 MHz does have some negative impact on the usability of the AWS–4 uplink, this impact is balanced by the increased utility of the 1995–2000 MHz band. DISH argues that its claimed loss of 25% of its uplink spectrum to enable the full flexible use of the 5 megahertz of the 1995–2000 MHz band will result in no net increase in the amount of spectrum available for broadband. However, this claim overlooks the fact that if 1995–2000 MHz is paired with 1915–1920 MHz, the calibrated restrictions we place on AWS–4 may enable the Commission to make available 10 megahertz of broadband spectrum. Moreover, the restrictions would still allow the full use of at least 5 megahertz (if not more) of uplink (*i.e.,* at least 2005–2010 MHz of the 2000–2010 MHz uplink segment) and the full 10 megahertz of paired downlink spectrum (*i.e.,* 2180–2190 MHz). This would not be the case if the restrictions at issue were imposed on 1995–2000 MHz in a scenario where that spectrum is only paired with another 5 megahertz. And, even if 1995–2000 MHz becomes an unpaired downlink band, DISH's argument rests on the assumption that 5 megahertz of uplink in the 2000–2020 MHz band is equivalent to 5 megahertz of downlink in the 1995–2000 MHz. As discussed above, this argument is flawed, because (1) there is more need for downlink spectrum than uplink spectrum, (2) the restricted use of 5 megahertz would have less of an impact to a 10 or 20 megahertz carrier in the AWS–4 band than it would to a 5 megahertz carrier in the 1995–2000 MHz band, including a carrier that would use the 1995–2000 MHz band to expand an existing use of the PCS band, (3) given the downlink-limited nature of broadband capacity, the loss of 5 megahertz of uplink spectrum in a band with two paired 10 + 10 megahertz blocks may have no impact on actual network capacity, and (4) an extension of an existing band is more easily utilized than a new band.

64. We are also not convinced by DISH's argument that adopting this limit will protect and favor an unassigned band over an assigned band. Because there has been no deployment of terrestrial services, devices, or base stations in either band, we find this argument unpersuasive. DISH further argues that adopting this limit places ''the entire burden'' on AWS–4, and that imposing this limit is premature and an attempt to predetermine the rules for the 1995–2000 MHz band. We disagree. We do not set rules for 1995–2000 MHz in this proceeding; rather, we set some limitations on AWS–4 which are balanced by promoting the usability of the 1995–2000 MHz band.

65. In addition, the likely practical impact of technical protections for the 1995–2000 MHz band in the AWS–4 uplink is small. We are not reclaiming any spectrum; rather, we are implementing an OOBE limit that may reduce the power levels on some uplink spectrum. As discussed above, with newer technologies such as LTE, power reductions of a portion of a carrier do not prevent it from being put to use in some portions of a cell and augmenting capacity. Further, current broadband networks use far more downlink capacity than uplink capacity. Based on prevailing traffic patterns, a licensee of AWS–4 authority with 20 MHz of downlink capacity is very likely to have excess uplink capacity in any case. DISH states that this line of reasoning is ''misguided'', because DISH needs 40 megahertz to compete, and needs ''more spectrum, not less.'' However, DISH fails to address the asymmetry of traffic, and only makes the blanket statement that it needs more spectrum. Of course, like all operators, DISH is free to acquire more spectrum as needed, and in fact we observe that DISH has spectrum in other bands, including in the 700 MHz Band. In any case, we are creating 40 megahertz of terrestrial rights. Although the rules we adopt may limit the power levels in part of the uplink spectrum, they do not prohibit its use, and as discussed below, they leave room for the licensee of AWS–4 operating authority to find technical or business approaches to increase the utility of the uplink spectrum if needed.

66. Finally, we find DISH's arguments that adopting this emission limit would delay its deployment time frame by causing delay in equipment standards in 3GPP to be unpersuasive. First, the Commission has historically not based its decisions regarding the appropriate technical rules for a wireless service merely on the potential of those decisions to delay the development of private party technical standards. Second, DISH is not required to await 3GPP standards resolution to design, test, and deploy equipment, particularly if it is the only operator in the band. Rather, a decision to wait until 3GPP has established final standards is an internal business decision, not a delay imposed by the Commission's development of technical rules for the service. Third, the only change necessary in the 3GPP standard would be modifying band 23 to accommodate the emission limit at 2000 MHz (and the power limits for operations in 2000–2005 MHz); many of the other parameters for this band (*e.g.,* OOBE at 2020 MHz; duplex spacing; frequencies; channel numbers; and so forth) could remain the same. Sprint has indicated that this additional work should take less than 6 months, and it has stated its commitment to facilitating relevant work in 3GPP. Fourth, DISH can also

mitigate a delay in obtaining final standards in several ways. For example, in its comments, DISH identifies several groups of tasks that would need to be completed prior to the launch of service, but states that the task groups must be performed serially, taking four years in sum. We do not believe that either engineering or business practices require these tasks be completed in a serial process; rather, we believe that they can be accomplished in part in parallel. Indeed, in the WCS proceeding, AT&T indicated that about half of the time needed to develop standards would overlap with equipment design and equipment testing. If DISH were to apply a similar level of overlap to the tasks it outlines, it would still be able to meet its proposed 4 year timeline for launching service. In sum, while DISH makes unsupported, speculative, and vague statements as to the possible impact of 3GPP timing on its market entry, the impact of not adopting these rules is clear and detrimental to the public interest.

67. As discussed above, DISH also proposed a combination of rules and commitments that it says will allow full use of the 1995–2000 MHz band while preventing any 3GPP delay. In addition to finding above that this proposal does not facilitate full flexible use of the 1995–2000 MHz band, we also find that it does not reduce the likelihood of 3GPP delays. DISH bases its argument on its assertion that integration of an external duplexer will allow it to meet a level of 60 + 10 $\log_{10}$(P) dB without changing the design of its chipset. However, as DISH has pointed out, the 3GPP standards contain the current ATC rule for OOBE in 1995–2000 MHz in the device co-existence table, and regardless as to whether the limit is 60 + 10 $\log_{10}$(P) dB or 70 + 10 $\log_{10}$(P) dB, 3GPP may choose to update this table and evaluate the impact of the new level on device design. Further, since the level of 60 + 10 $\log_{10}$(P) dB affords less protection than 70 + 10 $\log_{10}$(P) dB, it may create more contention and delay in 3GPP than our proposal. In summary, we do not find support in the record that adopting a level of 60 + 10 $\log_{10}$(P) dB will bring operations in the AWS–4 band to market sooner than the attenuation of 70 + 10 $\log_{10}$(P) dB that we do adopt.

68. *Private Agreements.* We recognize that technological improvements in devices in the 1995–2000 MHz band, as well as willingness on the part of licensees of the 1995–2000 MHz band to accept a higher probability of interference, could reduce the need for OOBE restrictions in 1995–2000 MHz. Therefore, we allow for licensees of AWS–4 authority to enter into private operator-to-operator agreements with all 1995–2000 MHz licensees to operate in 1995–2000 MHz at OOBE levels above 70 + 10 $\log_{10}$(P) dB.

69. *Summary.* We find that while DISH argues that the imposition of an OOBE limit of 70 + 10 $\log_{10}$(P) dB on AWS–4 uplink operations will render 5 megahertz of the AWS–4 uplink unusable and create delays in 3GPP, these arguments are unsupported, speculative, and vague, and in some cases not relevant to the uplink OOBE limit. Similarly, we do not find DISH's recent proposal of 60 + 10 $\log_{10}$(P) dB at 2000 MHz to be an appropriate limit. While we acknowledge that imposition of the limit of 70 + 10 $\log_{10}$(P) dB may have a negative impact on the usability of a portion of the AWS–4 uplink band, this is more than offset by the public interest benefits of increasing the usability of the 1995–2000 MHz band. Moreover, some of DISH's objections are not relevant to the OOBE limit on the AWS–4 uplink, but instead have to do with power and OOBE for operations in the 1995–2000 MHz band. As discussed below, DISH in fact does also suggest OOBE and power limitations for the 1995–2000 MHz band. As discussed elsewhere, we have had an open proceeding since 2004 that proposed full power use in 1995–2000 MHz, and an OOBE limit of 43 + 10 $\log_{10}$(P) dB for H block transmitters. Therefore, DISH has been aware of these issues for some time. These issues, moreover, can be addressed in the *H Block NPRM.* Further, even if our actions do in fact create only 15 megahertz of usable uplink for terrestrial use, this Report and Order still creates a large increase in the overall utility of this spectrum. That is, 15 megahertz of full usable terrestrial uplink can be put to more productive use than 20 megahertz of MSS/ATC uplink spectrum. For example, one commenter suggested that this conversion creates billions of dollars in value. For all these reasons, we find that requiring an attenuation of 70 + 10 $\log_{10}$(P) dB at and below 2000 MHz is appropriate for the AWS–4 uplink.

70. Finally, we decline to address the request by DISH that we clarify that the existing linear interpolation of the OOBE between 2000 MHz and 1995 MHz should be calculated in watts, rather than in dB. Because we adopt a flat OOBE limit across 1995–2000 MHz, this issue is moot, and we do not make a determination on it.

71. *Measurement Procedure.* We adopt the measurement procedure set forth in Section 27.53(h) of our rules to determine compliance with this limit. This section requires a measurement bandwidth of 1 megahertz or greater with an exception allowing a smaller measurement bandwidth in the first megahertz adjacent to the channel.

72. In sum, in order to maximize the public interest, comply with Congressional direction, and best balance the most efficient use of all relevant spectrum bands, including enabling future operations in the 1995–2000 MHz band and creating a useful AWS–4 band, we set the OOBE limit of 70 + 10 $\log_{10}$(P) dB at all frequencies at or below 2000 MHz.

(iii) Interference with operations in 2020–2025 MHz

73. We conclude that the 43 + 10 $\log_{10}$(P) dB OOBE limit and the measurement procedure set forth in § 27.53(h) are appropriate for protecting the 2020–2025 MHz band. No commenters opposed this proposal. Thus, for the reasons articulated in the *AWS–4 NPRM,* 77 FR 22720, Apr. 17, 2012, and in the *ICO Waiver Order,* 74 FR 29607 (Jun. 23, 2009), we find that this OOBE limit remains appropriate.

(iv) Interference with operations above 2025 MHz

74. We conclude the 43 + 10 $\log_{10}$(P) dB OOBE limit and the associated measurement procedure defined in § 27.53(h) are appropriate for protecting federal operations and BAS and CARS operations at 2025–2110 MHz. This limit is consistent with the record and no commenters disagreed with a 43 + 10 $\log_{10}$(P) OOBE limit above 2025 MHz, thus we conclude the record indicates that the benefits of the proposal outweigh any potential costs. Thus, we find it appropriate to continue to apply the 43 + 10 $\log_{10}$(P) OOBE limit and its associated measurement procedure that has effectively been in place since 2009.

(v) Interference with operations below 2180 MHz

75. We adopt an OOBE limit of 43 + 10 $\log_{10}$(P) dB to protect wireless systems that will operate below 2180 MHz. This conclusion is supported by the record. Furthermore, we anticipate future operations in the 2155–2180 MHz band will be similar in design and use to cellular and PCS systems, in which the 43 + 10 $\log_{10}$(P) dB limit has been used effectively in limiting adjacent channel interference between systems operating in the same direction (*e.g.,* downlink next to downlink). We therefore adopt the 43 + 10 $\log_{10}$(P) dB OOBE limit below 2180 MHz for all transmitters operating in the 2180–2200 bands. With no commenters opposing this emission limit, we further conclude

that its benefits outweigh any potential costs.

(vi) Interference with operations above 2200 MHz

76. *Background.* In the *AWS–4 NPRM,* the Commission sought comment on the appropriate OOBE limit for licensees of AWS–4 downlink spectrum at 2180–2200 MHz in order to protect adjacent block operations, including federal operations at 2200–2290 MHz. The Commission observed that the part 25 rules set forth strict emission limitations (-100.6 dBW/4 kHz EIRP) in the 2180–2200 MHz band, including at the 2200 MHz band edge. The rules also prohibit the location of 2180–2200 MHz base stations within 820 meters of a Federal earth station operating in the 2200–2290 MHz band. In 2009, however, the Commission waived the part 25 emission limit (-100.6 dBW/4kHz EIRP) rule for one of the 2 GHz MSS/ATC licensees with regard to operations at or above 2200 MHz; instead of the rule, that licensee was required to satisfy the terms of an operator-to-operator agreement between the MSS/ATC licensee and certain federal operators in the 2200–2290 MHz band. That agreement specified that, in certain circumstances, the MSS/ATC licensee was required to satisfy the part 25 emission limit, but in other circumstances, only had to satisfy the standard Commission emission limit of $43 + 10 \log_{10}(P)$ dB. In December 2012, DISH and federal users of the 2200–2290 MHz band entered into an operator-to-operator agreement, which the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce transmitted to the Commission. The agreement specifies that DISH (through its subsidiaries, as appropriate) will operate each base station in the 2180–2200 MHz band such that the power spectral density (PSD) of the signal received at existing Federal earth stations and aeronautical mobile telemetry (AMT) stations shall not exceed agreed upon levels. The agreement also contains provisions for addressing the operation of 2180–2200 MHz base station relative to new federal stations to be deployed in the 2200–2290 MHz band.

77. *Discussion.* We adopt the following approach for protecting Federal operations in the 2200–2290 MHz band from harmful interference from AWS–4 operations in the 2180–2200 MHz band. First, as discussed further below, we permit AWS–4 operators and Federal operators to enter into an operator-to-operator agreement that will specify terms of the permissible AWS–4 OOBE limits and/or maximum actual AWS–4 emissions to be received at the sites of Federal operations in the 2200–2290 MHz band. Second, we establish default OOBE limits for AWS–4 operations into the 2200–2290 MHz band in the event such private agreement were not in effect (*e.g.,* the agreement was terminated pursuant to its terms); AWS–4 licenses return to the Commission (*e.g.,* for a licensee's failure to meet the construction requirements).

78. We adopt this approach after careful analysis of the options before us. As explained above, the current ATC regime for protecting Federal operations in the 2200–2290 MHz band is a mix of Commission rules, waiver orders, and operator-to-operator agreements. As a result, the two MSS/ATC licensees have different interference protection requirements with respect to Federal operators in the 2200–2290 MHz band. Further, as noted above, during the course of this proceeding, the current 2 GHz MSS/ATC licensees (and prospective AWS–4 licensees) entered into an operator-to-operator agreement with Federal operators in the 2200–2290 MHz band. It is against this backdrop that we promulgate OOBE rules for AWS–4 base station emissions into the 2200–2290 MHz band, which, like the ATC regime, will both set clear rules and allow licensees of AWS–4 operating authority to deviate from those rules by entering into operator-to-operator agreements, which will be transmitted to the Commission by NTIA.

79. First, we permit, but do not require, licensees of AWS–4 authority to enter into operator-to-operator agreements with Federal operators at 2200–2290 MHz to address the attenuation of emissions from AWS–4 base stations operating at 2180–2200 MHz into the adjacent Federal band, so long as such agreements do not otherwise run afoul of other Commission rules. We observe that the existing MSS/ATC licensees and federal users of the 2200–2290 MHz band have already effectuated such an agreement on what they, as actual operators, find to be the best environment to avoid actual harmful interference. We applaud the adjacent Federal and non-Federal operators for reaching this agreement and, with this Report and Order, provide a foundation for this agreement and other similar agreements that might be reached in the future without the need for a waiver or other special permission from the Commission. Therefore, we permit the DISH-Federal Agreement to govern AWS–4 base station emissions from 2180–2200 MHz into the 2200–2290 MHz band. Specifically, when, as discussed below, the licenses held by the current 2 GHz MSS licensees are modified to include AWS–4 service, we will include as conditions to such license modifications the requirement that the licensees of AWS–4 operating authority must comply with the DISH-Federal Agreement with regard to the permissible AWS–4 emissions into the 2200–2290 MHz band and/or the maximum actual AWS–4 emissions to be received at the specified sites of Federal operations in the 2200–2290 MHz band. To ensure that this agreement, and any subsequent agreements are consistent with other Commission rules and do not impede the operation of secondary markets, we require that the licensee of AWS–4 authority who is a party to an operator-to-operator agreement maintain a copy of the agreement(s) in its station files and disclose it, upon request, to prospective AWS–4 assignees, transferees, or spectrum lessees, to Federal operators in the 2200–2290 MHz band, and to the Commission.

80. Second, to ensure that OOBE limits are established in the event such private agreements are not entered into or do not address all situations between AWS–4 operations in the 2180–2200 MHz band and Federal operations in the 2200–2290 MHz band, we establish default OOBE limits for AWS–4 emissions into the 2200–2290 MHz band. Because the record does not contain any technical justification to support any specific OOBE limit, and because the Commission did not propose a specific limit in the *AWS–4 NPRM,* we adopt the protection levels contained in the ATC rules relative to protection of Federal operations in the 2200–2290 MHz band. Accordingly, AWS–4 base stations operating in 2180–2200 MHz shall not exceed an EIRP of -100.6 dBW/4 kHz for emissions into the 2200–2290 MHz band. Further AWS–4 base stations operating in 2180–2200 MHz may not be located less than 820 meters from a U.S. Earth Station facility operating in the 2200–2290 MHz band.

81. Finally, to avoid possible confusion between the operation of an operator-to-operator agreement and the default OOBE limit, we clarify the application of our rules in the event that (1) an operator-to-operator agreement ceases to operate (for whatever reason) or (2) is operative for less than the entire universe of AWS–4 licenses or Federal operations in the 2200–2290 MHz band. In either case where the agreement is not in effect, the licensee of AWS–4 operating authority must comply with the default rule. For example, should the DISH-Federal Agreement terminate

for any reason, DISH (assuming it is the licensee of AWS–4 authority) would be required to operate pursuant to the default rule.

82. To ensure that AWS–4 base stations would be able to operate pursuant both to an operator-to-operator agreement and to the default rule, equipment manufacturers may seek equipment authorization for equipment designed against either the OOBE limit in the default rule, the OOBE limit in an executed operator-to-operator agreement between a licensee of AWS–4 authority and Federal operators in the 2200–2290 MHz band (which must provide at least 43 + 10 $\log_{10}$ (P) dB of attenuation), or both, except as specified below. We shall approve or deny the equipment authorization, based on testing against whichever (or both) OOBE the manufacturer requests.

83. We recognize, however, that equipment designed to operate to the stricter default OOBE limits will also comply with any more relaxed OOBE limit contained in an operator-to-operator agreement. In the case where equipment is intended to be operated at either the default or the relaxed limits, we believe the equipment will be either modified or adjusted by the manufacturer or in the field. That is, we expect the equipment to have more than one mode of operation in this case. We require the application for equipment authorization for such equipment to clearly demonstrate compliance with both limits. If at the time of authorization the equipment is only approved for compliance with one limit, but is expected to be modified subsequently by the manufacturer to operate in another mode either in the factory or in the field, the original equipment must be approved to permit such changes or meet such changes as allowed in the permissive change rules for equipment authorization.

84. In addition, a licensee in the AWS–4 band may operate its base stations consistent with its operator-to-operator agreement only if such an agreement is in effect. In any other situation, including where such an agreement existed, but has been terminated (for whatever reason), the licensee must operate AWS–4 base stations that have obtained equipment authorization based on the default rule. To the extent that a licensee of AWS–4 authority that is a party to an operator-to-operator agreement installs and operates bases stations that are authorized against an OOBE limit that is less stringent than the default rule, that licensee is solely responsible for ensuring that its equipment would be authorized to operate in the event that the agreement terminates (for whatever reason).

(vii) Interference with Global Positioning Systems (GPS) operations

85. *Background.* In the *AWS–4 NPRM,* the Commission observed that the current Part 25 MSS/ATC rules require certain protection limits over the GPS band at 1559–1610 MHz. Specifically, the current rules require 2 GHz MSS/ATC base stations and mobile terminals to provide an EIRP limit of -70 dBW/MHz or -80 dBW/700Hz, measured over any two millisecond active transmission interval, in the 1559–1610 MHz band. The Commission also observed that different MSS/ATC bands have different frequency separations from the GPS band and sought comment on whether any special interference rules should apply to AWS–4 operations to protect GPS service.

86. Some parties submitted comments asking for tighter emissions limits over the GPS band. USGIC argued that the current part 25 OOBE limits for the protection of GPS operations at 1559–1610 MHz from terrestrial operations in the 2 GHz band are obsolete and proposed that the Commission adopt the EIRP emission limits agreed to by TerreStar and DBSD in their ATC authorization proceedings—EIRP emission limits for mobile transmitters of -95dBW/MHz for wideband signals and of -105dBW/kHz for narrowband signals, and EIRP emission limits for fixed or base station of -100dBW/MHz for wideband signals and of -110dBW/kHz for narrowband signals. Deere similarly asserted that the OOBE limits in the Part 25 rules are not sufficient to protect GPS operations at 1559–1610 MHz, observed that TerreStar and DBSD had agreed to more stringent limits, and recommended that the Commission ''further study this issue and consider an update to the OOBE limit'' that should be applied to AWS–4 operations. On September 27, 2012, DISH and USGIC submitted a letter agreement in which DISH agreed to limit its OOBE EIRP densities over the 1559–1610 MHz band to the limits contained in USGIC's comments.

87. Other parties opposed the addition of GPS specific protection limits for AWS–4 operations. CTIA stated that GPS protection limits are not necessary for AWS–4 operations because the AWS–4 band is located several hundred megahertz away from the GPS band. CTIA further observed that operations in bands much closer to the GPS frequencies, such as the AWS–1 band (1710–1755 MHz; 2110–2155 MHz), operate with an OOBE limit of 43 + 10 $\log_{10}$(P) dB into the GPS band and these operations have not given rise to any complaints of interference to GPS. Instead of adopting OOBE limits, either by rule or by license condition, CTIA recommended that the Commission continue its recent efforts to examine receiver performance and noted that the Commission had recently held a workshop on receiver performance issues. LightSquared also stated that the Commission should focus its efforts to protect GPS by examining GPS receiver reliability standards. Greenwood claimed that the -105dBW/MHz EIRP limit would be reasonable if implemented over time, provided that receiver protection requirements for GPS/GNSS receivers increase to mitigate interference susceptibility. Greenwood, like CTIA, also observed that there are many millions of devices transmitting between the GPS and AWS–4 bands that operate in bands that do not have specific OOBE protection levels for GPS and that are not causing OOBE interference to GPS.

88. *Discussion.* The Commission has long recognized the importance of GPS and our responsibility to ensure that it receives appropriate interference protections from other radiocommunication services. The Commission generally supports the actions of licensees to resolve interference issues raised by other spectrum holders or users through private agreements, where, as is the case here, they are not otherwise inconsistent with Commission rules or policies. Because the prospective licensees of AWS–4 operating authority have reached a private agreement with the industry council representing GPS interests, the USGIC, we believe the most appropriate approach is to require that, as a license condition, the licensees comply with this agreement and the specific GPS protection limits contained therein. This is consistent with the USGIC's request that we ''condition AWS–4 licenses with the OOBE limits jointly agreed by DISH and the USGIC.'' The licenses, moreover, shall remain subject to this license condition in the event that the licensees assign or otherwise transfer the licenses to successors-in-interest or assignees. To the extent that AWS–4 licenses return to the Commission (*e.g.,* for a licensee's failure to meet the construction requirements), the Commission will, prior to reassigning such licenses, consult with NTIA about the need for specific OOBE requirements on the new licenses to protect GPS operations in the 1559–1610 MHz band.

89. In requiring the licensees comply with their voluntary agreement, we need not—and do not—reach the issue of

determining whether the record contains sufficient information on whether and, if so, at what level, to establish an OOBE limit rule for protection of GPS from AWS–4 operations. We observe that the USGIC stated that both it and its member Deere believe that the emissions limits for the GPS band for services operating in other frequency bands should be considered on a ''case-by-case basis.'' We make no determination as to whether the limits in the private agreement are appropriate or viable for services operating in other spectrum.

(viii) Interference with Other Bands

90. DISH suggested that we should impose emission limits on the 1995–2000 MHz block and on the 1930–1995 MHz PCS blocks, as well as power limitations for 1995–2000 MHz operations. Establishing such limits are outside the scope of this Report and Order, which sets service rules for AWS–4 spectrum, not the 1995–2000 MHz or 1930–1995 MHz bands. OOBE and power limits for the 1995–2000 MHz band will be addressed in the *H Block NPRM.* To the extent that any party seeks a change in the existing PCS rules, that party is free to petition the Commission for a rule change.

91. Nevertheless, we observe that DISH proposed that the Commission limit 1995–2000 MHz block base station operations by an attenuation of 70 + 10 $\log_{10}$(P) dB at and above 2000 MHz, and later proposed instead that such operations should be attenuated by a factor of 79 + 10 $\log_{10}$(P) dB at and above 2005 MHz. Similarly, DISH suggested that the in-band transmit power of operations in the 1995–2000 MHz band should be significantly reduced, i.e., that this should be a low power band. These proposals could reduce the usability of the 1995–2000 MHz band. Such limits appear to be inconsistent with our general finding that the public interest, consistent with the Spectrum Act, is best served by preserving the usability of 1995–2000 MHz even if there is a possibility of reduced usability of the lower portion of the AWS–4 uplink band. Thus, we caution any licensee of AWS–4 operating authority against designing or deploying its network (except at its own risk) assuming either of these levels of OOBE protection for the 2000–2005 MHz band from the 1995–2000 MHz band or low power limits in the 1995–2000 MHz band. As noted below, the Commission will not take action to protect licensees of AWS–4 operating authority from interference that arises in such a scenario. We expect that licensees and their equipment suppliers will take this warning into account when establishing technical specifications, including industry standards, and procuring equipment for the band. To the extent that satellite receivers have already been deployed, which could suffer reductions in performance if full power services are deployed in 1995–2000 MHz, we note that our proceeding proposing full power flexible use for 1995–2000 MHz has been open since 2004, before satellites operating in the 2000–2020 MHz band were launched, or even likely designed. Therefore, we expect that the satellites were designed with this overload scenario in mind and there should, therefore, be no impact to MSS. To the extent this is not the case, we do not expect to limit use of 1995–2000 MHz due to any limitations of receivers deployed after our proceeding on use of 1995–2000 MHz was opened.

2. Co-Channel Interference Among AWS–4 Systems

92. Co-channel interference rules prevent harmful interference between geographically adjacent licenses operating in the same spectrum. Specifically, to avoid this interference, the Commission adopts field strength limits that apply at the geographic edge of the license area. In the *AWS–4 NPRM,* the Commission proposed that the current AWS–1 signal strength limit be applied to AWS–4 operations. we must adopt signal strength limits here. With no commenters opposing this proposal, we conclude that the benefits of our proposal outweigh any potential costs. As we are basing our technical rules generally on AWS–1 rules where applicable, we continue to believe it appropriate to adopt the AWS–1 co-channel interference requirements for AWS–4. Thus we adopt the proposed co-channel interference levels and expand § 27.55(a)(1) of the Commission's rules to include the 2180–2200 MHz band. We observe, however, that the assignment approach we adopt below likely will result in an individual licensee obtaining assignments for geographically adjacent AWS–4 EA licenses. In such a scenario, that licensee may choose not to observe this signal strength limit between its geographically adjacent AWS–4 licenses, so long as it complies with other Commission rules and the adjacent affected service area licensee(s) agree(s) to a different field strength.

3. Receiver Performance

93. We decline to address receiver performance issues at this time due to lack of details and discussions in the record. We will continue our efforts to collaborate with multiple stakeholders on receiver performance and establish a path forward based on the various inputs from interested parties, including the final recommendations of the Commission's Technological Advisory Council, Receiver and Spectrum Working Group.

4. Power Limits

94. The Commission sought comment on appropriate power limits for terrestrial operations in the AWS–4 band. Specifically, the Commission proposed to apply existing AWS–1 power limits for both base and mobile stations in the AWS–4 bands. As discussed below, we adopt the Commission's proposed power limit for base stations. For mobile operations we adopt a power limit of 2 watts total equivalent isotropically radiated power (EIRP) with the additional constraint that total power between 2000–2005 MHz be limited to 5 milliwatts EIRP.

a. Base Stations

95. We adopt the three base station power limits. As we explain throughout this order, we base our technical rules on those in place for AWS–1 spectrum. The proposed rules are based on those for AWS–1, and we received no comments opposing the rules. Thus, we adopt the proposal to limit AWS–4 base stations to 1640 watts EIRP for emissions less than 1 MHz and 1640 watts/MHz EIRP for emissions over 1 MHz for non-rural areas; the proposal to set AWS–4 power limits for base stations operating in rural areas at the limits specified in 27.50(d)(1–2) of the Commission's rules; and the proposal that AWS–4 base stations with transmit power above 1640 watts EIRP and 1640 watts/MHz EIRP be required to coordinate with users in adjacent AWS blocks located within 120 kilometers. These power limits will help ensure robust service in the AWS–4 bands, while also helping to minimize harmful interference into other bands. No commenters opposed these proposals.

b. Mobile Stations

96. We adopt the following power limits for AWS–4 mobile operations. First, we adopt a limit of 2 watts equivalent isotropically radiated power (EIRP) for the total power of a device operating in the AWS–4 uplink. Then, to protect future operations in the adjacent 1995–2000 MHz band, we also limit the power of the portion of a device's transmission that falls into 2000–2005 MHz to 5 milliwatts. Our adoption of these requirements is based on the following technical analysis.

97. First, we consider the total mobile power for the AWS–4 uplink band. Although we generally are applying AWS–1 technical rules to AWS–4, here we adopt the 2 watt EIRP power limit proposed by DISH. No party opposed this proposal. We find that DISH is correct in its understanding of the ATC rule, and a 2 watt power limit is more restrictive than the existing ATC rules in the case of large bandwidths, which may be deployed in this band. Conversely, we note that keeping the PSD-based ATC rule would unnecessarily limit flexibility, and it could restrict the use of narrow transmission bandwidths, such as an LTE mobile transmitting on only a few resource blocks. We agree with DISH that a 2 watt EIRP for AWS–4 mobiles will provide adequate protection to PCS mobiles operating at 1990–1995 MHz.

98. Second, as discussed above, to promote the best and highest use of spectrum, to fulfill our statutory obligations, and to maintain consistency with past Commission actions, we determine that it is in the public interest to ensure the efficient and robust use of both the 1995–2000 MHz band and the AWS–4 band, even if that results in adopting targeted rules that partially limit the usability of a portion of the AWS–4 uplink band. For these reasons, above we establish specific attenuation requirements to address interference from AWS–4 OOBE into the 1995–2000 MHz band. OOBE limits do not, however, address overload issues. Overload interference can occur in a receiver when it receives signals outside of the frequencies of the desired signal, especially if they are of a much higher power than the desired signal. Overload interference can be managed by improving receiver performance through filtering or other techniques, or by placing transmit power limitations on the authorized frequencies of the potential interferer. We find below that a balance of expected improved performance for receivers in 1995–2000 MHz (relative to typical specifications) and establishing power limitations on AWS–4 operations in the 2000–2005 MHz band best mitigates the possibility of mobile-to-mobile interference from the AWS–4 uplink band to the 1995–2000 MHz band.

99. As detailed below, to establish the appropriate power limitations for AWS–4 operations in 2000–2005 MHz we make several calculations. First, we determine the signal level that future mobiles operating in the 1995–2000 MHz band can tolerate in an adjacent band, considering both the desired signal and the undesired signal levels, that is, the blocking performance. Next, we describe the user environment under which interference can reasonably be prevented. The environment defines the path losses between the interfering AWS–4 mobile and the 1995–2000 MHz receiver. Then, we establish power limits on the AWS–4 mobiles by applying the path losses to the maximum interfering signal level to work back to the allowable transmitter power.

100. *Blocking Performance.* As the Commission has not yet adopted rules for the 1995–2000 MHz band, and does not have receiver standards for comparable bands, to calculate the level of overload interference that we anticipate future mobile receivers operating in the 1995–2000 MHz band will tolerate we must turn to other sources. With the rapid adoption of 4G mobile broadband technologies, LTE is a technology commonly being deployed today. We use the 3GPP specifications for LTE user equipment (UE) operating in the nearby PCS band, band 25 (1930–1995 MHz). Although these 3GPP LTE specifications are applicable to user equipment operating in 1930–1995 MHz, not 1995–2000 MHz, and are specific to LTE devices, we feel they are a reasonable indication of the likely performance of future 1995–2000 MHz band devices.

101. In the 3GPP specifications for LTE, blocking performance is specified with a desired signal 6 dB above the reference sensitivity. For a device operating in the 1930–1995 MHz band (band 25) on a 5 megahertz channel, the reference sensitivity is −96.5 dBm. Thus, the desired signal is −90.5 dBm. Next we determine the level of the undesired signal. For interferers on the adjacent channel, the 3GPP standard specifies the ratio of the undesired to desired signal level, termed the adjacent channel selectivity (ACS), rather than an absolute blocking level. For band 25, assuming 5 MHz carriers, the ACS is 33 dB, resulting in −57.5 dBm as the level of undesired signal that the receiver must tolerate.

102. *User Environment.* The interference scenario that has been discussed in the record is where a handheld AWS–4 mobile transmitter and a handheld PCS mobile receiver are in close proximity. Based on the parameters provided in the comments of Motorola Mobility, which we find reasonable with the modification that the body loss applies to both devices as discussed above, the characteristics of this environment are:

- Mobiles are separated by 2 meters
- The mobiles are in line of sight conditions, experiencing free space path loss (FSPL)

FSPL (dB) = 20 log (d) + 20 log (f) − 27.55, where d = distance in meters and f = frequency in MHz.

For a 2 meter separation and 2000 MHz transmit frequency, this translates to FSPL = 20 log(2) + 20 log (2000) − 27.55 = 44.5 dB,

- Each mobile (TxAntGain, RxAntGain) has a combined antenna gain and head/body loss of -10 dB
- Total path losses = TxAntGain + FSPL + RxAntGain = 10 + 44.5 + 10 = 64.5 dB

103. *Power Limitation.* The allowable transmitter power for AWS–4 is thus calculated by adding the path losses of 64.5 dB to the maximum level of the undesired signal level of −57.5 dBm. Hence, we arrive at a transmitter power level of 7 dBm, which is equivalent to 5 milliwatts. Accordingly, we find that the limit on the total EIRP of AWS–4 mobiles in 2000–2005 MHz must be at most 5 milliwatts. We recognize that carriers larger than 5 MHz may be deployed in the AWS–4 spectrum, and therefore, this power limit may in some cases apply to only a portion of the total power transmitted by the mobile. Therefore, we allow a device to transmit a total of 2 watts EIRP, as long as the portion of the device's transmission in 2000–2005 MHz is limited to an EIRP of 5 milliwatts.

104. *Comparison to OOBE limit.* To confirm the appropriateness of this limit, we compare the effect of overload interference to the 1995–2000 MHz band to OOBE interference to the 1995–2000 MHz band. As discussed above, we establish an OOBE attenuation of 70 + 10 $\log_{10}$(P) below 2000 MHz for AWS–4 uplink transmissions. This corresponds to a level of −40 dBm/MHz. Applying the same isolation of 64.5 dB for 2 meters of separation, this means the level present at the 1995–2000 MHz receiver is −104.5 dBm/MHz. This is 3 dB below Motorola's suggested typical noise floor of −101.5 dBm/MHz, consisting of thermal noise of −114 dBm/MHz plus a 12.5 dB noise figure. This is an approximately 2 dB noise rise or desensitization, close to the 3 dB desensitization Motorola recommends as a threshold of interference. So the OOBE attenuation of 70 + 10 $\log_{10}$(P) and power limitation of 5 milliwatts are well balanced, with neither one allowing significantly higher probability of interference than the other.

105. *Receiver Improvements.* We note that using standard 3GPP blocking specifications, similar analysis would also imply the need for power reductions in 2005–2020 MHz. However, we believe that future

equipment for the 1995–2000 MHz band should be able to exceed these specifications, if licensees find it necessary to do so. We impose power restrictions only in the first 5 megahertz because of the difficulty of improving filter performance in the first 5 megahertz adjacent to a band.

106. *Private Agreements.* We recognize that further improvement of the performance of receivers in 1995–2000 MHz band, as well as willingness on the part of licensees of the 1995–2000 MHz band to accept a higher probability of interference, could reduce or eliminate the need for power restrictions in 2000–2005 MHz. Therefore, we allow for licensees of AWS–4 authority to enter into private operator-to-operator agreements with all 1995–2000 MHz licensees to operate in 2000–2005 MHz at power levels above 5 milliwatts EIRP. In no case, however, may the total power of the AWS–4 mobile emissions exceed 2 watts EIRP.

107. *Alternate proposal.* As discussed above, DISH also proposed a combination of rules and commitments that it says will allow full use of the 1995–2000 MHz band while preventing any 3GPP delay. In particular, part of this proposal is that DISH will designate 2000–2005 MHz as a terrestrial guard band, and DISH's devices will not transmit on those frequencies. DISH suggests that this will create more certainty for potential bidders on the1995–2000 MHz band than a power limitation such as we adopt here, and that its proposal will therefore increase the usability of that band. However, we do not adopt any rules prohibiting transmission in 2000–2005 MHz, as establishing calibrated technical limits with the flexibility to be modified via private agreements allows technical and business solutions that increase the usability of this spectrum if needed, whereas a rule such as proposed by DISH would foreclose any productive use of the spectrum. We also do not believe that DISH's proposal will increase the usability of the 1995–2000 MHz band over the rules we adopt here, which adequately protect the 1995–2000 MHz band through a combination of OOBE limits and power limitations.

108. In sum, we decline to adopt the proposed power limit of 1 watt EIRP for mobiles. Rather, we set power limits for mobile operations in the 2000–2020 MHz band as follows: the total power of the mobile is limited to 2 watts EIRP for emissions in 2000–2020 MHz, and is limited to 5 milliwatts EIRP for the portion of any emission that falls into 2000–2005 MHz, except as provided for by private agreement between a licensee of AWS–4 operating authority and all 1995–2000 MHz licensees. No party presented data on the costs associated with different mobile power limits. Thus, given the record before us, we conclude that the potential benefits of our adopted mobile station power limit would outweigh any potential costs.

5. Acceptance of Interference into the AWS–4 Uplink Band

109. As discussed earlier, the Commission looks to maximize the flexible use of both the AWS–4 and the 1995–2000 MHz bands to enable deployment of full, robust, commercial service for mobile broadband. And, as discussed above, to promote the best and highest use of spectrum, fulfill our statutory obligations, and to maintain consistency with past Commission actions, we determine that it is in the public interest to ensure the efficient and robust use of both the 1995–2000 MHz band and the AWS–4 band, even if that results in adopting targeted rules that partially limit the usability of a portion of the AWS–4 uplink band. To this end, we have prescribed both power and emission limits on the AWS–4 mobile transmitters to prevent interference to the mobile receivers in the 1995–2000 MHz band. The Commission anticipates that the new technical rules to be provided in a forthcoming rulemaking for operation in the 1995–2000 MHz band will address interference to AWS–4 operations. Even with appropriate technical rules and good engineering practice, where uplink and downlink operations are so closely located, there will remain a potential for base stations in the 1995–2000 MHz band to interfere with the AWS–4 base station receivers. Further, although we are not adopting rules limiting the operations of MSS mobile transmitters, the proximity of uplink and downlink operations also raises the potential for 1995–2000 MHz band base stations to interfere with MSS satellite receivers. Therefore, to the extent that future operations in the 1995–2000 MHz band, operating within the rules established for use of the 1995–2000 MHz band, cause harmful interference to AWS–4 operations or MSS operations due to either OOBE in the 2000–2005 MHz portion of the AWS–4 and 2 GHz MSS uplink band or in-band power in 1995–2000 MHz, AWS–4 and 2 GHz MSS licensees must accept this interference.

110. We emphasize that we limit the acceptance of OOBE interference to the 2000–2005 MHz portion of the AWS–4 and 2 GHz MSS bands. However, should in band interference occur due to the power in 1995–2000 MHz overloading receivers above 2000 MHz, this overload can potentially affect the entire receive band. Overload interference can be prevented by improved receive filters. Therefore, if a licensee of AWS–4 operating authority determines such filters are necessary, the impact to the uplink band is limited to the transition band of the filter, not the entire band. Such a transition band would be less than 5 megahertz, thus the impact would be limited to (at most) the 2000–2005 MHz portion of the AWS–4 bands, and there is no legacy equipment impact, as ATC service has not been deployed. Finally, we note that unlike the terrestrial service, MSS has been deployed in this band, with two satellites launched. Because both satellites were launched well after the Commission initiated the H block proceeding, we expect that they were designed with this overload scenario in mind. Therefore, there should be no impact to MSS. To the extent this is not the case, we do not expect to limit use of 1995–2000 MHz due to any limitations of receivers deployed after our proceeding on use of 1995–2000 MHz was opened.

111. Thus, for the public interest reasons discussed above and because Congress requires us to make available via a system of competitive bidding the 1995–2000 MHz band, we find that the costs of the tailored limitations on the use of the 2000–2005 MHz portion of the AWS–4 band as well as possibly some portion of the 2 GHz MSS band are outweighed by the benefits of enabling full use of the 1995–2000 MHz band and of the 2005–2020 MHz portion of the AWS–4 band.

6. Antenna Height Restrictions

112. In the *AWS–4 NPRM,* the Commission proposed that the flexible antenna height rules applicable to AWS–1 should be also applied to AWS–4 stations. In response, only DISH commented on this issue. As explained below, we adopt the Commission's proposals with minor modifications.

113. *Base Stations.* We find that, consistent with the Commission's proposal, specific antenna height restriction for AWS–4 base stations are not necessary. As discussed above, the general requirement to not endanger air navigation and the effective height limitations implicitly resulting from our co-channel interference rules obviate the need for specific antenna height restrictions for AWS–4 base stations. Additionally, the sole commenter on this issue supports the Commission's position. Thus, we find specific antenna height restrictions for AWS–4 base stations are not required.

114. *Fixed Stations.* DISH suggests that a height restriction is not necessary

for AWS–4 fixed stations, because the uplink operations of AWS–4 will be more similar to BRS/EBS than AWS–1. The 10 meter height limit was adopted in AWS–1 specifically to protect the Federal operations in the 1710–1755 MHz band and the adjacent Federal bands above and below. Outside of this specific case, the Commission has not found a 10 meter height restriction necessary for other terrestrial mobile bands, such as BRS/EBS or PCS. No other comments were received on this issue. Because the AWS–4 uplink band at 2000–2020 MHz is not adjacent to Federal operations, and to promote flexibility in the use of AWS–4 spectrum, we decline to adopt a height limitation for fixed stations in the AWS–4 uplink band.

7. Canadian and Mexican Coordination

115. Because of our shared border with Canada and Mexico, the Commission routinely works in conjunction with the United States Department of State and Canadian and Mexican government officials to ensure efficient use of the spectrum as well as interference-free operations in the border areas. Until such time as any adjusted agreements, as needed, between the United States, Mexico and/or Canada can be agreed to, operations must not cause harmful interference across the border, consistent with the terms of the agreements currently in force. The list of agreements includes the ''Protocol Concerning the Transmission and Reception of Signals from Satellites for the Provisions of Mobile-Satellite Services and Associated Feeder links in the United States of America and the United Mexican States.'' We note that further modifications of the rules might be necessary in order to comply with any future agreements with Canada and Mexico regarding the use of these bands.

8. Other Technical Issues

116. In addition to the specific technical issues addressed above, the Commission also proposed applying additional part 27 rules to the AWS–4 band. Specifically, the Commission proposed applying the following rule sections: §§ 27.51 Equipment authorization, 27.52 RF safety, 27.54 Frequency stability, 27.56 Antennas structures; air navigation safety, and 27.63 Disturbance of AM broadcast station antenna patterns. The Commission reasoned that because AWS–4 will be a part 27 service, these rules should apply to all licensees of AWS–4 terrestrial authority, including those who acquire licenses through partitioning or disaggregation. No commenters opposed this proposal. Accordingly, because these rules generally apply to all part 27 services, and because, as we explain below, we find it appropriate to license the AWS–4 spectrum under our part 27 regulatory framework, we conclude that the potential benefits of our proposal would outweigh any potential costs and adopt the proposal to apply these additional part 27 rules to licensees of AWS–4 authority.

C. Protection of MSS Operations

117. We adopt a rule concerning protection of MSS operations in the 2 GHz band. The rule requires that AWS–4 operations not cause harmful interference to 2 GHz MSS operations and accept any interference received from duly authorized 2 GHz MSS operations. Further, with no commenters opposing the proposed MSS protection rules, we conclude that the benefits of these rules would outweigh any potential costs. As detailed more fully below, the approach adopted also involves reliance upon rapid terrestrial build-out by the licensees, with potential loss of MSS interference protection in the event terrestrial services are not built out. This approach is incompatible with deployment of additional MSS systems in the band, and therefore we do not anticipate accepting applications for new or modified MS operations, except from an incumbent operator or its assignee or transferee. Accordingly, we delegate authority to the International Bureau to dismiss, upon acceptance by the incumbent MSS licensees of modified license authorizing AWS–4 operations, the ''Consolidated Petition for Reconsideration of Inmarsat Ventures Limited and Inmarsat Global Limited,'' filed January 9, 2006, in IB Docket Nos. -50220 and 05–221. That petition sought reconsideration premised on the deployment of an additional MSS system in the 2 GHz MSS bands. Finally, we observe that, should a licensee of AWS–4 operating authority who also possesses 2 GHz MSS operating authority fail to satisfy its AWS–4 Final Build-out Requirement in an EA, among other things, the MSS protection rule (discussed in this paragraph) shall not apply to that EA.

D. Assignment of AWS–4 Operating Authority

118. License assignment refers to the process by which the Commission grants an entity the right to use specified channels or frequencies of radio transmission for a specified period of time; no ownership right is conveyed to the licensee. *See* 47 CFR 2.1. Sections 307–309 of the Communications Act generally govern the initial assignment of licenses. *See* 47 U.S.C. 307–309. Section 316 governs the modification of Commission licenses. *See* 47 U.S.C. 316. As discussed below, we propose to modify, pursuant to our Section 316 authority, the incumbent 2 GHz MSS authorization holders' licenses to include AWS–4 terrestrial spectrum rights.

119. Specifically, we propose to modify the existing MSS licenses to add part 27 rights and obligations for AWS–4 terrestrial spectrum use with all of the attendant rights, limitations, and obligations associated with the AWS–4 service rules we adopt herein. We find that a section 316 license modification approach is the best course of action because it is the most efficient and quickest path to enabling flexible terrestrial use of this band while ensuring compliance with the MSS protection rule described above.

120. As explained below, we believe that technological difficulties continue to make it impractical today for same band, separate mobile satellite and terrestrial operator sharing of this spectrum, and therefore propose to modify the existing MSS licenses so that satellite and terrestrial services are managed by the same operator. We observe, however, that it may become possible for such same band, separate operator sharing to become technically feasible in the future. For this reason, and for other reasons discussed below, we find it appropriate to permit licensees of AWS–4 operating authority to utilize the Commission's wireless secondary market mechanisms with respect to their terrestrial operating authority.

1. Background

121. In 2003, the Commission established the ATC rules, concluding that any grant of ATC authority would only be to MSS incumbents. The Commission limited ATC authority to the existing MSS licensees because, in part, it determined that separately controlled MSS and terrestrial mobile operations (*i.e.,* two ubiquitous mobile services) in the same band would be ''impractical and ill-advised'' as the two distinct parties would be unable to overcome technical hurdles to reach a workable sharing arrangement. Technical analyses at the time, moreover, demonstrated that granting a third party the right to use licensed MSS spectrum for terrestrial use could not occur without impacting the rights of the existing satellite licensees.

2. Discussion

122. *Section 316 License Modification.* As discussed below, we reaffirm the Commission's earlier technical findings regarding same-band, separate operator sharing between mobile satellite and terrestrial operations in this band. We believe that such a sharing scenario generally remains impractical at this time and would inappropriately affect the rights of the existing MSS authorization holders. Evidenced by the broad support among commenters for the proposed license modification approach, we conclude that the Commission's initial proposal to grant terrestrial authority to operate in the AWS–4 band to the current 2 GHz MSS licensees, through section 316 license modifications, is appropriate and will serve the public interest, convenience, and necessity.

123. Of the numerous parties who commented on this issue, only NTCH opposes the license modification procedure outright. We disagree with NTCH, and explain our reasoning below.

124. *Legal Authority.* In the *AWS–4 NPRM,* the Commission proposed modifying the 2 GHz MSS licensees' authority to operate in the AWS–4 bands by adding the authority to operate part 27 terrestrial services. This approach is consistent with the Commission's broad license modification authority, existing precedent, and the record. We therefore adopt the Commission's proposal to issue an *Order of Proposed Modification,* which accompanies this *Report and Order,* to modify the existing 2 GHz MSS licenses to include terrestrial operating authority in the AWS–4 spectrum upon the effective date of the service rules adopted herein.

125. Section 316 grants the Commission authority to modify a license if the modification promotes ''the public interest, convenience, and necessity.'' *See* 47 U.S.C. 316(a)(1). The D.C. Circuit has explained the authority granted by section 316 to be a ''broad power to modify licenses; the Commission need only find that the proposed modification serve the public interest, convenience and necessity.'' *California Metro Mobile Communications* v. *FCC,* 365 F.3d 38, 45–46 (D.C. Cir. 2004). This broad nature includes eliminating harmful interference, or the potential for such interference, as an accepted basis for ordering wholesale license modifications.

126. Numerous commenters support the Commission's proposal to exercise this authority here. For example, PIO states that the Commission ''has ample legal authority under Title III * * * to modify spectrum licenses at any time.'' DISH comments that the license modification is consistent with both FCC precedent and the Communications Act, and that it is within the Commission's purview to modify the authorizations under section 316. Globalstar states that courts have confirmed the broad nature of Congress's grant of authority under section 316 to modify licenses when doing so serves the public interest. Moreover, even MetroPCS, who opposes, in part, the proposed approach, comments that the Commission is within its authority to modify licenses in order to improve spectrum utilization.

127. Grant of AWS–4 terrestrial operating authority to the 2 GHz MSS licensees will expand the amount of spectrum available for stand-alone terrestrial mobile broadband by 40 megahertz, while also reducing the potential for interference between existing satellite and new terrestrial operations in the band. Both reducing potential interference and increasing spectrum available for mobile broadband serve the public interest. To further ensure that modifying these licenses serves the public interest, we impose performance requirements and other license conditions, which will help to ensure the AWS–4 spectrum is used to provide consumers with mobile broadband service. Therefore, as explained in greater detailed below, we conclude both that the Commission has the authority under section 316 to modify the 2 GHz MSS licenses to add terrestrial rights and that so modifying these licenses will serve the public interest.

128. As discussed herein, the Commission is proposing to modify the 2 GHz MSS licenses to establish more uniform configuration and duplex spacing, one that will be consistent with the configuration of the spectrum for terrestrial use. We undertake this modification pursuant to section 316, which provides the Commission with the authority to modify licenses, including by rearranging licensees within a spectrum band. As evidenced by the 800 MHz proceeding, for example, the Commission previously has exercised this authority to modify a license to include authority to operate on new frequencies—there the Commission modified Nextel's authorization to add the 1990–1995 MHz band, 70 FR 76704, December 28, 2005. Additionally, the Commission modified licenses to relocate operations of certain Digital Electronic Message Service licensees from the 18 GHz band to the 24 GHz band, in order to accommodate Department of Defense military systems, 62 FR 24576, May 6, 1997. In modifying licenses to rearrange the MSS duplex spacing, the Commission must meet the public interest, convenience, and necessity requirements of section 316, which we do here for the reasons detailed below. Here, our action to reconfigure an existing band among existing licensees is of a much more limited nature than in previous exercises of Section 316 authority, such as the 800 MHz re-banding for Nextel. Indeed, although the 2000–2020 MHz and 2180–2200 MHz bands are currently assigned to two different licensees, Gamma Acquisitions L.L.C. (Gamma) and New DBSD Satellite Services G.P. (New DBSD), both of these licensees are wholly owned subsidiaries of DISH. As the satellites are under common control, the modification and resulting recalibration of the satellites should present a minimal burden to the existing licensees. We direct these licensees to determine how to effectuate the reconfiguration of the 2 GHz MSS band into an A–B/A–B arrangement. Providing the licensees with the ability to determine how to best effectuate the MSS band reconfiguration should further limit any burden the reconfiguration places on them. Thus, we will modify the respective licenses of Gamma and New DBSD to reflect the assignment of the paired spectrum as 2000–2010 MHz paired with 2180–2190 MHz and 2010–2020 MHz paired with 2190–2200 MHz, based on the licensees' responses to the Order of Proposed Modification herein.

129. *Public Interest Considerations.* In the *AWS–4 NPRM,* the Commission expected modification of the 2 GHz MSS licenses would yield certain public interest benefits, including the removal of regulatory barriers that impede the Commission's goal of terrestrial mobile broadband services in the 2 GHz band. The Commission proposed that if current technology did not permit separate MSS and terrestrial mobile licensees, then license modifications pursuant to section 316 would make more spectrum available for broadband use and avoid harmful electromagnetic interference. As discussed below, to benefit the public interest, we adopt our proposal to modify the 2 GHz MSS licenses pursuant to section 316.

130. *Making More Spectrum Available for Flexible Mobile Use.* As the Commission has observed, the availability and quality of wireless broadband services is likely to become constrained if additional spectrum is not made available to enable network

expansion and technology upgrades. The National Broadband Plan notes that, should additional mobile terrestrial spectrum not become available, the result could be higher prices, poor service quality, an inability for the U.S. to compete effectively on an international basis, depressed demand and, ultimately, a drag on innovation. Although the Commission previously envisioned the 2 GHz MSS band being available to respond to the demand for spectrum, including through the development of the ATC regime, to date commercial use of this spectrum remains virtually non-existent. Therefore, to improve the public interest benefits of the 2 GHz spectrum, the Commission proposed authorizing terrestrial operations in this spectrum. Granting the 2 GHz MSS operators the ability to provide more and better services to both existing and potentially new subscribers with the same amount of spectrum improves the efficiency with which they can use the spectrum. For example, DISH has commented that use of this spectrum for satellite service is most likely to be in conjunction with terrestrial service.

131. We emphasize that, although our determination to grant AWS–4 authority to the incumbent 2 GHz MSS licensees will undoubtedly result in an increase in value of those licensees, such increase in value is not a basis for our decision today; rather, it is a consequence of our decision, which is intended to enable AWS–4 spectrum to be meaningfully and timely put to use in a manner that promotes the public interest. We believe that various aspects of the rules we are adopting will create additional public benefits in consideration of the increase in the spectrum value. We deem the Section 316 license modification approach the best and fastest method for bringing this spectrum to market, a position underscored by commenters. Thus, we conclude Section 316 license modifications are in the public interest.

132. Additionally, the technical requirements that we are adopting today for 2000–2005 MHz operations will help make the adjacent band, 1995–2000 MHz, available for terrestrial, flexible use, including for mobile broadband use. The Commission allocated 1995–2000 MHz for fixed and mobile use in 2003 and designated it for AWS use in 2004 as a downlink band paired with 1915–1920 MHz. The existence of uplink operations adjacent to downlink operations, however, raises interference concerns; we resolve those through the establishment of technical and interference rules above. Further, the Spectrum Act requires the Commission to license the 1995–2000 MHz band under flexible use service rules, unless doing so would cause interference to PCS licensees in the 1930–1995 MHz band. Enabling this band to be used efficiently for flexible, commercial use is consistent with this statutory requirement. Moreover, as explained above, wireless broadband traffic is asymmetrical with more downlink than uplink; thus the public interest is best served by limiting uplink operations at 2000–2005 MHz to facilitate potential downlink operations at 1995–2000 MHz, particularly where such a downlink band could become part of the workhorse PCS band. Accordingly, we conclude Section 316 license modifications are in the public interest.

133. Finally, we disagree with NTCH's assertion that the license modification approach we take is not in the public interest. NTCH argues the Commission's proposed actions are inappropriate and that we should accept competing applications for AWS–4 spectrum. NTCH, however, ignores the critical detail that same-band, separate operator sharing of the spectrum is not technically feasible at this time. Moreover, nothing we do today eliminates the existing mobile satellite allocation for the 2 GHz MSS band or limits the licensees' continued satellite use rights for this spectrum (other than certain targeted technical restrictions applicable to 2000–2005 MHz). The Commission recognized these technical hurdles when it established co-primary fixed and mobile allocations in the 2 GHz band. Therefore, to make more spectrum in this band available for flexible terrestrial use, including for mobile broadband, and thereby serve the public interest, we will authorize AWS–4 operations by the incumbent 2 GHz MSS licensees through license modifications. To the extent NTCH suggests the Commission remove the MSS allocation in the 2 GHz band, we consider that request to be an untimely Petition for Reconsideration of the *2 GHz Band Co-Allocation Report and Order.*

134. *Eliminating Harmful Interference.* The Commission previously determined that separately controlled MSS and terrestrial operations (*i.e.,* two ubiquitous mobile services) in the same band would be impractical because the parties would not be able to overcome the technical hurdles to reach a workable sharing arrangement. This determination suggested that the public interest would be best served by modifying the 2 GHz MSS license to allow the satellite licensee to operate terrestrial services, rather than make the band available for terrestrial licenses under a sharing regime with MSS. As discussed below, the record demonstrates that the earlier Commission conclusion regarding the impracticality of allowing same spectrum, different operator use of the AWS–4 spectrum remains valid. The majority of commenters discussing this issue concur with the Commission's assessment that harmful interference would occur if the 2 GHz MSS and AWS–4 terrestrial spectrum rights were controlled by different entities. Thus, we conclude that the public interest is best served by modifying the 2 GHz MSS license rather than allowing shared use of the band. Accordingly, based on the record before us at this time, we decline to assign AWS–4 terrestrial rights through a system of competitive bidding.

135. One party opposes the Commission's proposal that shared use of the AWS–4 spectrum remains infeasible. MetroPCS argues that the current technology environment actually allows for sharing the AWS–4 spectrum between different operators. MetroPCS suggests that use of known technologies, such as advance coding and interference cancellation and mitigation techniques, would allow for greater interference protection for satellite handsets from terrestrial broadcasts. Additionally, MetroPCS asserts that because MSS satellites ''are essentially 'bent pipes,' satellite and terrestrial operators will be able to coordinate their systems in a way that was not originally contemplated when the Commission decided that sharing was not feasible.'' Although MetroPCS is correct that DISH's satellites use a ''bent pipe'' architecture where the satellite is essentially repeating a signal generated on the ground, MetroPCS does not clarify how this would facilitate coordination. Contrary to MetroPCS's assertions, we find the record demonstrates continued technical hurdles exist. As DISH notes, although such technologies do allow for greater interference protection, they are ''*only* feasible when operations are integrated * * * [and] the reverse link interference cancellation technique * * * is not a viable solution in the absence of integration, as it requires real-time knowledge of signals for this interference to be prevented.'' Similarly, as NRTC notes, the technology necessary to share spectrum between two separate licensees, such as dynamic spectrum access and cognitive radios, is not market-proven for sharing mobile satellite and terrestrial operators or addressed in relevant technical standards. Other parties, such as US

GIC, comment that the Commission correctly concluded that multiple parties would not be able to overcome technical hurdles.

136. Also, the record contains no evidence that dynamic frequency coordination can be achieved today between separately-controlled MSS and terrestrial networks. Indeed, as DISH notes, no commenter—including MetroPCS—provides technical support that disputes the continued validity of the Commission's 2003 finding. Rather, as Sprint states, the record engineering analysis presented by DISH ''credibly indicates that frequency sharing between separate operations could cause interference between AWS–4 and MSS equipment and transmissions.'' Thus, we find that spectrum sharing between separately-licensed MSS and terrestrial operators, while perhaps possible in the future, is not viable today in this spectrum band. Consequently, we conclude that substantial technical hurdles remain, justifying authorizing AWS–4 operations by the incumbent MSS licensees.

137. We emphasize that this public interest determination is based in part on rules that will limit or potentially limit the licensees' terrestrial use of a five megahertz portion of AWS–4 spectrum to facilitate the use of 1995–2000 MHz. In particular, as explained above, we are imposing increased OOBE limits at and below 2000 MHz, reduced power limits for mobile terrestrial operations in 2000–2005 MHz, and requiring an AWS–4 A block licensee to accept interference from duly authorized lawful operations in the 1995–2000 MHz band. We do this to protect future operations in the 1995–2000 MHz band from harmful interference, to ensure the possibility of flexible commercial use of that band, consistent with Congressional direction, and to strike a balance in ensuring the efficient use of all relevant spectrum bands. The Communications Act established ''that the Commission's powers are not limited to the engineering and technical aspects of radio communications.'' *National Broadcast Co.* v. *United States,* 319 U.S. 190, 215 (1943). Rather, the Communications Act directs the Commission to '''encourage the larger and more effective use of radio in the public interest''' and to adopt '''such rules and regulations and prescribe such restrictions and conditions * * * as may be necessary to carry out the provisions of this Act.''' *See* 47 U.S.C. 303(g), (r). As explained above, we deem it necessary to set these technical limits to best maximize AWS–4 and 1995–2000 MHz spectrum for flexible terrestrial use by minimizing harmful interference between the bands. We believe the technical rules we adopt today to protect against harmful interference will promote more effective and efficient use of the 1995–2000 MHz band and the AWS–4 band and we believe that the benefits of these rules will outweigh any restrictions on the use of a portion of the AWS–4 uplink band. Moreover, any restrictions on the use of a portion of the AWS–4 band would be more than offset by the considerable increase in flexibility that the authorization holders will receive in obtaining overall terrestrial use rights under the Commission's part 27 flexible use rules instead of under the existing ATC rules.

138. Commenters did not offer specific data on the amount of benefits or costs associated with our proposed authorization of AWS–4 operations by the incumbent MSS licensees. However, because of the technical difficulties associated with coordinating between different AWS–4 licensees and the MSS licensee using the shared spectrum in the same service area, and the requirement discussed above for licensees of AWS–4 operating authority to protect 2 GHz MSS operations from harmful interference, and given the record before us and the benefits discussed above, we conclude that the potential benefits of assigning the AWS–4 spectrum rights to the existing 2 GHz MSS licensees would outweigh any potential costs.

139. *Proposed Modification.* For the reasons discussed throughout this Report and Order, we conclude that it is in the public interest, convenience, and necessity to propose modifying the existing 2 GHz MSS licenses as described in section V below. These modifications include adding part 27 terrestrial spectrum rights to the 2 GHz MSS licenses, creating more uniform duplex spacing for the MSS rights, and eliminating ATC authority from the licenses. In the unexpected event that the license modification fails to become effectuated, we will take appropriate action at that time, potentially including full reconsideration of the assignment methods contemplated in this item and based on the revised factual scenario such an occurrence would represent.

E. Performance Requirements

140. The Commission establishes performance requirements to promote the productive use of spectrum, to encourage licensees to provide service to customers expeditiously, and to promote the provision of innovative services throughout the license area(s), including in rural areas. Historically, the Commission tailors performance and construction requirements to the unique characteristics of the spectrum band at issue. For the AWS–4 band, we adopt performance requirements that will ensure that the spectrum is put to use expeditiously, while providing licensees with the flexibility needed to deploy services according to their business plans. Specifically, we require:

- *AWS–4 Interim Build-out Requirement:* Within four (4) years, a licensee shall provide reliable terrestrial signal coverage and offer terrestrial service to at least forty (40) percent of its total AWS–4 population. A licensee's total AWS–4 population shall be calculated by summing the population of each of its license areas in the AWS–4 band.
- *AWS–4 Final Build-out Requirement:* Within seven (7) years, a licensee shall provide reliable terrestrial signal coverage and offer terrestrial service to at least seventy (70) percent of the population in each of its license areas.

141. Additionally, we adopt the following penalties for failing to meet the build-out benchmarks:

- *Failure to Meet AWS–4 Interim Build-out Requirement:* Where a licensee fails to meet the aggregate AWS–4 Interim Build-out Requirement, the AWS–4 Final Build-out Requirement shall be accelerated by one year (from seven to six years).
- *Failure to Meet AWS–4 Final Build-out Requirement:* Where a licensee fails to meet the AWS–4 Final Build-out Requirement in any EA, its authorization for each EA in which it fails to meet the requirement shall terminate automatically without Commission action. To the extent that the licensee also holds the 2 GHz MSS rights for the affected license area, failure to meet the AWS–4 Final Build-out Requirement in an EA shall also result in the MSS protection rule in § 27.1136 of the Commission's rules no longer applying to that EA.

142. We adopt specific performance requirements for the AWS–4 band in an effort to foster timely deployment of flexible terrestrial mobile service in the band, and to enable the Commission to take appropriate corrective action should the required deployment fail to occur. Although the record in response to the Commission's specific performance benchmark and penalty proposals is mixed, parties generally agree that performance requirements promote the timely, productive use of spectrum. Timely deployment of wireless networks in this band is vital given the failure of any terrestrial ATC

service and failure of significant MSS to develop despite years of Commission effort to enable deployment of emerging and innovative technologies in the band.

143. We disagree with commenters who argue that our build-out requirements would be of limited value, because they either do not believe the licensee (post license modification) intends to build out using the spectrum or believe that additional conditions are needed to ensure the spectrum is utilized. As an initial matter, we observe that the incumbent 2 GHz MSS licensees generally support our seven year end-of-term build-out benchmark and have committed to ''aggressively build-out a broadband network'' if they receive terrestrial authority to operate in the AWS–4 band. (DISH Comments, WT Docket Nos. 12–70, 04–356, ET Docket No. 10–142, page 18.) We expect this commitment to be met and, to ensure that it is, adopt performance requirements and associated penalties for failure to build-out, specifically designed to result in the spectrum being put to use for the benefit of the public interest. We address requests for conditions in addition to performance requirements below.

144. *Benchmarks.* To ensure that a licensee provides service to consumers expeditiously, we adopt specific quantifiable performance requirements. Consistent with our approach to performance benchmarks in other bands—including the Upper 700 MHz C-block and the 2.3 GHz WCS band—we adopt objective interim and final build-out benchmarks. As explained below, after taking into account the full range of comments, we adopt an interim requirement that differs somewhat from that proposed in the *AWS–4 NPRM* and adopt the final benchmark proposal in the *AWS–4 NPRM.*

145. *Interim Benchmark.* We modify the proposed interim build-out requirement in response to the record. Recognizing concerns raised by commenters that the proposal may not afford a new entrant in a new flexible use terrestrial band sufficient time to deploy its network and offer service, we extend the interim build-out requirement timeframe from three to four years. Extending the interim benchmark to four years will enable service providers and equipment vendors to deploy network infrastructure and devices based on the most advanced technologies, including the LTE-Advanced standard. This is analogous to the Commission's decision in the *2012 WCS Order* in which the Commission extended the proposed build-out requirements by six months to accommodate new technological developments. 27 FCC Rcd 13641 (2012). Extending the interim benchmark from three to four years also accommodates possible timing effects that may result from our technical findings, above, to enable use of the adjacent 1995–2000 MHz band. We also increase the population benchmark from 30% to 40%, to more closely align the benchmark with interim benchmarks in other bands. Finally, we determine that a licensee's total AWS–4 population shall be calculated by summing the population, based on the most recent decennial U.S. Census Data at the time of measurement, of each of its license areas in the AWS–4 band.

146. *Final Benchmark.* We find, consistent with the record, that a final seven-year construction milestone provides a reasonable timeframe for a licensee to deploy its network and offer widespread service. No party suggested that a longer time frame would be necessary and, indeed, DISH stated that seven years is a reasonable period for a final build-out milestone. We are not persuaded by T-Mobile's proposal that we require an expedited build-out schedule. Although we expect it is possible for a licensee to meet a faster schedule, we believe such a benchmark could unnecessarily restrict the business plans of licensees, particularly new entrants. Therefore, after assessing the record and Commission precedent, we find that requiring 70% build-out at the seven-year milestone would serve the public interest.

147. As discussed above, we are adopting an EA-based AWS–4 band plan requirement and not a nationwide band plan. Setting build-out benchmarks on an EA basis is consistent with our general approach of assigning AWS–4 terrestrial spectrum rights under the Commission's part 27 rules, including permitting any licensee to avail itself of the Commission's secondary market mechanisms. Consistent with our practice in other bands, we will measure interim and final build-out benchmarks using percentages of license area population. We reject DISH's proposal to measure these benchmarks using static measures of population. This allows for more flexibility and certainty in licensing. For example, should a licensee partition some of its AWS–4 spectrum, a percentage-based approach would apply to each partition, while a single population count would not.

148. *Rural Specific Benchmarks.* We conclude that no additional rural-specific construction benchmarks are warranted beyond the performance requirements described above. We recognize that some commenters seek stricter performance requirements to promote service to rural areas. However, the performance requirements we adopt today will provide licensees with an ability to scale networks in a cost efficient manner while also ensuring that the vast majority of the population will have access to these wireless broadband services by the final benchmark. Because of the substantial capital investment and logistical challenges associated with a licensee building-out its terrestrial network to a significant percentage of the Nation's population within four and seven years, we conclude that the performance requirements we adopt are an appropriate balance.

149. *Penalties for Failure to Meet Construction Requirements.* We adopt meaningful and enforceable consequences, or penalties, for failing to meet both the interim and the final benchmarks. The penalties we adopt represent modification of the Commission's main proposal in the *AWS–4 NPRM* for the penalty for failure to meet in the interim build-out requirement; they reflect the record generated in this proceeding.

150. *Penalties for Failure to Meet the Interim Benchmark.* We modify the Commission's proposal and find that failure to meet the aggregate AWS–4 Interim Build-out Requirement will result in the AWS–4 Final Build-out Requirement being accelerated (shortened) by one year. If a licensee of AWS–4 authority fails to meet the interim benchmark, its final build-out benchmark would be reduced to 6 years instead of 7 years. We agree with commenters who suggest that penalties of this nature are appropriate for failure to meet the AWS–4 interim benchmark. In modifying the Commission's proposal from the *AWS–4 NPRM,* we note the concerns raised by commenters who argued that the proposal to terminate all of a licensee's terrestrial authority for not meeting the Interim Build-out Requirement could impact investment and impact customers.

151. *Penalties for Failure to Meet the Final Benchmark.* In the event a licensee fails to meet the AWS–4 Final Build-out Requirement in any EA, we adopt the proposal in the AWS–4 NPRM that the licensee's terrestrial authority for each such area shall terminate automatically without Commission action. Automatic termination is a common remedy for failure to build part 27 flexible use licenses. We also adopt the Commission proposal that any licensee who forfeits its AWS–4 operating authority for failure to meet the AWS–4 Final Build-out

Requirement in an EA shall be precluded from regaining that authorization. To the extent that a licensee is also the 2 GHz MSS licensee, failure to meet the AWS–4 Final Build-out Requirement in a license area shall also result in the MSS protection rule in § 27.1136 of the Commission's rules no longer applying to that AWS–4 license area. We believe that our approach strikes an appropriate balance between promoting prompt build-out and penalizing a licensee for not meeting its terrestrial performance obligations in a particular EA. In addition, by only terminating specific licenses where a licensee fails to meet the final benchmark in a particular license area, a licensee's customers in other license areas would not be impacted.

152. Moreover, we reject suggestions that MSS interference protections should not be affected by a failure to construct terrestrial services. If we do not remove the protection rule for satellite operations for those geographic areas where the terrestrial operating authority terminates, it will be challenging to relicense the spectrum in a way that will encourage productive terrestrial use. This could create incentives for the current licensees not to comply with the construction benchmarks and could potentially cause the spectrum to continue to lay fallow of terrestrial use contrary to the public interest.

153. We believe these penalties are necessary to ensure that licensees utilize the spectrum in the public interest. As explained above, the Nation needs additional spectrum supply. Failure by licensees to meet the build-out requirements would not address this need. Commenters did not offer specific data on the amount of benefits or costs associated with our proposed penalties or any alternative penalties for failure to meet performance requirements. We disagree that the penalties could potentially discourage network investment for the licensee or lower the service quality for terrestrial wireless service customers. While a customer might lose service if a licensee loses its terrestrial spectrum rights for failure to build-out, we expect that a future licensee of AWS–4 authority for that EA would ultimately serve more customers. We expect the probability of not meeting the performance requirements due to the costs of meeting the rules to be small and that the performance penalties are unlikely to deter network investment. Moreover, the Commission has consistently dismissed the contention that an automatic termination policy is unfair; rather, it is the same approach that the Commission applies to nearly all geographically-licensed wireless services. The Commission has specifically rejected the argument that the automatic termination penalty would deter capital investment, noting that the wireless industry has invested billions of dollars and has flourished under this paradigm.

154. *''Use it or Share it.''* We decline to impose any ''use it or share it'' requirements for the AWS–4 spectrum band. PIO argues that the Commission's build-out requirements should be ''augmented by a 'use it or share it' license condition that would permit other parties to make use of unused'' AWS–4 spectrum on a localized basis until the licensee actually begins providing service. While we reserve the right to implement ''use it or share it'' obligations in the future, ''use it or share it'' is a complex concept that is not sufficiently developed in this record. Even though we do not adopt a requirement, we encourage providers to enter into leasing agreements for unused spectrum. While we discuss spectrum leasing in greater detail below, we note that engaging in spectrum leasing may assist a licensee in meeting its performance milestones. We also note that we asked a number of questions about ''use or lease'' in the *Incentive Auctions NPRM* and hope to build a more robust record in that proceeding about how such a process could work effectively, 77 FR 69934, Nov. 21, 2012.

155. *Compliance Procedures.* After assessing the record, we find that licensees must demonstrate compliance with the new performance requirements by filing a construction notification within 15 days of the relevant milestone certifying that they have met the applicable performance benchmark, consistent with § 1.946(d) of the Commission's rules. *See* 47 CFR 1.946(d). Further, we find that each construction notification must include electronic coverage maps and supporting documentation, which must be truthful and accurate and must not omit material information that is necessary for the Commission to determine compliance with its performance requirements. Finally, we decline to require, as suggested by T-Mobile, that any licensee file certifications every six months regarding its construction progress; such frequent reporting is unnecessary to ensure intensive spectrum use given the performance measures we adopt today.

156. Electronic coverage maps must accurately depict the boundaries of each license area in the licensee's service territory. *See* 47 CFR 27.14(p)(7). If a licensee does not provide reliable signal coverage to an entire EA, its map must accurately depict the boundaries of the area or areas within each EA not being served. Each licensee also must file supporting documentation certifying the type of service it is providing for each EA within its service territory and the type of technology used to provide such service. Supporting documentation must include the assumptions used to create the coverage maps, including the propagation model and the signal strength necessary to provide reliable service with the licensee's technology.

157. Further, the licensee must use the most recently available decennial U.S. Census Data at the time of measurement to meet the population based build-out requirements. *See* 47 CFR 27.14(h). Specifically, the licensee must base its claims of population served on areas no larger than the Census Tract level. This requirement tracks the Commission's action requiring broadband service providers to report ''snapshots'' of broadband service at the Census Tract level twice each year by completing FCC Form 477.

E. Applications for Any AWS–4 Spectrum Returned to the Commission

158. Certain requirements adopted in this *Report and Order* create the potential for AWS–4 spectrum rights to be terminated automatically or otherwise returned to the Commission's spectrum inventory for reassignment. For example, this *Report and Order* adopts consequences, including the loss of terrestrial use of, and satellite protection for, the spectrum, if a licensee fails to meet certain build-out requirements. Such returned AWS–4 terrestrial spectrum rights would be reassigned using a geographic-area approach with licenses to be made available on an EA basis. In such a situation, consistent with the proposal set forth in the *AWS–4 NPRM,* we adopt a licensing process that provides for the acceptance of mutually exclusive applications, which would be resolved by means of competitive bidding pursuant to the statutory directive. The Commission has long recognized that where mutually exclusive applications are submitted this type of framework best serves the public interest because the competitive bidding mechanism is most likely to select licensees that value the spectrum the most and will put it to its highest and most efficient use. In the event that AWS–4 spectrum rights are returned to the Commission, we conclude that any such rights will be made available for reassignment for terrestrial use only. As noted above, while we conclude that technological difficulties make it impractical today for same-band sharing of this spectrum

between separate mobile satellite and terrestrial operators, we observed that it may become possible for such sharing to become technically feasible in the future. For this reason, and for other reasons discussed herein, including our determination that returned spectrum will not be subject to any MSS protection rule, we find it appropriate to put a framework in place now that would govern the reassignment of AWS–4 spectrum rights. To the extent that the MSS licensee relinquishes its terrestrial spectrum rights either voluntarily or involuntary the MSS licensee bears the consequences of any interference that occurs as an attendant result of its opening the door to satellite/terrestrial use in the same band by two different licensees. That is, the MSS licensee would be responsible for its own considered choices or for its failure to fulfill the responsibilities that attends the expansion of its licensed rights into the terrestrial realm. Accordingly, the returned spectrum rights will be subject to the competitive bidding procedures we adopt below and will not be subject to any MSS protection rule.

159. *Procedures for Any AWS–4 Licenses Subject to Assignment by Competitive Bidding.* We will conduct any auction for AWS–4 licenses resulting from terrestrial spectrum rights being returned to the Commission pursuant to our standard competitive bidding rules found in part 1, subpart Q of the Commission's rules and will provide bidding credits for qualifying small businesses, as proposed in the *AWS–4 NPRM.* Below we discuss our reasons for adopting the relevant proposals.

160. *Application of Part 1 Competitive Bidding Rules.* The Commission proposed to conduct any auction for AWS–4 licenses in conformity with the general competitive bidding rules set forth in part 1, subpart Q, of the Commission's rules, and substantially consistent with the competitive bidding procedures that have been employed in previous auctions. Additionally, the Commission proposed to employ the Part 1 rules governing competitive bidding design, designated entity preference, unjust enrichment, application and payment procedures, reporting requirements, and the prohibition on certain communications between auction applicants. Under this proposal, such rules would be subject to any modifications that the Commission may adopt for its part 1 general competitive bidding rules in the future. The *AWS–4 NPRM* also sought comment on whether any part 1 rules would be inappropriate or should be modified for an auction of licenses in the AWS–4 bands.

161. We received no comments on the proposed use of our standard competitive bidding rules for any auction of terrestrial AWS–4 licenses.

162. One commenter, TIA, makes several proposals addressing auction design, such as the use of two-sided auctions and auction vouchers, the use of combinatorial, or package, bidding, and avoiding the use of minimum bids. Consistent with our long-standing approach, auction-specific matters such as the competitive bidding design and specific mechanisms relating to day-to-day auction conduct, including minimum opening bids and/or reserve prices, would be determined by the Wireless Telecommunications Bureau prior to the start of the auction pursuant to its delegated authority, after providing interested parties an opportunity to comment. Such delegated authority has proven effective over the years in providing flexibility to develop auction procedures in response to auction-specific issues and to respond rapidly to potential bidder concerns that are sometimes of a time-sensitive nature. Consequently, we determine that the Commission's part 1 bidding rules should govern the conduct of any such auction. Given the record before us and the benefits discussed above, we conclude that the potential benefits of our proposal would likely outweigh any potential costs.

163. *Small Business Provisions for Terrestrial Geographic Area Licenses.* As the *AWS–4 NPRM* discussed, in authorizing the Commission to use competitive bidding, Congress mandated that the Commission ''ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services.'' In addition, section 309(j)(3)(B) of the Communications Act provides that, in establishing eligibility criteria and bidding methodologies, the Commission shall promote ''economic opportunity and competition * * * by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women.'' One of the principal means by which the Commission fulfills this mandate is through the award of bidding credits to small businesses.

164. In the *Competitive Bidding Second Memorandum Opinion and Order,* the Commission stated that it would define eligibility requirements for small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold. Further, in the *Part 1 Third Report and Order,* the Commission, while standardizing many auction rules, determined that it would continue a service-by-service approach to defining the eligibility requirements for small businesses.

165. The Commission proposed in the *AWS–4 NPRM* to define a small business as an entity with average gross revenues for the preceding three years not exceeding $40 million, and a very small business as an entity with average gross revenues for the preceding three years not exceeding $15 million. Under this proposal, small businesses would be provided with a bidding credit of 15 percent and very small businesses with a bidding credit of 25 percent, consistent with the standardized schedule in part 1 of our rules.

166. This proposal was modeled on the small business size standards and associated bidding credits as the Commission adopted for the AWS–1 band. The Commission premised this proposal on the belief that the AWS–4 spectrum, assigned in geographic area licenses, would be employed for purposes similar to those for which the AWS–1 band is used. In response to the *AWS–4 NPRM's* request for comment on these proposals, including the costs or benefits of these standards and associated bidding credits, especially as they relate to the proposed geographic areas, the Commission received no comment. Based on our prior experience with the use of bidding credits in spectrum auctions, we believe that the use of bidding credits is an effective tool in achieving the statutory objective of promoting participation by designated entities in the provision of spectrum-based services. In the absence of small business size standards and bidding credits, designated entities might have less opportunity to obtain spectrum in this band. The Commission believes that continuing to extend such benefits to AWS–4 would be consistent with our statutory mandate. In light of the similarities with the AWS–1 service, we adopt these size standards and associated bidding credits for small businesses in the event that AWS–4 licenses are awarded through competitive bidding. On December 5, 2012, we requested the U.S. Small Business Administration's approval of our final rule adopting these small business size standards.

167. We received two comments in response to the *AWS–4 NPRM's* request

for comment on whether to use a different approach to bidding credits. Commenters addressed eligibility in differing ways. NTCH proposes adopting eligibility rules that would preserve a 20 megahertz license for entities with less than $100 million in assets, with the remaining 20 megahertz block available for all bidders. Council Tree proposes that in the absence of ''set aside blocks'' of AWS–4 spectrum for bidding only by designated entities, that the Commission adopt significantly higher bidding credits, with discounts up to 45 percent. Council Tree proposed bidding credits of 25% to businesses with average annual gross revenues not exceeding $40 million; 35% for businesses with revenues not exceeding $15 million; and 45% to businesses with revenues not exceeding $3 million. This proposal is premised on Council Tree's own assessment of the Commission's designated entity program. The Commission has made clear that it is unpersuaded by Council Tree's claims with respect to the performance of designated entities in recent auctions. Therefore, although we address Council Tree's proposals for the AWS–4 band, we decline to address again such claims, which are not the subject of this proceeding. The Commission has previously rejected suggestions for spectrum ''set-asides'' in rulemaking proceedings, concluding that it was unnecessary to supplement the incentives provided for small business participation by foreclosing licenses to other bidders. In the *AWS–4 NPRM,* the Commission acknowledged the difficulty in accurately predicting the market forces that might exist at the time that these frequencies are licensed, but the Commission is not persuaded that it is necessary to either set aside a portion of the spectrum at issue now, or adopt significantly larger bidding credits, in order to encourage the full participation of designated entities. We therefore adopt our proposals relating to small businesses. Given the record before us and the benefits discussed above, we conclude that the potential benefits of our proposals would likely outweigh any potential costs.

F. Regulatory Issues; Licensing and Operating Rules

168. The regulatory framework we adopt below establishes the license term, criteria for renewal, and other licensing and operating rules pertaining to the AWS–4 bands. In the *AWS–4 NPRM,* the Commission proposed to grant licensees of AWS–4 operating authority the flexibility to provide any fixed or mobile service consistent with the allocations for this spectrum. The Commission also proposed to license this spectrum under the Commission's market-oriented part 27 rules, and generally to apply the provisions of the Commission's part 27 rules applicable to AWS and the Commission's wireless rules generally applicable across multiple commercial bands to AWS–4 spectrum.

1. Flexible Use, Regulatory Framework, and Regulatory Status

169. Below, we adopt regulations to provide licensees of AWS–4 operating authority with the flexibility to provide any terrestrial fixed or mobile service that is consistent with the allocation and service rules for AWS–4 spectrum. We also determine to license the AWS–4 spectrum under the Commission's market-oriented part 27 rules and apply the regulatory status provisions of § 27.10.

170. *Flexible Use.* In order to promote innovative broadband services and encourage the flexible and efficient use of the AWS–4 band, we will allow a licensee of AWS–4 authority to utilize the spectrum for any terrestrial use permitted by the United States Table of Frequency Allocations contained in part 2 of the Commission's rules, provided that the licensee complies with the applicable service rules. We find that this determination fully meets the criteria of Section 303(y) and that the record unanimously supports our permitting flexible use of the AWS–4 spectrum. *See* 47 U.S.C. 303(y).

171. First, as required by section 303(y)(1), flexible use of this band is consistent with applicable international agreements. *See* 47 U.S.C. 303(y)(1). Such use would remain subject to bilateral discussions commonly undertaken whenever spectrum is put to use in border areas.

172. Second, as required by section 303(y)(2), flexible use is in the public interest because it would not deter—and, indeed, we expect it will stimulate—investment in broadband, and it would not result in harmful interference. *See* 47 U.S.C. 303(y)(2). We agree with commenters who state, for example, that flexibility will promote broadband deployment, ensure the spectrum is put to its most beneficial use, and maximize the probability of success for new services to be provided in the AWS–4 band. Similarly, we expect that flexibility will allow any licensee of AWS–4 authority to respond to consumer demand in a manner that maximizes the spectrum's value to both the public and the licensee.

173. Similarly, we believe flexibility will spur investment in communications services and systems and technology development. We find that permitting licensees to use this spectrum for any use permitted by the spectrum's allocation will not deter investment in communications services and systems, or technology development. The record in this proceeding unambiguously supports this determination.

174. We also find that permitting licensees' flexible use of the AWS–4 spectrum will not result in harmful interference among spectrum users. The technical rules we adopt today reflect careful consideration of potential interference scenarios and the overall public interest. Further, the flexibility we are permitting will itself provide licensees with the ability to adjust their operations to minimize any interference that might occur. Our technical rules for the AWS–4 band will permit licensees to provide a wide variety of services in these bands with a minimum of interference, and will permit both in-band (if any) and adjacent-band licensees to operate with sufficient certainty and clarity regarding their rights and responsibilities. Because we are adopting technical restrictions to protect other spectrum users, this proposal will not result in harmful interference. Accordingly, the standards of section 303(y)(2) are satisfied here. *See* 47 U.S.C. 303(y)(2). Commenters did not offer specific data on the amount of benefits or costs associated with our proposal for flexible use of the AWS–4 band. Given unanimous supports in the record and the potential benefits discussed above, we conclude that the potential benefits of our proposal would outweigh any potential costs.

175. *Regulatory Framework.* We determine to license the AWS–4 spectrum under part 27 because these rules provide a broad and flexible regulatory framework for licensing spectrum, thereby enabling the spectrum to be used to provide a wide variety of broadband services. This light-handed regulatory approach permits licensees to use the spectrum for a multitude of purposes across the country and provides licensees with the ability to change technologies in response to changes in market conditions.

176. The record unanimously supports this approach. The flexibility provided under part 27 should allow licensees to design their systems to respond readily to consumer demand, thus allowing the marketplace to dictate the best uses of the licensed spectrum. Commenters did not offer specific data on the amount of benefits or costs associated with our proposal to apply

the part 27 rules to the AWS–4 band. Given unanimous support in the record and the potential benefits discussed above, we conclude that the potential benefits of our proposal would outweigh any potential costs.

177. *Regulatory Status.* No commenters directly addressed the application of § 27.10 of the Commission's rules to the AWS–4 band. *See* 47 CFR 27.10. Commenters, however, overwhelmingly support increased regulatory flexibility and applying the part 27 rules to the AWS–4 band. We believe that by applying § 27.10 of the Commission's rules to the AWS–4 band we will achieve efficiencies in the licensing and administrative process, and provide licensees with additional flexibility. Therefore, we adopt the proposal from the *AWS–4 NPRM* to apply § 27.10 of our rules to the AWS–4 band.

178. Under this flexible regulatory approach, licensees in the AWS–4 band may provide common carrier, non-common carrier, private internal communications or any combination of these services, so long as the provision of service otherwise complies with applicable service rules. This broad licensing framework will encourage licensees to develop new and innovative services with minimal regulatory restraint.

179. To fulfill our enforcement obligations and to ensure compliance with Titles II and III of the Communications Act, we require the licensee to identify the regulatory status of the service(s) it intends to provide. Consistent with § 27.10 of the Commission's rules, the licensee will not be required to describe its particular services, but only to designate the regulatory status of the service(s). We remind potential licensees that an election to provide service on a common carrier basis requires that the elements of common carriage be present; otherwise the applicant must choose non-common carrier status. If a potential licensee is unsure of the nature of its services and whether classification as common carrier is appropriate, it may submit a petition with its applications, or at any time, requesting clarification and including service descriptions for that purpose.

180. We also determine that if the licensee elects to change the service or services it offers such that its regulatory status would change, it must notify the Commission and must do so within 30 days of making the change. A change in the licensee's regulatory status will not require prior Commission authorization, provided the licensee is in compliance with the foreign ownership requirements of section 310(b) of the Communications Act that apply as a result of the change. *See* 47 U.S.C. 310(b). We note, however, that a different time period (other than 30 days) may apply, as determined by the Commission, where the change results in the discontinuance, reduction, or impairment of the existing service.

2. Ownership Restrictions

181. *Foreign Ownership.* Based on our statutory responsibilities, we determine that all licensees of AWS–4 authority shall be subject to the provisions of § 27.12 of the Commission's rules. *See* 47 CFR 27.12. All such entities are subject to section 310(a) of the Communications Act, which prohibits licenses from being ''granted to or held by any foreign government or the representative therefore.'' *See* 47 U.S.C. 310(a). In addition, as applicable here, a licensee that would provide a common carrier, aeronautical en route, or aeronautical fixed service in this band would also be subject to the foreign ownership and citizenship requirements in section 310(b) of the Communications Act. *See* 47 U.S.C. 310(b).

182. We did not receive any comments opposing our proposal that applicants for this band be required to provide the same foreign ownership information in their filings, regardless of the type of service the licensee would provide using its authorization. Since we are adopting a flexible approach to licensing the AWS–4 band, we determine that all licensees will be subject to the same requirements for filing foreign ownership information in their applications. Therefore, we will require all licensees to provide the same foreign ownership information, which covers both sections 310(a) and 310(b) of the Communications Act, regardless of whether the licensee will provide common carrier or non-common carrier service. We note, however, that we would be unlikely to deny a license to an applicant requesting to provide exclusively services that are not subject to section 310(b), solely because its foreign ownership would disqualify it from receiving a license if the applicant had applied for authority to provide such services.

183. *Eligibility and Mobile Spectrum Holding Policies.* The Commission has previously determined in a number of services that eligibility restrictions on licenses may be imposed only when open eligibility would pose a significant likelihood of substantial harm to competition in specific markets and when an eligibility restriction would be effective in eliminating that harm. This approach relies on market forces absent a compelling showing that regulatory intervention to exclude potential participants is necessary.

184. There is nothing in the record indicating that open eligibility in the AWS–4 band would pose a significant likelihood of substantial competitive harm in the broadband services market. Therefore, consistent with our findings on this issue for other spectrum bands, we find that open eligibility in this band is consistent with our statutory mandate to promote the development and rapid deployment of new technologies, products, and services; economic opportunity and competition; and the efficient and intensive use of the electromagnetic spectrum. The open eligibility is also consistent with section 6404 of the Spectrum Act. Given the record before us, we conclude that the potential benefits of open eligibility would outweigh any potential costs.

185. The Commission recently opened a general rulemaking proceeding to broadly examine its policies and rules regarding mobile spectrum holdings, 77 FR 61330, October 9, 2012. Given that recently-initiated proceeding, we decline to address here the narrower issue of how to assess AWS–4 spectrum holdings for purposes of spectrum concentration analysis. During the pendency of the *Mobile Spectrum Holdings Policies* proceeding, we will continue to apply our case-by-case approach to secondary market transactions and initial license applications as necessary.

3. Secondary Markets

186. *Partitioning and Disaggregation.* The Commission's part 27 rules generally allow for geographic partitioning and spectrum disaggregation. Geographic partitioning refers to the assignment of geographic portions of a license to another licensee along geopolitical or other boundaries. Spectrum disaggregation refers to the assignment of a discrete amount of spectrum under the license to another entity. Disaggregation allows for multiple transmitters in the same geographic area operated by different companies on adjacent frequencies in the same band. As the Commission noted when first establishing partitioning and disaggregation rules, allowing such flexibility could facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of services, increase competition by allowing market entry by new entrants, and expedite provision of services that might not otherwise receive service in the near term. We conclude that a

licensee of AWS–4 authority should have the same ability to partition its service territories and disaggregate its spectrum as other wireless licensees and, therefore will allow any such licensee to partition its service areas or to disaggregate its spectrum to the extent permitted by § 27.15 of the Commission's rules. *See* 47 CFR 27.15. We acknowledge that, as the record indicates, there may be technical and coordination complexities associated with partitioning and disaggregation specific to the satellite overlay that exists in the band. Although these coordination and technical issues are real—indeed, they are central to our assignment determinations, above—the fact that we will assign AWS–4 operating authority to the 2 GHz MSS licensees mitigates against the need to prohibit partitioning or disaggregation. Additionally, the MSS interference protection rule we adopt above will ''run with the license,'' obligating any partitionee or disaggregatee to avoid interference with MSS operations.

187. To the extent that a licensee of AWS–4 authority develops the ability (through technical advances or coordination measures) to ensure that an AWS–4 partitionee or disagregatee would not cause harmful interference to MSS operations, we find no basis to restrict it from entering into partitioning or disaggregation arrangements in the same manner as other part 27 licensees.

188. As explained above and in the *AWS–4 NPRM,* the Commission determined that, based on the facts in this band, a grant of AWS–4 operating authority to a third party would potentially compromise the existing rights of existing satellite licensees. A private party licensee, however, is free to choose voluntarily to enter into a business relationship that includes its agreeing to not pursue all of its rights or even to encumber some of its rights. This is particularly so, if the licensee's forgoing of its rights furthers larger Commission goals. Stated otherwise, while we decline to grant AWS–4 authority to parties in a manner that would undermine the existing MSS licensees, we find it would be consistent with the Commission's goal of widespread mobile broadband availability to permit an MSS licensee to limit voluntarily its ability to offer satellite service as part of a secondary market arrangement enabling another party to better provide flexible use terrestrial service, including mobile broadband using AWS–4 spectrum. For example, a licensee may determine that it would be best for it to give up its rights to interference protection for its satellite operations for a certain geographic area or a specific portion of its spectrum and permit another licensee to have a license for terrestrial use for the corresponding geographic area or spectrum.

189. Thus, we believe that any licensee of AWS–4 authority should have the same freedom as other wireless licensees to use its licensed spectrum in the way that the licensee determines would make the best business sense through the use of partitioning or disaggregation. A licensee of AWS–4 authority should be permitted the discretion to determine the amount of spectrum it will occupy and the area it will serve consistent with its business plan. Accordingly, we find it in the public interest to permit any licensee of AWS–4 authority to partition any geographic portion of its license area, at any time following the grant of its license, and to also permit any such licensee to disaggregate spectrum in any amount, at any time following the grant of its license.

190. We further conclude that the public interest would be served by requiring each party to a partitioning, disaggregation, or combination of both in the AWS–4 band to individually meet the applicable AWS–4 performance requirements. As the Commission observed in the *WRS NPRM,* this approach should lead to more efficient spectrum usage and prevent the avoidance of timely construction through secondary market fiat, while still providing operators with the flexibility to design their networks according to their operational and business needs. In addition, commenters did not offer specific costs associated with the geographic partitioning and spectrum disaggregation rules for the AWS–4 band. Given the benefits discussed above, we conclude that the potential benefits of the partitioning and disaggregation rules would likely outweigh any potential costs.

191. *Spectrum Leasing.* We find it in the public interest to apply the same comprehensive set of rules, policies, and procedures governing spectrum leasing arrangements between terrestrial licensees and spectrum lessees that we have adopted for other wireless spectrum bands to the AWS–4 band. This decision will encourage innovative arrangements and investment in the AWS–4 band.

192. We extend our secondary leasing policies to both spectrum manager lease arrangements and *de facto* transfer lease arrangements. For a particular spectrum band, spectrum leasing policies generally follow the same approach as the partitioning and disaggregation policies for the band. In the *AWS–4 NPRM,* we observed this relationship between partitioning/disaggregation and spectrum leasing, but did not make a specific proposal with respect to whether to permit partitioning and disaggregation of AWS–4 spectrum. Consistent with our determination, above, to permit partitioning and disaggregation of AWS–4 spectrum, we permit spectrum leasing of AWS–4 spectrum, including both categories of spectrum lease arrangements.

193. We acknowledge that in the *2 GHz Band Co-Allocation Order* the Commission did not extend the secondary market regime to permit MSS/ATC *de facto* transfer lease arrangements, 76 FR 31252, May 31, 2012. The facts underlying that decision, however, differ from those here. In the case of MSS/ATC spectrum, terrestrial operations were explicitly ancillary to satellite operations and terrestrial operations were premised on the operator satisfying the ATC gating criteria, some of which require at least a certain amount of control over satellite operations, control an ATC lessee would not be able to exercise. That is not the situation here. The AWS–4 terrestrial spectrum use will not be ancillary to satellite 2 GHz MSS use. Rather, subject to the technical rules established herein, terrestrial and satellite uses will exist under co-primary allocations and will have equal status. Further, an AWS–4 terrestrial lessee will not be responsible for meeting satellite obligations, including the ATC gating criteria, which we are eliminating (along with the entire ATC regime) for the 2 GHz MSS band. Accordingly, we decline to adopt the Commission's proposal to not permit *de facto* lease arrangements of AWS–4 spectrum and reject the similar position of a handful of commenters. Instead, for the aforementioned reasons, we permit these lease arrangements, as well as spectrum manager lease arrangements for AWS–4 spectrum. Additionally, the MSS interference protection rule we adopt above will ''run'' with either type of leasing arrangement, obligating any lessee to avoid interference with MSS operations. Given the record before us, we conclude that the potential benefits of extending these rules, policies, and procedures are likely to outweigh the potential costs.

4. License Term, Renewal Criteria, and Permanent Discontinuance of Operations

194. *License Term.* We adopt a license term for AWS–4 spectrum rights of ten years and subsequent renewal terms of ten years and we modify § 27.13 of the Commission's rules to reflect these

determinations. *See* 47 CFR 27.13. We find our decision consistent with the Commission's adoption of ten-year license terms in most other part 27 services and in services using similar spectrum, such as that used for PCS. Thus, in adopting a 10-year license term, we treat holders of AWS–4 spectrum rights similarly to licensees providing like services. Further, no party opposed (or commented on) the Commission's license term proposal.

195. In addition, we require that, in the event that the terrestrial portion of a license is partitioned or disaggregated, any partitionee or disaggregatee will be authorized to hold its license for the remainder of the partitioner's or disaggregator's license term. Although the parties to such an arrangement may agree that the arrangement will terminate prior to the end of the license term, the arrangement may not remain in effect longer than the license term (or any subsequent renewal term). Thus, we ensure that a licensee, by partitioning or disaggregation, will not be able to confer greater rights on another party than it was awarded by the Commission under the terms of its license grant. This approach is similar to the partitioning and disaggregation provisions the Commission adopted for licensees in other spectrum bands, including for the BRS (formerly MDS), broadband PCS, 700 MHz band, and AWS–1 bands. Accordingly, we conclude that the potential benefits of the proposed license terms would outweigh any potential costs.

196. *Renewal Criteria.* Pursuant to section 308(b) of the Communications Act, the Commission may require renewal applicants to ''set forth such facts as the Commission by regulation may prescribe as to the citizenship, character, and financial, technical, and other qualifications of the applicant to operate the station'' as well as ''such other information as it may require.'' *See* 47 U.S.C. 308(b). We find that all licensees of spectrum in the AWS–4 band seeking renewal of their authorizations at the end of their license term must file a renewal application, independent of their performance requirements, pursuant to § 1.949 of the Commission's rules. *See* 47 CFR 1.949. Commenters did not comment on or address any potential costs associated with the proposed license renewal criteria in the AWS–4 band. Accordingly, we conclude that the potential benefits of the proposed license renewal requirements would outweigh any potential costs.

197. A licensee's renewal showing is distinct from its performance showing. In the renewal context, the Commission will consider the level and types of a licensee's service provided over the entire license term, as opposed to measuring services offered at a specific point in time for performance requirements. Thus, a licensee that meets the applicable performance requirements might nevertheless fail to meet the renewal requirements.

198. We require the renewal showing to include a detailed description of the renewal applicant's provision of service during the entire license period and discuss: (1) The level and quality of service provided by the applicant (*e.g.,* the population served, the area served, the number of subscribers, the services offered); (2) the date service commenced, whether service was ever interrupted, and the duration of any interruption or outage; (3) the extent to which service is provided to rural areas; (4) the extent to which service is provided to qualifying tribal land as defined in § 1.2110(e)(3)(i) of this chapter; and (5) any other factors associated with the level of service to the public. A licensee must also demonstrate at renewal that it has substantially complied with all applicable Commission rules and policies, and the Communications Act of 1934, as amended, including any applicable performance requirements. The licensee must also maintain the level of service provided at its final performance benchmark to the end of the license term.

199. As we did in the *700 MHz First Report and Order,* we will prohibit the filing of mutually exclusive renewal applications, 72 FR 27688, May 16, 2007. If a license is not renewed, the associated spectrum will be returned to the Commission for reassignment.

200. *Permanent Discontinuance of Operations.* We adopt the Commission's proposal to apply § 1.955(a)(3) of the Commission's rules to any licensee, such that an AWS–4 operator's terrestrial spectrum rights, will automatically terminate, without specific Commission action, if service is ''permanently discontinued.'' *See* 47 CFR 1.955(a)(3). For AWS–4 spectrum, we define ''permanently discontinued'' as a period of 180 consecutive days during which a licensee does not operate and does not serve at least one subscriber that is not affiliated with, controlled by, or related to, the provider in an EA. We believe this approach strikes the appropriate balance between a licensee's need for operational flexibility and the need to ensure efficient utilization of licensed spectrum. In addition, our determination will ensure that AWS–4 spectrum does not remain idle for extended periods. Rather, it will facilitate business and network planning by providing certainty to licensees and their investors. The discontinuance rule will apply commencing on the date a licensee must meet its final performance requirement benchmark, thereby providing a licensee with adequate time to construct its terrestrial network.

201. Furthermore, in accordance with § 1.955(a)(3) of the Commission's rules, if a licensee permanently discontinues service, the licensee must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 and requesting license cancellation. We emphasize, however, that an authorization will automatically terminate without specific Commission action if service is permanently discontinued even if a licensee fails to file the required form requesting license cancellation.

202. Finally, in applying § 1.955(a)(3) to licensees of AWS–4 authority, we clarify that operation of so-called channel keepers, *e.g.,* devices that transmit test signals, tones and/or color bars, do not constitute operation for purposes of the permanent discontinuance rules.

203. *Other Operating Requirements.* Although we are generally adopting part 27 rules for the AWS–4 band, in order to maintain general consistency among various wireless communication services, we also require any licensee of AWS–4 operating authority to comply with other rule parts that pertain generally to wireless communication services. For example, § 27.3 of the Commission's rules lists some of the other rule parts applicable to wireless communications service licensees generally; we thus find it appropriate to apply this and similar rules to the AWS–4 band. Some of these other rule parts will be applicable by virtue of the fact that they apply to all licensees, and others will apply depending on the type of service a licensee provides. For example: applicants and licensees will be subject to the application filing procedures for the Universal Licensing System, set forth in part 1 of our rules; licensees will be required to comply with the practices and procedures listed in part 1 of our rules for license applications, adjudicatory proceedings, etc; licensees will be required to comply with the Commission's environmental provisions, including § 1.1307; licensees will be required to comply with the antenna structure provisions of part 17 of our rules; to the extent a licensee provides a Commercial Mobile Radio Service, such service is subject to the provisions of part 20 of the Commission's rules, including 911/E911

and hearing-aid compatibility requirements, along with the provisions in the rule part under which the license was issued. Part 20 applies to all CMRS providers, even though the stations may be licensed under other parts of our rules; and the application of general provisions of parts 22, 24, or 27 will include rules related to equal employment opportunity, etc. No commenter opposes this approach.

204. *Facilitating Access to Spectrum and the Provision of Service to Tribal Lands.* We defer the application of any rules and policies for facilitating access to spectrum and the provision of service to Tribal Lands to the *Tribal Lands* proceeding, 67 FR 18476, Apr. 4, 2011. The *Tribal Lands* proceeding, being specifically focused on that issue, is better suited than the instant proceeding to reach conclusions on that issue.

5. Other Matters—Proposed Party Conditions

205. *Mandatory Wholesale and Roaming Requirements.* Several commenters requested that the Commission impose mandatory wholesale and roaming requirements on licensees of AWS–4 operating authority. We decline to impose any mandatory wholesale and roaming requirements in this *Report and Order.* We find these requests beyond the scope of the service rules proceeding before us and would be better addressed in other, non-band specific, proceedings on those topics. For example, roaming requirements for wireless spectrum licensees are the subject of other Commission proceedings. We also note that we have recently initiated a proceeding to broadly examine our policies and rules regarding mobile spectrum holdings, including possible remedies to address potential harms or to help ensure the realization of potential benefits.

206. *Wholesale Restrictions.* A number of commenters proposed that, in order to promote competition and prevent the entrenchment of duopoly power, the Commission should impose restrictions on the amount of AWS–4 spectrum that a licensee may make available for access to a particular wireless service provider. We decline to impose restrictions on the ability of a licensee of AWS–4 authority to provide access to its AWS–4 traffic capacity to other wireless carriers in this proceeding. We believe that this issue is beyond the scope of this proceeding. We also note that we have recently initiated a proceeding to broadly examine our policies and rules regarding mobile spectrum holdings.

207. *Penalties for Early License Transfers.* Some commenters seek the imposition of unjust enrichment penalties if a licensee of AWS–4 authority sells or otherwise transfers control of its license to one of the two largest mobile data carriers within a specified time period. We will not, in this proceeding, adopt a system for imposing unjust enrichment penalties in the event that a licensee of AWS–4 operating authority seeks to transfer its license to one of the two largest mobile data providers. Nor will we impose additional restrictions on the licensee's ability to transfer or otherwise assign its terrestrial spectrum rights. Rather, the Commission will continue to review any proposed transfers of control or assignments of AWS–4 authority under its requirements then in place. Finally, we note that we have recently initiated a proceeding to examine spectrum concentration issues and that, during the pendency of this proceeding, we will continue to apply our case-by-case approach to secondary markets transactions and initial license applications as necessary.

G. Relocation and Cost Sharing

1. Emerging Technologies Policies

208. The Emerging Technologies (ET) procedures represent a broad set of tools that the Commission uses to aid the process of making spectrum available for new uses. Generally, the Commission applies the ET procedures when it is necessary to relocate incumbent licensees to introduce new services into a frequency band. The Commission sets a ''sunset date''—a date by which incumbent licensees may not cause interference to new band entrants. Prior to the sunset date, the new entrants may negotiate with incumbents to gain early entry into the band and, if necessary, may relocate the incumbents to comparable facilities. Because new entrants may have to relocate incumbents from a larger frequency range or greater geographic area than where the new entrants will operate, the Commission also typically establishes a companion set of cost-sharing procedures. These procedures allow the operators that have relocated incumbents to be reimbursed a portion of their relocation expenses from new entrants that benefit from the spectrum clearance. The application of specific relocation and cost sharing processes under the ET framework generally varies for each frequency band, and is based on the types of incumbent licensees and particular band characteristics. We discuss, below, the particular relocation and cost sharing procedures that we adopt for the 2000–2020 MHz and 2180–2200 MHz bands.

Relocation and Cost-Sharing for 2000–2020 MHz

209. *Background.* The lower portion of the AWS–4 band (2000–2020 MHz) is part of the 1990–2025 MHz band that the Commission reallocated from the Broadcast Auxiliary Service (BAS) to emerging technologies such as PCS, AWS, and MSS. Consistent with the relocation principles first established in the Commission's *Emerging Technologies* proceeding, each new entrant had an independent responsibility to relocate incumbent BAS licensees. Sprint Nextel (Sprint), which is the PCS licensee at 1990–1995 MHz, completed the BAS transition for the entire 35 megahertz in 2010. In 2011, Sprint notified the Commission that it entered in a private settlement with DISH to resolve its dispute with MSS licensees with respect to MSS licensees' obligation to reimburse Sprint for their share of the BAS relocation costs.

210. *Discussion.* We find that no additional relocation or cost-sharing procedures are necessary for the 2000–2020 MHz AWS–4 band. In addition, although we do not adopt cost-sharing rules in this *Report and Order,* we clarify that AWS–2 licensees will continue to be responsible for reimbursing Sprint for 2/7th of the BAS relocation costs (*i.e.,* the proportional share of the costs associated with Sprint relocating 10 megahertz of BAS spectrum that may be used by AWS–2 entrants) and that such cost-sharing issues will be addressed in a separate proceeding.

211. *Relocation.* As explained in the *AWS–4 NPRM,* Sprint undertook the relocation of BAS from the entire 35 megahertz at 1990–2025 MHz and notified the Commission that this transition was completed in 2010. No party raised outstanding relocation issues, unrelated to cost-sharing (which is discussed below), for the 1990–2025 MHz band in response to the *AWS–4 NPRM.* Therefore, we find no need to adopt additional relocation procedures for the 1990–2025 MHz band.

212. *Cost Sharing.* Even though Sprint only benefits from the use of five megahertz of spectrum (1990–1995 MHz), Sprint incurred significant costs in clearing the remaining thirty megahertz of spectrum (1995–2025 MHz) to the benefit of other entrants. The Commission has consistently affirmed its general cost-sharing policy that an entrant who has relocated incumbents from reallocated spectrum is entitled to reimbursement for a portion of the band clearing costs from other entrants benefitting from that relocation. The Commission has

emphasized that all entrants to the 1990–2025 MHz band may be required to bear a proportional share of the costs incurred in the BAS clearance, on a *pro rata* basis according to the amount of spectrum each entrant is assigned. Of the total 35 megahertz of spectrum, five megahertz was authorized for PCS and held by Sprint; 10 megahertz is authorized for (but yet to be auctioned and licensed as) AWS–2; and 20 megahertz was authorized for MSS. Sprint clarified in the record that DISH satisfied the cost-sharing obligations associated with 20 megahertz of spectrum in the 1990–2025 MHz band and that the only remaining cost-sharing obligations in this band are attributable to the 10 megahertz of spectrum authorized for AWS–2.

213. We conclude that, consistent with the Commission's policy that all entrants to the 1990–2025 MHz band bear a proportional share of the costs incurred in the BAS clearance on a *pro rata* basis according to the amount of spectrum each entrant is assigned, future AWS–2 licensees who enter the band prior to the sunset date will be responsible for reimbursing Sprint for 2/7^{ths} of the BAS relocation costs (*i.e.,* the proportional share of the costs associate with Sprint relocating 10 megahertz of BAS spectrum that will be used by AWS–2 entrants). Each five megahertz block of spectrum in the 1990–2025 MHz band represents one-seventh of the relocated BAS spectrum. Sprint has stated that the *pro rata* share of the overall BAS relocation costs attributable to each five megahertz of relocated BAS spectrum amounts to $94,875,516. We believe that this determination represents the most fair and balanced approach for all parties. The Commission will address the application on these cost-sharing obligations on AWS–2 licensees, including Sprint's proposal to set the sunset date for reimbursement at ten years after the issuance of the first AWS licenses in these bands separately in the *H Block NPRM.*

2. Relocation and Cost Sharing for 1915–1920 MHz

214. We defer cost-sharing issues for the 1915–1920 MHz band until we establish service rules for that band, which we expect to do in the near future.

3. Relocation and Cost-Sharing for 2180–2200 MHz

215. *Background.* The upper portion of AWS–4 (2180–2200 MHz) is part of the 2160–2200 MHz band that the Commission previously reallocated from the Fixed Microwave Services (FS) to emerging technologies. The Commission's licensing records show approximately 700 active FS licenses in the 2180–2200 MHz band and that most of these incumbents appear to be state or local governmental entities, utilities, railroads, and other businesses with FS links licensed in the Microwave Public Safety Pool (MW) or the Microwave Industrial/Business Pool (MG) for private, internal communication. FS links in the 2180–2200 MHz band typically are paired, for two-way operation, with FS links in the 2130–2150 MHz band. The Commission previously adopted relocation and cost-sharing rules for AWS–1 licensees in the 2110–2155 MHz band, and we proposed in the *AWS–4 NPRM* to adopt similar rules for licensees of AWS–4 operating authority to govern relocation and cost-sharing in the 2180–2200 MHz band.

216. *Relocation.* We adopt rules for the relocation of FS incumbents from the 2180–2200 MHz band by an AWS–4 entrant based on similar rules that apply to the relocation of FS incumbents from the 2110–2155 MHz band by AWS–1 licensees. We also establish a 10-year sunset date from the grant of the first license or issuance of a modification of a license to authorize the use of the 2180–2200 MHz band for AWS–4 under part 27. We received minimal comment on this issue.

217. Under the AWS–4 service rules that we are adopting, the MSS/AWS–4 licensee will be required to build a terrestrial network to serve a large portion of the country. Thus, the deployment of a ubiquitous AWS–4 network creates a much greater certainty that incumbents would need to relocate from the band than might have been anticipated under the existing MSS/ATC regime. Because of the large number of FS incumbents still present in the band, we find that it serves the public interest to impose an obligation on an AWS–4 entrant to relocate FS incumbents from the 2180–2200 MHz band, and that this obligation should be independent and distinct from the existing MSS/ATC relocation obligation. Consequently, this relocation obligation shall not sunset at the December 2013 date applicable under the MSS/ATC rules but instead shall be determined by the AWS–4 relocation rules which we are now adopting.

218. Although FS incumbents in the 2180–2200 MHz band were subject to relocation by MSS licensees, we find it appropriate to impose relocation obligations on licensees of AWS–4 authority at this time because we now adopt service rules for a new wireless terrestrial service under Part 27. The Commission generally adopts relocation procedures at the time that it adopts rules for the provision of new services in bands that are used by incumbent licensees. The MSS/ATC relocation rules are based on unique circumstances that were only applicable to MSS. The Commission departed from its traditional relocation rules in adopting a mandatory negotiation period for relocation of FS incumbents by MSS licensees in the 2180–2200 MHz band as well as providing a specific date for the start of the ten-year sunset period instead of the issuance of the first license or start of the first relocation negotiations. The Commission believed that the modifications to the traditional relocation/negotiation procedures was warranted due to the presence of special circumstances specific to MSS and hoped that it would expedite the relocation of FS incumbents from the 2180–2200 MHz band. The Commission also has stated that those special circumstances are not applicable to relocations by AWS licensees and declined to depart from the traditional trigger for determining the mandatory negotiation period and the sunset dates for the relocation of FS incumbents by AWS licensees.

219. Although FS incumbents had considerable notice that they would likely need to relocate their services, we are not persuaded that this should be the predominant factor in our decision. We note that, under the ET procedures, the date at which the incumbents first received notice that they would be relocated has not determined the starting date for the relocation sunset period. For example, when the Commission allocated spectrum for AWS, including at 2130–2150 MHz in 2002, and thereafter adopted service rules, modified relocation rules, and adopted cost-sharing rules, it continued to impose an obligation on AWS–1 licensees to relocate FS incumbents at 2130–2150 MHz for ten years from the date on which the first AWS–1 license was granted, even though those FS incumbents were already on notice that they would be subject to relocation. Similarly, the Commission decided to relocate BAS incumbents in the 1990–2025 MHz band to make way for MSS in 1997, but did not begin the ten-year relocation period until 2000 and later extended the sunset date to 2013.

220. For all of the reasons discussed above, we conclude that it is in the public interest to adopt relocation rules for licensees of AWS–4 authority, including the trigger for determining the mandatory negotiation period and the sunset date for relocation obligations, that are based on our traditional *Emerging Technologies* proceedings and

similar to rules that have governed the relocation of incumbent licensees by AWS–1 licensees and other terrestrial wireless licensees. We believe that our action will promote a harmonized approach under part 27 to the relocation of FS incumbents by terrestrial wireless licensees across the AWS bands and will provide FS incumbents in the 2180–2200 MHz band with a meaningful opportunity to negotiate relocation agreements with a licensee of AWS–4 authority.

221. The specific rules that we adopt, as explained above, are based on similar rules that apply to the relocation of FS incumbents from the 2110–2155 MHz band by AWS–1 licensees. No parties commented on modifying the proposed rules themselves. In general, licensees of AWS–4 authority will be required to coordinate their frequency usage with all potentially affected co-channel and adjacent channel FS incumbents operating in the 2180–2200 MHz band prior to initiating operations from any base or fixed station. If interference would occur, the licensee of AWS–4 authority can initiate a mandatory negotiation period (two-years for non-public safety, three-years for public safety) during which each party must negotiate in good faith for the purpose of agreeing to terms under which the FS licensees would: (1) Relocate their operations to other fixed microwave bands or other media; or alternatively (2) accept a sharing arrangement with the licensee of AWS–4 authority that may result in an otherwise impermissible level of interference to the FS operations. If no agreement is reached during the mandatory negotiation period, the licensee of AWS–4 authority can initiate involuntary relocation procedures.

222. We also establish a 10-year sunset date from the grant of the first license or issuance of a modification of a license to authorize the use of the 2180–2200 MHz band for AWS–4 under part 27. We addressed arguments raised by DISH with respect to the sunset above. In addition, we adopt our proposal to delete the reference in footnote NG168 in the U.S. Table of Frequency Allocations to all Fixed and Mobile facilities operating on a secondary basis not later than December 9, 2013. No parties commented on our proposal to modify this footnote. As we explained in the *AWS–4 NPRM,* grandfathered fixed microwave systems will be governed by the procedures in § 101.79 after the applicable sunset date.

223. *Cost-Sharing.* We extend the cost-sharing rules adopted for AWS–1 licensees to the AWS–4 band. This will result in the cost-sharing requirements sunsetting on the same date as the relocation obligations. The Commission has emphasized that it is desirable to harmonize the FS relocation procedures among the various AWS designated bands to the greatest extent feasible. The Commission specifically noted that relocation procedures that are consistent throughout the band can be expected to foster a more efficient rollout of AWS and minimize confusion among the parties, and thereby serve the public interest. We believe that adopting rules based on the part 27 cost-sharing rules that apply to AWS–1 licensees will accelerate the relocation process and promote rapid deployment of new advanced wireless services in the band. The part 27 cost-sharing rules were designed to accommodate the deployment of new wireless terrestrial services and have a proven record of success. We also observe that the Commission refined the part 27 cost-sharing plan based on the experience and record of the cost-sharing plan that applied to PCS under part 24. We therefore believe that our adoption of similar rules in this instance will expedite the relocation of FS incumbents and the introduction of new services. We further find that this approach will serve the public interest because it will distribute relocation costs more equitably among the beneficiaries of the relocation, encourage the simultaneous relocation of multi-link communications systems, and accelerate the relocation process, thereby promoting more rapid deployment of new services. Accordingly, we adopt rules in based on the formal cost-sharing procedures codified in part 27 of our rules to apportion relocation costs among those entrants that benefit from the relocation of FS incumbents in the 2180–2200 MHz band.

224. Consistent with our proposal to extend the cost-sharing rules adopted for AWS–1 licensees to the AWS–4 band, we also adopt rules to permit for voluntary self-relocating FS incumbents to obtain reimbursement from those licensees of AWS–4 authority benefiting from the self-relocation. Incumbent participation will provide FS incumbents with the flexibility to relocate themselves and the right to obtain reimbursement of their relocation costs, adjusted by depreciation, up to the reimbursement cap, from new AWS–4 entrants in the band. Incumbent participation also will accelerate the relocation process by promoting system wide relocations and result in faster clearing of the band, thereby expediting the deployment of new advanced wireless services to the public. Therefore, we require licensees of AWS–4 authority to reimburse FS incumbents that voluntarily self-relocate from the 2110–2150 MHz and 2160–2200 MHz bands and AWS licensees will be entitled to *pro rata* cost sharing from other AWS licensees that also benefited from the self-relocation.

225. With respect to cost-sharing obligations on MSS operators for FS incumbent self-relocation in the 2180–2200 MHz band, we recognize that the Commission previously declined to impose cost sharing on MSS operators for voluntary self-relocation by FS incumbents in that band. Accordingly, for FS incumbents that elect to self-relocate their paired channels in the 2130–2150 MHz and 2180–2200 MHz bands, we will impose cost-sharing obligations on AWS licensees but not on MSS operators. Where a voluntarily relocating microwave incumbent relocates a paired microwave link with paths in the 2130–2150 MHz and 2180–2200 MHz, it may not seek reimbursement from MSS operators but is entitled to reimbursement from the first AWS beneficiary for its actual costs for relocating the paired link, subject to the reimbursement cap in § 27.1164(b). This amount is subject to depreciation as specified in § 27.1164(b). An AWS licensee who is obligated to reimburse relocation costs under this rule is entitled to obtain reimbursement from other AWS beneficiaries in accordance with §§ 27.1164 and 27.1168. For purposes of applying the cost-sharing formula relative to other AWS licensees that benefit from the self-relocation, depreciation shall run from the date on which the clearinghouse issues the notice of an obligation to reimburse the voluntarily relocating microwave incumbent.

226. We require AWS–4 relocators to file their reimbursement requests with the clearinghouse within 30 calendar days of the date the relocator signs a relocation agreement with an incumbent. Terrestrial operations trigger incumbent microwave relocations on a link-by-link basis, and the Commission imposed a mandatory requirement that all terrestrial operators—AWS and MSS ATC—that relocate FS incumbents from the 2110–2150 MHz and 2160–2200 MHz bands use a clearinghouse. No party proposed that we modify the rules requiring the use of a clearinghouse by terrestrial wireless licenses for cost-sharing. The clearinghouses have considerable experience in determining the cost-sharing obligation of AWS and other ET entities for the relocation of FS incumbents from the 2110–2150 MHz and 2160–2200 MHz bands, and the

Commission selected clearinghouses to serve as neutral third-parties in the cost-sharing process. We continue to believe that a mandatory requirement will allow the clearinghouses to accurately track cost-sharing obligations as they relate to all terrestrial operations and expedite the relocation of FS incumbents from the 2180–2200 MHz band by minimizing disputes over the reimbursement of those costs. For similar reasons and consistent with precedent, we will also require self-relocating microwave incumbents in the 2180–2200 MHz band to file their reimbursement requests with the clearinghouse within 30 calendar days of the date that they submit their notice of service discontinuance with the Commission.

227. We further require all licensees of AWS–4 authority that are constructing a new site or modifying an existing site to file site-specific data with the clearinghouse prior to initiating operations for a new or modified site. The site data must provide a detailed description of the proposed site's spectral frequency use and geographic location. We will also impose a continuing duty on those entities to maintain the accuracy of the data on file with the clearinghouse. We find that such an approach will ensure fairness in the process and preclude new AWS–4 entrants from conducting independent interference studies for the purpose or effect of evading the requirement to file site-specific data with the clearinghouse prior to initiating operations.

228. Utilizing the site-specific data submitted by licensees of AWS–4 authority, the clearinghouse determines the cost-sharing obligations of each entrant by applying the Proximity Threshold Test. We find that the presence of an entrant's site within the Proximity Threshold Box, regardless of whether it predates or postdates relocation of the incumbent, and regardless of the potential for actual interference, will trigger a cost-sharing obligation. Accordingly, any entrant that engineers around the FS incumbent will trigger a cost-sharing obligation once relocation of the FS incumbent occurs.

229. Consistent with precedent, we establish a specific date on which the cost-sharing plans that we adopt here will sunset. We find that the sunset date for cost sharing purposes is the date on which the relocation obligation for the subject band terminates. Although we realize that we are adopting a sunset date that differs from the sunset date for cost-sharing obligations of AWS–1 licensees, we find that establishing sunset dates for cost sharing purposes that are commensurate with the sunset date for AWS relocation obligations in each band appropriately balances the interests of all affected parties and ensures the equitable distribution of costs among those entrants benefiting from the relocations. We reiterate, however, that AWS entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

230. We continue to require participants in the cost-sharing plan to submit their disputes to the clearinghouse for resolution in the first instance. Where parties are unable to resolve their issues before the clearinghouse, parties are encouraged to use expedited ADR procedures, such as binding arbitration, mediation, or other ADR techniques. Except for the independent third party appraisal of the compensable relocation costs for a voluntarily relocating microwave incumbent and documentation of the relocation agreement or discontinuance of service required for a relocator or self-relocator's reimbursement claim, both of which must be submitted in their entirety, we require participants in the cost-sharing plan to provide only the uniform cost data requested by the clearinghouse subject to the continuing requirements that relocators and self-relocators maintain documentation of cost-related issues until the sunset date and provide such documentation, upon request, to the clearinghouse, the Commission, or entrants that trigger a cost-sharing obligation. In addition, we also require that parties of interest contesting the clearinghouse's determination of specific cost-sharing obligations must provide evidentiary support to demonstrate that their calculation is reasonable and made in good faith. Specifically, these parties are expected to exercise due diligence to obtain the information necessary to prepare an independent estimate of the relocation costs in question and to file the independent estimate and supporting documentation with the clearinghouse.

231. We expect new entrants and incumbent licensees to act in good faith in all matters relating to the cost-sharing process herein established. Although the Commission has generally required ''good faith'' in the context of parties' participation in negotiations, self-relocating incumbents benefit through their participation in the cost-sharing regime and therefore we expect them to act in good faith in seeking reimbursement for recoverable costs in accordance with the Commission's rules. We find that the question of whether a particular party was acting in good faith is best addressed on a case-by-case basis. By retaining sufficient flexibility to craft an appropriate remedy for a given violation in light of the particular circumstances at hand, we can ensure that any party who violates our good faith requirements, either by acting in bad faith or by filing frivolous or harassing claims of violations, will suffer sufficient penalties to outweigh any advantage it hoped to gain by its violation.

IV. Ancillary Terrestrial Component in the 2 GHZ MSS Band

232. We eliminate the ATC rules for the 2 GHz band and delete the former footnote NG168 (now numbered NG43) from the U.S. Table of Allocations. We conclude that authorizing two, distinct terrestrial mobile operations in the band would result in confusion and redundancy. Furthermore, the changing circumstances in the 2 GHz MSS band demonstrate that ATC regulations are no longer the best framework for developing and deploying terrestrial broadband operations in the band. Finally, the record reflects no opposition to our adopting the proposals. We therefore conclude that the potential benefits of our proposals would outweigh any potential costs. In eliminating the ATC rules for the 2 GHz MSS band, we emphasize that our action does not result in changes to the ATC rules for either the L-band or the Big LEO band; rather, we intend to address issues pertaining to the ATC rules for those bands in one or more separate proceedings at a later date.

V. Order of Proposed Modification

233. As noted above, although the 2000–2020 MHz and 2180–2200 MHz bands are currently assigned to two different licensees, Gamma Acquisitions L.L.C. (Gamma) and New DBSD Satellite Services G.P. (New DBSD), both licenses are wholly owned subsidiaries of DISH. In paragraph 175 above, we direct these 2 GHz MSS licensees to determine how to effectuate the reconfiguration of the 2 GHz MSS band into an A–B/A–B arrangement by each licensee selecting a duplex pair in response to this Order of Proposed Modification. For the reasons discussed throughout this *Report and Order,* we conclude that it is in the public interest, convenience, and necessity to propose modifying the existing 2 GHz MSS licenses as follows:

- To modify the 2 GHz MSS licenses of Gamma Acquisition L.L.C. (call sign E060430) and New DBSD Satellite Services G.P. (call sign E070272) to reflect the duplex pairing that each licensee selects in its response to this

Order of Proposed Modification, consistent with paragraph 175, above;

• To add AWS–4 terrestrial operating authority, as detailed in this *Report and Order and Order of Proposed Modification,* to the 2 GHz MSS licenses of both Gamma Acquisition L.L.C. (call sign E060430) and New DBSD Satellite Services G.P. (call sign E070272) consistent with the 2 GHz MSS licensees' duplex pairing selections;

• To require Gamma Acquisition L.L.C. and New DBSD Satellite Services G.P. to accept any OOBE interference to MSS or terrestrial operations in 2000–2005 MHz from lawful operations from future 1995–2000 MHz licensees;

• To require Gamma Acquisitions L.L.C. and New DBSD Satellite Services G.P. to accept any in band interference in some or all of 2000–2020 MHz from lawful operations from 1995–2000 MHz licensees; and

• To eliminate the ATC authority in the 2000–2020 MHz and 2180–2200 MHz spectrum bands of both Gamma Acquisition L.L.C. and New DBSD Satellite Services G.P.

234. In this connection, we believe that the proposed license modifications would serve the public interest by allowing for additional terrestrial broadband spectrum, while minimizing harmful interference. In accordance with section 316(a) of the Communications Act, as amended, and § 1.87(a) of the Commission's rules, we will not issue a modification order(s) until Gamma Acquisition L.L.C. and New DBSD Satellite Services G.P. have received notice of our proposed action and have had an opportunity to protest. We direct the staff to send this Report and Order and Order of Proposed Modification by certified mail, return receipt requested to Gamma Acquisition L.L.C., and to New DBSD Satellite Services G.P. Pursuant to section 316(a)(1) of the Act and § 1.87(a) of the Commission's rules, receipt of this *Report and Order and Order of Proposed Modification* by certified mail, return receipt requested, shall constitute notification in writing of our *Order of Proposed Modification* proposing to modify the 2 GHz MSS licenses of Gamma Acquisition L.L.C. and New DBSD Satellite Services G.P. and of the grounds and reasons therefore. Gamma Acquisition L.L.C. and New DBSD Satellite Services G.P. shall have thirty days from the date of such receipt to protest such Order of Proposed Modification. To protest the proposed modifications, Gamma Acquisition L.L.C. or New DBSD Satellite Services G.P. must, within thirty days of receiving notice of this *Report and Order and Order of Proposed Modification,* submit a written statement with sufficient evidence to show that the modification would not be in the public interest. The protest must be filed in the Electronic Comment Filing System (ECFS) under WT Docket No. 12–70 or with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street SW., Room TW–A235, Washington, DC 20554; the protesting party must, within 30 days of receiving notice of this *Report and Order and Order of Proposed Modification,* send a copy of the protest via electronic mail to Kevin Holmes of the Broadband Division of the Wireless Telecommunications Bureau at *Kevin.Holmes@fcc.gov*. (This address is proper only for protests submitted by U.S. mail. For hand-delivered or messenger-delivered paper filings, the proper address is 236 Massachusetts Ave. NE., Suite 110, Washington, DC 2002. For documents sent by overnight delivery service other than United States Postal Service Express Mail and Priority Mail, the proper address is 9300 East Hampton Dr., Capitol Heights, MD 20743. For further information, contact the Office of the Secretary at (202) 418–0300 or *mdortch@fcc.gov*) Once the 30 day protest period has lapsed, Gamma Acquisition L.L.C.'s and New DBSD Satellite Services G.P.'s right to file a protest expires, and the Commission may modify the licenses as noticed. Finally, in the event that Gamma Acquisition L.L.C. or New DBSD Satellite Services G.P. rejects any aspect of the proposed license modification, it will be deemed to have rejected the entire license modification.

235. We delegate to the Wireless Telecommunications Bureau and the International Bureau the authority to issue a license modification order for Gamma Acquisition L.L.C. (call sign E060430) and for New DBSD Satellite Services G.P. (call sign E070272), but only to the extent consistent with paragraphs 319–320 above.

236. *Ex Parte Status.* Unless otherwise provided by the Commission or its staff pursuant to § 1.1200(a), a license modification proceeding under Title III of the Communications Act is treated as a restricted proceeding for *ex parte* purposes under § 1.1208 of the Commission's rules. In this case, the license modification proceedings are related to the above-captioned rulemaking proceeding, WT Docket No. 12–70, which is designated as a permit but disclose proceeding under the *ex parte* rules. Due to the interrelated nature of these proceedings, we find that it is in the public interest to treat the license modification proceedings as permit but disclose proceedings under § 1.1206 of the Commission's rules. Therefore, any *ex parte* presentations that are made with respect to the issues involved in the subject license modification proceedings subsequent to the release of the this *Order of Proposed Modification* will be permissible but must be disclosed in accordance with the requirements of § 1.1206(b) of the Commission's rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). For administrative convenience only, any filings related to this Order of Proposed Modification must be filed in WT Docket No. 12–70 and may be filed using the Electronic Comment Filing System (ECFS), *http://apps.fcc.gov/ecfs/2d*. In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

VI. Notice of Inquiry: 2 GHZ Extension Band Concept

237. In the *AWS–4 Notice of Inquiry,* the Commission sought comment on a

variation on the AWS–4 band plan proposed in the *AWS–4 NPRM*. That band plan, termed the ''2 GHz Extension Band Concept,'' would have incorporated the NTIA proposal to reallocate the 1695–1710 MHz band from Federal to non-Federal use and would have resulted in a 35 megahertz band that paired 2180–2200 MHz (downlink) with 1695–1710 MHz (uplink) and a 30 megahertz downlink expansion band of 1995–2025 MHz, 77 FR 22737, April 17, 2012. Because we adopt a specific AWS–4 band plan above that includes much of this spectrum, we decline at this time to pursue the 2 GHz Extension Band Concept.

VII. Procedural Matters

A. Paperwork Reduction Act Analysis

238. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

239. In this present document, we have assessed the effects of the policies adopted in this Report and Order and Order of Proposed Modification with regard to information collection burdens on small business concerns, and find that these policies will benefit many companies with fewer than 25 employees because the revisions we adopt should provide small entities with more information, more flexibility, and more options for gaining access to valuable wireless spectrum. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA).

B. Final Regulatory Flexibility Analysis

240. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, we have prepared a FRFA concerning the possible impact of the rule changes contained in the *Report and Order* on small entities.

C. Need for, and Objectives of, the Report and Order

241. Demand for wireless broadband services and the network capacity associated with those services is surging, resulting in a growing demand for spectrum to support these services. Adoption of smartphones increased at a 50 percent annual growth rate in 2011, from 27 percent of U.S. mobile subscribers in December 2010 to nearly 42 percent in December 2011. Further, consumers have rapidly adopted the use of tablets, which were first introduced in January of 2010. By the end of 2012, it is estimated that one in five Americans—almost 70 million people—will use a tablet. Between 2011 and 2017, mobile data traffic generated by tablets is expected to grow at a compound annual growth rate of 100 percent. New mobile applications and services, such as high resolution video communications, are also using more bandwidth. For example, a single smartphone can generate as much traffic as thirty-five basic-feature mobile phones, while tablets connected to 3G and 4G networks use three times more data than smartphones over the cellular network. All of these trends, in combination, are creating an urgent need for more network capacity and, in turn, for suitable spectrum.

242. The 2010 *National Broadband Plan* recommended the Commission undertake to make 500 megahertz of spectrum available for broadband use within ten years, including 300 megahertz within five years. The Commission has taken numerous steps to achieve these goals, including recently adopting a notice of proposed rulemaking on conducting the world's first incentive auction to repurpose broadcast spectrum for wireless broadband use, and updating the Commission's rules for the 2.3 GHz Wireless Communications Service (WCS) band to permit the use of the most advanced wireless technologies in that band.

243. In February 2012, Congress enacted Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 (the ''Spectrum Act''). The Spectrum Act includes several provisions to make more spectrum available for commercial use, including through auctions, and to improve public safety communications. Among other things, the Spectrum Act requires the Commission, by February 23, 2015, to allocate the 1915–1920 MHz band and the 1995–2000 MHz band (collectively, the H Block) for commercial use, and to auction and grant new initial licenses for the use of each spectrum band, subject to flexible-use service rules. Congress provided, however, that if the Commission determined that either of the bands could not be used without causing harmful interference to commercial licensees in 1930–1995 MHz (PCS downlink), then the Commission was prohibited from allocating that specific band for commercial use or licensing it. Additionally, sections 6401(f) and 6413 of the Spectrum Act specify that the proceeds from an auction of licenses in the 1995–2000 MHz band and in the 1915–1920 MHz band shall be deposited in the Public Safety Trust Fund and then used to fund the Nationwide Public Safety Broadband Network (''FirstNet''). The H block spectrum could be the first spectrum specified by the Spectrum Act to be licensed by auction, and thus could represent the first inflow of revenues toward this statutory goal.

244. In this Report and Order, we increase the Nation's supply of spectrum for mobile broadband by adopting flexible use rules for 40 megahertz of spectrum in the 2 GHz band (2000–2020 MHz and 2180–2200 MHz), which we term the AWS–4 band. In so doing, we carry out a recommendation in the *National Broadband Plan* that the Commission enable the provision of stand-alone terrestrial services in the 2 GHz Mobile Satellite Service (MSS) spectrum band, thus dramatically increasing the value of this spectrum to the public. Specifically, we remove regulatory barriers to mobile broadband use of this spectrum, and adopt service, technical, and licensing rules that will encourage innovation and investment in mobile broadband and provide certainty and a stable regulatory regime in which broadband deployment can rapidly occur.

D. Legal Basis

245. The actions are authorized pursuant to sections 1, 2, 4(i), 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332, and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332, and 333, and Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 1302.

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

246. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted, herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. Below, we describe and estimate the number of small entity licensees that may be affected by the adopted rules.

247. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* Our action may, over time, affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration. As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2007, there were approximately 1,621,315 small organizations. Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

248. *Satellite Telecommunications and All Other Telecommunications.* The rules adopted in this Order would affect some providers of satellite telecommunications services. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

249. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999.

250. The second category of Other Telecommunications is comprised of entities ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, the Commission estimates that the majority of All Other Telecommunications firms are small entities that might be affected by our actions.

251. *Satellite Telecommunications/ Mobile Satellite Service Licensees.* Neither the Commission nor the U.S. Small Business Administration has developed a small business size standard specifically for mobile satellite service licensees. The appropriate size standard is therefore the SBA standard for Satellite Telecommunications, which provides that such entities are small if they have $15 million or less in annual revenues. This industry comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications. Currently, the Commission's records show that there are 31 entities authorized to provide voice and data MSS in the United States. The Commission does not have sufficient information to determine which, if any, of these parties are small entities. The Commission notes that small businesses are not likely to have the financial ability to become MSS system operators because of high implementation costs, including construction of satellite space stations and rocket launch, associated with satellite systems and services.

252. However, the U.S. Census publishes data about Satellite Telecommunications generally, and this data may well be relevant to the estimate of the number of voice and data MSS. Census data for 2007 indicate that 512 satellite telecommunications firms operated during that year. Of that 512, 290 received annual receipts of $10.0 million or less. 18 firms received annual receipts of between $10.0 million and $24, 999.999 and 30 received annual receipts of $25.0 million or more. Since the Census data does not distinguish between MSS and other types of satellite communications companies, it cannot be known precisely, based on Census data, how many of the 31 authorized MSS firms are small. However, since the majority of all satellite telecommunications companies were small under the applicable standard, a limited inference is possible that some of the 31 MSS firms are small. Since it is possible that some MSS companies are small entities affected by this Order, we therefore include them in this section of the FRFA.

253. *Wireless Telecommunications Carriers (except satellite).* The *Report and Order* applies various Commission policies and rules to terrestrial service in the MSS bands. We cannot predict who may in the future become a licensee or lease spectrum for terrestrial use in these bands. In general, any wireless telecommunications provider would be eligible to become an Advanced Wireless Service licensee or lease spectrum from the MSS or AWS licensees. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and

provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services.

254. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our actions.

F. Description of Projected Reporting, Recordkeeping, and other Compliance Requirements

255. The projected reporting, recordkeeping, and other compliance requirements resulting from the *Report and Order* will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The revisions the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to valuable wireless spectrum.

256. Any applicants for licenses of AWS–4 operating authority will be required to file license applications using the Commission's automated Universal Licensing System (ULS). ULS is an online electronic filing system that also serves as a powerful information tool that enables potential licensees to research applications, licenses, and antennae structures. It also keeps the public informed with weekly public notices, FCC rulemakings, processing utilities, and a telecommunications glossary. Licensees of AWS–4 operating authority that must submit long-form license applications must do so through ULS using Form 601, FCC Ownership Disclosure Information for the Wireless Telecommunications Services using FCC Form 602, and other appropriate forms.

G. Steps taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

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

258. As we provide in this *Report and Order,* licensing the AWS–4 bands under Economic Areas (EA) geographic size licenses will provide regulatory parity with other AWS bands that are licensed on an EA basis, such as AWS–1 B and C block licenses. Additionally, assigning AWS–4 in EA geographic areas will allow AWS–4 licensees to make adjustments to suit their individual needs. EA license areas are small enough to provide spectrum access opportunities for smaller carriers. EA license areas also nest within and may be aggregated up to larger license areas that have been used by the Commission for other services, such as Major Economic Areas (MEAs) and Regional Economic Area Groupings (REAGs) for those seeking to create larger service areas. Licensees may also adjust their geographic coverage through secondary markets. These rules should enable licensees of AWS–4 operating authority, or any entities, whether large or small, providing service in other AWS bands to more easily adjust their spectrum to build their networks pursuant to individual business plans.

259. This *Report and Order* adopts rules to protect entities operating in nearby spectrum bands from harmful interference, which may include small entities. The technical rules adopted in the *Report and Order* are designed, among other things, to protect broadband PCS services operating in the 1930–1995 MHz band, future services operating in the 1995–2000 MHz band, and Federal operations in the 2200–2290 MHz band from harmful interference from AWS–4 operations.

260. The *Report and Order* provides licensees of AWS–4 authority with the flexibility to provide any fixed or mobile service that is consistent with the allocations for this spectrum, which is consistent with other spectrum allocated or designated for licensed fixed and mobile services, *e.g.,* AWS–1. The *Report and Order* further provides for licensing of this spectrum under the Commission's market-oriented part 27 rules. This includes applying the Commission's secondary market policies and rules to all transactions involving the use of AWS–4 bands for terrestrial services, which will provide greater predictability and regulatory parity with bands licensed for terrestrial mobile broadband service. These rules should make it easier for AWS–4 providers to enter secondary market arrangements involving terrestrial use of their spectrum. The secondary market rules apply equally to all entities, whether small or large. As a result, we believe that this will provide an economic benefit to small entities by making it easier for entities, whether large or small, to enter into secondary market arrangements for AWS–4 spectrum.

H. Federal Rules that May Duplicate, Overlap, or Conflict with the Rules

261. None.

VIII. Ordering Clauses

262. Accordingly, It is ordered, pursuant to sections 1, 2, 4(i), 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332 and 333 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201, 301, 302, 303, 307, 308, 309, 310, 316, 319, 324, 332, and 333 that this Report and Order and Order of Proposed Modification is hereby adopted.

263. It is further ordered that parts 1, 2, 25, 27, and 101 of the Commission's rules, 47 CFR 1, 2, 25, 27, and 101, are amended,, effective 30 days after publication in the **Federal Register** except as otherwise provided herein.

264. It is further ordered that the amendments, adopted above, to §§ 1.949, 27.14, 27.17, 27.1131, 27.1134, 27.1136, 27.1166, 27.1168, 21.1170, 101.69, and 101.73(d) of the Commission's rules, 47 CFR 1.949, 27.14, 27.17, 27.1131, 27.1134, 27.1136, 27.1166, 27.1168, 21.1170, 101.69, and 101.73(d), which contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), will become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

265. It is further proposed, pursuant to sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 316, and § 1.87 of the Commission's rules, 47

CFR 1.87, that the license for Call Sign E060430 held by Gamma Acquisition L.L.C. be modified consistent with section IV (Order of Proposed Modification) of this Report and Order and Order of Proposed Modification. Pursuant to section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 316(a)(1), and § 1.87(a) of the Commission's rules, 47 CFR 1.87(a), receipt of this Report and Order and Order of Proposed Modification by certified mail, return receipt requested, shall constitute notification in writing of our Order of Proposed Modification that proposes to modify Call Sign E060430 held by Gamma Acquisition L.L.C., and of the grounds and reasons therefore, and Gamma Acquisition L.L.C. shall have thirty (30) days from the date of receipt to protest such Order of Proposed Modification. The Wireless Telecommunications Bureau and the International Bureau are delegated authority to issue an order of modification if no protests are filed.

266. It is further proposed, pursuant to sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 316, and § 1.87 of the Commission's rules, 47 CFR 1.87, that the license for Call Sign E070272 held by New DBSD Satellite Services G.P. be modified consistent with section IV (Order of Proposed Modification) of this Report and Order and Order of Proposed Modification. Pursuant to section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 316(a)(1), and § 1.87(a) of the Commission's rules, 47 CFR 1.87(a), receipt of this Report and Order and Order of Proposed Modification by certified mail, return receipt requested, shall constitute notification in writing of our Order of Proposed Modification that proposes to modify Call Sign E070272 held by New DBSD Satellite Services G.P., and of the grounds and reasons therefore, and New DBSD Satellite Services G.P. shall have thirty (30) days from the date of receipt to protest such Order of Proposed Modification. The Wireless Telecommunications Bureau and the International Bureau are delegated authority to issue an order of modification if no protests are filed.

267. It is further ordered that this Report and Order and Order of Proposed Modification shall be sent by certified mail, return receipt request, to Gamma Acquisition L.L.C., 9601 South Meridian Blvd., Englewood, CO 80112 and Pantelis Michalopoulos, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW., Washington, DC 20036–1795, and to New DBSD Satellite Services G.P., 11700 Plaza America Drive, Suite 1010, Reston, VA 20190 and Pantelis Michalopoulos, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW., Washington, DC 20036–1795.

268. It is further ordered that the license modification proceedings commenced by the Order of Proposed Modification shall be treated as permit-but-disclose proceedings under the Commission's *ex parte* rules, *see* 47 CFR 1.1200 *et seq.*

269. It is further ordered that the Wireless Telecommunications Bureau is delegated authority to make all necessary changes to its electronic database systems and forms to implement the policies and rules adopted in this Report and Order.

270. It is further ordered that the International Bureau is delegated authority to act on the petition for reconsideration filed by Inmarsat in IB Docket Nos. 05–220 and 05–221, consistent with this Order as set forth above.

271. It is further ordered that the Final Regulatory Flexibility Analysis hereto is adopted.

272. It is further ordered that the Commission shall send a copy of this *Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

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

List of Subjects

47 CFR Parts 1, 2, and 101

Radio, Reporting and recordkeeping requirements.

47 CFR Parts 25 and 27

Communications common carriers, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 25, 27, and 101 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309.

■ 2. Amend § 1.949 by adding paragraph (c) to read as follows:

§ 1.949 Application for renewal of license.

* * * * *

(c) *Renewal showing.* An applicant for renewal of a geographic-area authorization in the 2000–2020 MHz and 2180–2200 MHz service bands must make a renewal showing, independent of its performance requirements, as a condition of renewal. The showing must include a detailed description of the applicant's provision of service during the entire license period and address:

(1) The level and quality of service provided by the applicant (*e.g.,* the population served, the area served, the number of subscribers, the services offered);

(2) The date service commenced, whether service was ever interrupted, and the duration of any interruption or outage;

(3) The extent to which service is provided to rural areas;

(4) The extent to which service is provided to qualifying tribal land as defined in § 1.2110(f)(3)(i); and

(5) Any other factors associated with the level of service to the public.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 4. Section 2.106, the Table of Frequency Allocations, is revised as follows:

■ a. Page 36 is revised

■ b. In the list of non-Federal Government (NG) Footnotes, footnote NG43 is removed.

The revision reads as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F			1980-2025	NG177	
				2000-2020 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space)	Satellite Communications (25) Wireless Communications (27)
2010-2025 FIXED MOBILE 5.388A 5.388B 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389E	2010-2025 FIXED MOBILE 5.388A 5.388B 5.388		2020-2025 FIXED MOBILE NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347 US393	2025-2110 FIXED NG118 MOBILE 5.391 5.392 US90 US222 US346 US347 US393	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)
2110-2120 FIXED MOBILE 5.388A 5.388B SPACE RESEARCH (deep space) (Earth-to-space) 5.388			2110-2120 US252	2110-2120 FIXED MOBILE US252	Public Mobile (22) Wireless Communications (27) Fixed Microwave (101)
2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2160 FIXED MOBILE 5.388A 5.388B Mobile-satellite (space-to-Earth) 5.388	2120-2170 FIXED MOBILE 5.388A 5.388B 5.388	2120-2200	2120-2180 FIXED MOBILE NG153 NG178	
	2160-2170 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.388 5.389C 5.389E				
2170-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth) 5.351A 5.388 5.389A 5.389F				2180-2200 FIXED MOBILE MOBILE-SATELLITE (space-to-Earth)	Satellite Communications (25) Wireless Communications (27)

* * * * *

PART 25—SATELLITE COMMUNICATIONS

■ 5. 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. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 6. Amend § 25.143 by revising paragraphs (i) and (k) to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and 2 GHz mobile-satellite service.

* * * * *

(i) *Incorporation of ancillary terrestrial component base stations into a 1.6/2.4 GHz mobile-satellite service network.* Any licensee authorized to construct and launch a 1.6/2.4 GHz system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

* * * * *

(k) *Aircraft.* ATC mobile terminals must be operated in accordance with 25.136(a). All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 1610–1626.5 MHz/2483.5–2500 MHz bands shall bear the following statement in a conspicuous location on the device: ''This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft.''

■ 7. Amend § 25.149 by revising the section heading and paragraph (a)(1) introductory text, removing and reserving paragraphs (a)(2)(i), (b)(1)(i), and (b)(5)(i), and revising paragraphs (d) and (e) to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellites service networks operating in the 1.5/1.6 GHz and 1.6/2.4 GHz mobile-satellite service.

(a) * * *

(1) ATC shall be deployed in the forward-band mode of operation whereby the ATC mobile terminals transmit in the MSS uplink bands and the ATC base stations transmit in the MSS downlink bands in portions of the 1626.5–1660.5 MHz/1525–1559 MHz bands (L-band) and the 1610–1626.5 MHz/2483.5–2500 MHz bands (Big LEO band).

* * * * *

(d) Applicants for an ancillary terrestrial component authority shall demonstrate that the applicant does or will comply with the provisions of § 1.924 of this chapter and §§ 25.203(e) through 25.203(g) and with § 25.253 or § 25.254, as appropriate, through certification or explanatory technical exhibit. (e) Except as provided for in paragraph (f) of this section, no application for an ancillary terrestrial component shall be granted until the applicant has demonstrated actual compliance with the provisions of paragraph (b) of this section. Upon receipt of ATC authority, all ATC licensees must ensure continued compliance with this section and §§ 25.253 or 25.254, as appropriate.

* * * * *

§ 25.252 [Removed and Reserved].

■ 8. Remove and reserve § 25.252.

■ 9. Amend § 25.255 by revising the section heading to read as follows:

§ 25.255 Procedures for resolving harmful interference related to operation of ancillary terrestrial components operating in the 1.5/1.6 GHz and 1.6/2.4 GHz bands.

* * * * *

■ 10. Add § 25.265 to read as follows:

§ 25.265 Acceptance of interference in 2000–2020 MHz.

(a) MSS receivers operating in the 2000–2020 MHz band must accept interference from lawful operations in the 1995–2000 MHz band, where such interference is due to:

(1) The in-band power of any operations in 1995–2000 MHz (*i.e.,* the portion of transmit power contained in the 1995–2000 MHz band); or

(2) The portion of out-of-band emissions contained in 2000–2005 MHz.

(b) [Reserved].

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

■ 11. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 12. Amend § 27.1 by adding paragraph (b)(10) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(10) 2000–2020 MHz and 2180–2200 MHz.

* * * * *

■ 13. Amend § 27.2 by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 27.2 Permissible communications.

(a) *Miscellaneous wireless communications services.* Except as provided in paragraph (b) or (d) of this section and subject to technical and other rules contained in this part, a licensee in the frequency bands specified in § 27.5 may provide any services for which its frequency bands are allocated, as set forth in the non-Federal Government column of the Table of Allocations in § 2.106 of this chapter (column 5).

* * * * *

(d) *2000–2020 MHz and 2180–2200 MHz bands.* Operators in the 2000–2020 MHz and 2180–2200 MHz bands may not provide the mobile-satellite service under the provisions of this part; rather, mobile-satellite service shall be provided in a manner consistent with part 25 of this chapter.

■ 14. Amend § 27.4 by revising the definition in ''Advanced wireless service (AWS)'' to read as follows:

§ 27.4 Terms and definitions.

Advanced Wireless Service (AWS). A radiocommunication service licensed pursuant to this part for the frequency bands specified in § 27.5(h) or § 27.5(j).

* * * * *

■ 15. Amend § 27.5 by adding paragraph (j) to read as follows:

§ 27.5 Frequencies.

* * * * *

(j) *2000–2020 MHz and 2180–2200 MHz bands.* The following frequencies are available for licensing pursuant to this part in the 2000–2020 MHz and 2180–2200 MHz (AWS–4) bands:

(1) Two paired channel blocks of 10 megahertz each are available for assignment as follows: Block A: 2000–2010 MHz and 2180–2190 MHz; and Block B: 2010–2020 MHz and 2190–2200 MHz.

(2) [Reserved].

■ 16. Amend § 27.6 by adding paragraph (i) to read as follows:

§ 27.6 Service areas.

* * * * *

(i) *2000–2020 MHz and 2180–2200 MHz bands.* AWS service areas for the 2000–2020 MHz and 2180–2200 MHz bands are based on Economic Areas (EAs) as defined in paragraph (a) of this section.

■ 17. Amend § 27.13 by adding paragraph (i) to read as follows:

§ 27.13 License period.

* * * * *

(i) *2000–2020 MHz and 2180–2200 MHz bands.* Authorizations for the 2000–2020 MHz and 2180–2200 MHz

bands will have a term not to exceed ten years from the date of issuance or renewal.

■ 18. Amend § 27.14 by revising the first sentence of paragraphs (a), (f), and (k), and adding paragraph (q) to read as follows:

§ 27.14 Construction requirements; Criteria for renewal.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, Block D in the 758–763 MHz and 788–793 MHz bands, Block A in the 2305–2310 MHz and 2350–2355 MHz bands, Block B in the 2310–2315 MHz and 2355–2360 MHz bands, Block C in the 2315–2320 MHz band, and Block D in the 2345–2350 MHz band, and with the exception of licensees holding AWS authorizations in the 2000–2020 MHz and 2180–2200 MHz bands, must, as a performance requirement, make a showing of ''substantial service'' in their license area within the prescribed license term set forth in § 27.13. * * *

* * * * *

(f) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 698–746 MHz, 747–762 MHz, and 777–792 MHz bands and licensees holding AWS authorizations for the 2000–2020 MHz and 2180–2200 MHz bands. * * *

* * * * *

(k) Licensees holding WCS or AWS authorizations in the spectrum blocks enumerated in paragraphs (g), (h), (i), or (q) of this section, including any licensee that obtained its license pursuant to the procedures set forth in paragraph (j) of this section, shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the applicable benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. * * *

* * * * *

(q) The following provisions apply to any licensee holding an AWS authorization in the 2000–2020 MHz and 2180–2200 MHz bands (an ''AWS–4 licensee''):

(1) An AWS–4 licensee shall provide terrestrial signal coverage and offer terrestrial service within four (4) years from the date of the license to at least forty (40) percent of the total population in the aggregate service areas that it has licensed in the 2000–2020 MHz and 2180–2200 MHz bands (''AWS–4 Interim Buildout Requirement''). For purposes of this subpart, a licensee's total population shall be calculated by summing the population of each license area that a licensee holds in the 2000–2020 MHz and 2180–2200 MHz bands; and

(2) An AWS–4 licensee shall provide terrestrial signal coverage and offer terrestrial service within seven (7) years from the date of the license to at least seventy (70) percent of the population in each of its license areas in the 2000–2020 MHz and 2180–2200 MHz bands (''AWS–4 Final Buildout Requirement'').

(3) If any AWS–4 licensee fails to establish that it meets the AWS–4 Interim Buildout Requirement, the AWS–4 Final Buildout requirement shall be accelerated by one year from (seven to six years).

(4) If any AWS–4 licensee fails to establish that it meets the AWS–4 Final Buildout Requirement in any of its license areas in the 2000–2020 MHz and 2180–2200 MHz bands, its authorization for each license area in which it fails to meet the requirement shall terminate automatically without Commission action. To the extent that the AWS–4 licensee also holds the 2 GHz MSS rights for the affected license area, failure to meet the AWS–4 Final Buildout Requirement in an EA shall also result in the MSS protection rule in § 27.1136 no longer applying in that license area.

(5) To demonstrate compliance with these performance requirements, licensees shall use the most recently available U.S. Census Data at the time of measurement and shall base their measurements of population served on areas no larger than the Census Tract level. The population within a specific Census Tract (or other acceptable identifier) will only be deemed served by the licensee if it provides signal coverage to and offers service within the specific Census Tract (or other acceptable identifier). To the extent the Census Tract (or other acceptable identifier) extends beyond the boundaries of a license area, a licensee with authorizations for such areas may only include the population within the Census Tract (or other acceptable identifier) towards meeting the performance requirement of a single, individual license.

(6) Failure by any AWS–4 licensee to meet the AWS–4 Final Buildout Requirement in paragraph (q)(4) of this section will result in forfeiture of the license and the licensee will be ineligible to regain it.

■ 19. Amend § 27.15 by revising paragraph (d)(1)(i); adding paragraph (d)(1)(iii); revising paragraph (d)(2)(i); and adding paragraph (d)(2)(iii) to read as follows:

§ 27.15 Geographic partitioning and spectrum disaggregation.

* * * * *

(d) * * *

(1) * * *

(i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands; and for licensees holding AWS authorizations in the 2000–2020 MHz and 2180–2200 MHz bands; the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee subsequently fails to meet its substantial service requirement, its license will be subject to automatic cancellation without further Commission action. Under the second option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire, pre-partitioned geographic service area. If the partitioner subsequently fails to meet its substantial service requirement, only its license will be subject to automatic cancellation without further Commission action.

* * * * *

(iii) For licensees holding AWS authorizations in the 2000–2020 MHz and 2180–2200 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a geographic partitioning must individually meet any service-specific performance requirements (*i.e.,* construction and operation requirements). If a partitioner or partitionee fails to meet any service-specific performance requirements on or before the required date, then the consequences for this failure shall be those enumerated in § 27.14(q)

(2) * * *

(i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands,

Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, or Block D in the 758–763 MHz and 788–793 MHz bands; and for licensees holding AWS authorizations in the 2000–2020 MHz and 2180–2200 MHz bands; the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to disaggregation agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the disaggregator and disaggregatee each certifies that it will share responsibility for meeting the substantial service requirement for the geographic service area. If the parties choose this option and either party subsequently fails to satisfy its substantial service responsibility, both parties' licenses will be subject to forfeiture without further Commission action. Under the second option, both parties certify either that the disaggregator or the disaggregatee will meet the substantial service requirement for the geographic service area. If the parties choose this option, and the party responsible subsequently fails to meet the substantial service requirement, only that party's license will be subject to forfeiture without further Commission action.

* * * * *

(iii) For licensees holding AWS authorizations in the 2000–2020 MHz and 2180–2200 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Each party to a spectrum disaggregation must individually meet any service-specific performance requirements (*i.e.,* construction and operation requirements). If a disaggregator or a disagregatee fails to meet any service-specific performance requirements on or before the required date, then the consequences for this failure shall be those enumerated in § 27.14(q).

■ 20. Add § 27.17 to read as follows:

§ 27.17 Discontinuance of service in the 2000–2020 MHz and 2180–2200 MHz bands.

(a) *Termination of authorization.* A licensee's AWS authorization in the 2000–2020 MHz and 2180–2200 MHz bands will automatically terminate, without specific Commission action, if it permanently discontinues service after meeting the AWS–4 Final Buildout Requirement as specified in § 27.14.

(b) *Permanent discontinuance.* Permanent discontinuance of service is defined as 180 consecutive days during which a licensee holding AWS authority in the 2000–2020 MHz and 2180–2200 MHz bands does not operate or, in the case of a commercial mobile radio service provider, does not provide service to at least one subscriber that is not affiliated with, controlled by, or related to the providing carrier.

(c) *Filing requirements.* A licensee of the 2000–2020 MHz and 2180–2200 MHz bands that permanently discontinues service as defined in this section must notify the Commission of the discontinuance within 10 days by filing FCC Form 601 or 605 requesting license cancellation. An authorization will automatically terminate, without specific Commission action, if service is permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation.

■ 21. Amend § 27.50 by revising paragraphs (d) introductory text, (d)(1) introductory text, and (d)(2) introductory text, and adding paragraphs (d)(7) and (8) to read as follows:

§ 27.50 Power limits and duty cycle.

* * * * *

(d) The following power and antenna height requirements apply to stations transmitting in the 1710–1755 MHz, 2110–2155 MHz, 2000–2020 MHz, and 2180–2200 MHz bands:

(1) The power of each fixed or base station transmitting in the 2110–2155 MHz or 2180–2200 MHz bands and located in any county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, is limited to:

* * * * *

(2) The power of each fixed or base station transmitting in the 2110–2155 MHz or 2180–2200 MHz bands and situated in any geographic location other than that described in paragraph (d)(1) of this section is limited to:

* * * * *

(7) Fixed, mobile, and portable (hand-held) stations operating in the 2000–2020 MHz band are limited to 2 watts EIRP, except that the total power of any portion of an emission that falls within the 2000–2005 MHz band may not exceed 5 milliwatts. A licensee of AWS–4 authority may enter into private operator-to-operator agreements with all 1995–2000 MHz licensees to operate in 2000–2005 MHz at power levels above 5 milliwatts EIRP; except the total power of the AWS–4 mobile emissions may not exceed 2 watts EIRP.

(8) A licensee operating a base or fixed station in the 2180–2200 MHz band utilizing a power greater than 1640 watts EIRP and greater than 1640 watts/MHz EIRP must be coordinated in advance with all AWS licensees authorized to operate on adjacent frequency blocks in the 2180–2200 MHz band.

* * * * *

■ 22. Amend § 27.53 by revising paragraph (h) to read as follows:

§ 27.53 Emission limits.

* * * * *

(h) *AWS emission limits.* (1) *General protection levels.* Except as otherwise specified below, for operations in the 1710–1755 MHz, 2110–2155 MHz, 2000–2020 MHz, and 2180–2200 bands, the power of any emission outside a licensee's frequency block shall be attenuated below the transmitter power (P) in watts by at least $43 + 10 \log_{10}(P)$ dB.

(2) *Additional protection levels.* Notwithstanding the foregoing paragraph (h)(1) of this section:

(i) Operations in the 2180–2200 MHz band are subject to the out-of-band emission requirements set forth in § 27.1134 for the protection of federal government operations operating in the 2200–2290 MHz band.

(ii) For operations in the 2000–2020 MHz band, the power of any emissions below 2000 MHz shall be attenuated below the transmitter power (P) in watts by at least $70 + 10 \log_{10}(P)$ dB.

(3) *Measurement procedure.* (i) Compliance with this provision is based on the use of measurement instrumentation employing a resolution bandwidth of 1 megahertz or greater. However, in the 1 megahertz bands immediately outside and adjacent to the licensee's frequency block, a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power.

(ii) When measuring the emission limits, the nominal carrier frequency shall be adjusted as close to the licensee's frequency block edges, both upper and lower, as the design permits.

(iii) The measurements of emission power can be expressed in peak or average values, provided they are expressed in the same parameters as the transmitter power.

(4) *Private agreements.* (i) For AWS operations in the 2000–2020 MHz and 2180–2200 MHz bands, to the extent a

licensee establishes unified operations across the AWS blocks, that licensee may choose not to observe the emission limit specified in paragraph (h)(1), above, strictly between its adjacent block licenses in a geographic area, so long as it complies with other Commission rules and is not adversely affecting the operations of other parties by virtue of exceeding the emission limit.

(ii) For AWS operations in the 2000–2020 MHz band, a licensee may enter into private agreements with all licensees operating between 1995 and 2000 MHz to allow the 70 + 10 $\log_{10}$(P) dB limit to be exceeded within the 1995–2000 MHz band.

(iii) An AWS licensee who is a party to a private agreement described in this section (4) must maintain a copy of the agreement in its station files and disclose it, upon request, to prospective AWS assignees, transferees, or spectrum lessees and to the Commission.

* * * * *

■ 23. Amend § 27.55 by revising paragraph (a)(1) to read as follows:

§ 27.55 Power strength limits.

(a) * * *

(1) 2110–2155, 2180–2200, 2305–2320 and 2345–2360 MHz bands: 47 dBμV/m.

* * * * *

■ 24. Amend § 27.57 by revising paragraph (c) to read as follows:

§ 27.57 International coordination.

* * * * *

(c) Operation in the 1710–1755 MHz, 2110–2155 MHz, 2000–2020 MHz, and 2180–2200 MHz bands is subject to international agreements with Mexico and Canada.

■ 25. Add § 27.65 to read as follows:

§ 27.65 Acceptance of interference in 2000–2020 MHz.

(a) Receivers operating in the 2000–2020 MHz band must accept interference from lawful operations in the 1995–2000 MHz band, where such interference is due to:

(1) The in-band power of any operations in 1995–2000 MHz (i.e., the portion transmit power contained in the 1995–2000 MHz band); or

(2) The portion of out-of-band emissions contained in 2000–2005 MHz.

(b) [Reserved].

Subpart L—1710–1755 MHz, 2110–2155 MHz, 2000–2020 MHz, and 2180–2200 MHz bands

■ 26. Amend part 27 by revising the heading of subpart L to read as set forth above.

■ 27. Add § 27.1103 to read as follows:

§ 27.1103 2000–2020 MHz and 2180–2200 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for 2000–2020 MHz and 2180–2200 MHz band licenses are subject to competitive bidding. The general competitive bidding procedures set forth in 47 CFR part 1, subpart Q will apply unless otherwise provided in this subpart.

■ 28. Add § 27.1104 to read as follows:

§ 27.1104 Designated Entities in the 2000–2020 MHz and 2180–2200 MHz bands.

Eligibility for small business provisions:

(a) *Small business.* (1) A small business is an entity that, together with its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship, has average gross revenues not exceeding $40 million for the preceding three years.

(2) A very small business is an entity that, together with its affiliates, its controlling interests, the affiliates of its controlling interests, and the entities with which it has an attributable material relationship, has average gross revenues not exceeding $15 million for the preceding three years.

(b) *Bidding credits.* A winning bidder that qualifies as a small business as defined in this section or a consortium of small businesses may use the bidding credit specified in § 1.2110(f)(2)(iii) of this chapter. A winning bidder that qualifies as a very small business as defined in this section or a consortium of very small businesses may use the bidding credit specified in § 1.2110(f)(2)(ii) of this chapter.

■ 29. Revise § 27.1131 to read as follows:

§ 27.1131 Protection of Part 101 operations.

All AWS licensees, prior to initiating operations from any base or fixed station, must coordinate their frequency usage with co-channel and adjacent channel incumbent, Part 101 fixed-point-to-point microwave licensees operating in the 2110–2155 MHz and 2180–2200 MHz bands. Coordination shall be conducted in accordance with the provisions of § 24.237 of this chapter.

■ 30. Amend § 27.1134 by adding paragraph (e) to read as follows:

§ 27.1134 Protection of Federal Government operations.

* * * * *

(e) *Protection of Federal operations in the 2200–2290 MHz band*—(1) *Default emission limits.* Except as provided in paragraph (e)(2) of this section, the following default out-of-band emissions limits shall apply for AWS–4 operations in the 2180–2200 MHz band.

(i) For these AWS–4 operations, the power of any emissions on all frequencies between 2200 and 2290 MHz shall not exceed an EIRP of −100.6 dBW/4 kHz.

(ii) No AWS–4 base station operating in the 2180–2200 MHz band shall be located less than 820 meters from a U.S. Earth Station facility operating in the 2200–2290 MHz band.

(2) *Agreements between AWS–4 operators and Federal government entities.* The out-of-band emissions limits in paragraph (e)(1) of this section may be modified by the private contractual agreement of licensees of AWS–4 operating authority and Federal government entities operating in the 2200–2290 MHz band. Such agreement shall be transmitted to the Commission by the National Telecommunications and Information Administration (NTIA) of the U.S. Department of Commerce. A licensee of AWS–4 operating authority who is a party to such an agreement must maintain a copy of the agreement in its station files and disclose it, upon request, to prospective AWS–4 assignees, transferees, or spectrum lessees, to Federal operators, and to the Commission.

■ 31. Add § 27.1136 to read as follows:

§ 27.1136 Protection of mobile satellite services in the 2000–2020 MHz and 2180–2200 MHz bands.

An AWS licensee of the 2000–2020 MHz and 2180–2200 MHz bands must accept any interference received from duly authorized mobile satellite service operations in these bands. Any such AWS licensees must protect mobile satellite service operations in these bands from harmful interference.

■ 32. Amend § 27.1160 by revising the first sentence to read as follows:

§ 27.1160 Cost-sharing requirements for AWS.

Frequencies in the 2110–2150 MHz and 2160–2200 MHz bands listed in § 101.147 of this chapter have been reallocated from Fixed Microwave Services (FMS) to use by AWS (as reflected in § 2.106 of this chapter).

* * *

■ 33. Amend § 27.1166 by revising paragraph (a)(1), paragraph (b) introductory text, and paragraphs (b)(2) and (f) to read as follows:

§ 27.1166 Reimbursement under the Cost-Sharing Plan.

(a) * * *

(1) To obtain reimbursement, an AWS relocator must submit documentation of the relocation agreement to the clearinghouse within 30 calendar days of the date a relocation agreement is signed with an incumbent. In the case of involuntary relocation, an AWS relocator must submit documentation of the relocated system within 30 calendar days after the end of the relocation.

* * * * *

(b) *Documentation of expenses.* Once relocation occurs, the AWS relocator, or the voluntarily relocating microwave incumbent, must submit documentation itemizing the amount spent for items specifically listed in § 27.1164(b), as well as any reimbursable items not specifically listed in § 27.1164(b) that are directly attributable to actual relocation costs. Specifically, the AWS relocator, or the voluntarily relocating microwave incumbent must submit, in the first instance, only the uniform cost data requested by the clearinghouse along with a copy, without redaction, of either the relocation agreement, if any, or the third party appraisal described in (b)(1) of this section, if relocation was undertaken by the microwave incumbent. AWS relocators and voluntarily relocating microwave incumbents must maintain documentation of cost-related issues until the applicable sunset date and provide such documentation upon request, to the clearinghouse, the Commission, or entrants that trigger a cost-sharing obligation. If an AWS relocator pays a microwave incumbent a monetary sum to relocate its own facilities, the AWS relocator must estimate the costs associated with relocating the incumbent by itemizing the anticipated cost for items listed in § 27.1164(b). If the sum paid to the incumbent cannot be accounted for, the remaining amount is not eligible for reimbursement.

* * * * *

(2) *Identification of links.* The AWS relocator or the voluntarily relocating microwave incumbent must identify the particular link associated with appropriate expenses (*i.e.,* costs may not be averaged over numerous links). Where the AWS relocator or voluntarily relocating microwave incumbent relocates both paths of a paired channel microwave link (*e.g.,* 2110–2130 MHz with 2160–2180 MHz and 2130–2150 MHz with 2180–2200 MHz), the AWS relocator or voluntarily relocating microwave incumbent must identify the expenses associated with each paired microwave link.

* * * * *

(f) *Reimbursement for Self-relocating FMS links in the 2130–2150 MHz and 2180–2200 MHz bands.* Where a voluntarily relocating microwave incumbent relocates a paired microwave link with paths in the 2130–2150 MHz and 2180–2200 MHz bands, it may not seek reimbursement from MSS operators, but is entitled to reimbursement from the first AWS beneficiary for its actual costs for relocating the paired link, subject to the reimbursement cap in § 27.1164(b). This amount is subject to depreciation as specified in § 27.1164(b). An AWS licensee who is obligated to reimburse relocation costs under this rule is entitled to obtain reimbursement from other AWS beneficiaries in accordance with §§ 27.1164 and 27.1168. For purposes of applying the cost-sharing formula relative to other AWS licensees that benefit from the self-relocation, depreciation shall run from the date on which the clearinghouse issues the notice of an obligation to reimburse the voluntarily relocating microwave incumbent.

■ 34. Amend § 27.1168 by revising paragraph (a) introductory text, paragraphs (a)(2), (a)(3) introductory text, (a)(3)(ii), and (b) to read as follows:

§ 27.1168 Triggering a reimbursement obligation.

(a) The clearinghouse will apply the following test to determine when an AWS entity has triggered a cost-sharing obligation and therefore must pay an AWS relocator, MSS relocator, or a voluntarily relocating microwave incumbent in accordance with the formula detailed in § 27.1164:

* * * * *

(2) An AWS relocator, MSS relocator or a voluntarily relocating microwave incumbent has paid the relocation costs of the microwave incumbent; and

(3) The AWS or MSS entity is operating or preparing to turn on a fixed base station at commercial power and the fixed base station is located within a rectangle (Proximity Threshold) described as follows:

* * * * *

(ii) If the application of the Proximity Threshold Test indicates that a reimbursement obligation exists, the clearinghouse will calculate the reimbursement amount in accordance with the cost-sharing formula and notify the AWS entity of the total amount of its reimbursement obligation.

(b) Once a reimbursement obligation is triggered, the AWS entity may not avoid paying its cost-sharing obligation by deconstructing or modifying its facilities.

■ 35. Revise § 27.1170 to read as follows:

§ 27.1170 Payment issues.

Prior to initiating operations for a newly constructed site or modified existing site, an AWS entity is required to file a notice containing site-specific data with the clearinghouse. The notice regarding the new or modified site must provide a detailed description of the proposed site's spectral frequency use and geographic location, including but not limited to the applicant's name and address, the name of the transmitting base station, the geographic coordinates corresponding to that base station, the frequencies and polarizations to be added, changed or deleted, and the emission designator. If a prior coordination notice (PCN) under § 101.103(d) of this chapter is prepared, AWS entities can satisfy the site-data filing requirement by submitting a copy of their PCN to the clearinghouse. AWS entities that file either a notice or a PCN have a continuing duty to maintain the accuracy of the site-specific data on file with the clearinghouse. Utilizing the site-specific data, the clearinghouse will determine if any reimbursement obligation exists and notify the AWS entity in writing of its repayment obligation, if any. When the AWS entity receives a written copy of such obligation, it must pay directly to the relocator the amount owed within 30 calendar days.

■ 36. Revise § 27.1174 to read as follows:

§ 27.1174 Termination of cost-sharing obligations.

The cost-sharing plan will sunset for all AWS and MSS entities on the same date on which the relocation obligation for the subject AWS band (*i.e.,* 2110–2150 MHz, 2160–2175 MHz, 2175–2180 MHz, 2180–2200 MHz) in which the relocated FMS link was located terminates. AWS or MSS entrants that trigger a cost-sharing obligation prior to the sunset date must satisfy their payment obligation in full.

PART 101—FIXED MICROWAVE SERVICES

■ 37. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, and 303 unless otherwise noted.

■ 38. Amend § 101.69 by revising paragraph (e) introductory text to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(e) Relocation of FMS licensees by Mobile-Satellite Service (MSS) licensees will be subject to mandatory negotiations only.

* * * * *

■ 39. Amend § 101.73 by revising paragraph (a) and paragraph (d) introductory text to read as follows:

§ 101.73 Mandatory negotiations.

(a) A mandatory negotiation period may be initiated at the option of the ET licensee. Relocation of FMS licensees by Mobile Satellite Service (MSS) operators and AWS licensees in the 2110–2150 MHz and 2160–2200 MHz bands will be subject to mandatory negotiations only.

* * * * *

(d) *Provisions for Relocation of Fixed Microwave Licensees in the 2110–2150 and 2160–2200 MHz bands.* A separate mandatory negotiation period will commence for each FMS licensee when an ET licensee informs that FMS licensee in writing of its desire to negotiate. Mandatory negotiations will be conducted with the goal of providing the FMS licensee with comparable facilities defined as facilities possessing the following characteristics:

* * * * *

■ 40. Amend § 101.79 by revising paragraphs (a) introductory text and (a)(2) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset. Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA TSB 10–F (for terrestrial-to-terrestrial situations) or TIA TSB 86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis. The date that the relocation rules sunset is determined as follows:

* * * * *

(2) For the 2180–2200 MHz band, for MSS/ATC December 8, 2013 (*i.e.,* ten years after the mandatory negotiation period begins for MSS/ATC operators in the service), and for ET licensees authorized under part 27 ten years after the first part 27 license is issued in the band. To the extent that an MSS operator is also an ET licensee authorized under part 27, the part 27 sunset applies to its relocation and cost sharing obligations should the two sets of obligations conflict.

* * * * *

■ 41. Amend § 101.82 by revising paragraphs (a) and (d) to read as follows:

§ 101.82 Reimbursement and relocation expenses in the 2110–2150 MHz and 2160–2200 MHz bands.

(a) Reimbursement and relocation expenses for the 2110–2130 MHz and 2160–2200 MHz bands are addressed in §§ 27.1160–27.1174.

* * * * *

(d) *Cost-sharing obligations among terrestrial stations.* For terrestrial stations (AWS), cost-sharing obligations are governed by §§ 27.1160 through 27.1174 of this chapter; provided, however, that MSS operators are not obligated to reimburse voluntarily relocating FMS incumbents in the 2180–2200 MHz band. (AWS reimbursement and cost-sharing obligations relative to voluntarily relocating FMS incumbents are governed by § 27.1166 of this chapter).

* * * * *

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Part III

Environmental Protection Agency

40 CFR Part 49

Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2013–0009; FRL–9774–1]

Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a source-specific federal implementation plan (FIP) requiring the Navajo Generating Station (NGS), located on the Navajo Nation, to reduce emissions of oxides of nitrogen (NO_X) under the Best Available Retrofit Technology (BART) provision of the Clean Air Act (CAA or Act) in order to reduce visibility impairment resulting from NGS at 11 National Parks and Wilderness Areas. NGS, which was built over 35 years ago, is the largest coal-fired power plant in the West in terms of generating capacity. It is central to the economies of the Navajo Nation and Hopi Tribe and supplies power to the states of Arizona, Nevada, and California. Electricity produced by NGS is also used to power the Central Arizona Project, which supplies surface water to three counties and numerous Indian tribes in Arizona. NGS is projected to continue operating at least until 2044. EPA is proposing to require NGS to achieve a nearly 80 percent reduction of its current overall NO_X emission rate. Our analysis indicates that installation of controls to achieve this reduction would result in significant visibility improvement that is well-balanced with the cost of those controls. For a number of reasons, including the importance of NGS to numerous Indian tribes located in Arizona and the federal government's reliance on NGS to meet the requirements of water settlements with several tribes, EPA is proposing an alternative to BART that would provide flexibility to NGS in the schedule for the installation of new control equipment. We also describe other compliance schedules for consideration and comment. We recognize that there may be other approaches that could result in equivalent or better visibility benefits over time and that there may be changes in energy demand, supply or other developments over the next several decades that may change electricity generation on the Navajo Nation. EPA encourages a robust public discussion of our proposed BART determination and alternative, the additional alternatives described herein, and other possible approaches. EPA is prepared to issue a supplemental proposal if approaches other than the proposed BART determination or proposed alternative articulated in this notice are identified as satisfying the requirements of the Clean Air Act and meeting the needs of the stakeholders. EPA is committed to continuing to engage with stakeholders to develop a final FIP that maintains benefits to tribes and the regional economy while improving visibility in many of our nation's most treasured National Parks and Wilderness Areas.

DATES: Comments must be submitted no later than May 6, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0009, by one of the following methods:

Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

Email: r9ngsbart@epa.gov.

Mail or deliver: Anita Lee (Air-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Hearings: EPA intends to hold public hearings to accept oral and written comments on the proposed rulemaking. EPA will provide notice and additional details at least 30 days prior to the hearings in the **Federal Register**, on our Web site, and in the docket.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at EPA Region 9 (e.g., maps, voluminous reports, copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region 9, (415) 972–3958, *r9ngsbart@epa.gov.*

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

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I. Background

A. Navajo Generating Station

The Navajo Generating Station (NGS) is a coal-fired power plant located on the Navajo Nation Indian Reservation, just east of Page, Arizona, approximately 135 miles north of Flagstaff, Arizona. The three 750 MW units at NGS were constructed over 1974—1976. At a capacity of 2250 MW, NGS is the largest coal-fired power plant in the western United States.

NGS is located near many of our most treasured National Parks and Wilderness Areas. Congress mandated heightened protection for these areas in designating them as mandatory Class I Federal areas. Eleven Class I areas are located within 300 km of NGS: Arches National Park (NP), Bryce Canyon NP, Canyonlands NP, Capitol Reef NP, Grand Canyon NP, Mazatzal Wilderness Area (WA), Mesa Verde NP, Petrified Forest NP, Pine Mountain WA, Sycamore Canyon WA, and Zion NP. These areas support an active tourism industry drawing over 4 million visitors to the Grand Canyon National Park alone in 2011.[1] In addition to EPA's role implementing the Regional Haze program, the Federal Land Managers of these areas, the National Park Service and the U.S. Fish and Wildlife Service, under the Department of the Interior, and the U.S. Forest Service, under the Department of Agriculture, also play important roles in the protection of visibility in the mandatory Class I Federal areas.

NGS is co-owned by six entities: The U.S. Bureau of Reclamation (Reclamation)—24.3 percent, Salt River Project (SRP), which also acts as the facility operator—21.7 percent, Los Angeles Department of Water and Power (LADWP)—21.2 percent, Arizona Public Service (APS)—14 percent, Nevada Power Company (NPC)—11.3 percent, and Tucson Electric Power (TEP)—7.5 percent. NGS uses hot-side electrostatic precipitators (hot-side ESPs) to control emissions of particulate matter (PM) and flue gas desulfurization units (FGDs) to control emissions of sulfur dioxide (SO_2). Over the 2009—2011 period, the owners of NGS voluntarily installed modern low-NO_X burners with separated over-fire air (LNB/SOFA) to reduce emissions of NO_X.

B. Significance of NGS and Federal Collaboration

Federal participation in NGS was authorized in the Colorado River Basin Project Act of 1968 as a preferred alternative to building hydroelectric dams in the Grand Canyon for providing power to the Central Arizona Project.[2] The Central Arizona Project (CAP) is a 336-mile water distribution system that delivers about 1.5 million acre-feet (AF) per year of Colorado River water from Lake Havasu in western Arizona to non-tribal agricultural water users in central Arizona, Indian tribes located in Arizona, and municipal water users in Maricopa, Pinal, and Pima counties.[3] This CAP water is used to meet the terms of a number of Indian water rights settlements in central Arizona and to reduce groundwater usage in the region.[4] Electricity from NGS powers the pumps that move CAP water to its destinations along the distribution system.

Several tribes located in Arizona have allocations of CAP water through water settlement agreements that have been approved through acts of Congress.[5] In exchange for allocations of CAP water at reduced cost and access to funds for the development of water infrastructure, these tribes have released their claims to other water in Arizona. Excess NGS power owned by Reclamation that is not used by CAP is sold and profits are deposited into a fund to support the tribal water settlement agreements.[6] The Department of the Interior (through the Bureau of Reclamation) plays an important role in the implementation of these settlement agreements and the management of the funds set aside for water infrastructure development for tribes.

The coal used by NGS is supplied by the Kayenta Mine, operated by Peabody Energy and located on reservation lands of both the Navajo Nation and the Hopi Tribe. Taxes and royalties from NGS and the Kayenta Mine paid to the Navajo Nation and Hopi Tribe contribute significantly to the annual revenues for both governments.[7]

C. Statutory and Regulatory Framework for Addressing Visibility

Part C, subpart II, of title I of the CAA as amended in 1977 establishes a visibility protection program that sets forth ''as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.'' 42 U.S.C. 7491A(a)(1). The terms ''impairment of visibility'' and ''visibility impairment'' are defined in the Act to include a reduction in visual range and atmospheric discoloration. Id. 7491A(g)(6). A fundamental requirement of the visibility protection program was for EPA, in consultation with the Secretary of the Interior, to promulgate a list of ''mandatory class I Federal areas'' where visibility is an important value. Id. 7491A(a)(2). These areas include national wilderness areas and national parks greater than six thousand acres in size. Id. 7472(a).

On November 30, 1979, EPA identified 156 mandatory Class I Federal areas where visibility is an important value, including: Grand Canyon NP in Arizona (40 CFR 81.403); Mesa Verde NP in Colorado (Id. 81.406); and Arches, Bryce Canyon, Canyonlands, Capitol Reef, and Zion NP in Utah (Id. 81.430). These mandatory Class I Federal areas are among the 11 Class I areas within an approximately 300 km radius of NGS.

On December 2, 1980, EPA promulgated the first phase of the required visibility regulations addressing visibility impairment that is reasonably attributable to a single source or a small group of sources, codified at 40 CFR 51.300–307. 45 FR 80084. The 1980 regulations deferred regulating regional haze (i.e., widespread haze from a multitude of sources which impairs visibility in every direction over a large area), based

[1] See document titled ''Grand Canyon Annual Visitation.pdf'' in the docket for this proposed rulemaking, available through *https://irma.nps.gov/Stats/*.

[2] See information on the Central Arizona Project at *http://www.usbr.gov/projects/Project.jsp?proj_Name=Central+Arizona+Project*. See also report by the National Renewable Energy Lab (NREL), discussed in more detail in Section G.iii of this notice, titled ''Navajo Generating Station and Air Visibility Regulations: Alternatives and Impacts'', revision dated March 2012 (NREL report) in the docket for this proposed rulemaking.

[3] See Section titled ''Welcome'' on CAP homepage: *http://www.cap-az.com/*

[4] See, for example, Section 4 of the NREL report and Comments from the Central Arizona Water Conservation District on the NREL report to DOI and EPA dated February 23, 201[2], in the docket for this proposed rulemaking.

[5] See, for example, Section 6 of the NREL report.

[6] Id.

[7] Id.

on a finding that the scientific data were inadequate at that time. Id. at 80086.

Congress added Section 169B to the Act in the 1990 CAA Amendments, requiring EPA to take further action to reduce visibility impairment in broad geographic regions. 42 U.S.C. 7492. In 1993, the National Academy of Sciences released a comprehensive study required by the 1990 Amendments concluding that ''current scientific knowledge is adequate and control technologies are available for taking regulatory action to improve and protect visibility.'' [8]

EPA promulgated regulations to address regional haze on April 22, 1999. 64 FR 35765. Consistent with the statutory requirement in 42 U.S.C. 7491(b)(2)(A), EPA's 1999 regional haze regulations (RHR) include a provision that states must require certain major stationary sources ''in existence on August 7, 1977, but which ha[ve] not been in operation for more than fifteen years as of such date'' which emit pollutants that are reasonably anticipated to cause or contribute to any visibility impairment to procure, install and operate BART. In determining BART, states are required to take into account five factors identified in the CAA and EPA's regulations. 42 U.S.C. 7491(g)(2) and 40 CFR 51.308. These five factors are the cost of controls, the energy and non-air quality impacts of controls, the existing controls at the source, the remaining useful life of the source, and the anticipated visibility benefits of controls. The CAA and RHR require BART to be installed and operated as expeditiously as practicable, but in no event later than five years from the date of the approved plan. 42 U.S.C 7491(b)(2)(A), 42 U.S.C 7491(g)(4), and 40 CFR 51.308(e)(1)(iv). EPA made revisions to the RHR after 1999 and those revisions together with the RHR are codified at 40 CFR Part 51, Subpart P and Appendix Y. The regulations allow EPA to promulgate an alternative to BART provided the alternative results in greater reasonable progress than will result from installation and operation of BART. 40 CFR 51.308(e)(2).

D. Statutory and Regulatory Framework for Addressing Sources Located in Indian Country

When the CAA was amended in 1990, Congress included a new provision, Section 301(d), granting EPA authority to treat Indian tribes in the same manner as states where appropriate. See 40 U.S.C. 7601(d). Congress also recognized, however, that such treatment may not be appropriate for all purposes of the Act and that in some circumstances, it may be inappropriate to treat tribes identically to states. Therefore, Section 301(d)(2) of the Act directed EPA to promulgate regulations ''specifying those provisions of [the CAA] for which it is appropriate to treat Indian tribes as states.'' Id. 7601(d)(2). In addition, Congress provided that ''[i]n any case in which [EPA] determines that the treatment of Indian tribes as identical to states is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.'' Id. 7601(d)(4).

In 1998, EPA promulgated regulations at 40 CFR Part 49 (which have been referred to as the Tribal Authority Rule or TAR) relating to implementation of CAA programs in Indian country. See 40 CFR Part 49; see also 59 FR 43956 (Aug. 25, 1994)(proposed rule); 63 FR 7254 (Feb. 12, 1998)(final rule); *Arizona Public Service Company* v. *EPA,* 211 F.3d 1280 (DC Cir. 2000), *cert. den.,* 532 U.S. 970 (2001)(upholding the TAR). The TAR allows EPA to treat eligible Indian tribes in the same manner as states ''with respect to all provisions of the [CAA] and implementing regulations, except for those provisions [listed] in § 49.4 and the [EPA] regulations that implement those provisions.'' 40 CFR 49.3. EPA recognized that tribes may, but are not required to administer air programs under the CAA, were in the early stages of developing air planning programs known as Tribal Implementation Plans (TIPs) and would need additional time to develop air quality programs. 63 FR 7264–65. Thus, EPA determined that it was not appropriate to treat tribes in the same manner as states for purposes of those provisions of the CAA imposing air program submittal deadlines. See 59 FR 43964–65; 63 FR 7264–65. Similarly, EPA determined that it would be inappropriate to treat tribes in the same manner as states for purposes of the related CAA provisions establishing sanctions and federal oversight mechanisms where states fail to meet applicable air program submittal deadlines. Id. In particular, EPA found that it was inappropriate to treat tribes in the same manner as states for the purposes of Section 110(c)(1), which requires EPA to promulgate a FIP within 2 years after a state fails to make a required plan submission.

Although EPA determined that it was inappropriate to treat tribes in the same manner as states for the purposes of Section 110(c)(1), EPA also determined that under other provisions of the CAA, it has the discretionary authority to promulgate ''such federal implementation plan provisions as are necessary or appropriate to protect air quality'' when a Tribe has not submitted a TIP. 40 CFR 49.11. EPA determined in promulgating the TAR that it could exercise discretionary authority to promulgate FIPs based on Section 301(a) of the CAA, which authorizes EPA to prescribe such regulations as are necessary to carry out the Act, and Section 301(d)(4), which authorizes EPA to directly administer CAA provisions for which EPA has determined it is inappropriate or infeasible to treat tribes as identical to states so as to achieve the appropriate purpose. 40 CFR 49.11. See also 63 FR 7265. Specifically, 40 CFR 49.11(a) provides that EPA:

> [s]hall promulgate without unreasonable delay such Federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 30[1](a) and 301(d)(4), if a tribe does not submit a tribal implementation plan or does not receive EPA approval of a submitted tribal implementation plan.

As described in detail below, EPA has previously promulgated FIPs to regulate air pollutants emitted from the two coal-fired electric generating facilities on the Navajo Nation, Four Corners Power Plant (FCPP) and NGS. In 1991, prior to the promulgation of the TAR, EPA revised an existing FIP that applied to Arizona to include a requirement for NGS to substantially reduce its SO_2 emissions by installing scrubbers, based on a finding that the SO_2 emissions were contributing to visibility impairment at the Grand Canyon National Park. 56 FR 50172 (October 3, 1991); *see also Central Arizona Water Conservation District* v. *United States Environmental Protection Agency,* 990 F.2d 1531 (9th Cir. 1993)(upholding EPA's promulgation of the FIP). Then, in 1999, EPA proposed a FIP for NGS to fill the regulatory gap that existed because SIP rules issued by Arizona to regulate NGS were not applicable or enforceable on the Navajo Nation, and the Tribe had not sought approval of a TIP covering the plant. 64 FR 48731 (September 8, 1999). EPA did not finalize the 1999 proposal and proposed a new FIP for NGS on September 12, 2006. 71 FR 53631. EPA finalized the NGS FIP in 2010 generally making the emission limits from the Arizona SIP

[8] *Protecting Visibility in National Parks and Wilderness Areas,* Committee on Haze in National Parks and Wilderness Areas, National Research Council, National Academy Press (1993). Available through: *http://www.nap.edu/openbook.php?record_id=2097&page=R2*

rules for NGS federally enforceable, with one modification.[9] 75 FR 10174 (March 5, 2010). The 2010 NGS FIP was promulgated under the authority in the CAA and 40 CFR 49.11(a) that underlies our proposal today.

Because the Arizona SIP did not contain any NO_X emission limits for NGS, the final 2010 FIP did not impose any limits on NO_X. However, NGS is subject to the federal Acid Rain Program requirements under title IV of the Clean Air Act. NGS elected to comply early as a Phase I NO_X facility subject to a NO_X limit of 0.40 lb/MMBtu, per unit, on an annual basis. Over the 2009—2011 timeframe, the owners of NGS voluntarily installed new LNB/SOFA at NGS, with a NO_X emission limit of 0.24 lb/MMBtu.

E. Statutory and Regulatory Framework for BART Determinations

When Congress enacted Section 169A of the CAA in 1977 to protect visibility, it directed EPA to promulgate regulations that would require applicable implementation plans to include a determination of BART for certain major stationary sources that are ''reasonably anticipated to cause or contribute to any impairment of visibility in any [Class I area]''. 42 U.S.C. 7491(b)(2)(A) & (g). A source is BART-eligible if it is a fossil fuel-fired steam electric plant of more than 250 MMBtu/hr heat input or other listed industrial source that has the potential to emit 250 tons or more of any visibility-impairing pollutant and that came into operation between 1962 and 1977. Id. NGS meets these criteria and is a BART-eligible source.

A BART-eligible source with a predicted visibility impact of 0.5 deciviews (dv) or more in a Class I area ''contributes'' to visibility impairment and is subject to BART. See 70 FR at 39161 (July 6, 2005). NGS contributes to visibility impairment at 11 surrounding Class I areas in excess of this threshold, and is thus subject to BART.

In determining BART, states are required to take into account five factors identified in the CAA and EPA's regulations. 42 U.S.C. 7491(g)(2) and 40 CFR 51.308. Those factors are: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any pollution control equipment in use or in existence at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. 40 CFR 51.308(e)(1)(ii)(A). EPA's guidelines for evaluating BART are set forth in Appendix Y to 40 CFR Part 51, referred to as the BART Guidelines, and must be followed in making BART determinations for fossil fuel-fired electric generating plants larger than 750 MW.

F. Relationship of Air Pollutants to Visibility Impairment

Emissions of NO_X contribute to the formation of particulate matter (PM), which, in turn, interacts with light to impair visibility. The fundamental science of haze formation and visibility impairment is described in greater detail in a comprehensive study by National Research Council.[10]

Briefly, the smallest particles in the 0.1 to 1 micron range interact with light most strongly as they are about the same size as the wavelengths of visible light. The effect of the interaction is to scatter light from its original path. Conversely, for a given line of sight, such as between a mountain scene and an observer, light from many different original paths is scattered into that line. The scattered light appears as whitish haze in the line of sight, obscuring the view.

Boiler stacks and material handling are sources of primary PM, or PM emitted directly into the atmosphere. Of primary PM emissions, those in the smaller particle size range, less than 2.5 microns, tend to have the largest impact on visibility. PM emissions from boiler stacks can have varying particle size makeup depending on the PM control technology. PM from material handling, however, tends to be coarse, i.e., around 10 microns, because it is created from the breakup of larger particles of coal, soil, and rock.

PM that is formed in the atmosphere from the photochemical transformation and condensation of gaseous chemical pollutants, also called secondary PM, tends to be fine, i.e., smaller than 1 micron, because it is formed from the buildup of individual molecules. This secondary PM tends to contribute more to visibility impairment than primary PM because it is in the size range that most effectively interacts with visible light. NO_X and SO_2 emissions from coal-fired power plants are examples of gaseous chemical pollutants that react with other compounds in the atmosphere to form secondary PM.

NO_X is a gaseous pollutant that can be oxidized to form nitric acid. In the atmosphere, nitric acid in the presence of ammonia forms particulate ammonium nitrate. The formation of particulate ammonium nitrate depends on temperature and relative humidity, and therefore varies by season. Particulate ammonium nitrate can grow into the size range that effectively interacts with light by coagulating together and by taking on additional pollutants and water.

G. EPA's Advanced Notice of Proposed Rulemaking

On August 28, 2009, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) regarding EPA's intention to implement the BART requirement of the RHR for the two subject-to-BART coal-fired power plants located on the Navajo Nation, the Four Corners Power Plant[11] and the Navajo Generating Station. 74 FR 44313. In that ANPRM, EPA put forth our analysis of the cost and anticipated visibility benefits comparing selective catalytic reduction (SCR) and modern combustion controls for both power plants and requested comment. The ANPRM marked the beginning of an ongoing process of consultation with tribes and discussions with other key stakeholders on the issue of NO_X control at FCPP and NGS. EPA received over 6,000 comments on the ANPRM, most of which were identical electronic mail messages in support of requiring stringent air pollution controls at NGS. Comments from tribes located in Arizona, the owners of NGS, other stakeholders, and other federal agencies are discussed briefly below, and described in more detail in the TSD for this proposed rulemaking.

i. Information from Tribes

EPA received numerous comments on the ANPRM from tribes and tribal organizations, including the Navajo Nation, Hopi Tribe, Gila River Indian Community, Ak-Chin Indian Community, Tohono O'odham Nation, Pascua Yaqui Tribe, Fort McDowell Yavapai Nation, Yavapai-Apache Nation, and the Inter Tribal Council of Arizona. Comments from the Navajo Nation and Hopi Tribe focused on the significant contribution of coal-related royalties, taxes, and employment at NGS and the Kayenta Mine to the economies of the Navajo Nation and the Hopi Tribe. Comments from the Gila River Indian Community, the Tohono

[9] In the 2010 NGS FIP, EPA finalized federally enforceable emission limits for SO_2, particulate matter (PM), and opacity, and control measures for dust for NGS. The 2010 FIP lowered the opacity limit from 40 percent to 20 percent and included requirements to control emissions associated with coal and ash handling and storage.

[10] *Protecting Visibility in National Parks and Wilderness Areas,* Committee on Haze in National Parks and Wilderness Areas, National Research Council, National Academy Press (1993).

[11] EPA has taken final action on our BART determination for the Four Corners Power Plant. See 77 FR 51620 dated August 24, 2012.

O'odham Nation, and other tribes located in Arizona focused on the importance of continued operation of NGS as a source of power to the Central Arizona Water Conservation District (CAWCD), the operating arm of CAP, in order for the federal government to meet obligations under existing water settlement agreements. The importance to tribes of continued operation of NGS and affordable water costs cannot be overemphasized. Detailed discussions of tribal interests in NGS, including studies submitted by the Hopi Tribe and the Gila River Indian Community, are provided in the TSD for this proposed rulemaking.

EPA has met with tribes on numerous occasions to discuss the significance of NGS to tribal economies and tribal water interests in Arizona.[12] Consultations with tribes included potential economic impacts associated with a BART determination for NGS, as well as potential impacts from EPA's Mercury and Air Toxics Standards (MATS) rulemaking.

In recognition of the unusual complexity of regulating NGS, representatives from EPA, including the Assistant Administrator and the Deputy Assistant Administrator for the Office of Air and Radiation and the Regional Administrator for Region 9, visited NGS and affected communities in the area. EPA officials have also met with additional stakeholders, at various locations, including EPA offices in San Francisco, California and Washington, DC, and offices of individual tribal governing councils and the Inter Tribal Council of Arizona.

ii. Information from NGS Owners

SRP, operator and part-owner of NGS, provided information to EPA outlining several uncertainties that significantly increase the financial risk of near-term investments in new air pollution controls, including uncertainties in plant ownership and lease agreements.[13]

One of the owners of NGS is the Los Angeles Department of Water and Power (LADWP), a public utility located in California. Under California law (Senate Bill 1368),[14] long-term investments in base load generation by California utilities must meet a carbon dioxide emission performance standard based on a combined cycle natural gas-fired base load power plant. NGS and other traditional coal-fired power plants that operate without carbon capture and sequestration do not meet this standard. Therefore, LADWP will be prohibited from continued participation and long-term investments in NGS beyond its current contract term of 2019. As a result, LADWP has indicated its intention to sell its 21.2 percent ownership stake in NGS. The future owner of LADWP's share of NGS is currently uncertain.[15]

In addition, NGS's current site lease with the Navajo Nation, as well as several other agreements and contracts, expire in 2019. Table 1 lists several leases, agreements, and contracts that must be renewed to ensure continued operation of NGS into the future.[16] Although the owners of NGS are in negotiations with the Navajo Nation for a lease renewal to extend to 2044 and with Peabody Energy for a renewed coal supply contract, the outcomes of these negotiations are also not yet finalized.

TABLE 1—LEASES, AGREEMENTS, AND CONTRACT RENEWALS FOR NGS AND KAYENTA MINE

Description	Renewal year
Peabody Lease Renewal with Navajo Nation and Hopi Tribe	2017
Coal Supply Contract between Peabody and NGS	2019
NGS Project Lease Renewal with Navajo Nation (Federal Rights of Way)	2019
Water Intake/Water Line Renewal (Federal Rights of Way)	2019
Railroad and Transmission Line Renewals (Federal Rights of Way)	2021
Southern Transmission Line Easement (Federal Rights of Way)	2022

Because NGS is located in Indian country, lease and other rights-of-way agreement renewals must be approved by the Department of the Interior. These approvals, which are an unusual requirement for continued operation of a power plant, are federal actions that trigger review under the National Environmental Protection Act (NEPA).[17] For actions significantly affecting the environment, NEPA review requires the development of an Environmental Impact Statement (EIS) and includes a substantial process for public involvement. The Department of the Interior estimates that NEPA review for approval of leases and other rights-of-way agreements may require approximately five years to complete.[18] Therefore, even if the Navajo Nation and the owners of NGS reach agreement on renewed leases and other rights-of-way shortly, the owners of NGS may not have a lease fully approved by the Department of the Interior until 2019 or later.

iii. Comments from Other Stakeholders

In addition to the identical electronic mail messages from private citizens, EPA received general comments, both in support of and in opposition to stringent air pollution controls at NGS, from numerous individuals, state and local agencies, industry, utility and water groups, environmental and community-based organizations, cities and municipalities in Arizona, U.S. and State Representatives, and the Governor and Treasurer of Arizona. All comments received on the ANPRM are available in the ANPRM docket.[19]

Several groups provided separate comment letters on the five-factor BART analysis discussed in the ANPRM, including the Arizona Department of Environmental Quality, the Utility Air Research Group, and a consortium of environmental and Navajo community organizations. The Colorado Department of Public Health and the Environment and the Attorney General of New Mexico submitted separate comments on potential co-benefits to mercury reduction resulting from certain NO_X controls. Numerous groups and individuals, including elected officials in Arizona, stressed the importance of NGS to the Arizona economy and raised concerns that a stringent BART determination such as SCR might force closure of NGS or otherwise result in economic harm to cities, tribes, and agricultural water users in Arizona. Other commenters stressed the importance of reducing the plant's contribution to regional haze. EPA discusses comments, both in support of and in opposition to stringent controls at NGS, in more detail in the TSD for this proposed rulemaking.

[12] See document titled "Timeline of All Tribal Consultations on NGS.docx" in the docket for this proposed rulemaking.

[13] See March 12, 2012 letter from four owners of NGS to EPA regarding Pending BART Determination for Navajo Generating Station, in the docket for this proposed rulemaking.

[14] See information on SB 1368 Emission Performance Standards at *http://www.energy.ca.gov/emission_standards/*

[15] See, for example, 2012 Draft Integrated Resource Plan Executive Summary available at *https://www.ladwp.com/ladwp/faces/wcnav_externalId/a-p-doc?_adf.ctrl-state=a8ti68apu_29&_afrLoop=234058941927000*, or in the docket for this proposed rulemaking.

[16] Information in Table 1 is based on Table 1–3 on page 13 of the NREL report.

[17] Id.

[18] See email and attachment from Letty Belin, DOI to Janet McCabe, EPA, dated August 20, 2012, in the docket for this proposed rulemaking.

[19] See Docket #: EPA–R09–OAR–2009–0598 on *www.regulations.gov.*

iv. Involvement of Other Federal Agencies

Following the ANPRM, EPA received comments from other federal agencies that have authority to oversee interests and activities related to NGS. The Bureau of Reclamation, under the Department of the Interior, is a part-owner of NGS. However, Reclamation and four additional Interior agencies (National Park Service, Bureau of Indian Affairs, Office of Surface Mining, and U.S. Fish and Wildlife Service) also have regulatory authorities relating to NGS or the Kayenta coal mine that serves it. The U.S. Forest Service, an agency within the Department of Agriculture, has authority to protect visibility in the Class I areas in its jurisdiction. EPA has Clean Air Act authority to maintain air quality and improve visibility. The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy, Office of Indian Energy Policy and Programs, and National Laboratories have technical expertise and other resources related to clean energy development and production in Indian country.

In 2011, DOI entered into an interagency agreement with DOE to commission the National Renewable Energy Laboratory (NREL) to conduct a study with the goal of providing an objective assessment of issues related to the power sector that are important for understanding the potential impacts on power and water rates of BART options for NGS. Under phase 1 of an intended two-phase study, NREL conducted an analysis focusing on the potential effects from costs associated with NO_X control options or NGS closure. NREL completed the first part of its study in January 2012 and provided public comments it received on the study to EPA in March 2012.[20] In June 2012, NREL completed a final chapter as part of its phase 1 study that provides a high-level examination of alternatives to NGS.[21]

Given the extent of federal and tribal interests in NGS, on January 4, 2013, EPA, DOI, and DOE signed a joint federal agency statement committing to collaborate on several short- and long-term goals, including analyzing and pursuing strategies for providing clean, affordable and reliable power, affordable and sustainable water, and sustainable economic development to key stakeholders who currently depend on NGS.[22] The agencies will work together with stakeholders to identify and undertake actions that support implementation of BART, including seeking funding to cover expenses for pollution control or other necessary upgrades for the federal portion of NGS. The agencies will also work to jointly support a phase 2 report to analyze a full range of clean energy options for NGS over the next decades and work with stakeholders to develop a roadmap for achieving long-term, innovative clean energy solutions for NGS. This collaboration may span several years and EPA expects alternative strategies resulting from the collaboration may contribute to reductions in NO_X emissions at NGS.

II. EPA's Proposed Action

A. A NO_X BART Determination for NGS Is ''Necessary or Appropriate''

The numerous Class I areas that surround NGS are sometimes known as the Golden Circle of National Parks.[23] Millions of tourists visit these areas, many visiting from other countries, to view the unique vistas of the Class I areas in this region.

As Congress recognized, visibility is an important value and must be protected in these areas. Currently, air quality and visibility are impaired in the Class I areas surrounding NGS. The National Park Service noted in 2008 that ''[v]isibility is impaired to some degree at all units where it is being measured and remains considerably higher than the target natural conditions in many places, particularly on the haziest days.'' [24] Of the 11 mandatory Class I federal areas located within 300 km of NGS, eight national parks, including Grand Canyon, Canyonlands, and Capitol Reef, are among the areas monitored by the National Park Service.[25] NGS is one of many contributors to regional haze in these areas and Congress recognized that all sources that emit air pollutants that may reasonably be anticipated to cause or contribute to visibility impairment would need to do their part to address the problem.

Because NGS is a subject-to-BART source that would undergo a BART determination if located on state land, and based on the importance of visibility in the Golden Circle of National Parks, EPA is proposing to find that a BART determination for NO_X emissions from NGS is ''necessary or appropriate'' under the TAR. See 40 CFR 49.11.

Emissions of PM and SO_2 at NGS are controlled by hot-side electrostatic precipitators (HS–ESPs) and wet scrubbers, respectively. EPA finalized emission controls and limits for SO_2 and PM in our FIPs in 1991 and in 2010 (75 FR 10174). On February 16, 2012, EPA finalized the MATS rulemaking that set a lower emission limit for PM (77 FR 9304). The emission limits EPA established for SO_2 in 1991 were determined to achieve greater reasonable progress than would BART,[26] therefore the reasonable progress goals of CAA Section 169A(b)(2) for SO_2 at NGS are already satisfied. Because emissions of PM are well controlled at NGS through federally enforceable limits, EPA is not proposing that it is ''necessary or appropriate'' under the TAR to determine BART for PM emissions at NGS.

B. Available and Feasible Control Technologies and Five Factor Analysis for NO_X Emissions

Reducing NO_X emissions from electric generating units generally involves: (1) Combustion controls to reduce the production of NO_X from fuel-bound nitrogen and as a by-product of high temperature combustion reactions between atmospheric nitrogen (N_2) and oxygen (O_2) in the air; or (2) combustion controls in combination with post-combustion add-on controls to reduce the amount of NO_X emitted in flue gas by converting NO_X to diatomic nitrogen (N_2) via a catalytic or non-catalytic process.

As discussed in detail in the TSD for this proposed rulemaking, SRP submitted to EPA a BART analysis in 2008 and several revisions thereafter. SRP identified the following control options as technically feasible at NGS for reducing NO_X emissions: LNB/SOFA, flue gas recirculation (FGR), selective non-catalytic reduction (SNCR), and selective catalytic

[20] See ''March 2012 Revision to NREL Report.pdf'' and ''Comments on NREL Report.pdf'' in the docket for this proposed rulemaking.

[21] See June 2012 report by NREL titled ''Navajo Generating Station and Clean-Energy Alternatives: Options for Renewables'' in the docket for this proposed rulemaking.

[22] See *Joint Federal Agency Statement Regarding Navajo Generating Station,* dated January 4, 2013, in the docket for this proposed rulemaking.

[23] See *Navajo National Monument: A Place and its People, An Administrative History,* Hal K. Rothman, 1991, National Park Service, Chapter IV: ''Land-Bound:'' 1938–1962, available at: *http://www.nps.gov/history/history/online_books/nava/adhi/adhi4e.htm.*

[24] *Air Quality in National Parks,* 2008 Annual Performance & Progress Report, National Resource Report NPS/NRPC/ARD/NRR—2009/151, September 2009, p. 30, in the docket for this proposed rulemaking.

[25] Id. Appendix B. Note that the other three mandatory Class I Federal areas located within 300 km of NGS are Wilderness Areas that are managed by the U.S. Forest Service.

[26] See 56 FR 50172 (October 3, 1991) and 75 FR 10174 (March 5, 2010).

reduction (SCR).[27] The option that achieves the largest reduction in NO_X emissions is a combination of combustion controls and post-combustion add-on controls, i.e., LNB/SOFA in combination with SCR. Although SRP identified FGR as technically feasible, it did not conduct additional analysis on FGR, based on its determination that FGR is less effective than LNB/SOFA.

For the control of NO_X emissions, EPA has determined that the technologies identified by SRP are the main technically feasible NO_X control technologies. For the most stringent control option (LNB/SOFA in combination with SCR), SRP determined that a 2+2 catalyst system (four-catalyst layer design with initial deployment of two catalyst layers) could achieve an emission rate of approximately 0.05 lb/MMBtu under ideal operating conditions in order to ensure compliance with an emission limit of 0.07—0.08 lb/MMBtu on a 30-day rolling average. SRP suggested that the 60 percent compliance margin between its intended design target (0.05 lb/MMBtu) and its suggested NO_X emission limit (0.08 lb/MMBtu) is needed to allow for normal operating fluctuations associated with minor equipment upsets, fuel characteristics impacting NO_X production, and SCR process delays due to load changes.

As discussed in more detail in the TSD for this proposed rulemaking, for several reasons, including information from a catalyst vendor that an SCR system at NGS using three layers of catalyst can meet a limit of 0.08 lb/MMBtu and four layers of catalyst can meet a limit of 0.05 lb/MMBtu, EPA is proposing to determine that Units 1—3 can meet an emission limit of 0.055 lb/MMBtu using four layers of catalyst. EPA expects this proposed emission limit of 0.055 lb/MMBtu to provide an adequate compliance margin for normal fluctuations because compliance will be measured on a plant wide rolling average basis of 30 boiler operating days. EPA understands that Units 1—3 at NGS currently operate on a 3-year outage cycle and that if SCR is installed, catalyst replacement would be timed to coincide with outage cycles to reduce costs. EPA is specifically requesting comment on whether NGS can maintain its current 3-year outage cycle with four layers of catalyst to meet a limit of 0.055 lb/MMBtu and on the adequacy of the margin of compliance provided by the limit.

i. Factor 1: Cost of Compliance

The cost of compliance is expressed as the total capital cost of controls, the total annual cost of controls (i.e., annual operating costs plus amortized capital costs), and the cost effectiveness of controls. Cost effectiveness is expressed in cost per ton of pollutant reduced ($/ton), and is calculated by dividing the total annual cost by the total amount of pollutant reduced per year. 40 CFR Part 51, Appendix Y, IV.D.4.c.

For this proposed rulemaking, EPA evaluated the total capital and total annual cost estimates SRP submitted to EPA for SCR (excluding additional costs for LNB/SOFA) in 2010 against the EPA Control Cost Manual.[28] EPA has generally accepted the total capital and total annual cost estimates submitted by SRP, except that we have used an interest rate that is consistent with EPA cost analyses and eliminated three line item costs that are not included in the EPA Control Cost Manual. The costs presented in Table 2 for SCR+LNB/SOFA with four layers of catalyst represent EPA's estimate for SCR+LNB/SOFA at 0.055 lb/MMBtu. The TSD for this proposed rulemaking describes our analysis and rationale to support our revised cost analysis for SCR at NGS, as well as our cost analyses for SCR with 3 layers of catalyst at a level of 0.08 lb/MMBtu.

In January 2012, SRP provided updated cost estimates for SNCR and LNB/SOFA.[29] EPA did not make any revisions to these estimates. Although SRP's 2010 cost estimate for SCR and their 2012 cost estimate for SNCR excluded the costs of LNB/SOFA, the values shown in Table 2 are for SCR+LNB/SOFA and SNCR+LNB/SOFA. Between 2008 and 2012, SRP has suggested different emission rates achievable with SNCR, ranging from 0.15 lb/MMBtu to 0.20 lb/MMBtu. EPA evaluated SNCR+LNB/SOFA at a level of 0.18 lb/MMBtu, and LNB/SOFA at a level of 0.24 lb/MMBtu. Our evaluation of SNCR+LNB/SOFA at 0.18 lb/MMBtu is generally consistent with levels achieved at NGS during a SNCR demonstration test (0.16—0.17 lb/MMBtu), but lower than the emission limit of 0.20 lb/MMBtu SRP suggested as providing an adequate margin of compliance.[30]

TABLE 2—TOTAL CAPITAL AND TOTAL ANNUAL COSTS OF NO_X CONTROLS ON UNITS 1–3 AT NGS

	LNB/SOFA*	SNCR+ LNB/SOFA	SCR+ LNB/SOFA (EPA estimate)	SCR+ LNB/SOFA (SRP estimate)
Total Capital Cost ($ millions)	$45	$84	$541	$589
Total Annual Costs ($ millions)	$5	$29	$64	$80
Annual NO_X Reductions Estimated by EPA (tpy)	10,865	16,608	28,573	26,180

* Costs for LNB/SOFA are actual costs expended over 2009—2011.

Average cost effectiveness and incremental cost effectiveness of SCR+LNB/SOFA, SNCR+LNB/SOFA, and LNB/SOFA are presented in Table 3. The SRP average and incremental cost effectiveness numbers reported in Table 3 come from SRP and are generally based on the assumption that SCR+LNB/SOFA would achieve an emission limit of 0.08 lb/MMBtu.[31] The EPA cost effectiveness values in Table 3 for SCR+LNB/SOFA are based on a NO_X emission limit of 0.055 lb/MMBtu and the EPA estimates for total annual cost

[27] BART Analysis for the Navajo Generating Station Units 1—3, Prepared for Salt River Project—Navajo Generating Station by ENSRAECOM, Document Number 05830–012–300, dated November 2007.

[28] See Salt River Project—Navajo Generating Station Units 1, 2, 3 SCR and Baghouse Capital Cost Estimate Report, Prepared by Sargent and Lundy, Project Number 12656–001, August 17, 2010, in the docket for this proposed rulemaking.

[29] See Updated Best Available Retrofit Technology Analysis, Navajo Generating Station, from Kelly J. Barr, SRP to Deborah Jordan, EPA dated January 20, 2012, in the docket for this proposed rulemaking.

[30] See letter from Kelly J. Barr, SRP to Deborah Jordan, EPA dated July 20, 2012, in the docket for this proposed rulemaking.

[31] See Updated Best Available Retrofit Technology Analysis, Navajo Generating Station, from Kelly J. Barr, SRP to Deborah Jordan, EPA, dated January 20, 2012, in the docket for this proposed rulemaking.

in Table 2. EPA did not revise SRP cost estimates for LNB/SOFA or SNCR.[32]

TABLE 3—AVERAGE AND INCREMENTAL COST EFFECTIVENESS FOR NO_X CONTROLS ON UNITS 1–3 AT NGS CALCULATED BY EPA AND SRP

	LNB/SOFA	SNCR+LNB/SOFA ($/ton)	SCR+LNB/SOFA ($/ton)
Average Cost Effectiveness (Average for Units 1—3)			
EPA	$486 per ton	$1,745 per ton	$2,240 per ton.
SRP	$519 per ton	$1,481 per ton	$2,926 per ton.
Incremental Cost Effectiveness (Average for Units 1—3)			
	SNCR+LNB/SOFA (vs. LNB/SOFA)	SCR+LNB/SOFA (vs. SNCR+LNB/SOFA)	SCR+LNB/SOFA (vs. LNB/SOFA)
EPA	$4,110 per ton	$2,933 per ton	$3,315 per ton.
SRP	$3,135 per ton	$5,282 per ton	Not calculated.

The average cost effectiveness of SCR+LNB/SOFA estimated by EPA is not substantially higher than the average cost effectiveness of SNCR+LNB/SOFA, and the incremental cost effectiveness of SCR+LNB/SOFA is lower than SNCR+LNB/SOFA (see Table 3).

The cost effectiveness values calculated by both EPA and SRP for SCR+LNB/SOFA are lower than or within the range of other BART evaluations that required SCR. For example, BART analyses for other electric generating facilities requiring SCR had a range of costs: Four Corners Power Plant (on the Navajo Nation) Units 1—5: $2,500—$3,200 per ton of NO_X removed;[33] PacifiCorp Naughton Plant Unit 3 (Wyoming): $2,830 per ton of NO_X removed;[34] and Hayden Station (in Colorado) Units 1 and 2: $3,400—$4,100 per ton of NO_X removed.[35]

Based on EPA's cost estimates and our analysis of average and incremental cost effectiveness, EPA has determined that SCR is cost effective at NGS.[36]

ii. Factor 2: Energy and Non-Air Quality Impacts

The BART Guidelines describe the second factor, the energy and non-air quality environmental impacts of compliance, as an examination of whether the use of the control technology would result in direct energy penalties or benefits, and whether there are environmental impacts other than air quality due to emissions of the pollutant in question or due to the control technology. The BART Guidelines also state that under the energy impacts analysis, the reviewing authority may consider ''whether a given alternative would result in significant economic disruption or unemployment.'' 70 FR 39169. In selecting a ''best'' alternative, the BART Guidelines further state that ''there may be unusual circumstances that justify taking into consideration the conditions of the plant and the economic effects of requiring the use of a given control technology.'' 70 FR 39171. Thus, although neither the CAA nor the RHR require states or EPA to consider the affordability of controls or ratepayer impacts as part of a BART analysis, the BART guidelines allow (but do not require) consideration of ''affordability'' in the BART analysis.

EPA is exercising its discretion to include in this second factor an analysis to examine the viability of NGS's continued operation if new NO_X controls are required. This analysis compares electricity generation costs after installing new NO_X controls at NGS against the cost to purchase an equivalent amount of power on the wholesale market. Because stakeholders have expressed concern that installation of new controls at NGS may cause the facility to close, the purpose of this analysis is to assess whether it would be more economical for the owners of NGS to install controls and continue operation, or to retire the facility and purchase power in order to meet their obligations to supply electricity to their customers. EPA has also included an analysis to estimate potential indirect impacts to ratepayers who use electricity supplied by SRP or water supplied by CAP. A complete discussion of other energy and non-air quality impacts is provided in the TSD for this proposed rulemaking.

As discussed previously, NGS is unique because it was constructed and is owned in part by the federal government to provide electricity to distribute water to tribes located in Arizona and a diverse group of other water users. NGS is also located on the Navajo Nation and the Kayenta Mine that supplies its coal is located on the reservation lands of both the Navajo Nation and the Hopi Tribe.

The Navajo Nation and the Hopi Tribe have expressed concern that requiring additional controls at NGS could result in lost employment, taxes, and royalties to their tribal governments if the owners of NGS chose to retire units or curtail operations rather than install new air pollution controls.

a. Affordability Analysis

As mentioned above, EPA conducted an analysis to estimate electricity generation costs if SCR or SNCR were installed at NGS within 5 years of a final rulemaking (i.e., by 2018 if this rule is finalized in 2013)[37] compared to costs to purchase an equivalent amount of power on the wholesale market. This analysis assumes that the owners of NGS would choose the least costly option for providing power to their

[32] See TSD for this proposed rulemaking for a discussion of small differences in cost effectiveness values for LNB/SOFA and SNCR+LNB/SOFA calculated by EPA and SRP, and shown in Table 3.

[33] 77 FR 51619 (August 24, 2012).

[34] 77 FR 33021 (June 4, 2012).

[35] See Colorado Department of Public Health BART Determination for Public Service Company—Hayden Station, available at *http://www.colorado.gov/cs/Satellite/CDPHE-AP/CBON/1251595092457,* and in the docket for this proposed rulemaking.

[36] EPA's Cost Control Manual does not include indirect or ancillary costs such as water rates in the evaluation of cost-effectiveness under factor 1. EPA is considering those costs under factor 2.

[37] Given the time that will likely be required for full public discussion of this proposal, consideration of the information submitted during the public comment, and the possibility of a supplemental proposal following comments we receive on Alternatives 2 and 3, it is possible that this rule may not be finalized until 2014, in which case the timeframe for compliance would also shift, from 2018 to 2019.

customers. The results of this analysis are summarized briefly here.

Our analysis is based on a 25-year discounted cash flow model that calculates the net present value (NPV) of the total revenue required to generate electricity at NGS over 2012–2036 for several different operating scenarios. The model assumes a 20-year amortization period for scenarios involving installation of new air pollution controls and uses a 25-year discounted cash flow to account for the approximate 5-year period between the present day and the installation of new controls. The scenarios include: The current Business As Usual (BAU) scenario that accounts for installation in 2009—2011 of LNB/SOFA, the installation of SNCR on all units at NGS by 2018, the installation of SCR on all units by 2018, and the scenario of purchasing energy on the wholesale market beginning in 2018 and thereafter.[38] The results are shown in Table 4.

TABLE 4—NET PRESENT VALUE (NPV) OF TOTAL REVENUE REQUIRED TO GENERATE ELECTRICITY OVER 2012–2036 WITH NO_X CONTROLS COMPARED TO EQUIVALENT WHOLESALE MARKET POWER PURCHASES

	Business as usual (BAU) (LNB/SOFA)	Increase from BAU if SNCR	Increase from BAU if SCR	Increase from BAU if power purchased on market		
				Low	Mid	High
NPV ($ millions)	$7,766	$278	$648	$673	$951	$1,040
Percent Increase compared to BAU	n/a	4%	8.3%	8.7%	12.2%	13.4%

We estimate that the retrofit of all three units at NGS with SCR would result in an incremental increase in the NPV of the revenue required to generate electricity at NGS of $648 million over the business as usual (BAU) case, which is lower than the increase over BAU of the cost to purchase the equivalent amount of electricity on the wholesale market considering the low, mid, and high market trends ($673—$1,040 million). These results shows that although SCR would increase the cost of electricity generation by 16 percent in 2018 (see Table 5), on a 25-year NPV basis, installation and operation of SCR remains less than the total cost to purchase electricity on the wholesale market from elsewhere in the West. The analysis conducted by NREL shows similar results that also indicate that installation of SCR at NGS by 2018 would likely cost less than replacing it with power purchased from elsewhere in the West.[39]

TABLE 5—INCREASE IN ELECTRICITY GENERATION COSTS IN 2018 IF SCR INSTALLED AT NGS

	Business as usual electricity generation cost	Electricity generation cost with SCR	Percent increase compared to BAU
Bureau of Reclamation	3.27 cents/kWh	3.73 cents/kWh	14
Publicly-Owned Utilities (SRP, LADWP)	3.49 cents/kWh	3.97 cents/kWh	14
Investor-Owned Utilities (APS, TEP, NPC).	3.88 cents/kWh	4.61 cents/kWh	19
Average Total Plant	3.56 cents/kWh	4.13 cents/kWh	16

Table 5 shows that the increase in electricity generation cost for the owners of NGS, ranging from a 14 percent increase for Reclamation and the publicly-owned utilities to an estimated 19 percent increase for the investor-owned utilities, would differ based on how each owner recovers capital investments. In other words, the increase in electricity generation costs for investor-owned utilities is higher because the capital recovery includes a rate of return for investors.

b. Electricity and Water Rate Analysis

In order to determine how the projected increase in electricity generation cost would affect retail customers, EPA also estimated the potential increase in retail electricity rates for SRP customers, and the potential increase in CAP water rates.[40]

As discussed previously, Reclamation owns 24.3 percent of NGS for the benefit of the CAP. Power from NGS is used by CAP to pump surface water from the Colorado River to much of Arizona. Construction of CAP was authorized by Congress in 1968 under the Colorado River Basin Project Act to deliver Arizona's surface water entitlement of the Colorado River to the state.

Under the Colorado River Basin Project Act, any electricity owned by Reclamation based on its percentage ownership of NGS that is not used by CAP (excess power) is sold. The Colorado River Basin Project Act requires profits from Reclamation's excess power sales to be deposited in the Lower Colorado River Basin Development Fund (Development Fund). The Development Fund was originally authorized under the

[38] The results reported here assume that LADWP's share of NGS is purchased by another publicly-owned utility. Results from other scenarios (e.g., if LADWP's share is purchased by an investor-owned utility) are discussed in the TSD for this proposed rulemaking.

[39] NREL further concludes that even with electricity generation rate increases resulting from SCR, NGS would still be one of the lowest cost generators in the Desert Southwest.

[40] The NREL analysis commissioned by DOI, as well as separate studies commissioned by other stakeholders, conducted similar rate analyses. Two studies by Harvey Economics, one commissioned by SRP and the other commissioned by the Gila River Indian Community examined potential impacts to electricity rates and Tribal and non-Tribal CAP water users in Arizona. A third study by Arizona State University commissioned by SRP examined the contribution of NGS and the Kayenta Mine to the broader regional and Arizona economy. Although EPA has included these studies in the docket for our proposed rulemaking, EPA is not providing a critical review or assessment of the methodologies of those studies.

Colorado River Basin Project Act to repay construction costs of CAP to the federal government. Subsequent settlement acts with several tribes, however, have authorized use of the Development Fund to pay the delivery portion of the cost of CAP water (also called fixed operation, maintenance and replacement costs, or OM&R costs)[41] for certain Indian tribes, and to pay the costs to construct the delivery systems to bring CAP water to certain Indian tribes.

CAP's 336-mile water delivery system was completed in 1993 and delivers 1.5 million AF of water annually to Maricopa, Pima, and Pinal Counties through a series of canals and pumping stations. The CAP water delivery system is required to pump water up an elevation of 3,000 feet from Lake Havasu to the city of Tucson. The Central Arizona Water Conservation District (CAWCD) is the operating entity for CAP. According to CAWCD, CAP water currently meets over 20 percent of Arizona's total water demands, and within CAP's service area, which encompasses about 80 percent of Arizona's water users and taxpayers, CAP water meets about 50 percent of the municipal demands. Approximately 40 percent of CAP's water delivery supply is dedicated to Native American use.

Our analysis indicates that, although SRP's cost to generate electricity would increase by 16 percent if SCR were installed (Table 5), the maximum increase for SRP's retail customers is estimated to be 0.06 cents per kWh, an increase of 0.66 percent (Table 6). For customers of the utilities that have a portfolio of power generating sources, e.g., all NGS owners except Reclamation,[42] the increased electricity generation cost at NGS from installation of SCR would flow into a broader consumer retail rate calculation based on the entire portfolio of the utility's electricity generation assets and purchase power contracts, which typically include coal (including other coal plants in addition to NGS), natural gas, nuclear, and some renewable energy. Therefore, the increase in retail rates paid by SRP customers is not expected to be proportional, on a percentage basis, to SRP's increase in electricity generation costs at NGS.

In contrast, Reclamation's share of power produced by NGS is used by CAP or sold for the benefit of the Development Fund. CAP relies on NGS for over 90 percent of its power needs. The estimated 14 percent increase in the electricity generation cost for Reclamation (Table 5), would translate into a 14 percent increase in the portion of the CAWCD water rate associated with the electrical cost of pumping water (energy costs, or variable OM&R), as shown in Table 6, because NGS is CAP's main source of power.

TABLE 6—PROJECTED ELECTRICITY AND WATER RATES IN 2018 IF NO_X CONTROLS ARE INSTALLED AT NGS

	BAU (LNB/SOFA)	SNCR		SCR	
		Rate increase	Percent increase	Rate increase	Percent increase
Electricity Rate to SRP Customers	9.26 cents/kWh	0.02 cents/kWh	0.2	0.06 cents/kWh	0.66
CAWCD Water Rate paid by M&I Users (fixed + variable OM&R)	$141/AF	$2.99/AF	2.1	$8.40/AF	6.0
CAWCD Water Rate paid by Tribal and Agricultural Users (variable OM&R)	$58/AF	$2.99/AF	5.2	$8.40/AF	14

Municipal and industrial (M&I) users of CAP water pay not only energy costs (variable OM&R) but also delivery costs (fixed OM&R) of water. Total water rates in 2018 for M&I users are projected by CAWCD to be $141 per AF; therefore, a rate increase from SCR of $8.40 per AF represents a 6 percent increase in CAP water rates.[43] However, the actual increase to total water costs would depend on the user's individual degree of reliance on CAP water. For example, the city of Phoenix relies on CAP for 45 percent of its water supply. Therefore, a 6 percent increase in CAP water rates would effectively result in a 4 percent overall water cost increase to customers in Phoenix because CAP water represents only a portion of its water.

In contrast to M&I users, as part of the Arizona Water Settlements Act of 2004, agricultural water users and tribes pay only the energy costs of CAP water; therefore, the same $8.40 per AF increase in water rates represents a 14 percent increase. EPA is aware of 13 tribes located in Arizona that currently have CAP water allocations through settlement agreements or use CAP water under contract (see Table 7 and the TSD for this proposed rulemaking for additional information and references). EPA does not have information regarding the degree of reliance on CAP water for tribes or agricultural water users. However, agricultural or tribal customers that have non-CAP sources of water will experience a smaller percentage increase in total water costs than users that rely entirely on CAP water (e.g., see Phoenix example discussed above).

TABLE 7—TRIBES WITH CAP ALLOCATIONS OR CAP CONTRACTS

Tribe	CAP Allocation or contract volume (acre feet per year)
Gila River Indian Community	311,800
Ak-Chin Indian Community	85,000
Tohono O'odham Nation	74,000
San Carlos Apache Tribe	60,665
White Mountain Apache Indian Tribe	23,782
Fort McDowell Yavapai Nation	18,233
Salt River Pima-Maricopa Indian Community	13,300
Navajo Nation	6,411
Yavapai-Apache Nation (Camp Verde)	1,200
Hopi Tribe	1,000
Pascua Yaqui Tribe	500
Yavapai-Prescott Tribe	500
Tonto Apache Nation	128

[41] CAWCD calls the delivery portion of water costs the ''fixed OM&R'' costs and the energy portion of water costs (the portion associated with NGS power costs) the ''variable OM&R'' costs.

[42] Although the Bureau of Reclamation has constructed dams that generate hydroelectric power, EPA understands that CAP's main source of power comes from Reclamation's ownership share in NGS.

[43] For comparison, two Navajo non-governmental organizations, the To Nizhoni Ani and Black Mesa Water Coalition, provided information on their water costs to EPA in the docket for this proposed rulemaking. This information stated that members of the Navajo Nation, who do not get water from CAP, pay much higher costs for water than CAP customers, ranging from one to four cents per gallon (equivalent to over $3,000 to over $13,000 per acre foot of water).

In its analysis, NREL estimated a low and high range of potential water rate increases based on SCR installation and operation cost estimates from the National Park Service and from SRP (see Table 8). NREL's estimates of increased water rates from the installation and operation of SCR are consistent with our estimates. Separate analyses for the Gila River Indian Community and SRP by Harvey Economics estimated pumping cost increases that are slightly lower than NREL and EPA estimates.

TABLE 8—COMPARISON OF PROJECTED WATER RATE INCREASES FROM SCR INSTALLATION ESTIMATED BY EPA AND OTHER STUDIES

	NREL High	EPA	NREL Low	Harvey
CAP Water Rate Increase	$8.58/AF	$8.40/AF	$7.10/AF	$6.60/AF
Increase to M&I Users	7%	6%	6%	Not calculated
Increase to Tribes and Agricultural Users	16%	14%	13%	11%

c. Summary of EPA's Affordability and Rate Impacts Analyses

Based on our analyses, the 25-year NPV of costs to produce power at NGS with SCR installed and operated on all units should be below the market prices of wholesale power.

However, as discussed previously in section I.G.ii, EPA understands that the timing of regulatory compliance is an important consideration given potential ownership changes and that the current term of NGS's lease with the Navajo Nation, as well as other leases and rights-of-way agreements, extend only to 2019. Based on public statements made by stakeholders, and as indicated in the March 2012 NREL report, the owners of NGS intend to pursue a renewed lease agreement with the Navajo Nation that extends to 2044. However, until a renewed lease that supports continued long-term operation of NGS is negotiated and approved by DOI, significant capital investment needed to modernize NGS with new air pollution controls may be viewed unfavorably without additional certainty that the costs can be recovered over a reasonable amortization period.

Our analysis also shows that increased electricity rates to customers of the utilities that own NGS should be relatively low. However, because of CAP's nearly complete reliance on NGS for power, we estimate that CAP water rates would increase by $8.40 per AF, representing a 6 percent increase in rates to M&I users and a 14 percent increase to tribes and agricultural water users.

EPA understands that a potential increase in water rates to tribes is a critical issue for them. We note that, as described in the following section, past pollution control investments at this facility have made use of alternative financing methods that limited impacts on CAP water rates. Furthermore, the NREL report indicated that mechanisms may exist to help avoid or mitigate the estimated level of impact. EPA, in conjunction with DOI and DOE, have committed to work together on several short- and long-term goals, including innovative clean energy options for electricity generation and seeking funding to cover expenses for the federal portion of pollution control at NGS. However, it is not clear at this time whether or what type of mechanisms might be available to lessen increased costs. Therefore, as explained further below, EPA believes that the potential economic impacts discussed in this section argue for thoughtful consideration of how flexibility in the compliance timeframe can be provided consistent with the air quality goals of the Clean Air Act.

EPA seeks comment on opportunities to reduce and/or avoid significant impacts on tribes while ensuring visibility protection for the 11 affected Class I areas.

iii. Factor 3: Existing Controls at the Facility

As stated previously, NGS currently uses hot-side ESPs to control PM. To reduce emissions of SO_2, SRP installed wet limestone FGDs over the period 1997–1999 on each unit, as required under a FIP issued by EPA on October 3, 1991 (56 FR 50172, codified at 40 CFR 49.5513(d)(1)), to remedy visibility impairment at the Grand Canyon National Park that was reasonably attributable to NGS. The total cost of the FGD units was $420 million. Reclamation's 24.3 percent share of the FGD units was funded through CAP construction appropriations and CAWCD is repaying these costs to the federal government as part of total CAP project costs over a 50-year period. The 1991 FIP set an emission limit for SO_2 of 0.10 lb/MMBtu on a plant-wide rolling annual average basis. On March 5, 2010 (75 FR 10174), EPA issued a gap-filling FIP for NGS to federalize emission limits for PM of 0.06 lb/MMBtu on a plant-wide 3-hour average basis, an opacity limit of 20 percent, and a 3-hour average SO_2 limit of 1 lb/MMBtu. The SO_2 emission limit in the final 2010 FIP ensures that actual SO_2 emissions from NGS will remain 90 percent lower on an annual basis than they were before the scrubbers were installed to comply with the 1991 visibility FIP. Additionally, EPA's final MATS rule set a filterable PM limit of 0.03 lb/MMBtu. This limit applies to Units 1–3 at NGS.

Prior to 2009, NGS used close-coupled over fire air (CCOFA) to control NO_X emissions. In April 2009, SRP submitted a Prevention of Significant Deterioration (PSD) permit application to EPA Region 9 to voluntarily install and operate advanced combustion controls (LNB/SOFA) on Units 1—3. The LNB/SOFA triggered PSD review for significant increases in emissions of carbon monoxide (CO). Reclamation's share of the LNB/SOFA installation was funded from the Development Fund. These costs were then reimbursed by SRP on an amortized basis and the remaining balance was reimbursed by CAWCD.[44] Because SRP submitted its permit application for the LNB/SOFA modification after EPA had begun its BART analysis for NGS, in the Ambient Air Quality Impact Report (AAQIR)[45] for the proposed PSD permit (AZ 08–01) EPA stated that:

> The early installation of the LNB/SOFA systems will not affect the baselines for cost or visibility improvements in the BART determination, and therefore will not influence EPA's determination of the proper NO_X reductions required to be achieved from BART.

Additionally, in an agreement[46] regarding the EPA proposed PSD permit AZ 08–01, signed November 19, 2008, by Bill Heddon, Executive Director of Grand Canyon Trust (GCT) and Richard

[44] See page 22 of NREL report.

[45] See EPA's Ambient Air Quality Impact Report, dated October 2008, for the proposed PSD permit for NGS, in the docket for this proposed rulemaking.

[46] See Agreement between Grand Canyon Trust and Salt River Project on NGS dated November 19, 2008, in the docket for this proposed rulemaking.

Hayslip, Associate General Manager of SRP, GCT agreed to withdraw its November 14, 2008, comment letter to EPA, provided SRP understood that:

> Grand Canyon Trust stands by its support for the installation of low-NO_X burners and separated overfire air at the Navajo Generating Station as long as their installation and operation will not prejudice in any way the implementation of more effective NO_X and particulate matter controls (including SCR or SNCR, and baghouse technology) to more fully address Navajo's visibility impacts under the reasonable attribution and regional haze programs.

SRP installed LNB/SOFA combustion controls on Unit 3 in 2009, on Unit 2 in 2010, and on Unit 1 in 2011. Therefore, all three units currently operate with modern advanced combustion controls and are required to meet the NO_X limit set in the final PSD permit issued by EPA on November 20, 2008, of 0.24 lb/MMBtu on a 30-day rolling average.[47]

Because EPA, GCT, and SRP agreed that the installation of advanced combustion controls would not affect or prejudice our BART determination for NGS, EPA's analysis of the cost effectiveness of SCR used the baseline emission rate from 2001—2003, prior to the installation of the LNB/SOFA. However, because EPA's proposed BART determination is being issued for public comment in 2013, after the installation of advanced combustion controls has been completed on all units, EPA is also providing cost effectiveness information calculated using LNB/SOFA as the baseline, which is equivalent to calculating incremental cost effectiveness of SCR+LNB/SOFA compared to LNB/SOFA alone (see Table 3). These values are also discussed as the incremental cost effectiveness estimates in Section 3 of the TSD for this proposed rulemaking. The affordability and rate impact analysis, discussed above, considers the installation of LNB/SOFA over the period of 2009—2011 as expenditures that have already occurred; therefore, additional calculations for the analysis using LNB/SOFA as baseline are not needed.

Based on the information above, EPA is proposing to determine that consideration of the existing controls at NGS does not warrant eliminating SCR as the top technically feasible and cost effective NO_X emission control technology for NGS.

iv. Factor 4: Remaining Useful Life of Facility

EPA is proposing to determine that the appropriate remaining useful life for NGS, as used as an amortization period for the cost of controls, should be 20 years. The various uncertainties currently facing NGS, including ownership changes and current lease and right-of-way agreement negotiations, could affect NGS's ability to operate into the future; however, without an enforceable obligation for a shorter useful life, EPA has determined it is most appropriate to rely on a 20-year useful life as the default for amortization purposes.

EPA also understands from recent discussions on the lease renewal for NGS that the owners may be negotiating the renewal lease period to end in 2044 (over 30 years from 2013). Although a 30-year amortization period may be more realistic for NGS, a longer amortization period would reduce the annualized cost of capital improvements and, thus, decrease the $/ton cost effectiveness value. Because the use of the shorter amortization period is more conservative (increases the $/ton cost effectiveness value), EPA's calculations of cost effectiveness in our analysis rely on a 20-year amortization period. However, EPA recognizes that if the capital costs of controls can be amortized over a longer period, the cost effectiveness of new controls would appear more favorable.

The default amortization period used in the EPA Control Cost Manual is 20 years,[48] and given the indications that the remaining life of NGS could be shorter or longer, EPA is proposing to determine that use of a 20-year remaining useful life is appropriate.

v. Factor 5: Degree of Visibility Improvement

The fifth factor to consider under EPA's BART guidelines is the degree of visibility improvement from the BART control options. See 59 FR 39170. The BART guidelines recommend using the CALPUFF air quality dispersion model to estimate the visibility improvements from alternative control technologies at each nearby Class I area, typically those within a 300 km radius of the source, and to compare these to each other and to the impact of the baseline (i.e., current) source configuration. EPA included in our modeling analysis the 11 Class I areas that are within 300 km of NGS. These areas are listed in Table 10 below, along with estimated visibility impacts.

Visibility is often described in terms of visual range in kilometers or miles. The deciview scale is an alternative measure of visibility impairment: lower deciview values represent better visibility and greater visual range, while increasing deciview values represent increasingly poor visibility.

EPA's BART guidelines recommend comparing visibility improvements between control options using the 98th percentile of 24-hour delta deciviews, which is roughly equivalent to the facility's 8th highest visibility impact day. The 98th percentile is recommended rather than the maximum value to avoid undue influence from unusual meteorological conditions. The ''delta'' refers to the difference between total deciview impact from the facility including natural background, and deciviews of natural background alone, so ''delta deciviews'' is the estimate of the facility's impact on visibility. In practice, ''deciview impact'' is often used in place of ''delta deciview impact'' and the two terms should be assumed to have the same meaning.

In the BART guidelines, EPA noted that a 1.0 deciview impact from a source is sufficient to ''cause'' visibility impairment and that a source with a 0.5 deciview impact would ''contribute'' to visibility impairment.

CALPUFF modeling is generally performed according to a modeling protocol, which sets out the model version, choice of geographic domain, input preparation procedures, and the various model settings to be used. EPA's modeling for this proposed rulemaking generally followed the same approach in SRP's modeling,[49] which in turn was based on the 2006 Western Regional Air Partnership (WRAP) protocol,[50] developed for subject-to-BART screening modeling of NGS and other western facilities. The WRAP protocol was reviewed by multiple regulatory agencies, including EPA, the National Park Service, the U.S. Forest Service (USFS), and air agencies of WRAP member states; it was accepted by

[47] See final PSD permit issued by EPA Region 9 dated November 20, 2008, in the docket for this proposed rulemaking.

[48] See EPA Control Cost Manual, Section 6, page 2–48, available from *http://www.epa.gov/ttncatc1/dir1/c_allchs.pdf.*

[49] The SRP approach, and differences from the WRAP protocol, are described in Appendix A of *Revised BART Analysis for the Navajo Generating Station Units 1–3,* ENSR Corporation, Document No. 05830–012–300, January 2009, Salt River Project, Tempe, AZ, in the docket for this proposed rulemaking.

[50] *CALMET/CALPUFF Protocol for BART Exemption Screening Analysis for Class I Areas in the Western United States*, Western Regional Air Partnership (WRAP); Gail Tonnesen, Zion Wang; Ralph Morris, Abby Hoats and Yiqin Jia, August 15, 2006. Available on UCR Regional Modeling Center web site, BART CALPUFF Modeling, *http://pah.cert.ucr.edu/aqm/308/bart.shtml.*

WRAP states for use in their Regional Haze SIPs. Differences between the SRP approach and the WRAP approach are discussed in more detail in the TSD for this proposed rulemaking.

While EPA generally followed the SRP approach, EPA used different ammonia background concentrations and a different method for converting CALPUFF concentrations to visibility impact estimates. These differences, described in detail below, result in substantial differences in predicted visibility impacts.

The values of ammonia background concentrations are important because ammonia is a component of particulate ammonium sulfate and ammonium nitrate, both of which degrade visibility. Ammonia is present in the air from both natural and anthropogenic sources. The latter may include motor vehicles, livestock operations, fertilizer application associated with farming, and ammonia slip from the use of ammonia in SCR and SNCR technologies to control NO_X emissions. Sensitivity of the model results to other ammonia assumptions are discussed in the TSD, and do not change the ranking of control options for evaluating visibility improvement, or the overall conclusions of the visibility analysis.

The U.S. Forest Service informed EPA that the ammonia background concentrations modeled by Arizona Public Service for the Four Corners Power Plant in January 2008 were lower than observed concentrations.[51] The USFS recommended a method of back-calculating the ammonia background based on monitored values of sulfate and nitrate. EPA's ANPRM provided modeling results based on using the USFS's back-calculation methodology, for both Four Corners and NGS.

The visibility modeling supporting today's proposal for NGS uses a constant ammonia background of 1 ppb, which is the default value recommended for western areas by the Interagency Workgroup on Air Quality Modeling.[52] The TSD describes the results of sensitivity simulations using different concentrations of background ammonia. This includes supplemental modeling using a range of 0.2–1 ppb ammonia background concentrations as used by SRP, as well as supplemental modeling using back-calculated ammonia concentrations,[53] with a thorough discussion of the back-calculation methodology.

Aside from the background ammonia assumptions, the other significant difference between EPA's modeling approach and the SRP approach is the procedure for calculating visibility impacts within CALPOST, a CALPUFF post-processor. This difference has two aspects, the ''visibility method'' used to convert CALPUFF pollutant concentrations into deciviews, and the choice of natural background conditions, which affects the calculation of delta deciviews.

A key choice in the visibility method is between Method 6 and Method 8, implementing the original and the revised IMPROVE equation, respectively. The IMPROVE equation converts monitored or modeled pollutant concentrations into extinction, which is the fraction of light removed from a sight path; deciviews are calculated from extinction. Many BART assessments were performed before the revised IMPROVE equation was incorporated into CALPUFF, so the original equation was generally used for past assessments. However, in this proposal EPA is primarily relying on the revised IMPROVE equation. The revised IMPROVE equation is currently preferred by the Federal Land Managers,[54] because it has less bias in estimating visibility under the worst visibility conditions.[55] As discussed in the TSD, EPA performed sensitivity simulations and found that using the original IMPROVE equation would on average give baseline impacts about 3 percent lower than using the revised equation, with a range of 15 percent lower to 9 percent higher depending on the Class I area.

The BART Guidelines recommend that visibility impacts should be estimated in deciviews relative to natural background conditions, that is, in delta deciviews. In accordance with the BART Guidelines, EPA used the average of the best 20 percent days as background.[56]

Table 9 presents the visibility impacts of the 98th percentile of 24-hour delta deciviews for each Class I area for each year, averaged over 2001–2003.[57] For each Class I area, the table shows the deciview impact for the base case, and the deciview improvement from that baseline impact when controls are applied. Also shown are the cumulative deciview impacts, which are the simple sum of impacts or improvements over all the Class I areas. Table 10 shows the average number of days with a baseline impact or improvement of at least 0.5 dv; it also shows two ''dollars per deciview'' measures of cost effectiveness, both of which divide the total annual cost of the control in millions of dollars per year by an improvement in deciviews. For the first metric, ''$/max dv'', annual cost (Table 2) is divided by the 98th percentile deciview improvement at the Class I area with the greatest improvement (Table 9). The second metric, ''$/cumulative dv'', divides annual cost by the cumulative 98th percentile deciview improvement. In assessing the degree of visibility improvement from controls, EPA relied heavily on the maximum deciview improvement among the Class I areas and the number of areas showing improvement (i.e., all 11 Class I areas), with cumulative improvement providing a supplemental measure that combines information on the number of areas and on individual area improvement. The $/dv metrics shown in Table 10 provide additional, cost-related information that supplements to the cost effectiveness ($/ton) that was considered in Factor 1: Cost of Compliance.

[51] Letter from Rick Cables (Forest Service R2 Regional Forester) and Corbin Newman (Forest Service R3 Regional Forester) to Deborah Jordan (EPA Region 9 Air Division Director) dated March 16, 2009, document number 0016 in the docket for the ANPRM: EPA–R09–OAR–2009–0598.

[52] Interagency Workgroup On Air Quality Modeling (IWAQM) Phase 2 Summary Report And Recommendations For Modeling Long Range Transport Impacts (EPA–454/R–98–019), EPA OAQPS, December 1998, available at: *http://www.epa.gov/scram001/7thconf/calpuff/phase2.pdf,* and in the docket for this proposed rulemaking.

[53] Ammonia concentrations for Mesa Verde National Park were not based on the back-calculation method for these simulations, but instead were derived from measured ammonia concentrations in the Four Corners area, as described in Mark E. Sather et al., 2008. ''Baseline ambient gaseous ammonia concentrations in the Four Corners area and eastern Oklahoma, USA''. Journal of Environmental Monitoring, 2008, 10, 1319–1325, DOI: 10.1039/b807984f).

[54] Federal Land Managers' Air Quality Related Values Work Group (FLAG) Phase I Report—Revised (2010), U.S. Forest Service, National Park Service, U.S. Fish and Wildlife Service, October 2010. Available on web page *http://www.nature.nps.gov/air/Permits/flag.*

[55] Pitchford, Marc, 2006, ''New IMPROVE algorithm for estimating light extinction approved for use'', The IMPROVE Newsletter, Volume 14, Number 4, Air Resource Specialists, Inc.; web page: *http://vista.cira.colostate.edu/improve/Publications/news_letters.htm; Revised IMPROVE algorithm for Estimating Light Extinction from Particle Speciation Data,* IMPROVE, January 2006. web page: *http://vista.cira.colostate.edu/improve/publications/graylit/gray_literature.htm.*

[56] It is worth noting that an EPA guidance memo suggests that the comparison can use either annual average background conditions, or the average of the best (cleanest) 20 percent of days. ''Regional Haze Regulations and Guidelines for Best Available Retrofit Technology (BART) Determinations'', memorandum from Joseph W. Paisie, EPA OAQPS, July 19, 2006, p. 2.

[57] EPA did not average the 98th percentiles from each year as did SRP, rather EPA used the 98th percentile from all the daily values from the three years taken together. This does not significantly affect the overall results.

TABLE 9—EPA MODELING RESULTS—BASELINE IMPACTS AND IMPROVEMENT FROM NO_X CONTROLS, 98TH PERCENTILE DELTA DECIVIEWS (DV) FROM 2001–2003, USING 1 PPB AMMONIA BACKGROUND

Class I area	Distance to NGS	Baseline impact	Improvement from LNB/SOFA		Improvement from SNCR+LNB/SOFA		Improvement from SCR+LNB/SOFA	
	(km)	(dv)	(dv)	(%)	(dv)	(%)	(dv)	(%)
Arches NP	245	4.5	1.7	37	2.2	50	3.5	77
Bryce Canyon NP	96	4.9	1.6	33	2.3	46	3.6	74
Canyonlands NP	173	6.0	2.1	35	2.9	48	4.6	76
Capitol Reef NP	90	7.7	2.1	28	3.1	40	5.4	71
Grand Canyon NP	29	8.4	1.9	23	2.9	35	5.4	64
Mazatzal WA	279	1.5	0.6	41	0.8	52	1.1	75
Mesa Verde NP	253	3.2	1.3	42	1.8	55	2.6	81
Petrified Forest NP	235	3.4	1.4	41	1.8	54	2.7	78
Pine Mountain WA	287	1.3	0.5	41	0.7	54	1.0	75
Sycamore Canyon WA	204	2.4	0.9	37	1.2	50	1.8	75
Zion NP	134	4.4	1.4	31	2.0	45	3.3	76
Cumulative	.....	48	16	33	22	45	35	73

TABLE 10—EPA MODELING RESULTS FROM 2001–2003, USING 1 PPB AMMONIA BACKGROUND—ADDITIONAL VISIBILITY METRICS

	Baseline Impact	Improvement From LNB/SOFA		Improvement from SNCR+LNB/SOFA		Improvement From SCR+LNB/SOFA	
Average number of days greater than or equal to 0.5 dv at Class I area with most-impacted Baseline (Canyonlands NP)	130	27	21%	44	34%	72	55%
$/max dv (millions)	n/a	$2.5	.....	$9.3	.....	$11.8	.....
$/cumulative dv (millions)	n/a	$0.3	.....	$1.3	.....	$1.8	.....

As shown in Tables 9 and 10, the modeled visibility benefits of SCR+LNB/SOFA are substantially greater than those of SNCR+LNB/SOFA or LNB/SOFA. The modeled 98th percentile visibility improvement due to installation of LNB/SOFA equals or exceeds 0.5 deciviews at all 11 Class I areas, exceeds 1 deciview at most of these Class I areas, and reaches 2.1 deciviews at two of these Class I areas. For SNCR+LNB/SOFA, the modeled visibility improvement exceeds 0.5 deciviews at all 11 Class I areas, exceeds 1 deciview at most of these Class I areas, and reaches roughly 3 deciviews at three of these Class I areas. For SCR+LNB/SOFA, the improvement exceeds 1 deciview at all 11 Class I areas, exceeds 2 deciviews at most of these areas, and reaches 5.4 deciviews at two of these areas.

EPA is proposing to determine that the anticipated visibility benefits of NO_X controls at NGS supports SCR+LNB/SOFA as the most stringent technically feasible and cost effective NO_X emission control technology for NGS.

C. EPA's Proposed NO_X Emission Limit for NGS

The BART Guidelines give states and EPA discretion in determining the relative weight of each factor in making a BART determination. A summary of the results of EPA's factor analysis is shown in Table 11.

TABLE 11—SUMMARY OF EPA'S FIVE FACTOR NO_X BART ANALYSIS FOR NGS

Factor	LNB/SOFA	SNCR+LNB/SOFA	SCR+LNB/SOFA
Limit(lb/MMBtu)	0.24	0.18	0.055.
1 Average Cost Effectiveness	$486/ton	$1,745/ton	$2,240/ton.
Incremental Cost Effectiveness	N/A	$ 4,110/ton	$2,933/ton (v. SNCR), $3,315/ton (v. LNB).
2 Comparison of SCR vs. Market (compliance by 2018).	Increase in Net Present Value from SCR = $648 million vs. NPV from Market Cases = $673–$1040 million.		
SRP Electricity Rate in 2018 (compliance by 2018)	9.26¢/kWh (Baseline)	9.28¢/kWh	9.32¢/kWh.
Energy-Only Water Rate in 2018 (compliance by 2018).	$58/acre-foot (Baseline)	$61/acre-foot	$66/acre-foot.
3 Existing Controls	LNB/SOFA installed in 2009–2011		
4 Remaining Useful Life	EPA Default Amortization Period is 20 years. NGS seeking to extend lease to 2044		
5 Highest Visibility Benefit of Controls	2.1 dv	3.1 dv	5.4 dv.
Sum of Visibility Benefit from 11 Class I areas	16 dv	22 dv	35 dv.

Based on our five factor analysis, EPA is proposing to determine a plantwide emission limit of 0.055 lb/MMBtu as BART for NGS, based on a rolling average of 30 boiler operating days, achievable with the installation of SCR. We are proposing this emissions limit as BART for NO_X because: (1) The average and incremental costs of SCR are cost effective; (2) EPA anticipates that the installation and operation of SCR to meet the proposed BART limit should not cause the owners of NGS to retire units and that the history of funding air pollution control at NGS suggests that other significant impacts may be avoided or mitigated; (3) the voluntary installation of LNB/SOFA in 2009–2011 at NGS has achieved some NO_X reductions, but not the level achievable with SCR; (4) NGS is projected to continue operation at least to 2044; and (5) the anticipated visibility improvements from SCR would be significant at 11 Class I areas. Based on these factors, EPA is proposing to determine that an emission limit of 0.055 lb/MMBtu is BART for NGS. This emission limit represents a reduction of nearly 80 percent from the existing permitted NO_X emission limit.

D. EPA's Proposed BART Alternative

Under the CAA, compliance with emission limits determined as BART must be ''as expeditious as practicable but in no event later than five years'' after the effective date of the final BART determination (See CAA 169A(b)(2)(A) and (g)(4)). That date would be 2018, if the rule is finalized in 2013, or 2019 if, due to a need for extended public discussion or a supplemental proposal, the rule is finalized in 2014.[58] As previously stated, EPA recognizes that the circumstances related to NGS create unusual and significant challenges for a 5-year compliance schedule. We therefore have considered other options that are consistent with the CAA and RHR, that also provide for a more flexible, extended compliance schedule.

EPA's BART regulations allow an alternative to BART provided the alternative results in greater reasonable progress than would have been achieved through installation of BART. 40 CFR 51.308(e)(2). The regulations provide that an alternative to BART must ensure that all necessary emission reductions occur during the period of the first long-term strategy for regional haze, or in 2018 for States that were required to submit regional haze SIPs in December 2007. 40 CFR 51.308(e)(2)(iii). Thus, the RHR provided five additional years for the implementation of alternatives to BART (known as ''better than BART'').

In today's proposal, we are proposing a BART alternative (Alternative 1) for NGS that would require the plant to meet a NO_X limit of 0.055 lb/MMBtu on one unit per year in 2021, 2022, and 2023. We also describe and solicit comment on a framework for extending the compliance schedule beyond 2023, and will issue a supplemental proposal if we receive comments supporting a later compliance date.

i. Compliance Flexibility Is Necessary or Appropriate

EPA is proposing an alternative to provide the owners of NGS options for flexibility in achieving emissions reductions required under our proposed BART determination. SRP expressed concern that the owners of NGS may choose to retire the facility if faced with the financial risk of making a large capital investment within 5 years without also having certainty that the lease and contract re-negotiations would conclude in a timely and favorable manner. EPA understands that the owners of NGS face numerous uncertainties and the unusual requirement to comply with NEPA for lease and other rights-of-way approvals, which apply only to NGS and Four Corners Power Plant. EPA also understands the importance of the continued operation of NGS and the Kayenta Mine to the Navajo Nation and Hopi Tribe as a source of direct revenues through lease payments or coal royalties, as well as the importance of Reclamation's share of NGS to supply water to many tribes located in Arizona in accordance with several water settlement acts.

In this proposal, EPA is proposing Alternative 1 as a ''better than BART'' alternative that addresses the uncertainties described in the previous section. We are also requesting comment on two other alternatives that provide longer schedules for compliance. Because we would need additional information to propose to approve a longer compliance schedule beyond the timeframe in Alternative 1, we would supplement our proposal if we intend to finalize either of the longer compliance schedules discussed below. As discussed below, all of the alternatives include a NO_X emission rate of 0.055 lb/MMBtu, but vary in the amount of time provided for compliance. Alternative 1 and the other two on which we are soliciting comment assume that NGS will continue to operate well into the future, but EPA recognizes that there may be changes in energy demand or in how energy is supplied in this region that could form the basis of other options. EPA welcomes comment on our proposed BART determination and proposed alternative (Alternative 1), as well as the other alternatives we describe here and other options from interested parties.

ii. Background on Alternative Measures to BART

EPA has previously provided flexibility to the Four Corners Power Plant (FCPP), also located on the Navajo Nation, to achieve emission reductions of NO_X under either BART or an alternative measure to BART. 77 FR 51619 (August 24, 2012). Changes in ownership at FCPP and differences between the five boilers operated at FCPP, contributed, in part, to a decision by the owners of FCPP to put forth an alternative emission control strategy that included closure of the three smaller and less efficient units and somewhat delayed installation of SCR on the two largest units, resulting in greater emission reductions than under EPA's proposed BART determination. On February 25, 2011, EPA proposed this alternative emission control strategy as an alternative measure that would result in more progress towards achieving visibility improvements in the surrounding Class I areas (76 FR 10530). In that Supplemental Proposal, EPA put forth the legal and historical background for proposing a BART Alternative (76 FR 10533). Briefly, the RHR allows states (and EPA) the ability to consider alternatives to BART (40 CFR 51.308(e)(2)). The regulation requires a demonstration, based on a weight of evidence evaluation, that the alternative measure will achieve greater reasonable progress than would have resulted from installation and operation of BART. The regulation provides that:

> [i]f the distribution of emissions is not substantially different than under BART, and the alternative measure results in greater emission reductions, then the alternative measure may be deemed to achieve greater reasonable progress.

40 CFR 51.308(e)(3). The RHR also requires that emission reductions from the alternative program take place during the period of the first long-term strategy for regional haze (40 CFR 51.308(e)(2)(iii), which ends in 2018. EPA's final action on FCPP required the facility to achieve emission reductions under the alternative emission control strategy by July 31, 2018.

[58] For simplicity, EPA has assumed the rule will be finalized in 2013 in our analysis of alternatives to BART.

iii. Legal Rationale for Extending Compliance Schedule for Alternative Measures for NGS

For NGS, EPA is proposing a BART alternative (Alternative 1) consistent with 40 CFR 51.308(e)(2). In particular, EPA is proposing that consideration of a compliance schedule beyond 2018 for Alternative 1 at NGS is appropriate for several reasons, including the singular importance of NGS to many tribes located in Arizona and their water settlement agreements with the federal government, the numerous uncertainties facing the owners of NGS, the requirement for NEPA review of a lease extension, and the early and voluntary installation of modern combustion controls over the 2009–2011 timeframe. The timeframe for compliance would not, in itself, avoid or mitigate increases in water rates for tribes located in Arizona; however, it would provide time for the collaborating federal agencies to explore options to avoid or minimize potential impacts to tribes, including seeking funding to cover expenses for the federal portion of pollution control at NGS.

EPA is exercising its authority and discretion under section 301(d)(4) of the Clean Air Act, 42 U.S.C. 7601(d)(4), and 40 CFR 49.11(a) to propose an extended timeframe for an alternative measure under the RHR for NGS. EPA considers this extension of time to be consistent with the general programmatic requirements. In the 1999 RHR, EPA provided states with the flexibility to adopt alternatives to BART but required any such alternative to be fully implemented by the end of the first planning period. 40 CFR 51.308(e)(2)(iii). States and regulated sources accordingly had almost 20 years under the RHR to design and implement alternative measures to BART. Because of the myriad stakeholder interests and complex governmental interests unique to NGS, we are only now addressing the BART requirements for NGS. Given the timing of our proposed action, any BART alternative would need to be fully implemented on the same timeframe as BART, under the current regional haze regulations. For all the reasons explained above, we consider it appropriate to consider an extended compliance period for NGS. Therefore, notwithstanding the requirements in 40 CFR 51.308(e)(2)(iii) for BART alternatives to be implemented by 2018 (if the rule is finalized in 2013), we are proposing in Alternative 1 to require that emission reductions from an alternative to BART at NGS take place by 2023.

Our proposal to require emission reductions by 2023 is also supported by the Tribal Authority Rule codified at 40 CFR 49.11(a). The TAR reflects EPA's commitment to promulgate ''such Federal implementation plan *provisions as are necessary or appropriate* to protect air quality'' in Indian country where a tribe either does not submit a tribal implementation (TIP) or does not receive approval of a submitted TIP. (Emphasis added.)

The use of the term ''provisions as are necessary or appropriate'' indicates EPA's determination that it may only be necessary or appropriate to promulgate a FIP of limited scope. The United States Court of Appeals for the Tenth Circuit has previously endorsed the application of this approach in a challenge to the FIP for the Four Corners Power Plant, stating: ''[40 CFR 49.11(a)] provides the EPA discretion to determine what rulemaking is necessary or appropriate to protect air quality and requires the EPA to promulgate suc rulemaking.'' *Arizona Public Service Company* v. *EPA*. The court went on to observe: ''Nothing in section 49.11(a) requires EPA * * * to submit a plan meeting the completeness criteria of [40 CFR part 51] Appendix V.'' *Id.* While the decision in *Arizona Public Service Company* focused on 40 CFR Part 51 Appendix V, EPA believes the same considerations apply to the promulgation of a FIP intended to address the objectives set forth in 40 CFR 51.308(e)(2). In particular, EPA has discretion to determine if and when a FIP addressing the objectives set forth in 40 CFR 51.308(e)(2) should be promulgated, which necessarily includes discretion to determine the timing for complying with the requirements of any such FIP.

iv. Description and Analysis of a Proposed Alternative Measure to BART

EPA recognizes that the owners of NGS elected to install modern LNB/SOFA on one unit per year at the facility over the 2009–2011 timeframe. The NO_X reductions achieved by installing the modern LNB/SOFA were not required under any regulatory program of the CAA; therefore, installation of new combustion controls (i.e. LNB/SOFA) was voluntary. SRP obtained a pre-construction PSD permit from EPA in 2008 for a significant increase in CO emissions, a criteria pollutant that does not impair visibility, as a result of the installation and operation of new combustion controls. EPA notes that LNB/SOFA is a potential control option evaluated in this BART analysis, and that LNB/SOFA is typically used in conjunction with installation of SCR or SNCR to first reduce emissions of NO_X formed during combustion before further control by the downstream post-combustion control system. EPA recognizes that the owners of NGS could have waited until a final BART determination was issued and effective before installing any new controls, including the LNB/SOFA.

SRP's early and voluntary installation of LNB/SOFA over the 2009–2011 timeframe resulted in more NO_X emissions reductions during the 2009–2018 period than if LNB/SOFA were installed concurrently with SCR by 2018. Our BART proposal requires NGS to achieve the BART limit of 0.055 lb/MMBtu no later than 5 years after our final rule. For purposes of this evaluation, we are assuming the rule is finalized in 2013 and that NGS would be required to meet the emissions limit achievable with SCR+LNB/SOFA 5 years after 2013, or by 2018. EPA is proposing to apply these early and voluntary NO_X emission reductions as a credit in our analysis of BART alternatives. EPA has determined that application of a credit for NO_X reductions achieved by LNB/SOFA during the 2009–2018 period is appropriate here because if LNB/SOFA were not already installed at NGS, the BART determination EPA is proposing today would have incorporated installation of LNB/SOFA in combination with SCR as BART. We calculate that the early NO_X emission reductions achieved by installation of LNB/SOFA in the 2009–2011 timeframe at NGS totals 92,715 tons.[59] EPA is proposing to find that an alternative is ''better than BART'' if the adjusted total NO_X emissions over the 2009–2044 timeframe (i.e., emissions remaining after subtracting 92,715 tons for the LNB/SOFA credit for early and voluntary emission reductions) are less than total emissions under our proposed BART determination for the same period (i.e., 358,974 tons).

We are proposing in Alternative 1, as an alternative to BART, to require NGS to meet a NO_X limit of 0.055 lb/MMBtu on one unit per year in 2021, 2022, and 2023. EPA notes that the installation years for Alternative 1 coincide with scheduled major outages at NGS.

As shown in Table 12 below, EPA has calculated that the total amount of NO_X that would be emitted from NGS over the 2009–2044 timeframe under EPA's proposed BART determination will

[59] See spreadsheet titled ''BART Alternatives.xlsx'' in the docket for this proposed rulemaking.

equal 358,974 tons.[60] EPA has also calculated that the total NO_X emissions over 2009–2044 under Alternative 1, with the credit for the actual early and voluntary emission reductions, will be 338,189 tons. Based on its adjusted total NO_X emissions, Alternative 1 meets the ''better than BART'' threshold (i.e., 338,189 tons is less than 358,974 tons). Therefore, EPA is proposing Alternative 1 (compliance with BART emission limits on one unit per year in 2021, 2022, and 2023) as a better-than-BART alternative that results in greater reasonable progress than would be achieved under BART.

TABLE 12—ANALYSIS OF PROPOSED BART ALTERNATIVE

	BART	Alternative 1
Installation Years	by 2018	2021, 2022, and 2023.
Total Emissions (tons)	358,974	430,904.
LNB/SOFA Credit (tons)	n/a	92,175.
Adjusted Emissions (tons)	n/a	338,189.
Better than BART?	n/a	Yes. (338,189 tons < 358,974 tons).

E. Analysis of Additional Alternative Compliance Schedules

To the extent that there may be interest in additional flexibility beyond the 2021–2023 compliance schedule under Alternative 1, EPA has evaluated two additional compliance schedules, using the ''better than BART'' analysis framework described above, to evaluate additional time for compliance, i.e., compliance on one unit per year in 2023, 2024, and 2025 (Alternative 2) and compliance on one unit per year in 2024, 2025, and 2026 (Alternative 3). EPA is not proposing Alternatives 2 and 3 because these alternatives require additional information from stakeholders in order to meet the ''better than BART'' threshold. We are soliciting comment on Alternatives 2 and 3, and, if appropriate, will supplement this proposal before finalizing any alternative to BART that extends the compliance schedule beyond the timeframe proposed in Alternative 1.

As shown in Table 13, Alternatives 2 and 3 do not, as currently evaluated, meet the ''better than BART'' threshold because the adjusted emissions (accounting for the LNB/SOFA credit for early NO_X reductions) exceed total emissions under BART. Table 13 refers to the amount by which the alternative exceeds BART as the ''NO_X emissions reduction deficit.'' For Alternatives 2 and 3, the NO_X emission reduction deficits are 15,179 tons and 33,160 tons, respectively, showing that as the compliance dates under a given alternative extend further into the future, the NO_X emission reduction deficit grows. Because Alternatives 2 and 3 do not by themselves meet the ''better than BART'' threshold, EPA views Alternatives 2 and 3 as viable only if the owners of NGS achieve additional emission reductions to bridge the deficit in NO_X emission reductions. These additional emission reductions could be implemented as short-term (e.g., for some subset of the period 2009–2044) or long-term (e.g., achieved annually until 2044) measures.

As shown in Table 13, if the owners of NGS complied with the schedule under Alternative 2 and implemented a short-term emission reduction bridge (for example, over a 10-year period from 2013–2023), the owners of NGS would need to achieve additional NO_X emission reductions of 1,518 tons per year. Similarly, implementing a long-term emission reduction bridge (for example, over the period of 2013–2044) would require additional NO_X emission reductions of 490 tons per year. The short and long term emission reduction bridges in Table 13 provide examples of how additional emission reductions might be distributed over time. The actual annual emission reductions that NGS would need to bridge the NO_X deficit would depend, not only on the size of the deficit, but on the specific measures and time periods chosen by the owners of NGS. Depending on the magnitude of the required emission bridge, EPA anticipates that reductions could be achieved without expending substantial funds before the lease, NEPA review, and other processes are completed. Such reductions could be implemented as NO_X reductions achieved annually in equal increments to meet the emissions bridge, or some other structure that achieves the total emission reductions at different intervals. Thus, EPA is soliciting comment on how NGS could achieve the emission reduction bridge necessary for these longer compliance schedules to meet the ''better than BART'' threshold and will supplement our proposal before an alternative with a compliance schedule beyond 2023 is finalized.

TABLE 13—ANALYSIS OF ADDITIONAL ALTERNATIVES

	BART	Alternative 2	Alternative 3
Installation Years	by 2018	2023, 2024, and 2025	2024, 2025, and 2026.
Total Emissions (tons)	358,974	466,869	484,849.
LNB/SOFA Credit (tons)	n/a	92,175	92,175.
Adjusted Emissions (tons)	n/a	374,154	392,134.
Better than BART?	n/a	No	No.
Emission Reduction Deficit (tons)	n/a	15,179	33,160.
Short-term Emission Bridge (tpy) (years in place)	n/a	1,518 tpy over 2013–2023	3,015 tpy over 2013–2024.

[60] Emissions over 2009–2044 for EPA's proposed BART determination are calculated assuming compliance with a proposed limit of 0.055 lb/MMBtu by 2018, and actual installation years for LNB/SOFA, i.e., 2009–2011 period. EPA has selected the period 2009–2044 as most appropriate because it includes the early installation dates for LNB/SOFA and extends until the anticipated 2044 termination date of the new site lease currently under negotiation between the Navajo Nation and the owners of NGS. Other timeframes can be used for the ''better than BART'' analysis (e.g., 2001–2064), however, these timeframes are unlikely to materially alter the analysis.

TABLE 13—ANALYSIS OF ADDITIONAL ALTERNATIVES—Continued

	BART	Alternative 2	Alternative 3
Long-term Emission Bridge (tpy) (years in place)	n/a	490 tpy over 2013–2044	1,070 tpy over 2013–2044.

In summary, EPA is requesting comment on technically and economically feasible technologies or mechanisms to serve as enforceable emission reduction bridges (whether short or long term) that would allow consideration of alternatives that would not otherwise meet the ''better than BART'' threshold for NO_X (e.g., Alternatives 2 or 3 or other alternatives suggested by stakeholders during the public comment period for this proposed rule). EPA also seeks comment on the schedule on which reductions from an emissions bridge would need to be achieved. If EPA receives proposals from stakeholders during the comment period that put forth a plan for specific emission reduction bridges to bring total emissions over 2009–2044 of an extended compliance schedule (beyond 2023) at or below the ''better than BART'' threshold of 358,974 tons, EPA may issue a supplemental proposal for public comment.

F. Solicitation of Comments

EPA is requesting comment on our proposed level of BART control of 0.055 lb/MMBtu for NO_X. We are also requesting comment on our proposed BART Alternative 1 with a compliance timeframe of 2021–2023, resulting in greater reasonable progress than would otherwise be achieved under BART by crediting NGS for its early and voluntary installation of LNB/SOFA.

EPA is requesting comment on Alternatives 2 and 3 that provide additional time for compliance and would require the owners of NGS to implement additional emission reductions in order to assure greater reasonable progress than would otherwise be achieved under BART. In particular, we are requesting comment from stakeholders on potential technologies that can serve to bridge the NO_X emission reduction deficit for compliance schedules that do not, by themselves, meet the ''better than BART'' threshold (i.e., Alternatives 2 and 3). EPA will publish a supplemental proposal before we would finalize any alternative that requires an emission reduction bridge to be ''better than BART''.

In recognition of the importance of NGS to the local and regional economy and the multitude of interests and stakeholders involved, EPA is providing a 90-day comment period on this proposed rulemaking and will continue to engage in consultation with tribes located in Arizona during the rulemaking process. EPA seeks comment on the analysis and conclusions presented in this proposal and invites suggestions for other alternatives that reduce NO_X emissions at NGS and its contribution to visibility impairment while providing long-term, sustainable benefits to tribes.

IV. Administrative Requirements

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

This action proposes a source-specific FIP for the Navajo Generating Station on the Navajo Nation. Under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and EO 13563 (76 FR 3821, January 21, 2011), because this proposed rule applies to only one facility, it is not a rule of general applicability. This proposed rule, therefore, is exempt from review under EO 12866 and EO 13563.

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. Burden is defined at 5 CFR 1320.3(b). Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * * .'' 44 U.S.C. 3502(3)(A). Because the proposed FIP applies to a single facility, Navajo Generating Station, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed 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 this proposed action on small entities, I certify that this proposed action will not have a significant economic impact on a substantial number of small entities. The Navajo Generating Station is not a small entity and the FIP for Navajo Generating Station being proposed today does not impose any compliance requirements on small entities. *See Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985). We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

EPA anticipates the annual cost to the private sector of this proposed rule to be $64 million per year (see Table 2). Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA. This proposed rule will not impose direct compliance costs on state, local or tribal governments. This proposed action will, if finalized, reduce the emissions of NO_X from a single source, the Navajo Generating Station.

In developing this rule, EPA consulted with small governments pursuant to a plan established under section 203 of UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. EPA put forth an Advanced Notice of Proposed Rulemaking on August 28, 2009 regarding our intention to propose a BART determination for NGS and the Four Corners Power Plant. We received comments from numerous small governments, including tribal governments, and governments of several towns in Arizona. This proposed rule will not impose direct compliance costs on any small governments. However, increased electricity and water costs associated with this proposed rule may indirectly affect small governments.

E. Executive Order 13132: Federalism

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 in the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action proposes emission reductions of NO_X at a specific stationary source located in Indian country. Thus, Executive Order 13132 does not apply to this action.

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

Under Executive Order 13175 (65 FR 67249, November 9, 2000), EPA may not issue a regulation that has tribal 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 tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement.

EPA has concluded that this action will have tribal implications, and consequently EPA has consulted with tribal officials during the process of developing the proposed regulation. The proposed regulation will neither impose substantial direct compliance costs on tribal governments, nor pre-empt tribal law. However, several tribes located in Arizona have expressed concerns regarding the potential impact of this regulation on their economic interests. The Navajo Nation and Hopi Tribe focused on the significant contribution of coal-related royalties, taxes and employment at NGS and the Kayenta Mine to their economies. Comments from other Arizona tribes focused on the importance of NGS as a source of power to the CAP in order for the federal government to meet obligations under existing water settlement agreements. The importance to tribes of continued operation of NGS and affordable water costs cannot be overemphasized. In Section II.B.ii, EPA explains in detail the tribal information that we received and considered in this proposed rulemaking.

In order to understand more fully the concerns of the tribes, senior level EPA officials from both Washington, DC and San Francisco have personally visited the NGS facility in Page, Arizona. EPA sent invitations to all tribes in Arizona to consult with EPA during the development of our BART determination for NGS. We received correspondence and comments on our ANPRM from officials of numerous tribes, including the Navajo Nation, the Hopi Tribe, the Gila River Indian Community, the Ak-Chin Indian Community, the Tohono O'odham Nation, the Fort McDowell Indian Community, the Pascua Yaqui Tribe, and the Salt River-Pima Maricopa Indian Community. On September 16, 2011, and February 8, 2012, EPA held consultation sessions about NGS with representatives from approximately eleven tribes participating in one or both meetings. Additionally, EPA had in-person consultation meetings with tribal representatives prior to this proposal on August 7 and August 27, 2012. Representatives from nine tribes attended. In addition to formal consultation, EPA has had numerous meetings and conference calls with tribes at their request throughout the process of developing the action we are proposing today. A timeline of all correspondence and consultation with tribes on NGS is included in the docket for this proposed rulemaking.[61] EPA will continue to consult with Tribal officials during the public comment period on the proposed FIP. Several tribes, including the Navajo, submitted comments which EPA considered in developing this proposed action. Therefore, EPA has allowed tribes to provide meaningful and timely input into the development of this proposed rule and will continue to consult with affected tribes prior to finalizing our BART determination or any alternative to BART. The technical support document for this proposed rulemaking provides a detailed discussion of comments received from tribes during the comment period for the ANPRM and subsequent consultation and correspondence, and EPA's responses to those comments.

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

Executive Order 13045: *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it requires emissions reductions of NO_X from a single stationary source. Because this proposed action only applies to a single source and is not a proposed rule of general applicability, it is not economically significant as defined under Executive Order 12866, and does not have a disproportionate effect on children. However, to the extent that the rule will reduce emissions of NO_X, which contribute to ozone and fine particulate matter formation as well as visibility impairment, the rule will have a beneficial effect on children's health be reducing air pollution that causes or exacerbates childhood asthma and other respiratory issues.

H. Executive Order 13211: Actions Concerning Regulations 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 exempt under Executive Order 12866.

[61] See document titled: ''Timeline of All Tribal Consultation on NGS.docx'', in the docket for this proposed rulemaking.

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, 12 (10) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the VCS bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable VCS.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable VCS. For the measurements listed below, there are a number of VCS that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR Part 60, Appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current proposed rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR Part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

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 has determined that this proposed rule, if finalized, will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposed rule requires emissions reductions of NO_X from a single stationary source, Navajo Generating Station.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: January 17, 2013.

Jared Blumenfeld,

Regional Administrator, Region 9.

Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—[INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT]

■ 1. The authority citation for part 49 continues to read as follows:

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

■ 2. Section 49.5513 is amended by adding paragraph (j) to read as follows:

§ 49.5513 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.

* * * * *

(j)(1) *Applicability.* Regional Haze Best Available Retrofit Technology limits for this plant are in addition to the requirements of paragraphs (a) through (i) of this section. The provisions of this paragraph (j) are severable, and if any provision of this paragraph (j), or the application of any provision of this paragraph (j) to any owner/operator or circumstance, is held invalid, the application of such provision to other owner/operators and other circumstances, and the remainder of this paragraph (j), shall not be affected thereby.

(2) *Definitions.* Terms not defined in this paragraph (j)(2) shall have the meaning given to them in the Clean Air Act or EPA's regulations implementing the Clean Air Act and in paragraph (c) of this section. For purposes of this paragraph (j):

(i) *Boiler operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the steam-generating unit. It is not necessary for fuel to be combusted the entire 24-hour period.

(ii) *Coal-fired unit* means any of Units 1, 2, or 3 at Navajo Generating Station.

(iii) *Continuous emission monitoring system or CEMS* means the equipment required by 40 CFR Part 75 and this paragraph (j).

(iv) *Emissions limitation or emissions limit* means the federal emissions limitation required by this section.

(v) *Group of coal-fired units* means Units 1, 2 and 3 at Navajo Generating Station.

(vi) *lb* means pound(s).

(vii) NO_X means nitrogen oxides expressed as nitrogen dioxide (NO_2).

(viii) *Owner(s)/operator(s)* means any person(s) who own(s) or who operate(s), control(s), or supervise(s) one more of the units of the Navajo Generating Station.

(ix) *MMBtu* means million British thermal unit(s).

(x) *Operating hour* means any hour that fossil fuel is fired in the unit.

(xi) *Unit* means any of Units 1, 2, or 3 at Navajo Generating Station.

(xii) *Valid data* means CEMs data that is not out of control as defined in 40 CFR Part 75.

(3) *Compliance date.* The owner/operator may elect to comply with the NO_X emission limitations in this paragraph (j) either:

(i) Within five years of the effective date of the final rulemaking, or

(ii) On one coal-fired unit per year by 2021, 2022, and 2023.

(4) NO_X emission limitations. The owner/operator of each coal-fired unit subject to this paragraph (j) shall not emit or cause to be emitted NO_X in excess of the following:

(i) Under paragraph (j)(3)(i) of this section: within 5 years of the effective of the final rule, 0.055 pounds per million British thermal units (lb/MMBtu) from any group of coal-fired units, averaged on a rolling average basis over 30-boiler-operating days.

(ii) Under paragraph (j)(3)(ii) of this section:

(A) After 2021, 0.178 lb/MMBtu from any group of coal-fired units, averaged on a rolling basis over 30-boiler-operating days.

(B) After 2022, 0.117 lb/MMBtu from any group of coal-fired units, averaged on a rolling basis over 30-boiler-operating days.

(C) On and thereafter 2023, 0.055 lb/MMBtu from any group of coal-fired units, averaged on a rolling basis over 30-boiler-operating days.

(5) *Continuous emission monitoring system.* (i) At all times after the dates

specified in paragraph (j)(3) of this section, the owner/operator of each unit shall maintain, calibrate, and operate a CEMS, in full compliance with the requirements found at 40 CFR Part 75, to accurately measure NO_X, diluent, and stack gas volumetric flow rate from each unit. Valid data means data recorded when the CEMS is not out-of-control as defined by Part 75, as defined in paragraph (j)(2) of this section. All valid CEMS hourly data shall be used to determine compliance with the emission limitations for NO_X in paragraph (j)(4) of this section for each unit. If the CEMs data is not valid, that CEMs data shall be treated as missing data and not used to calculate the emission average. CEMs data does not need to be bias adjusted as defined in 40 CFR Part 75. Each required CEMS must obtain valid data for at least 90 percent of the unit operating hours, on an annual basis.

(ii) The owner/operator of each unit shall comply with the quality assurance procedures for CEMS found in 40 CFR Part 75. In addition to these Part 75 requirements, relative accuracy test audits shall be calculated for both the NO_X pounds per hour measurement and the heat input measurement. The calculation of NO_X pounds per hour and heat input relative accuracy shall be evaluated each time the CEMS undergo relative accuracy testing.

(6) *Compliance Determination for NO_X.* (i) The 30-day rolling average NO_X emission rate for each group of coal-fired units shall be calculated for each calendar day, even if a unit is not in operation on that calendar day, in accordance with the following procedure: step one, for each unit, sum the hourly pounds of NO_X emitted during the current boiler-operating day (or most recent boiler-operating day if the unit is not in operation), and the preceding twenty-nine (29) boiler-operating days, to calculate the total pounds of NO_X emitted over the most recent thirty (30) boiler-operating day period for each coal-fired unit; step two, for each unit, sum the hourly heat input, in MMBtu, during the current boiler-operating day (or most recent boiler-operating day if the unit is not in operation), and the preceding twenty-nine (29) boiler-operating days, to calculate the total heat input, in MMBtu, over the most recent thirty (30) boiler-operating day period for each coal-fired unit; step 3, sum together the total pounds of NO_X emitted from the group of coal-fired units over each unit's most recent thirty (30) boiler-operating day period (the most recent 30 boiler-operating day periods for different units may be different); step four, sum together the total heat input from the group of coal-fired units over each unit's most recent thirty (30) boiler-operating day period; and step five, divide the total pounds of NO_X emitted from step three by the total heat input from step four for each group of coal-fired units, to calculate the 30-day rolling average NO_X emission rate for each group of coal-fired units, in pounds of NO_X per MMBtu, for each calendar day. Each 30-day rolling average NO_X emission rate shall include all emissions and all heat input that occur during all periods within any boiler-operating day, including emissions from startup, shutdown, and malfunction.

(ii) If a valid NO_X pounds per hour or heat input is not available for any hour for a unit, that heat input and NO_X pounds per hour shall not be used in the calculation for that 30 boiler operating day period.

(7) *Recordkeeping.* The owner or operator of each unit shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results as required by Part 75 and as necessary to calculate each units pounds of NO_X and heat input for each hour.

(ii) Each calendar day rolling average group emission rates for NO_X calculated in accordance with paragraph (j)(5)(i) of this section.

(iii) Each unit's 30 boiler operating day pounds of NO_X and heat input.

(iv) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR Part 75.

(v) Records of the relative accuracy calculation of the NO_X lb/hr measurement and hourly heat input.

(vi) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(vii) Any other records required by 40 CFR Part 75.

(8) *Reporting.* All reports and notifications under this paragraph (j) shall be submitted to the Director, Navajo Environmental Protection Agency, P.O. Box 339, Window Rock, Arizona 86515, and to the Director of Enforcement Division, U.S. EPA Region IX, at 75 Hawthorne Street, San Francisco, CA 94105. (i) The owner/operator shall notify EPA within two weeks after completion of installation of NO_X control technology on any of the units subject to this section.

(ii) Within 30 days after the first applicable compliance date in paragraph (j)(3) of this section and within 30 days of every second calendar quarter thereafter (i.e., semi-annually), the owner/operator shall submit a report that lists for each calendar day, calculated in accordance with paragraph (j)(6) of this section, total lb of NO_X and heat input (as used to calculate compliance per paragraph (j)(4) of this section, for each unit's last 30 boiler operating days. Included in this report shall be the results of the last relative accuracy test audit and the calculated relative accuracy for lb/hr NO_X and heat input performed 45 days prior to the end of that reporting period. The end of the year report shall also include the percent valid data for each NO_X, diluent, and flow monitor used in the calculations of compliance with paragraph (j)(4) of this section.

(9) *Enforcement.* Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant as to whether the unit would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard or applicable emission limit in the plan.

(10) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the unit including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Regional Administrator, or their designee, which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the unit.

(11) The affirmative defense provisions of paragraphs (c)(1) and (g)(3) of this section, related only to malfunctions, apply to this paragraph (j).

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Part IV

Department of the Treasury

Community Development Financial Institutions Fund

12 CFR Part 1808

Guarantees for Bonds Issued for Community or Economic Development Purposes; Final Rule

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

12 CFR Part 1808

RIN 1559–AA01

Guarantees for Bonds Issued for Community or Economic Development Purposes

AGENCY: Community Development Financial Institutions (CDFI) Fund, Department of the Treasury.

ACTION: Interim rule with request for public comment.

SUMMARY: The Department of the Treasury is issuing the interim rule implementing the Community Development Financial Institutions (CDFI) Bond Guarantee Program, established through section 1134 of the Small Business Jobs Act of 2010 and administered by the CDFI Fund, under authority delegated by the Secretary of the Treasury.

DATES: Interim rule effective April 8, 2013. Comment due date: Comments on the interim rule must be received in the offices of the CDFI Fund on or before April 8, 2013.

ADDRESSES: All comments concerning the interim rule should be submitted and viewed through the Federal e-Rulemaking Portal, *http://www.regulations.gov.* Comments may also be addressed to Lisa M. Jones, Manager, CDFI Bond Guarantee Program, by mail to the CDFI Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220; by email to *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 508–0090 (this is not a toll free number). Comments will be made available for public review on the CDFI Fund's Web site at *www.cdfifund.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa M. Jones, Manager, CDFI Bond Guarantee Program, CDFI Fund, at (202) 653–0421 (this is not a toll free number). Information regarding the CDFI Fund and the CDFI Bond Guarantee Program may be downloaded from the CDFI Fund's Web site at *http://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

1. *The need for the regulatory action and how the action will meet that need:* The CDFI Bond Guarantee Program is authorized by section 1134 of the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a) (the Act), which requires the Secretary of the Treasury to promulgate regulations to carry out that section of the Act. Capitalized terms used herein and not defined elsewhere are defined in section 1808.102 of the interim rule.

2. *Statement of legal authority for the regulatory action:* 12 U.S.C. 4713a (j)(1).

B. Summary of the Major Provisions of the Regulatory Action

1. *General provisions:* Subpart A (sections 1808.100–106) sets forth the CDFI Bond Guarantee Program's purpose, summary, program definitions, deviations, and relationship to other programs, among other provisions.

2. *Eligibility:* Subpart B (sections 1808.200–202) sets forth eligibility requirements and responsibilities for certain CDFI Bond Guarantee Program participants, particularly the Qualified Issuer, Designated Bonding Authority, and Eligible CDFIs.

3. *Eligible activities:* Subpart C (sections 1808.300–309) sets forth the activities that are allowable under the CDFI Bond Guarantee Program, as well as interest rates, terms and conditions for Bonds, Bond Issues, the Risk-Share Pool, Bond Loans, Secondary Loans, and the Relending Account.

4. *Applications for Guarantee and Qualified Issuer:* Subpart D (sections 1808.400–401) sets forth the parameters of the Notice of Guarantee Availability, the Guarantee Application (which includes the Capital Distribution Plan), and the Qualified Issuer Application.

5. *Evaluation and selection:* Subpart E (sections 1808.500–504) describes how the CDFI Fund will evaluate applications submitted by certain interested parties.

6. *Terms and conditions of Guarantee:* Subpart F (sections 1808.600–627) sets forth terms and conditions of the Guarantee, certain parties' roles and duties, representations and warranties, covenants, and reporting, conflict of interest, compliance, and other requirements.

II. Summary of Estimated Economic Benefits

	Discounting by 3%		Discounting by 7%	
	$200 million issuance	$2 billion issuance	$200 million issuance	$2 billion issuance
COSTS				
Government costs	$19.9 million	$28.8 million	$13.4 million	$18.6 million.
Eligible CDFIs	$4.6 million	$45.7 million	$4.2 million	$41.9 million.
Low-Income communities	n/a	n/a	n/a	n/a
TRANSFERS				
Low-Income communities	$200 million	$2 billion	$200 million	$2 billion.

III. Background

The Community Development Financial Institutions (CDFI) Bond Guarantee Program is authorized by the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a) (the Act). Section 1134 of the Act amended the Riegle Community Development and Regulatory Improvement Act of 1994 (the Riegle Act) (12 U.S.C. 4701, et seq.) to provide authority to the Secretary of the Treasury to establish and administer the CDFI Bond Guarantee Program. Under authority delegated by the Secretary of the Treasury, the CDFI Bond Guarantee Program is administered by the Community Development Financial Institutions Fund (CDFI) Fund, a wholly owned government corporation within the U.S. Department of the Treasury. Pursuant to the Act the Secretary of the Treasury will provide a Guarantee for the repayment of the full amount of the Bond Issue, including the Verifiable Principal, Interest, and Call Premium, issued to finance Bond Loans to Certified CDFIs for Eligible Community or Economic Development Purposes for a period not to exceed 30 years. The Bonds will support CDFI lending in Investment Areas by providing a source of low-cost, long-term capital to Eligible CDFIs.

Consistent with the Office of Management and Budget (OMB)

Circular A–129 (Policies for Federal Credit Programs and Non-Tax Receivables), Bonds issued pursuant to the CDFI Bond Guarantee Program will be purchased by the Federal Financing Bank (FFB), a body corporate and instrumentality of the Federal Government under the general supervision and direction of the Secretary of the Treasury. As required by the Act, the Guarantee will be fully assignable and transferable to capital markets on terms and conditions that are consistent with comparable Federal Government-guaranteed bonds and satisfactory to the CDFI Fund, the Guarantor, and the FFB.

The interim rule creates the regulatory requirements and parameters for CDFI Bond Guarantee Program implementation and administration including, among others, Qualified Issuer eligibility, application requirements, application review, selection criteria, Guarantee and Bond Loan documentation, eligible uses of Bond Proceeds and Bond Loan proceeds, terms and conditions, and reporting requirements. The CDFI Fund seeks public comment on the entire interim rule.

IV. Responses to the Request for Public Comment

On July 1, 2011, the CDFI Fund published in the **Federal Register** a Request for Public Comment (76 FR 38577) (the RPC), seeking public responses to specific questions regarding CDFI Bond Guarantee Program design, implementation, and administration. The CDFI Fund posed specific questions regarding a number of issues, including the following: how certain terms should be defined in the regulations; the eligible uses of funds (specifically, whether there should be any limitations on the types of loans that can be financed or refinanced with Bond Proceeds); provisions of the Guarantee; the eligibility of entities participating in the CDFI Bond Guarantee Program; and how the CDFI Fund should determine that a Qualified Issuer has the appropriate expertise, capacity, and experience to make Bond Loans for Eligible Community or Economic Development Purposes.

The CDFI Fund received more than 60 comment letters in response to the RPC. All comments have been reviewed by the CDFI Fund and have been taken into consideration in the drafting of the interim rule. A summary of the collective comments received in response to the RPC (as well as the CDFI Fund's responses) follows.

A. Definitions

The Act requires that Bond Proceeds be used to make Bond Loans to Eligible CDFIs and that those Eligible CDFIs use the Bond Loan proceeds for Eligible Purposes. Such purposes include the various uses of financial assistance authorized under the Riegle Act, as well as the provision of community or economic development in ''low-income or underserved rural areas.'' Comments were solicited as to how the CDFI Fund should define those terms.

(1) Low-Income

With respect to defining Low-Income, the majority of comments suggested that the U.S. Department of Housing and Urban Development (HUD) definitions for States and Metropolitan Statistical Areas (MSAs) should be followed, including HUD definitions that are not based on census tracts. Other comments suggested that Low-Income should be defined: (i) In alignment with definitions used in other CDFI Fund programs such as the Community Development Financial Institutions (CDFI) Program, the Native American CDFI Assistance (NACA) Program, and the New Markets Tax Credit Program; (ii) as up to 120 percent of the Area Median Income as defined by HUD; (iii) based upon low-income school districts; (iv) based upon low wealth rather than income level; or (v) using Federal banking agencies' definitions for determining Community Reinvestment Act compliance.

The CDFI Fund's Response:

The CDFI Fund has adopted the definition of Low-Income that is set forth in section 1808.102 of the CDFI Bond Guarantee Program interim rule. This definition is in accordance with the Low-Income definition found in the CDFI Program regulations at 12 CFR 1805.104(ee). The CDFI Fund selected a definition of Low-Income that is: (i) a standardized definition that is widely understood within the CDFI industry; (ii) a definition that the CDFI Fund can independently verify because the CDFI Fund has collected data under this definition over the past 10 years; (iii) more inclusive and allows for more Low-Income areas to comply with the CDFI Bond Guarantee Program; and (iv) consistent with the eligibility criteria for other CDFI Fund programs.

(2) Underserved Rural Areas

Regarding the term Underserved Rural Areas, the majority of comments suggested a definition consistent with the definition of Investment Area or Targeted Population set forth in the CDFI Program regulations (12 CFR 1805.104 (dd) and (kk), respectively). The majority of comments suggested using the U.S. Department of Agriculture (USDA) definition of Rural Areas. Other comments suggested that Rural Areas should be defined using the Federal Financial Institutions Examination Council definition for non-metro areas, and that the CDFI Fund should include Colonias in the definition of Rural Areas even when they otherwise fall within Metropolitan Statistical Areas (MSAs). Other suggestions included using: all non-MSA or HUD Fair Market Rent areas; the new Rural-Urban Commuting Area Codes definition established by the Office of Rural Health Policy; or the 2008 Farm Bill definition of Substantially Underserved Trust Areas.

The CDFI Fund's Response:

The CDFI Fund has adopted the definition of Underserved Rural Area that is forth in section 1808.102 of the interim rule. This definition is consistent with the definition of Investment Area as used in the CDFI Program (at 12 CFR 1805.104(dd)) and the definition of non-metropolitan as used in the New Markets Tax Credit Program. The CDFI Fund selected a combined definition of Underserved Rural Area because it is: (i) A standardized definition that is widely understood within the CDFI industry; (ii) a definition that the CDFI Fund can independently verify because the CDFI Fund has collected data under these definitions over the past 10 years; (iii) more inclusive and allows for more Low-Income areas to comply with the CDFI Bond Guarantee Program; and (iv) consistent with the eligibility criteria for other CDFI Fund programs.

B. Use of Funds

The Act requires that Bond Proceeds be used to make loans to Certified CDFIs for Eligible Purposes.

(1) Eligible Uses of Bond Proceeds

The CDFI Fund requested comments regarding the authorized uses of Bond Proceeds to finance Bond Loans. Specifically, comments were invited regarding any limitations on the types of Bond Loans to be financed, limitations on the percentage of Bond Loans that could be used to refinance outstanding loans, and any other restrictions that the CDFI Fund should impose on the Bond Loans such as interest rate and fee restrictions.

The majority of comments were not in favor of limitations on the types of Bond Loans that can be financed with the Bond Proceeds, especially when the Bond Loans meet the provisions of the

Act and are similar in purpose to those that are permissible under other programs, such as the Financial Assistance Component of the CDFI Program.

The majority of comments indicated that there should not be any limits on the percentage of Bond Loans that can be used to refinance outstanding loans with the Bond Proceeds. A few comments suggested that refinancing should be limited to 25 or 50 percent so as to encourage focus on new projects. Some comments suggested that any refinanced loans should meet minimum quality standards and should be non-delinquent in order to be refinanced with Bond Proceeds.

The CDFI Fund's Response:

Bond Proceeds must be used by the Qualified Issuer to finance or Refinance loans to Eligible CDFIs for Eligible Purposes as set forth in sections 1808.301 and 1808.302 of the interim rule. The CDFI Fund will not limit the amount of Bond Proceeds that the Qualified Issuer can use to Refinance loans. The Qualified Issuer must have a Capital Distribution Plan with the requisite Eligible CDFIs configured to on-lend the Bond Loans to Secondary Borrowers. Eligible CDFIs must on-lend the Bond Loans as Secondary Loans to Secondary Borrowers consistent with the Secondary Loan Requirements established by the CDFI Fund and defined in section 1808.102. The Secondary Loans must demonstrate a repayment source and collateral provisions consistent with the Secondary Loan Requirements.

(2) Eligible Uses of Bond Loan Proceeds

The CDFI Fund requested comments on the use of Bond Loan proceeds by CDFIs: specifically, the authorization of revolving loan funds; the permissibility of loan purchases with Bond Proceeds; and any other restrictions that the CDFI Fund should impose.

The majority of comments indicated that eligible Bond Loan purposes should include: (i) Capitalization of revolving loan funds; (ii) capitalization of equity positions for regulated institutions; and (iii) loan loss reserves, debt service reserves, and/or sinking funds in support of a Federally guaranteed bond.

Comments showed unanimous support for permitting loan proceeds to be used to purchase loans from other CDFIs. Comments also indicated that the purchase of loans is an important liquidity and aggregation mechanism and should be encouraged in order to increase capital flows in the CDFI industry. Suggested restrictions included restricting purchases to loans made after the enactment date of the Act, and requiring that the majority of loan purchase proceeds should be used for community development activities.

The CDFI Fund's Response:

The CDFI Fund selected eligible uses for the Bond Loan proceeds that are consistent with the eligible uses of funds in the CDFI and NACA Programs and the Act. Bond Loan proceeds must be used for Eligible Purposes that include (i) The capitalization of Loan Loss Reserves in an amount that is up to five percent of the par amount of the Bond Loan; (ii) the financing or Refinancing for community or economic development purposes described in 12 U.S.C. 4707 (b), which includes community or economic development purposes in Low-Income Areas or Underserved Rural Areas; (iii) prepaying one monthly installment of Bond Loan payments, and (iv) paying Bond Issuance Fees. The CDFI Fund included the capitalization of Loan Loss Reserves as an Eligible Purpose with the provision that Eligible CDFIs must obtain a Principal Loss Collateral Provision as collateral for this Eligible Purpose. Additional limitations, special rules, procedures and restrictions will be specified in the applicable Notice of Guarantee Availability (as described in section 1808.400 of the interim rule), as well as the Agreement to Guarantee, Bond Documents, and Bond Loan documents.

(3) Bond Proceeds Deployment; Relending Account; Risk-Share Pool

Pursuant to the Act, Qualified Issuers are required to use not less than 90 percent of principal amount of a Bond (other than cost of Bond Issuance Fees) to make loans within one year after the Bond Issue Date. Not more than 10 percent of the maximum principal amount of a Bond may be held in a Relending Account which may be made available for additional loans for Eligible Purposes. Each Eligible CDFI must contribute to a Risk-Share Pool equal to three percent of the principal amount of the Bond. The CDFI Fund requested comments regarding the 90 percent loan requirement, use of the Relending Account, scope of the Risk-Share Pool, and other measures that should be taken to minimize the risk of loss to the Federal Government.

Commentators suggested that Qualified Issuers may face challenges disbursing Bond Loans to CDFIs equal to 90 percent of the Bond principal within one year. In their comments, they cited that CDFI business models often provide binding permanent loan commitments to small businesses and entities that engage in construction and development financing. CDFIs lend to these entities under a total commitment structure that includes draws on an as needed basis. In addition, commentators indicated that a one-year deployment requirement for 100 percent of Bond Loans would require: (1) CDFIs to have an actual pipeline of loans; (2) immediate funding availability for the pipeline of loans; and (3) CDFIs to close quickly on the loans. Commenters indicated that it would be impractical for CDFIs to present an actual pipeline as part of the Capital Distribution Plan, but to instead require the Qualified Issuer to demonstrate a CDFI's intended versus actual pipeline of loans. Under a one-year deployment rule, CDFIs would face the undesirable prospect of having to develop a new financing program hastily and then terminate it prematurely. Commentators also suggested that most Qualified Issuers would be able to close Bond Loan commitments within one year of the Bond Issue Date but would require a period longer than one year, depending upon the end-borrowers' needs, to disburse the Bond Loan funds.

The majority of commentators stated that the Relending Account should be used to absorb and relend prepayments, permit early refinancing, and facilitate maturities shorter than the Bond duration. Some suggested that the Relending Account should be used for Bond payments if a default occurs, and that the 10 percent Relending Account should be calculated on a rolling-average basis.

Strong opinions were expressed against interest rate increases or requiring specific restrictions, covenants, or conditions not articulated in the statutory provisions. Some comments were in favor of requiring a larger Risk-Share Pool. Many comments suggested a variety of forms of supplemental credit enhancement. A ''one size fits all'' approach was not endorsed and several suggestions were made, including: the purchase of insurance; collateral liens; increased rates on end borrowers; and a ''repurchase structure'' where delinquent loans in an asset-backed portfolio were replaced after 180 days. The majority of the comments were in favor of allowing the Qualified Issuer to set aside the three percent from the Bond Proceeds for financing of the Risk-Share Pool. Some commentators suggested that they favored flexible systems allowing for various funding streams, e.g., surety or escrow from the issuer pending approval of application, third party funding, or cash flows from investment.

The CDFI Fund's Response:

The CDFI Fund will require the Qualified Issuer to execute Bond Loan agreements for not less than 100 percent of the Bond principal on the Bond Issue Date. If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers, as follows: (i) not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of such Eligible CDFI's Bond Loan proceeds allocated to Secondary Loans, and (ii) not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of such Eligible CDFI's Bond Loan proceeds allocated to Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

The CDFI Fund defines the Relending Account and the Capital Distribution Plan in section 1808.102 of the interim rule.

The Risk-Share Pool, described in 12 U.S.C. 4713a(d), must be funded by the Eligible CDFIs. The CDFI Fund will not allow the Bond Proceeds, or funds received from other CDFI Fund programs, to be used to fund the Risk-Share Pool. The CDFI Fund defines the Risk-Share Pool in section 1808.102 of the interim rule.

If the CDFI Fund determines that there is a need for protections to mitigate the risk of loss to the Federal Government, the CDFI Fund may require in the terms and conditions of the Guarantee that the Qualified Issuer implement various tools, in addition to the Risk-Share Pool, to compensate for risk which may include, but not be limited to, requiring the Eligible CDFI to provide for third-party Credit Enhancements.

C. Guarantee Provisions

The Act provides for a 100 percent guarantee for bonds issued as part of a Bond Issue under the CDFI Bond Guarantee Program. Consistent with the Office of Management and Budget (OMB) Circular A–129 (Policies for Federal Credit Programs and Non-Tax Receivables), these bonds will be purchased by the Federal Financing Bank (FFB). The CDFI Fund requested comments regarding potential loss remedies prior to the Bond Purchaser seeking reimbursement under the Guarantee, as well other any other terms, conditions, or Bond structure requirements that should be imposed to protect the taxpayer.

The majority of comments stated that the CDFI Fund should work with the Qualified Issuer, aggregators (designated entities acting on behalf of the Qualified Issuers), and originators and Servicers of loans to exercise all rights and remedies available under law before calling the Guarantee. Some comments suggested that, for non-performing assets underlying a Bond, the CDFI Fund should consider using special servicers to deal with these assets. Recommended remedies include the substitution of non-performing assets, liquidation of underlying collateral, liquidation of risk-share and supplemental credit reserves, and the exercise of recourse.

The majority of comments stated that the CDFI Fund should not set specific guidelines for the structure of the Bonds. It was suggested instead that the CDFI Fund should allow the marketplace to encourage the development of models for structuring the Bonds. Commentators recommended that the CDFI Fund require Qualified Issuers to issue Bonds of $100,000,000 or more, but allow them to make incremental drawdowns of Bond Proceeds. Some comments suggested that Bonds could be issued in smaller increments as part of one application, as long as each Guarantee covered no less than $100,000,000 of Bonds.

The CDFI Fund's Response:

The CDFI Fund defines Verifiable Losses of Principal, Interest, and Call Premium in section 1808.102 of the interim rule. When the Qualified Issuer has delinquent payments, the CDFI Fund and the Guarantor will exercise all available rights and remedies to protect the Federal Government's interests.

With regard to the structure of the Bond, the CDFI Fund will allow a Qualified Issuer to utilize multiple Bond Loans to CDFIs to meet the $100,000,000 minimum Guarantee requirement of the Act. However, each Bond Loan must be a minimum of $10,000,000.

D. Eligible Entities

The Act defines Eligible CDFI at 12 U.S.C. 4713a(a)(1) as a CDFI certified by the Secretary that has applied to the Qualified Issuer for, or been granted by a Qualified Issuer, a loan under the program, and authorizes the CDFI Fund to determine which entities may serve as Qualified Issuers and Master Servicer. The CDFI Fund requested comments regarding the criteria that should be used to approve entities to participate in the CDFI Bond Guarantee Program. Specifically, the CDFI Fund solicited comments on the number of Qualified Issuers and Master Servicers that should be approved under the CDFI Bond Guarantee Program, as well as any eligibility criteria that should be applied to Eligible CDFIs beyond CDFI certification.

The majority of commentators indicated that they were not in favor of the CDFI Fund requiring only one Qualified Issuer for all Bonds issued under the CDFI Bond Guarantee Program. Respondents stated that this requirement would be an unnecessary limitation that would prevent multiple CDFIs from serving as Qualified Issuers. Comments suggested, however, that it may be effective to have one Qualified Issuer issue most of the Bonds initially. There were mixed views regarding whether the CDFI Fund should permit an entity that is not a Certified CDFI to apply for CDFI certification simultaneously with submission of a Guarantee Application and a Capital Distribution Plan. The majority of commentators stated that only a CDFI that has been designated as a Certified CDFI prior to the applicable Guarantee Application deadline should be allowed to participate in the program. In contrast, some commentators stated that the CDFI Fund should permit non-certified entities the ability to apply to the CDFI Bond Guarantee Program while these entities pursue CDFI certification. The majority of commentators stated that the CDFI Fund should allow all existing CDFIs (or their designees) that are Certified CDFIs in good standing to apply to the CDFI Bond Guarantee Program. Respondents were consistent in stating that a CDFI that applies to the CDFI Bond Guarantee Program should demonstrate strong financial and capital positions, as well as a significant and sustained track record of economic development in Low-Income communities. Many respondents requested that the CDFI Fund require that Eligible CDFIs be certified by the CDFI Fund for a period of at least two to three years.

The majority of commentators indicated that CDFIs should be allowed to service their own Bond Loans and the CDFI Fund should not require one Servicer for all Bonds issued under the CDFI Bond Guarantee Program. The comments suggested that the CDFI Fund should instead choose to limit the number of Servicers in order to keep program costs low. Comments were in favor of the CDFI Fund requiring the Master Servicer and Servicers to have a track record of providing similar services, and they stated that a key factor in determining CDFI Bond Guarantee Program success will be the level and skill of the Servicers responsible for remitting principal and

interest payments on the Bonds. It was proposed that the Master Servicer should be rated by a national rating agency and should have broad experience in servicing community development needs. In addition, some commentators stated that the CDFI Fund should pre-qualify the Master Servicer and make it known to CDFIs prior to submission of a Guarantee Application. Respondents were in favor of a CDFI being allowed to serve as its own Servicer, and they cited that the unique asset and/or borrower characteristics provide strength to CDFIs with respect to their loan servicing capabilities. Comments also suggested that the CDFI Fund should recognize a consortium of non-profit entities, led by a certified CDFI, as an eligible applicant.

The CDFI Fund's Response:

The CDFI Fund has defined the criteria for Qualified Issuers and the Master Servicer in section 1808.200 and section 1808.606, respectively, of the interim rule. The CDFI Fund considered the servicing capabilities of the CDFI industry when defining the criteria for Qualified Issuers. As a result, the CDFI Fund will allow the Qualified Issuer to provide, in its Qualified Issuer Application, information on the proposed Servicer for each Bond Issue. In response to commenters request to keep the program costs low, the CDFI Fund will only allow one Master Servicer/Trustee for the CDFI Bond Guarantee Program.

The CDFI Fund may also select a Designated Bonding Authority (DBA) to serve as a Qualified Issuer for CDFIs seeking Bond Loans that do not wish to designate their own Qualified Issuer and/or that cannot alone prepare a Capital Distribution Plan that meets the requirements for participation in the CDFI Bond Guarantee Program. A DBA will be prequalified as meeting the requirements for Qualified Issuers by the CDFI Fund; however, a Guarantee Application submitted by a DBA will not receive any preference in the selection process. The qualifications for a DBA are described in section 1808.201 of the interim rule. The DBA will be selected in accordance with section 1808.502, which requires interested parties to submit a Qualified Issuer Application in response to the applicable Notice of Guarantee Availability.

Eligible CDFIs must be certified by the CDFI Fund and must meet the requirements set forth in section 1808.202 of the interim rule.

E. Capital Distribution Plan

There were multiple recommendations as to what applicants should be required to submit in their Capital Distribution Plans. Comments were consistent in suggesting that the CDFI Fund should require applicants to detail (in a Capital Distribution Plan) their fixed and ongoing costs of deploying capital, including a detailed breakdown of the uses of funds, which would entail the 90 percent or greater portion of Bond Proceeds used to make Bond Loans for Eligible Purposes and managing a multitude of CDFI entities. In addition, respondents suggested that a detailed breakdown of uses of the remaining portion of Bond Proceeds should be submitted. Comments stated that the CDFI Fund should not impose a limit on the number of Bonds and Guarantees for which Qualified Issuers are allowed to apply or qualify; however, it was suggested that the CDFI Fund implement the CDFI Bond Guarantee Program in a broad manner that would potentially mitigate a concentration among too small a number of participants. In general, commentators recommended that, in their respective Capital Distribution Plans, applicants should demonstrate an intended pipeline of underlying assets as well as the ability to service the Bond based on the expected terms and conditions of the assets in the pipeline. Respondents were consistent in stating that the CDFI Fund should not set minimum underwriting criteria for borrowers.

The CDFI Fund's Response:

The CDFI Fund defines Capital Distribution Plan in section 1808.102 of the interim rule. The CDFI Fund will require the Qualified Issuer to execute Bond Loan agreements for no less than 100 percent of the Bond Proceeds on the Bond Issue Date. If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows: (i) not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans, and (ii) not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

A Qualified Issuer may apply for and receive more than one Guarantee under the CDFI Bond Guarantee Program; provided, however, that the Qualified Issuer must demonstrate in subsequent Guarantee Applications that all prior Bonds have been issued and executed as Bond Loans in accordance with the applicable Guarantee Application, Capital Distribution Plan, and Bond Documents.

F. Accountability of Qualified Issuers

Comments indicated a considerable push for allowing flexibility with regard to mandating the performance outcomes of the Qualified Issuer. Comments were in favor of accountability measures, including the submittal of an annual report, but did not indicate the need for any additional reporting. In addition, commentators agreed that all risk share, credit, and liquidity reserves should be included in calculating the annual percentage of Bond principal used to make Bond Loans. Comments expressed a key interest in ensuring that the CDFI Fund shows consistency across its various program areas. Some respondents expressed a need for the CDFI Fund to provide continuous training opportunities on compliance and reporting requirements for the CDFI Bond Guarantee Program.

The CDFI Fund's Response:

Subsequent to publication of the interim rule, the CDFI Fund will provide outreach and training on the application process, compliance, and reporting requirements as defined in subsection 1808.619 for Qualified Issuers and Eligible CDFIs. To be eligible to participate in the CDFI Bond Guarantee Program, the CDFI Fund will require Qualified Issuers and Eligible CDFIs applicants that are prior awardees/allocatees of the CDFI Fund to be compliant under their assistance, allocation, or award agreements under all other CDFI Fund programs at the time of submission of the Guarantee Application. The CDFI Fund will not include the three percent Risk-Share Pool or any additional reserves in calculating the requirements of the Capital Distribution Plan.

G. Prohibited Uses

Commentators generally did not express a desire for additional mandates regarding prohibited uses. Commentators did advise, however, that the CDFI Fund adopt, as a model, the rules of the Financial Assistance Component of the CDFI Program, which permit a wide range of financing activities and allow for flexibility and innovation.

The CDFI Fund's Response:

The CDFI Fund selected Eligible Purposes that are consistent with the eligible uses of funds under the CDFI Program, NACA Program, and the Act. Uses of Bond Proceeds must be consistent with Eligible Community or Economic Development Purposes defined in 12 U.S.C. 4713a(a)(2) and sections 1808.301 and 1808.302 of the interim rule.

The CDFI Fund prohibits certain uses of the Bond Proceeds as set forth in 12 U.S.C. 4713a(c)(5) and section 1808.309 of the interim rule. The CDFI Fund prohibits the use of Bond Proceeds to fund the Risk-Share Pool to further incentivize Eligible CDFIs to perform quality underwriting of Secondary Loans and repayment of Bond Loans. Other risk mitigations include Eligible CDFIs providing collateral and full recourse obligations to receive Bond Loans.

H. Servicing of Transactions

Commentators expressed an interest in limiting the duties of the CDFI Fund to the general administration and management of the CDFI Bond Guarantee Program, and stated that the CDFI Fund should not be involved in a Bond transaction. There were split opinions regarding the requirement that each Qualified Issuer have a designated Program Administrator.

The CDFI Fund's Response:

The CDFI Fund addresses the aforementioned concerns in the interim rule, which delineates the roles of the CDFI Fund, the Guarantor, Program Administrators, and Qualified Issuers. The CDFI Fund will issue a solicitation to select the Master Servicer/Trustee, which will serve as a fiduciary, maintain funds and accounts, serve as the Special Servicer, oversee the Servicers, provide loan monitoring and reporting, and perform the duties described in 12 U.S.C. 4713a(f)(4) and section 1808.606 of the interim rule.

I. General Compliance

The majority of comments indicated that annual financial statements and a report of asset or portfolio performance should be collected and reviewed by the Master Servicer. A range of recommendations were made for the types of reports that should be submitted, including: institution level reports; disbursement reports; and a report verifying that Bond Proceeds are used for Eligible Purposes. With respect to the Act's mandate regarding repayment of Bonds, respondents stated that there should be a cure period of 90 days before action is taken. After the 90-day period, part of the Risk-Share Pool should be released to meet Bond terms in a way that preserves the outstanding Bond characteristics, such as coupon and term. Further, it was recommended that the CDFI Fund should retain the right to extend the cure period as deemed necessary and appropriate. Comments advised that before the CDFI Fund imposes penalties on a Qualified Issuer for noncompliance, the CDFI Fund should work collaboratively to resolve the issue and have a menu of additional options available for resolution. Suggested options included written notification, suspension from participation, and requiring repayment of the Bond, depending on the seriousness of the infraction and circumstances. These actions should be undertaken after a 90-day cure period.

The CDFI Fund's Response:

Qualified Issuers must provide information requested by the CDFI Fund as described in section 1808.619 of the interim rule and be subject to periodic on-site audits by the CDFI Fund or its designee as needed to determine compliance with the requirements of the CDFI Bond Guarantee Program. The CDFI Fund will not exempt the Qualified Issuer from complying with all applicable Federal, State, and local laws, regulations, ordinances, OMB Circulars and Executive Orders. Bond payments must be made in accordance with the terms and conditions of the underlying Bond documents. Qualified Issuers will be required to include disclosure statements in all Bond Loan documents that identify the obligations of the parties to comply with the applicable statutes and regulations.

J. General Comments

The majority of comments stated that CDFI Bond Guarantee Program rules should be written to allow for maximum program flexibility. This includes a wide variety of issues such as: Multiple structures (special purpose entities and single-issuers); allowance of proceeds for lending and equity capital, loan loss reserves, and refinancing; flexible definitions of Eligible Purposes; allowing revolving loan funds in the program structure that meet the 90 percent loan requirement; and allowing for smaller tranches of issuances as part of a total $100,000,000 package. Respondents stated that the CDFI Bond Guarantee Program regulations should foster immediate operability in the interest of time to expedite the issuance of Bonds. In addition, comments stated that requirements such as reporting and eligibility should align with other CDFI Fund programs such as the Financial Assistance Component of the CDFI Program.

Several respondents raised a concern about the need to prepare CDFIs for access to mainstream financial institutions and capital markets. With respect to rulemaking, commentators stated that the regulations should not carry limiting constraints or be unnecessarily complicated such as requiring burdensome credit enhancements, agency credit ratings, or preset underwriting criteria.

The CDFI Fund's Response:

The CDFI Fund agrees that the CDFI Bond Guarantee Program has the potential to provide expansive opportunity by offering low-cost capital to CDFIs. However, the CDFI Fund recognizes the need to balance flexibility for program participants against the need to mitigate risk to the taxpayer, and stay within the confines of various existing statutes, regulations, and guidance documents including, but not limited to, the Riegle Community Development and Regulatory Improvement Act of 1994, the Small Business Jobs Act of 2010, the Federal Credit Reform Act of 1990, as amended, and OMB Circular A–129 (Policies for Federal Credit Programs and Non-Tax Receivables). The CDFI Fund will develop and promulgate Bond Loan Requirements and Secondary Loan Requirements.

V. Rulemaking Analysis

A. Executive Order (E.O.) 12866; Regulatory Impact Analysis

It has been determined that the interim rule of the CDFI Bond Guarantee Program is a significant regulatory action as defined in Executive Order 12866 in that the program will result in an annual effect of $100 million of more on the economy. Accordingly, the interim rule has been reviewed by the Office of Management and Budget. The Regulatory Impact Analysis prepared by the CDFI Fund for the interim rule is provided below.

1. Description of Need for the Regulatory Action

The CDFI Bond Guarantee Program was authorized by the Small Business Jobs Act of 2010 (Pub. L. 111–240) (the Act), passed by Congress and signed into law by the President on September 27, 2010. Sections 1134 and 1703 of the Act provide authority to the Secretary of the Department of the Treasury to establish the program by regulation, which will be administered by the CDFI Fund, a wholly owned government corporation within the U.S. Department

of the Treasury, pursuant to authority delegated by the Secretary of the Treasury.

The Act authorizes the Secretary to guarantee the full amount of Bonds, including the principal, interest, and call premiums, with terms not to exceed 30 years, issued to finance or refinance loans for Eligible Community or Economic Development Purposes. The Bond Issues will support CDFI lending and investment in Investment Areas by providing a source of low-cost, long-term capital to CDFIs. The Act provides that the Secretary of the Treasury will not issue more than ten Guarantees in any calendar year. No Guarantee amount may be less than $100,000,000, provided the total principal amount of guaranteed Bond Issues outstanding for any one fiscal year may not exceed $1 billion.

2. Provision—Affected Populations

The CDFI Fund was established through the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–325) for the purpose of promoting economic and community development through investment in and assistance to CDFIs. The two target populations served by the CDFI Fund that will be affected by the CDFI Bond Guarantee Program are (i) Certified CDFIs and (ii) rural and urban Low-Income communities served by Certified CDFIs throughout the United States.

Certified CDFIs are specialized, community-based financial institutions that serve rural and urban Low-Income communities or work in economically distressed areas, often operating in market niches that may be underserved by traditional financial institutions. Only financial institutions certified by the CDFI Fund can receive financial assistance awards through the CDFI Program and the NACA Program. Certified CDFIs include depository institutions such as community development banks, thrifts, and credit unions; and non-depository institutions such as loan and venture capital funds. Certified CDFIs provide a wide range of financial products and services in Low-Income Areas.[1] While the types of products made available are generally similar to those provided by mainstream financial institutions (such as small business lending and lending for community facilities and commercial real estate development), Certified CDFIs often lend to and make equity investments in markets that may not be served by mainstream financial institutions. In addition, Certified CDFIs may offer rates and terms that are more flexible to Low-Income borrowers. Certified CDFIs also provide services that help ensure that credit is used effectively, such as technical assistance to small businesses, and home buying and credit counseling to consumers.

As of April 2012, there were over 980 Certified CDFIs (including Certified CDFI banks and their Certified CDFI bank holding companies) that provide financial products and services to underserved populations and distressed communities in the United States. A thorough analysis was conducted of a subset of 904 Certified CDFIs, excluding bank holding companies, to compile consistent asset data on this population, which is reported below. These 904 Certified CDFIs are financial institutions that have average total assets of $55.6 million (although average asset size varies by institution type).

a. Community development loan funds (CDLFs) constitute about 66 percent of Certified CDFIs and have average assets of about $19.9 million. CDLFs are usually nonprofits that provide financing and development services to businesses, organizations and individuals in Low-Income urban and rural areas. CDLFs can be further categorized based on the type of clients served, such as microenterprises, small businesses, housing, and community service organizations (e.g., health care providers, charter school operators).

b. Community development credit unions (CDCUs) constitute about 22 percent of Certified CDFIs and have average assets of $66.9 million. CDCUs are nonprofit cooperatives owned by members that promote ownership of assets and savings and provide affordable credit and retail financial services to Low-Income people.

c. Community development banks and bank holding companies constitute about nine percent of Certified CDFIs and have average assets of $298.3 million. CDFI banks provide capital to rebuild economically distressed communities through targeted lending and investment and the provision of financial services to community residents and business owners.

d. Community development venture capital funds constitute about three percent of all Certified CDFIs, have average assets of $9.7 million, and include both for-profit and nonprofit organizations that provide equity and debt-with-equity features for businesses in distressed communities.

A preliminary analysis conducted by the CDFI Fund shows that Certified CDFIs that are large enough to deploy at least $10 million in new lending to Low-Income communities are the most likely participants in the CDFI Bond Guarantee Program. The rationale is that only larger CDFIs will be able to absorb and deploy $10 million in new capital. In particular, non-profit CDFI loan funds are expected to be the primary participants in the CDFI Bond Guarantee Program.

a. Analysis of CDFI Fund awardees. First, the CDFI Fund used its Community Investment Impact System (CIIS), which collects data from CDFIs that have received awards from the CDFI Fund. CDFI Program and NACA Program awardees are required to report total portfolio and financial data for three years. A total of 68 Certified CDFI loan funds were identified that provided consistent data for a five year period from 2006 to 2010 on assets, new lending, and type of lending. The results showed that a total of 59 CDFI loan funds out of the 68 originated more than $10 million in loans. These 59 loan funds, that annually originated more than $10 million in loans, had assets that ranged from $25 million to nearly $400 million. As a result, a cutoff point of a minimum of $25 million in assets was established as a preliminary estimate of the threshold to participate in the CDFI Bond Guarantee Program. Due to data limitations, this estimate is based on a sample of CDFI awardees and not on the total universe of Certified CDFIs. However, given the lack of data on non-awardee Certified CDFIs, it is possible there are eligible CDFIs below the $25 million threshold capable of participating in the CDFI Bond Guarantee Program.

b. Analysis of CDFI Fund Certified CDFIs. Second, the CDFI Fund certification database was used to query the number and type of Certified CDFIs that had assets over $25 million. A total of 243 Certified CDFIs have assets over $25 million, including 77 CDFI banks, 74 credit unions, 91 loan funds, and one venture capital fund. This group is a sample of potential participants in the CDFI Bond Guarantee Program.

[1] The terms Low-Income and Low-Income Area are defined in section 1808.102 of the interim rule. These definitions may be different from those used in the economic studies cited hereafter. For specific definitions related to the studies, please refer to the cited articles.

TABLE 1—CDFIS WITH MORE THAN $25 MILLION IN ASSETS

CDFI type	Count	Share %	Sum of assets	Share of assets %	Average assets	Minimum asset size	Maximum asset size
Bank or Thrift	77	32	$24,705,263,619	53	$320,847,579	$26,655,000	$2,144,987,000
Credit Union	74	30	12,589,364,746	27	170,126,551	26,456,363	1,623,228,958
Loan Fund	91	37	9,073,961,136	20	99,713,859	25,379,706	1,424,547,537
Venture Capital Fund	1	0	59,151,038	0	59,151,038	59,151,038	59,151,038
Grand Total	243	100	46,427,740,539	100	191,060,661	25,379,706	2,144,987,000

Source: CDFI Fund Community Investment Impact System (CIIS) and Certification Database.

a. Targeted Populations. In general, Certified CDFIs primarily serve Low-Income communities and Low-Income targeted populations. A Certified CDFI's Investment Area is defined as a geographic unit (state, county, census tract, block group, Indian/Native areas), or as contiguous geographic units entirely located within the United States that meets one of the following criteria:

(1) Has a population poverty rate of at least 20 percent;

(2) has an unemployment rate 1.5 times the national average;

(3) for a Metropolitan Area, has a median family income (MFI) at or below 80 percent of the greater of either the Metropolitan or national Metropolitan MFI;

(4) for a non-Metropolitan area, has an MFI at or below 80 percent of the greater of either the Statewide or national Non-Metropolitan MFI;

(5) is wholly located within an Empowerment Zone or Enterprise Community; or

(6) has a county population loss greater than or equal to 10 percent between the two most recent census periods for Metropolitan Areas or five percent over last five years for Non-Metropolitan areas.

Under these criteria, there are 27,275 census tracts (41 percent) that qualify as CDFI investment areas out of 66,285 total census tracts in U.S. Of these, 22,360 are Metropolitan census tracts and 4,915 Non-Metropolitan census tracts. There are 269 counties that qualify as a result of the combined impact of the population loss and outmigration criteria. Based on the most recent three-year of reporting by CDFIs awardees, about 20 percent of eligible census tracts are served; however, no transactional lending and investment data is available from Certified non-awardee CDFIs and therefore no estimates of lending in target markets can be provided for four-fifths of Certified CDFIs.

However, it is noteworthy that CDFI investment areas and target markets are highly correlated with the distressed and underserved areas as defined in the Community Reinvestment Act.[2] In general, Certified CDFIs provide financial products and services in areas that are historically underserved by mainstream depository institutions.

b. Financial products offered by CDFIs. According to the CDFI Fund Agency Financial Report for Fiscal Year 2012, CDFIs originated over $1.3 billion in loans in 2011. Of these, 15.6 percent were commercial real estate originations, which included investments in charter schools and community facilities such as health clinics, employment and training facilities, and centers that provide services for low-income children and youth. In addition, 28 percent of these annual originations supported small businesses and microenterprises, including support for business incubators. In 2011, CDFIs also financed over 24,000 affordable housing rental units. The majority of these investments were located in very Low-Income communities where lending for community infrastructure is limited.

3. Description of the problem.

The availability of long-term debt and equity capital for CDFIs, particularly non-profit loan funds, is one of the major structural issues facing the CDFI industry. Certified CDFIs face challenges accessing long term capital to support their lending and investment; such challenges are related to broader structural impediments faced by Low-Income communities in accessing affordable and appropriate financial services.

Certified CDFIs traditionally receive grants, loans, and other forms of financing from various sources, notably banks incentivized by the Community Reinvestment Act (CRA). However, that capital tends to be short- or medium-term, and expensive as compared to products non-CDFI or for-profit lenders can obtain.[3] Lenders and investors to Certified CDFIs typically provide Certified CDFIs with capital that has maturities of ten years or less. As a result, Certified CDFIs endure asset liability mismatches when they offer longer term lending products (i.e., mortgages) to their target borrowers.

According to an analysis by the Carsey Institute at the University of New Hampshire, which was prepared for and funded by the CDFI Fund, ''the lack of long-term debt financing forces CDFIs to [save cash] pushing down leverage and giving the appearance that many underleveraged CDFIs are not lending as much as they could, thus neglecting demand among its targeted consumers.''[4] Certified CDFI loan funds are generally not well leveraged, possibly reflecting the cost of debt available to them. Additionally, the non-profit status of many CDFIs also means that they do not enjoy the tax benefits of debt leverage which for-profit financial institutions are able to take advantage of. According to the Carsey analysis, ''[p]articularly among loan funds, a large number of CDFIs have very little leverage (i.e., they fund themselves mainly through net assets, not debt). The median CDFI loan fund in 2009 was leveraged at just $1.10 in liabilities for every $1 in net assets. About eight percent of loan funds had no liabilities whatsoever. Banks and credit unions are typically leveraged at a rate of 10:1 or more.''[5]

The reasons behind the lack of access to long-term debt available in capital markets are complex; however, a market-based approach focuses on one key element: the risk of Certified CDFIs. Capital markets typically rely on the credit ratings by rating agencies to determine the interest rate and terms of

[2] *http://www.ffiec.gov/craadweb/naaginfs.htm.*

[3] Charles Tansey, Michael Swack, Michael Tansey, Vicky Stein. *Capital Markets, CDFIs, and Organizational Credit Risk,* Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 37.

[4] Michael Swack, Jack Northrup, and Eric Hangen. CDFI Industry Analysis, Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 15.

[5] Michael Swack, Jack Northrup, and Eric Hangen. *CDFI Industry Analysis,* Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 10.

an investment. According to Tansey et al., the inability of credit rating agencies to accurately assess credit risk of CDFIs is due to: the absence of standardized data of risk performance; the lack of consistent audited financials limiting the ability to discern assets, specifically cash, available for repayment; the need for the development of comparable ratios to analyze financial health; Certified CDFIs' willingness to engage in non-conventional lending; and, the perceived risk of lending to Low-Income communities. Such challenges result in proposed investments to CDFIs that are unrated or rated as below investment grade, thus not attractive to the capital markets.

a. Distributional issues in provision of financial services in Low-Income Areas. The risk of lending to Certified CDFIs and ultimately to Low-Income communities is steeped in the chronic distributional gaps in the provision of financial services and products to Rural and urban Low-Income Areas of the United States, thus contributing to limited credit risk information for mainstream financial institutions to underwrite new activity in these communities. The lack of credit information for many Low-Income households in addition to smaller loan sizes typical of Low-Income communities often results in higher transaction costs for current lending. In addition, the substantial lack of data and higher costs in serving these communities also inhibits the access to long-term capital for CDFIs that serve these communities.

In rural areas, lack of access also stems from the more limited deal flows, limited supporting infrastructure, and the difficulty of providing oversight for sparsely populated areas. Furthermore, CDFI investments are often characterized by the small scale of individual transactions and the perception of a high degree of risk.[6]

Using census panel data on economically distressed areas, persistent poverty has been located in the same geographic areas for over half a century, including the lower Mississippi Delta, areas along the Rio Grande, and traditional Native American territories in the West.[7] Many households in persistent poverty counties are ''unbanked'' and have little or no credit score information because they may operate with cash in the informal economy; many live in areas characterized by poverty rates of more than 20 percent. About three quarters of persistent poverty areas reflect the minority status of their populations, showing a concentration of persistent poverty, low incomes, and lack of financial services in minority communities. According to the Economic Research Service (ERS) at the U.S. Department of Agriculture (USDA), of the 442 ''high-poverty counties in 2000 (based on 1999 income), three-fourths reflect the low income of their racial and ethnic minorities and are classified as Black, Hispanic, or Native American high-poverty counties. In these counties, either a majority of the poor are Black, Hispanic, or Native American, or it is only the high incidence of poverty among these minority groups that brings the county's overall rate above 20 percent. Of the remaining fourth of high-poverty counties, most (91 counties) are located in the Southern Highlands of eastern Kentucky, West Virginia, and parts of Missouri and Oklahoma. In these areas, the poor are predominantly non-Hispanic Whites.'' [8]

b. *Market failure.* Rural and urban Low-Income, very Low-Income, and persistent poverty areas are underserved by mainstream financial institutions and lack access to investment, capital, and credit. Low lending rates in these communities create an information deficit for assessing risk for individual households and neighborhoods in mortgage, business, and consumer credit markets, and contribute to higher transaction costs. Furthermore, credit rationing can affect both Low-Income communities and Certified CDFIs that serve this market niche.

Market failures in the provision of financial services to Low-Income areas have been well-documented in the academic literature (see Akerlof, Stieglitz, Klausner, Richardson, Mills and Lubuele).[9] One market imperfection is the inherently asymmetric information between a lender and a borrower. Klausner notes that ''borrowers often know more about their own risk of default than do lenders. [* * *] When a bank makes a loan it does so based on information regarding the default risk of the borrower.'' [10]

Both targeted and mainstream financial lending programs depend on credit scores to assess risk to provide financial services to their customers. However, credit scores are often limited in Low-Income communities due to the low level of lending by mainstream financial institutions in these communities and the resulting lack of information on the risk of default for these loan products. In addition, Low-Income households may operate in the informal economy and may not have credit score information.

Credit rationing is likely to occur in Low-Income Areas because generating individual credit risk scores would be too costly for lenders. Klausner and Richardson note that because banks seek to maximize their profit, they [and other financial institutions] may be averse to lending to Low-Income Areas due to the low value of financial transactions and the lack of credit score information to assess the riskiness of loans.

[6] Michael Swack, Jack Northrup, and Eric Hangen. *CDFI Industry Analysis.* Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 14. Available at *http://www.cdfifund.gov/docs/CBI/2012/Carsey%20Report%20PR%20042512.pdf.*

[7] For a list of persistent poverty counties used by the CDFI Fund, see *http://www.cdfifund.gov/what_we_do/persistentpoverty.asp.*

[8] See *http://www.ers.usda.gov/Briefing/incomepovertywelfare/povertygeography.htm.*

[9] (A) Akerlof, George A. 1970. ''The Market for Lemons: Quality Uncertainty and the Market Mechanism.'' *The Quarterly Journal of Economics.* 84 (3): 488–500. Akerlof argues that underdeveloped areas, such as Low-Income and persistent poverty areas, may remain undeveloped due to the lack of information (such as the lack of credit scores for households operating in the informal economy) and the high costs of obtaining accurate information on these credit risks. According to Akerlof, ''Credit markets in underdeveloped areas often strongly reflect the operation of the Lemons Principle.'' In the Lemons Principle, ''bad cars drive out the good because they sell at the same prices as the good cars.'' In other words, the perception of average higher risk in Low-Income Areas may prevent deserving borrowers from accessing credit and capital from mainstream lenders. However, non-traditional lenders such as CDFIs are willing to conduct individual underwriting and are able to enter these markets.

(B) Stiglitz, Joseph E., and Andrew Weiss. 1980. *Credit rationing in markets with imperfect information.* Princeton, N.J.: Econometric Research Program, Princeton University.

(C) Klausner, Michael, ''Market failure and the Community Reinvestment Act: A market-oriented alternative to the Community Reinvestment Act.'' *University of Pennsylvania Law Review,* Vol. 143, No. 5 (May 1995) pp. 1561–1593.

(D) Richardson, Christopher, ''The Community Reinvestment Act and the economics of regulatory policy.'' *Fordham Urban Law Journal,* Vol. 29, Issue 4, 2001, Article 11. Richardson argues that ''low levels of lending in low- and moderate-income (LMI) areas result from the inability of rational lending decisions made by profit-maximizing lenders to achieve a socially optimal flow of credit to LMI areas. The market failure occurs because the marginal cost of a single lender acquiring the information necessary to adequately assess risk and identify profitable lending opportunities in LMI areas outweighs the potential marginal benefit the lender can expect to accrue. In the extreme case, if no single lender will rationally decide to lend in the area, and no loans will be made'' (p. 1614).

(E) Mills, E.S. and L.S. Lubuele. 1994. ''Performance of residential mortgages in low-income and moderate-income neighborhoods.'' *Journal of Real Estate Finance and Economics* 9(3): 245–260.

[10] Klausner, Michael, ''A tradable obligation approach to the Community Reinvestment Act'' in Chakrabarti, Prabal. 2009. *Revisiting the CRA: perspectives on the future of the Community Reinvestment Act.* Boston, Mass: Federal Reserve Bank of Boston. *http://www.frbsf.org/publications/community/cra/revisiting_cra.pdf.*

4. Solutions to the Problem.

Through the CDFI Bond Guarantee Program, Certified CDFIs will demonstrate the ability to successfully deploy conventional long-term debt, with maturity dates, payment schedules, conditions, covenants, and reporting requirements similar to those required and provided by capital markets. The CDFI Bond Guarantee Program will require standardized data collection and portfolio monitoring, develop a mechanism for accurately assessing Certified CDFI credit risk, and provide capital markets with a track record on which to base future lending and investment. Moreover, the CDFI Bond Guarantee Program, because of the maximum 30 year maturity, will allow Certified CDFIs to offer a higher volume of longer term products to their borrowers as well as manage their interest rate and duration risk because of improved asset/liability matching. This will further close the gap in the provision of investments in community facilities, business lending, and financial services to rural and Low-Income residents and businesses, addressing distributional issues in the provision of financial services.

a. *Certified CDFIs as potential solution to underserved markets and market failure.* A potential solution to distributional issues in the provision of financial services and market failure is lending by financial institutions such as Certified CDFIs. However, due to their customer base (Low-Income residents and small businesses and nonprofits serving Low-Income communities), the credit rationing that limits access to capital for those customers also limits the ability of Certified CDFIs to secure affordable long-term capital. Moreover, there is no standardized data on the universe of Certified CDFIs, especially unregulated loan funds that do not have award reporting history. The CDFI Bond Guarantee Program would provide access to a maximum of $2 billion in 30-year long-term capital to address the distributional effects and market failure faced by Low-Income residents and communities as well as the inability of Certified CDFIs to secure long-term capital to support their lending and investment efforts.

b. *Lowering the transaction costs of lending to Low-Income Areas.* Transaction costs for the provision of financial services in Low-Income Areas are often higher because many Low-Income households have no credit score data that can be used to standardize and lower the cost of the underwriting process. In part, this is due to the fact that many Low-Income households do not use traditional financial institutions for banking needs, relying on fringe banking services (e.g., check cashers, payday lenders, etc.) to conduct financial transactions, thereby limiting available credit histories and credit score data. The CDFI Fund estimates that, based on credit score data at the census tract level, a total of 27 percent of very Low-Income households are missing credit FICO scores, compared to eight percent for higher-income areas (see Table 2 below). These figures may underestimate the number of households without credit scores because they are based on a sample of households that provided data, adjusted for the population.

TABLE 2—CREDIT SCORE INFORMATION

Median family income as a percent of area income by census tract	Population share in sample %	Percent missing credit scores %
a. <50%	5.99	27
b. 50%<80%	26.83	18
c. 80%<120%	46.99	12
d. 120%<200%	18.40	9
e. >200%	1.79	8
Grand Total	100.00	14

Source: analysis by the CDFI Fund using Census Bureau 2000 Summary File 1 demographic data and FICO scores by census tract.

Another factor inhibiting credit provisioning is the lower profitability associated with lower-value loans. This, combined with expensive underwriting, make the provision of loans and services to Low-Income populations unprofitable for mainstream financial institutions. According to the Carsey Institute ''[t]hese transactions costs can be high for CDFIs because CDFIs market, underwrite, and originate smaller loans, and provide more intensive services. As a cost driver for CDFI Loan Funds, operating expense [as a result of high transactions costs to collect information on Low-Income communities and to underwrite smaller value loans] is by far the largest component of an organization's expenses, dwarfing both cost of capital and loan loss expense.'' [11]

If the $200 million to $2 billion range is used to estimate the minimum and maximum impact range for the CDFI Bond Guarantee program, using the average loan size of $75,000 for CDFIs, a total of 2,667 loans to 26,670 loans may be issued. A share of these loans—potentially over half—will involve detailed and costly underwriting information at the household and firm level for loan recipients that otherwise would not receive funding. A share of these loans will include households and firms that do not have credit available elsewhere from mainstream financial institutions for long-term mortgages, community facilities such as charter schools, small business and microloans, and financial banking services. As a result of lending by participating Certified CDFIs, the Certified CDFIs will generate new credit score data from the loans to such consumers, which in turn will provide new credit information on these products and market segments, which should mitigate the risk associated with a lack of credit data on Low-Income and rural communities and borrowers. This information can lower transaction costs and encourage increased participation of traditional financial institutions in underserved areas, thereby attracting additional capital from the private sector.[12]

c. *Providing long-term debt and leverage.* According to the Carsey Institute, ''[t]he availability of long-term debt and equity capital for CDFIs, particularly loan funds, is one of the major structural issues facing the industry. [* * *] The lack of long-term debt financing forces CDFIs to [save cash] pushing down leverage and giving the appearance that many underleveraged CDFIs are not lending as much as they could, thus neglecting demand among its targeted consumers.'' [13] The analysis by the Carsey Institute noted that Certified CDFIs have access to short-term capital and cannot access longer-term capital. Lenders and investors to Certified CDFIs typically provide Certified CDFIs with capital that has maturities of ten years or less. As a result, Certified CDFIs endure asset liability mismatches when they offer longer term lending products (i.e., mortgages) to their target borrowers.

The analysis by the Carsey Institute also found that Certified CDFI loan funds are generally not well leveraged, possibly reflecting the cost of debt available to them. According to the

[11] Michael Swack, Jack Northrup, and Eric Hangen. CDFI Industry Analysis. Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 9. Available at *http://www.cdfifund.gov/docs/CBI/2012/Carsey%20Report%20PR%20042512.pdf.*

[12] See: ''Collaborators or Competitors? Examining the Relationship Between CDFIs and Mainstream Banks in Lending to Small Businesses in Underserved Markets'' by Geoff Smith, Sean Zielenbach, Jennifer Newon and Sarah Duda, The Woodstock Institute, published by the CDFI Fund, 2009 http://www.cdfifund.gov/impact_we_make/research/community-economic-development.

[13] Michael Swack, Jack Northrup, and Eric Hangen. CDFI Industry Analysis, Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 15.

analysis, ''[p]articularly among loan funds, a large number of CDFIs have very little leverage (i.e., they fund themselves mainly through net assets, not debt). The median CDFI loan fund in 2009 was leveraged at just $1.10 in liabilities for every $1 in net assets. About eight percent of loan funds had no liabilities whatsoever. Banks and credit unions are typically leveraged at a rate of 10:1 or more.'' [14] The CDFI Bond Guarantee Program, because of the maximum 30 year maturity, will allow Certified CDFIs to offer a higher volume of longer term products to their borrowers as well as manage their interest rate and duration risk because of improved asset/liability matching. This will further close the gap in the provision of services to Low-Income residents and businesses.

Finally, the Carsey analysis indicates that the average term for credit provided to CDFIs is rarely above 15 years. When appropriately compared based on term, the cost of funds under the CDFI Bond Guarantee Program is significantly lower than what is currently available in the market. The Carsey analysis notes that CDFIs typically borrow on a secured basis at more than 100 basis points above the London Interbank Offered Rate (LIBOR), and that this is for shorter terms than contemplated under the CDFI Bond Guarantee Program.

5. Baseline

Currently, the CDFI Fund administers six grant and tax allocation programs:

TABLE 3—CDFI FUND AWARD PROGRAMS

Program	Type/Status	Purpose	Total amount awarded/number of awardees last funding round	Highest award amount
CDFI Program	Grant/Annual Appropriations.	Provides financial assistance awards to institutions that are certified as CDFIs, and technical assistance grants to Certified CDFIs and entities that will become certified as CDFIs within three years. Note: The CDFI Fund may give a financial assistance award in the form of a loan if the CDFI provides a loan as its matching fund. Direct loans are dictated by the term and conditions of the loan submitted as matching funds.	$149 million/144 awardees.	$1.4 million.
Native Initiatives	Grant/Annual Appropriations.	Assists entities in overcoming barriers that prevent access to credit, capital, and financial services in Native American, Alaskan Native, and Native Hawaiian communities (Native Communities). The Native Initiatives' central component is the Native American CDFI Assistance (NACA) Program, which increases the number and capacity of existing or new CDFIs serving Native Communities.	$11.5 million/33 awardees.	$750,000.
Bank Enterprise Award Program.	Grant/Annual Appropriations.	Provides grants to FDIC-insured banks for increasing their investment in Low-Income communities and/or in CDFIs.	$18 million *	$500,000 *.
New Markets Tax Credit Program.	Non-cash Tax Credit Authority/Annual Renewal.	Provides tax credit allocation authority to certified Community Development Entities (CDEs), enabling investors to claim tax credits against their Federal income taxes. The CDEs in turn use the capital raised to make investments in Low-Income communities.	$3.5 billion in annual authority.	n/a.
Capital Magnet Fund	Grant/FY 2010 only	Provides grants for CDFIs and other nonprofits to finance the development, rehabilitation, and purchase of affordable housing for Low-Income people.	$80 million/23 awardees.	$6 million.
Financial Education and Counseling Pilot Program.	Grant/FY 2009 and FY 2010 only.	Provides financial assistance awards to enable Certified CDFIs and other eligible organizations to deliver a variety of financial education and counseling services to prospective homebuyers.	$4.1 million/4 awardees **.	$3.15 million/ $400,000 **.

* Based on most recent funding round.
** In FY 2010, the CDFI Fund was appropriated $4.1 million for the FEC Pilot Program, of which $3.1 million was specifically appropriated for an award to an organization located in the State of Hawaii and $1 million was appropriated in FY 2010 for the FEC Pilot Program.

a. *Size of loans under the CDFI Bond Guarantee Program greater than current CDFI Fund programs.* While valuable, CDFI Fund programs provide limited, short-term capital for CDFIs. The increased competitiveness, small award size, and annual uncertainty in the total amounts to be awarded limit CDFIs' ability to plan effectively for long-term project and capital needs. For the baseline analysis without the CDFI Bond Guarantee Program, the CDFI Fund assumes that the above-mentioned programs would be appropriated at historical levels and estimates that

[14] Michael Swack, Jack Northrup, and Eric Hangen. *CDFI Industry Analysis,* Spring 2012. Carsey Institute, University of New Hampshire, Durham, New Hampshire, p. 14.

Certified CDFIs would borrow and lend at current levels.

b. *CDFI lending at current levels.* In FY 2011, CDFI Fund awardees reported originating 16,313 loans or investments totaling $1.2 billion, based on their portfolio of activities in 2010. This includes $357.3 million for 5,010 home improvement and purchase loans, $296.8 million for 5,233 business and microenterprise loans, and $289.2 million for 679 residential real estate transactions. These data on the amount and number of loans or investments originated provide baselines for benchmarking and targeting program performance. Under the CDFI Program, real estate loans financed 17,778 affordable housing units, including 15,979 rental units and 1,799 owner units. CDFIs also provided extensive financial products and services to unbanked and underserved individuals by opening 6,537 new bank accounts and maintaining 7,007 Individual Development Accounts totaling $9,131,382 in savings. CDFIs reported providing financial literacy counseling and other training opportunities to 177,252 individuals. Finally, loans and investments originated by CDFIs over the last three years were located in more than 22 percent of eligible census tracts, exceeding the target of 10 percent. Average Certified CDFI awardee loan sizes for all loan types from 2003 to 2010 are $62,000, and the average term is 5.9 years. Average commercial real estate loan sizes are $694,000 with an average term of 6.4 years.

c. *What would occur in the absence of the CDFI Bond Guarantee Program.* The absence of the CDFI Bond Guarantee Program limits the ability of Certified CDFIs to provide long-term affordable loans and investments to Low-Income borrowers, individuals, and small businesses. Financial innovation and development of products specifically tailored to Low-Income communities may be curtailed and the potential for Certified CDFIs entering private capital markets would also be limited. The CDFI Bond Guarantee Program would result in a share of lending that would not otherwise occur in Low-Income areas, as well as leveraging and relending which could result in potential economic benefits. The CDFI Fund's award and tax credit programs would remain the primary source of Federally funded programs for Certified CDFIs.

6. Time Horizon for the Analysis

The CDFI Bond Guarantee Program is authorized to guarantee up to $1 billion in Bonds issued each year through FY 2014, and the maximum maturity of the Bonds cannot exceed 30 years. Therefore, the appropriate time horizon for analysis is FY 2013–FY 2044.

7. Alternative Approaches Considered

To address the distributional gaps and market failure identified above, the CDFI Bond Guarantee Program structure should allow for participation by Eligible CDFIs that demonstrate the ability to deploy Bond Loan proceeds within the guidelines and credit subsidy constraints as written in the Act. The CDFI Fund has chosen to structure the program pursuant to alternatives c and d described below.

Regulatory alternatives for the CDFI Bond Guarantee Program considered are: (a) Requiring minimum participation size to equal $100 million per institution per Guarantee; (b) requiring a pool of CDFIs with a minimum participation size equal to $500,000 per institution in a $100 million Guarantee; (c) requiring a pool of CDFIs with a minimum participation size of $10 million per institution in a $100 million minimum Guarantee; or (d) requiring general recourse obligations by CDFI Borrowers.

a. *Minimum Bond Loan size of $100 million.* This alternative would only allow a maximum of ten Eligible CDFIs to participate in the CDFI Bond Guarantee Program each year, limiting the ability of a significant percentage of Certified CDFIs from accessing the Bond Proceeds and lending them to Low-Income households and businesses in Low-Income areas. Given the requirements of a zero-subsidy program and the debt service burden of a $100 million liability, it is likely that only ten or fewer Certified CDFIs would be able to participate based upon estimates of the additional debt service burden imposed by a $100 million obligation. The reduced number of applicants would lead to a more streamlined approval and implementation process (e.g., faster processing, less variation in documentation) resulting in lower bond issuance costs for the Qualified Issuers and Eligible CDFIs in the obligation. Cumulative administrative costs for Eligible CDFIs would be lower legal fees, and the absence of Secondary Borrower applications that would require underwriting and due diligence. These cost reductions would be achieved in part by reduced reliance on outside counsel and consultants by applicants.

However, the benefits of the CDFI Bond Guarantee Program would also be reduced due to the concentration of benefits in a handful of Certified CDFIs. It is less likely that the funds would be disbursed among various market segments categorized by geography, industry sector, ethnicity, and other socioeconomic factors. This alternative is less likely to address the credit rationing and distribution problems and therefore yield lower social benefits. The benefit of risk diversification would also be lessened, and could impose a greater overall cost in terms of interest rates to Secondary Borrowers.

b. *Minimum Bond Loan size of $500,000.* Maximizing the number of organizations that can participate as an Eligible CDFI by setting a low Bond Loan limit does not result in the greatest net benefits due to the corresponding increase in administrative costs. The CDFI Fund could set the minimum Bond Loan size to $500,000. This number is representative of the approximate average size of loans disbursed through the CDFI Program.[15] Under this scenario, up to 200 Eligible CDFIs could participate in a minimum $100 million issuance. There is a greater likelihood of the benefits being distributed among underserved market segments as measured by geography, industry sector, ethnicity, and other socioeconomic factors. Long-term capital would be provided to many of the smaller institutions certified by the CDFI Fund, and as a result these institutions would most likely be able to reduce asset-liability mismatches previously described.

Increasing the number of possible Eligible CDFIs in a single Guarantee pool would:

(1) Decrease the likelihood of issuing the maximum number of Bonds in a fiscal year due to the difficulty in grouping large numbers of Certified CDFIs into homogeneous credit qualities for credit scoring approval by the Office of Management and Budget (OMB); and

(2) for Eligible CDFIs, significantly increase costs associated with loan documentation, legal counsel, underwriting and due diligence, as well as ongoing compliance and loan monitoring.

The 10 basis point Agency Administrative Fee authorized by the Act would equal only $500 per institution on an annual basis based on a minimum participation of $500,000. This annual fee declines based upon outstanding principal balance. Further, Eligible CDFIs participating in the program would each incur fees associated with their own legal counsel and possibly consulting services in addition to the 10 basis point Agency Administration Fee. Although scale

[15] Through the CDFI Program, the CDFI Fund has made 157 loans with an average principal of approximately $512,000 from 1996–2008.

effects exist, there is a minimum fixed cost of issuance associated with such services that each individual Eligible CDFI would incur, thus raising the aggregate total costs of issuance for Eligible CDFIs. Therefore, this alternative is less likely to address the credit rationing and distribution problems, and therefore does not maximize social benefits.

c. *Minimum participation size of $10 million.* The CDFI Fund has chosen to require a minimum Bond Loan size of $10 million so long as the aggregate principal amount is at least a $100 million minimum Bond Issue. This has been determined as the best alternative that maximizes net benefits. The proposed structure of the CDFI Bond Guarantee Program would allow two-tier borrowing: Eligible CDFIs would borrow at the $10 million minimum and then lend to Secondary Borrowers (in some cases also CDFIs) in increments below the $10 million minimum. Given this proposed structure, up to 100 Eligible CDFIs could theoretically participate in a fiscal year; however, several dozen Eligible CDFIs may choose to apply for larger Bond Loan amounts.

This program is not meant to be a reproduction of the CDFI Program, which provides hundreds of Certified CDFIs awards between $100,000 and $1,000,000 each year in an effort to support the capacity of Certified CDFIs to build direct equity in support of their capital needs. The minimum participation of $10 million targets Certified CDFIs that have the financial and operating capacity to quickly deploy capital to Low-Income communities as well as lend Secondary Loans of smaller amounts to Certified CDFIs that are unable to absorb large amounts of debt on their balance sheets. These Certified CDFIs will also be required to demonstrate the capacity to track and measure performance and impact of the Bond Loan proceeds, which will build the data needed to help counter the distributional issues noted in the earlier sections.

By demonstrating that Low-Income households and businesses are able to borrow and repay loans of greater amounts and tenor, the transactional costs of lending to such borrowers will decrease over time and the ability of the participating Eligible CDFIs to relend and leverage those funds will increase as the loans are repaid. This regulatory alternative is best suited to ameliorating the credit rationing and distribution problems, and thus maximizes net social benefits.

d. *On-balance sheet, general recourse obligations.* The CDFI Fund has chosen to require general recourse obligations that will be on-balance sheet liabilities of Eligible CDFIs. Eligible CDFIs will be underwritten for their financial strength, management capacity, and general probability of default based upon various factors. Additionally, the Eligible CDFIs are required to lend funds subject to Secondary Loan Requirements that satisfy a certain minimum recovery rate in the case of default or temporary financial hardship by an Eligible CDFI.

The benefits of this approach include a streamlined application process where the Eligible CDFI is underwritten rather than each individual asset financed by Bond Loan proceeds. Where necessary, the Credit Enhancements required to increase an Eligible CDFI's credit quality are more easily quantified and enforceable. Additionally, more Eligible CDFIs may be able to participate by achieving the zero subsidy level required of the program.

Additional costs may be incurred in order to participate in the program, including the cost of acquiring Credit Enhancements and documenting the Eligible CDFI's financial strength, management capacity, and other characteristics indicative of capacity to reduce the probability of default. Costs such as legal and consultant fees may be reduced because each individual asset financed by Bond Loan proceeds does not need to be underwritten.

Although difficult to estimate, it is likely that this regulatory alternative is both the net most beneficial and least costly alternative. This alternative also allows the CDFI industry to demonstrate its ability to manage capital, mitigate risk, and leverage funds long-term in a way not currently captured or adequately assessed. This alternative is best suited to ameliorating the credit rationing and distribution issues identified.

Therefore, the CDFI Fund has chosen to pursue regulatory alternatives (c) and (d), above, in the design and implementation of the CDFI Bond Guarantee Program.

8. Economic Effects of Selected Approach.

Per the Act, the CDFI Bond Guarantee Program will expire at the end of FY 2014; therefore, in FY 2013 and FY 2014 the Secretary of the Treasury can provide guarantees for Bond Issues with maturities up to 30 years. The CDFI Bond Guarantee Program would provide a maximum of $2 billion in long-term capital to fill the gap in mortgage lending, consumer lending, and business lending. A summary of the projected transfers and costs under two scenarios is provided in Table 3: One Bond Issue per fiscal year ($200 million) and 10 Bond Issues per fiscal year ($2 billion).

Transfers and costs have been discounted using a net present value methodology over a 30-year period using a three percent discount rate that reflects the cost of capital and seven percent discount value for benefits recommended by OMB in its guidance for Regulatory Impact Analyses. Table 3 describes the transfers and costs discounted at both the three percent and seven percent levels.

TABLE 4—POTENTIAL COSTS AND TRANSFERS

	Discounting by 3%		Discounting by 7%	
	$200 million issuance	$2 billion issuance	$200 million issuance	$2 billion issuance
COSTS				
Government Costs	$19.9 million	$28.8 million	$13.4 million	$18.6 million.
Eligible CDFIs	$4.6 million	$45.7 million	$4.2 million	$41.9 million.
Low-Income communities	n/a	n/a	n/a	n/a.
TRANSFERS				
Low-Income communities	$200 million	$2 billion	$200 million	$2 billion.

a. *Government costs.* The estimate of the administrative costs to the CDFI Fund (Government Costs) are based on current administrative costs of implementation and the FY 2014 budget request for additional Full-Time Employees (FTEs), as well as the staff required to administer and manage the program for the remaining 30 years of the program. Government costs may fluctuate depending on the size of the guaranteed Bond Issues, The costs do not reflect inflation factors or the use of non-governmental contractors to carry out administrative functions after FY 2013 and FY 2014.

b. *Eligible CDFI costs.* The estimated administrative costs to Eligible CDFIs for the CDFI Bond Guarantee Program are based on: (1) The future costs of 10 basis points in Agency Administrative Fees of the amount of the unpaid principal of the Bonds, up to the maximum maturity of 30 years, for Bonds issued through September 30, 2014, the expiration of the program, and these costs discounted back to the present value; and (2) the Bond Issue costs through September 30, 2014, the expiration of the program, and these costs discounted back to the present value. The Bond Issuance Fees are estimated to be one percent of principle value of the Bond Issue.

9. Non-Quantified and Non-Monetized Benefits and Costs

Non-quantified benefits include the reduction of information asymmetry between Eligible CDFI and mainstream financial institutions cited in section 3(b), above. Regulated banks, thrifts, and credit unions are subject to intense and standard reporting requirements by their respective regulators. However, non-regulated Certified CDFIs frequently utilize disparate accounting methodologies and report certain data points, such as borrower defaults and delinquencies, in ways that are difficult to compare across organizations. Non-profit Certified CDFIs are yet more difficult to compare due to the variety of reporting options available to non-profit institutions under generally accepted accounting principles (GAAP). By addressing the information asymmetry challenge, Eligible CDFIs in the CDFI Bond Guarantee Program may be able to provide sufficient information to traditional capital market participants to access private sources of long-term capital. This non-quantified benefit would further result in the amelioration of credit rationing, thereby increasing the amount of credit information available for traditional financial institutions.

Ancillary non-quantified benefits include additional information that the CDFI Fund will be able to develop using standardized data collection within the CDFI industry, creating consistent reporting within other programs, such as the CDFI Program, and within other related agencies and regulators that interact with Certified CDFIs. In addition, the CDFI industry will be able to develop innovative financial products to meet the long-term needs of their borrowers, thus increasing the level of direct investment from the Bond Proceeds and leveraging additional investment from the private sector. The program may also result in standardized credit rating information on the Low-Income communities served by Certified CDFIs. This would result in further reductions of informational asymmetry to the benefit of both individual borrowers and the CDFIs which serve them.

Countervailing non-monetized costs include the increased reporting and monitoring requirements for participants in the CDFI Bond Guarantee Program and administrative burden posed by data collection and verification. Depending upon the structure and composition of Eligible CDFIs that may pool together for a minimum $100 million Bond Issue, non-monetized costs may vary greatly based on necessary legal counsel, labor hours of staff, travel requirements, and other overhead costs. CDFIs that are awardees of current CDFI Fund programs are already required to provide detailed reporting on an annualized basis. In compliance with OMB Circular A–129, the CDFI Bond Guarantee Program will collect all necessary information to manage the portfolio effectively, and track progress towards policy goals. Therefore, the non-quantified costs for participants in the CDFI Bond Guarantee Program would be the incremental burden of providing necessary reporting for the CDFI Fund to proactively manage portfolio risks and performance.

10. Uncertainty in Economic Impacts

The impact estimates are very dependent on a nested set of assumptions that presuppose knowledge of which Certified CDFIs will participate in the CDFI Bond Guarantee Program, their target markets, and the characteristics of the typical Certified CDFI lending portfolio. While the CDFI Fund could estimate average community and economic impacts based on reporting awardees, the reliability of such estimates would be misleading; econometric estimates based on awardee reporting would be inefficient and biased since such estimates would not necessarily reflect the subgroup of Certified CDFIs that would be deemed eligible given the asset and underwriting requirements of the CDFI Bond Guarantee Program.

A firm estimate of the impacts of the CDFI Bond Guarantee Program is not feasible without understanding the costs of the assistance to participating CDFIs, which includes the interest rate on the Bond Loans and the costs of other terms and Credit Enhancements necessary to result in an estimated zero subsidy cost for the CDFI Bond Guarantee Program. The CDFI Fund intends to estimate the subsidy cost separately for each Guarantee, to account more accurately for the differing characteristics of each facility. Accordingly, the cost of capital to participating CDFIs will depend on these characteristics, as will the number of CDFIs that will participate (the take rate by type of institution) in the CDFI Bond Guarantee Program. Certified CDFI participation will also be affected by the cost of alternative financing that may be available.

The Carsey Institute [16] report indicates that CDFIs typically can borrow, on a secured basis, on the open market at rates that are approximately 75–100 basis points above the LIBOR. As of May 22, 2012, the one-year LIBOR Rate was 1.05 percent,[17] or 85 basis points above the 0.20 percent 1-year Treasury Yield Curve Rate.[18] Although it may not be appropriate to extrapolate due to other factors which affect yield spreads as duration increases, Certified CDFIs may face borrowing costs that are 160–185 basis points above comparable Treasury securities. It is likely that the yield spread charged on 30-year maturities, which are not available to Certified CDFIs, would be significantly higher due to the additional interest-rate risk inherent to long-term debt issuances. Moreover, it is not possible to anticipate the amount of relending that CDFIs would engage in over the course of 30 years.

Uncertainty in cost estimates results from the variety and complexity of financial structures that may be presented to the CDFI Bond Guarantee Program during the application process. Complex legal structures, Credit Enhancements, and tailored provisions in each Agreement to Guarantee may result in vastly different administrative burdens for the Eligible CDFI, as well as

[16] Capital Markets, CDFIs, and Organization Credit Risk, p. 47.

[17] *http://www.bankrate.com/rates/interest-rates/1-year-libor.aspx.*

[18] *http://www.treasury.gov/resource-center/data-chart-center/interest-rates/Pages/TextView.aspx?data=yield.*

the CDFI Fund. Depending upon the structure and composition of Eligible CDFIs that may pool together for a minimum $100 million Bond Issue, non-monetized costs may vary greatly based on necessary legal counsel, labor hours of staff, travel requirements, and other overhead costs. Further, the increased burden of compliance costs by participating Eligible CDFIs will depend on the degree of sophistication and ability of each organization's management, staff, and information systems to process and submit data required throughout the life of the program.

B. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required under the Administrative Procedure Act (5 U.S.C 553) or any other law, the Regulatory Flexibility Act does not apply.

C. Paperwork Reduction Act

The collection of information contained in the interim rule will be separately submitted to the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (PRA) for approval and issuance of an OMB Control Number. Under the PRA, an agency may not conduct or sponsor, and an individual is not required to respond to, a collection of information unless it displays a valid OMB control number. The CDFI Fund will publish a PRA Notice in the **Federal Register** to solicit comments on the information collections. In the PRA Notice published in the **Federal Register**, the CDFI Fund will specifically invite comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the CDFI Fund, including whether the information shall have practical utility; (b) the accuracy of the CDFI Fund'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 technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The CDFI Fund will solicit public comment on each of these issues for the following sections of this document that contain information collection (ICs):

1. *ICs Regarding the Application Process (12 CFR 1808.401).* This section provides the requirements for the Qualified Issuer Application and Guarantee Application. For the Qualified Issuer Application, the estimated burden for Qualified Issuer applicants is 240 hours. The estimated number of Qualified Issuer respondents is 10 per year. The estimated total annual burden regarding the Qualified Issuer Application process is 2,400 hours. For the Guarantee Application, the estimated burden for Qualified Issuer applicants is 240 hours. The estimated burden for Eligible CDFI applicants is 50 hours. The estimated number of Qualified Issuer respondents is 10 per year. The estimated number of Eligible CDFI respondents is 100 per year. The estimated total annual burden regarding the Guarantee Application process is 7,400 hours. These estimates may be revised in the final PRA Notices published in the **Federal Register**.

2. *ICs Regarding Reporting Requirements (12 CFR 1808.619).* This section provides the reporting requirements for the Qualified Issuer and Eligible CDFI participants. The estimated burden for a Qualified Issuer participant is 80 hours, consisting of monthly, quarterly, and annual reporting. The estimated burden for Eligible CDFI participants is 86 hours, consisting of monthly, quarterly, and annual reporting. The estimated number of Qualified Issuer participants is 5 per year. The estimated number of Eligible CDFI participants is 50 per year. The estimated total annual burden regarding the reporting requirements is 4,700 hours. These estimates may be revised in the final PRA Notices published in the **Federal Register**.

Comments concerning suggestions for reducing the burden of collections of information should be directed by mail to the Deputy Director, CDFI Fund, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, and to the Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

D. National Environmental Policy Act

The interim rule has been reviewed in accordance with 12 CFR part 1815, the CDFI Fund's environmental quality regulations published pursuant to the National Environmental Protection Act of 1969 (NEPA), which require that the CDFI Fund adequately consider the cumulative impact proposed activities have upon the human environment. It is the determination of the CDFI Fund that the interim rule does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with NEPA and the CDFI Fund's environmental quality regulations at 12 CFR part 1815, neither an Environmental Assessment nor an Environmental Impact Statement is required.

E. Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(a)(2), the interim rule related to loans is exempt from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 551 et seq., including the requirement to provide prior notice and an opportunity for public comment.

List of Subjects in 12 CFR Part 1808

Community development, Guaranteed bonds, Guaranteed loans, Loan programs—housing and community development, Reporting and record keeping requirements.

For the reasons set forth in the preamble, 12 CFR chapter XVIII is amended by adding part 1808 to read as follows:

PART 1808—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS BOND GUARANTEE PROGRAM

Subpart A—General Provisions

Sec.
1808.100 Purpose.
1808.101 Summary.
1808.102 Definitions.
1808.103 Participant not instrumentality.
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1808.105 Relationship to other CDFI Fund programs.
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Subpart B—Eligibility

1808.200 Qualified Issuers.
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1808.300 Interest rates.
1808.301 Eligible uses of Bond Proceeds.
1808.302 Bond terms and conditions.
1808.303 Risk-Share Pool.
1808.304 Eligible uses of Bond Loan proceeds.
1808.305 Bond Loan terms and conditions.
1808.306 Conditions precedent to Bond and Bond Loan.
1808.307 Secondary Loan Eligible Purposes; Terms and conditions.
1808.308 Relending Fund; Relending Account.
1808.309 Restrictions on uses of Bond Proceeds and Bond Loan proceeds.

Subpart D—Applications for Guarantee and Qualified Issuer

1808.400 Notice of Guarantee Availability.
1808.401 Application requirements.

Subpart E—Evaluation and Selection

1808.500 Evaluation of Qualified Issuer Applications.
1808.501 Evaluation of Guarantee Applications.
1808.502 Evaluation of Designated Bonding Authority Applications.
1808.503 Consultation with Appropriate Regulatory Agencies.
1808.504 Selection of Qualified Issuers; Approval for Guarantee.

Subpart F—Terms and Conditions of Guarantee

1808.600 Full faith and credit and incontestability of Guarantee.
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1808.602 Offer of Guarantee.
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1808.612 Specific financial covenants of Eligible CDFI.
1808.613 Negative covenants of Eligible CDFI.
1808.614 Covenants of Secondary Borrower with respect to Secondary Loan.
1808.615 Negative covenants of Secondary Borrower.
1808.616 Events of default and remedies with respect to Bonds.
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1808.618 Events of default and remedies with respect to Secondary Loans.
1808.619 Reporting requirements.
1808.620 Investments in Guaranteed Bonds ineligible for Community Reinvestment Act Purposes.
1808.621 Conflict of interest requirements.
1808.622 Compliance with government requirements.
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1808.624 Criminal provisions.
1808.625 CDFI Fund deemed not to control.
1808.626 Limitation on liability.
1808.627 Fraud, waste and abuse.

Authority: The Small Business Jobs Act of 2010, Pub. L. 111–240, §§ 1134 and 1703; 12 U.S.C. 4713a.

Subpart A—General Provisions

§ 1808.100 Purpose.

The purpose of the Community Development Financial Institutions (CDFI) Bond Guarantee Program is to support CDFI lending by providing Guarantees for Bonds issued as part of a Bond Issue for Eligible Community or Economic Development Purposes, as authorized by sections 1134 and 1703 of the Small Business Jobs Act of 2010 (Pub. L. 111–240; 12 U.S.C. 4713a).

§ 1808.101 Summary.

This section provides a summary overview of certain key provisions of the interim rule, the detailed requirements of which are set forth in subsequent subparts.

(a) *Guarantee.* Through the CDFI Bond Guarantee Program, the Guarantor will provide a Guarantee for Bonds issued by Qualified Issuers as part of a Bond Issue.

(b) *Bonds.* Pursuant to the Act at 12 U.S.C. 4713a(e), a Bond Issue shall comprise Bonds having a minimum aggregate principal amount of $100,000,000 and a maximum aggregate principal amount of $1,000,000,000. The principal amount of each Bond (or series of Bonds) shall not be less than $10,000,000. A Bond Rate for each advance of funds under a Bond will be established by the Bond Purchaser as of the date of the respective advance, as provided in the Bond.

(c) *Bond Loans to Eligible CDFIs.* The Qualified Issuer will use Bond Proceeds to make Bond Loans to Eligible CDFIs for Eligible Purposes, as those terms are defined in section 1808.102. The CDFI Fund will evaluate each Eligible CDFI using standard Bond Loan Requirements to assess their creditworthiness and capacity to receive a Bond Loan. Each Eligible CDFI may borrow a Bond Loan in an amount that is at least $10,000,000. The Bond Loan Rate shall be the same as the Bond Rate on the particular advance of funds under the Bond that funds the Bond Loan. The aggregate of the principal amounts of the Bond Loans must not exceed the maximum principal amount of the corresponding Bond Issue. The Qualified Issuer must execute Bond Loan documents for 100 percent of the principal amount of each Bond on the Bond Issue Date. Bond Loan proceeds may not be drawn down from the Qualified Issuer until the Eligible CDFI has an immediate use for the Bond Loan proceeds. Five percent, or such other amount that is determined by the CDFI Fund in its sole discretion, of Bond Loan proceeds may be used by an Eligible CDFI to capitalize Loan Loss Reserves.

(d) *Secondary Loans to Secondary Borrowers.* If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows:

(1) Not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans; and

(2) Not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of such Eligible CDFI's Bond Loan proceeds allocated for Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

(e) *Terms and conditions.* Bonds, Bond Loans and Secondary Loans shall have terms and conditions as set forth in Subpart F of this interim rule including at a minimum, that:

(1) Each Bond shall be a nonrecourse obligation of the Qualified Issuer, payable solely from amounts available pursuant to the Bond Documents. Each promissory note evidencing a Bond Loan shall be a general recourse obligation of the Eligible CDFI and secured by a first lien on collateral. Each Secondary Loan shall be secured by a first lien on collateral and payable solely from amounts available pursuant to the Secondary Loan documents;

(2) The maturity date of a Bond shall not be later than 30 years after the Bond Issue Date. The maturity date of Bond Loans and Secondary Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond;

(3) The Bonds shall be purchased by the Bond Purchaser on terms and conditions that are satisfactory to the Bond Purchaser, the Guarantor, and the CDFI Fund (under specific requirements set forth in § 1808.302 and the Bond Documents); and

(4) The Guarantor shall guarantee payments on Bonds issued as part of a Bond Issue in such forms and on such terms and conditions and subject to such covenants, representations, warranties and requirements (including requirements for audits) as set forth in this interim rule in Subpart F. These requirements may be expanded upon through the program's Notice of Guarantee Availability, the Bond Documents, and the Bond Loan documents. The Qualified Issuer shall enter into the applicable Bond Documents to evidence its acceptance of the terms and conditions of the Guarantee.

§ 1808.102 Definitions.

For purposes of this part, capitalized terms used herein and not defined elsewhere are defined as follows:

(a) *Act* means the Small Business Jobs Act of 2010, Pub. L. 111–240, sections 1134 and 1703, 12 U.S.C. 4713a;

(b) *Affiliate* means any entity that Controls, is Controlled by, or is under common Control with, another entity. Control is defined as:

(1) Ownership, control or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities (as that term is defined in 12 CFR 1805.104(mm)) of any legal entity, directly or indirectly or acting through one or more other persons; or

(2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any legal entity; or

(3) The power to exercise, directly or indirectly, a controlling influence, as determined by the CDFI Fund, over the management, credit decisions, investment decisions, or policies of any legal entity;

(c) *Agency Administrative Fee* means a fee in an amount equal to 10 basis points (0.1 percent) of the amount of the unpaid principal of the Bond Issue, payable annually to the CDFI Fund by a Qualified Issuer;

(d) *Agreement to Guarantee* means the written agreement between the Guarantor and the Qualified Issuer which sets forth the terms and conditions on which the Guarantor will provide the Guarantee;

(e) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q), and includes, with respect to an Insured Credit Union (as such term is defined in 12 CFR 1805.104(bb)), the National Credit Union Administration;

(f) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union (as such term is defined in 12 CFR 1805.104(e));

(g) *Bond* means a security in the form of a draw-down bond or note issued by the Qualified Issuer, with each advance of funds thereunder bearing interest at an applicable Bond Rate established by the Bond Purchaser in accordance with section 1808.300 of this part, and sold to the Bond Purchaser, the proceeds of which will be used for Eligible Purposes, and which benefit from a Guarantee;

(h) *Bond Documents* mean, for each Bond, the respective Bond, Bond Trust Indenture, Agreement to Guarantee, Bond purchase agreement, and all other instruments and documentation pertaining to the issuance of the Bond;

(i) *Bond Issuance Fees* mean amounts paid by an Eligible CDFI for reasonable and appropriate expenses, administrative costs, and fees for services incurred in connection with the issuance of the Bond (but not including the Agency Administrative Fee) and the making of the Bond Loan;

(j) *Bond Issue* means at least $100,000,000, and no more than $1,000,000,000, in aggregate principal amount of Bonds secured by a single Guarantee; each Bond (or series of Bonds) in the Bond Issue being in the minimum principal amount of at least $10,000,000;

(k) *Bond Issue Date* means the date on which the Bond is deemed to be issued or originated;

(l) *Bond Loan* means a loan of Bond Proceeds by a Qualified Issuer to an Eligible CDFI. A Bond Loan must be in an initial principal amount that is not less than $10,000,000, and Bond Loan proceeds must be used for Eligible Purposes;

(m) *Bond Loan Payment Default Rate* means, in the event of a Bond Loan payment default, the applicable interest rate on any overdue amount from its due date to the date of actual payment and shall be calculated in the same manner as a late charge rate is calculated in the underlying Bond;

(n) *Bond Loan Rate* means the rate of interest for each advance of funds under a Bond Loan, which shall be the same as the Bond Rate;

(o) *Bond Loan Requirements* means the credit criteria, established by the CDFI Fund, for assessing the creditworthiness and capacity of each Eligible CDFI applicant to receive a Bond Loan;

(p) *Bond Proceeds* means the funds that are advanced by the Bond Purchaser to the Qualified Issuer under a Bond;

(q) *Bond Purchaser (or Bondholder)* means the Federal Financing Bank, the body corporate and instrumentality of the Federal Government created by the Federal Financing Bank Act of 1973 (12 U.S.C. 2281 et seq.);

(r) *Bond Rate* means the rate of interest for each advance of funds under a Bond;

(s) *Bond Trust Indenture* means the agreement between the Qualified Issuer and the Master Servicer/Trustee that sets forth the rights, duties, responsibilities and remedies of the Qualified Issuer and Master Servicer/Trustee with respect to the Bonds, to include responsibilities regarding the management of the collateral, the management of the funds and accounts, the repayment and redemption of the Bonds, and the circumstances and processes surrounding any default;

(t) *Capital Distribution Plan* means the component of the Guarantee Application that demonstrates the Qualified Issuer's comprehensive plan for lending, disbursing, servicing, and monitoring each Bond Loan and that meets the requirements of § 1808.401 of this interim rule and such other requirements as may be designated in the applicable Notice of Guarantee Availability. The Capital Distribution Plan includes, among other components (specified in § 1808.401 of this interim rule), a Statement of Proposed Sources and Uses of Funds, and shall include one or more Secondary Capital Distribution Plans;

(u) *CDFI Bond Guarantee Program (or Program)* means the program of providing Guarantees for Bonds issued as part of a Bond Issue by Qualified Issuers to make Bond Loans to Eligible CDFIs for Eligible Purposes, as authorized by subsections 1134 and 1703 of the Act (12 U.S.C. 4713a), and implemented under this part;

(v) *Certified Community Development Financial Institution (or Certified CDFI*) means a financing entity that has a primary mission of promoting community development and that has been certified by the CDFI Fund as meeting the eligibility requirements set forth in 12 CFR 1805.201;

(w) *Community Development Financial Institutions Fund (or CDFI Fund*) means the Community Development Financial Institutions Fund, a wholly owned government corporation within the U.S. Department of the Treasury, established under the Riegle Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.), as amended;

(x) *Credit Enhancement* means such instrument or document proffered by an Eligible CDFI to enhance the credit quality of a Bond and/or Bond Loan. Credit Enhancements may include, but are not limited to, pledges of financial resources and lines and letters of credit issued by: an Eligible CDFI; an Affiliate; a regulated financial institution; a foundation; or another entity. The Risk-Share Pool is not a form of Credit Enhancement;

(y) *Department Opinion* means an internal opinion by the CDFI Fund regarding compliance by the Qualified Issuer with the requirements for approval of a Guarantee;

(z) *Designated Bonding Authority (or DBA)* means a Qualified Issuer selected by the CDFI Fund to issue Bonds on behalf of certain Eligible CDFIs and

make Bond Loans to such Eligible CDFIs, pursuant to this interim rule;

(aa) *Eligible Community Development Financial Institution (or Eligible CDFI)* means a Certified CDFI that has submitted an application to a Qualified Issuer for a Bond Loan, has been deemed creditworthy based on the Bond Loan Requirements, and has received a Bond Loan;

(bb) *Eligible Community or Economic Development Purpose (or Eligible Purpose)* means the allowable uses of Bond Proceeds and Bond Loan proceeds, which includes financing or Refinancing for community or economic development purposes described in 12 U.S.C. 4707(b), including but not limited to community or economic development purposes in Low-Income Areas or Underserved Rural Areas, as deemed eligible by the CDFI Fund in its sole discretion; Bond Issuance Fees in an amount not to exceed one percent of Bond Loan proceeds; and capitalization of Loan Loss Reserves in an amount that is up to five percent of the par amount of the Bond Loan, or such other amount that is determined by the CDFI Fund in its sole discretion;

(cc) *Guarantee* means the guarantee by the Guarantor, pursuant to an Agreement to Guarantee, of the repayment of 100 percent of the Verifiable Losses of Principal, Interest, and Call Premium, if any, on the corresponding Bonds issued as part of a Bond Issue; each Guarantee shall be for a Bond Issue of at least $100,000,000, plus the related interest and call premiums;

(dd) *Guarantee Application* means the application document that a Qualified Issuer submits in order to apply for a Guarantee;

(ee) *Guarantor* means the Secretary of the Treasury or the Secretary's designee;

(ff) *Investment Area* means a geographic area meeting the requirements of 12 CFR 1805.201(b)(3)(ii);

(gg) *Loan Loss Reserves* means the use of Bond Loan proceeds (secured by a Principal Loss Collateral Provision) for a set aside in the form of cash reserves that serve as a safeguard to protect the Eligible CDFI against future losses for any loans for community or economic development purposes described in 12 U.S.C. 4707 (b), including community or economic development purposes in Low-Income Areas or Underserved Rural Areas, within the Eligible CDFI's portfolio;

(hh) *Low-Income* means an income, adjusted for family size, of not more than: (1) for Metropolitan Areas, 80 percent of the area median family income; and (2) for non-Metropolitan Areas, the greater of: (1) 80 percent of the area median family income; or (2) 80 percent of the Statewide non-Metropolitan Area median family income;

(ii) *Low-Income Area* means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located. With respect to a census tract or block numbering area located within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater. In the case of a census tract or block numbering area located outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(jj) *Master Servicer/Trustee* means a third party trust company or financial institution that is in the business of administering facilities similar to the Bonds and Bond Loans, has been deemed acceptable by the CDFI Fund, and whose duties include, among others, exercising fiduciary powers to enforce the terms of Bonds and Bond Loans pursuant to the Bond Trust Indenture entered into by and between the Master Servicer/Trustee and the Qualified Issuer, overseeing the activities of Servicers, and facilitating Bond principal and interest payments to the Bond Purchaser;

(kk) *Metropolitan Area* means an area that contains an urban core based statistical area of 50,000 or more population and is designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e), 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(ll) *Notice of Guarantee Availability (or NOGA)* means the notice, published by the CDFI Fund, that announces to all interested parties the opportunity to submit Qualified Issuer Applications and Guarantee Applications pursuant sections 1808.400 and 1808.401 of this interim rule;

(mm) *Principal Loss Collateral Provision* means a cash or cash equivalent guarantee or facility provided in lieu of pledged collateral set forth in the Bond Documents and Bond Loan documents;

(nn) *Program Administrator* means the Qualified Issuer, or an entity designated by the Qualified Issuer and approved by the CDFI Fund, that performs certain administrative duties related to application preparation, compliance monitoring, and reporting, as well as other duties set forth under section 1808.606 of this interim rule;

(oo) *Qualified Issuer* means a Certified CDFI, or any entity designated by a Certified CDFI to issue Bonds on its behalf, that meets the qualification requirements set forth in section 1808.200 of this interim rule, and that has been approved as such by the CDFI Fund pursuant to review and evaluation of the Qualified Issuer Application;

(pp) *Qualified Issuer Application* means the application document that a Certified CDFI (or any entity designated by a Certified CDFI to issue Bonds on its behalf) submits to the CDFI Fund in order to be approved as a Qualified Issuer prior to, or simultaneously with, a Guarantee Application;

(qq) *Qualified Secondary Loan Receivable* means payment receivables from the Secondary Loan(s) relating to the corresponding Bond Loan;

(rr) *Refinance (or Refinancing)* means the use of Bond Proceeds to refinance an Eligible CDFI's or Secondary Borrower's existing loan, which must have been used for an Eligible Purpose;

(ss) *Relending Fund* means the fund maintained by the Master Servicer/Trustee to allow an Eligible CDFI to relend Secondary Loan repayments for Eligible Purposes, not to exceed 10 percent of the principal amount outstanding of the Bonds, minus the Risk Share Pool; the Relending Fund will include a Relending Account for each Bond Issue; and each Relending Account will include a Relending Subaccount for each Bond Loan;

(tt) *Risk-Share Pool* means an account maintained by the Master Servicer/Trustee throughout the term of a Guarantee to cover losses before the Guarantee is exercised; the Risk-Share Pool is capitalized by pro rata payments equal to three percent of the amount disbursed on the Bonds from all Eligible CDFIs within a Bond Issue; payments must be funded at each disbursement under the Bond and associated Bond Loan; amounts in the Risk-Share Pool will not be returned to the Eligible CDFIs until maturity of all of the Bonds, and termination of all Bond Loans, within a Bond Issue;

(uu) *Secondary Borrower* means an entity that has made application to the Eligible CDFI for a Secondary Loan, been deemed creditworthy by the Eligible CDFI, meets the criteria set forth in the applicable Secondary Loan Requirements to receive a Secondary Loan, and has received a Secondary Loan;

(vv) *Secondary Capital Distribution Plan* means the component of the Capital Distribution Plan that pertains to the making of Secondary Loans, demonstrates the Eligible CDFI's comprehensive plan for lending, disbursing, servicing and monitoring Secondary Loans, includes a description of how the proposed Secondary Loan will meet Eligible Purposes and meets such other the requirements as may be designated in the applicable Notice of Guarantee Availability;

(ww) *Secondary Loan* means the use of Bond Loan proceeds by an Eligible CDFI to finance or Refinance a loan to a Secondary Borrower for Eligible Purposes, which meets the applicable Secondary Loan Requirements;

(xx) *Secondary Loan Requirements* mean the minimum required criteria used by each Eligible CDFI (in addition to the Eligible CDFI's underwriting criteria) to evaluate a request by a Secondary Borrower applicant for a Secondary Loan. The Secondary Loan Requirements will be established by the CDFI Fund and incorporated into the Bond Loan documents;

(yy) *Servicer* means the Qualified Issuer, or an entity designated by the Qualified Issuer and approved by the CDFI Fund, to perform various Bond Loan servicing duties, as set forth in this part;

(zz) *Special Servicer* means the Master Servicer/Trustee, or an entity designated by the Master Servicer/Trustee and approved by the CDFI Fund, that performs certain administrative duties related to the restructuring of Bond Loans that are in or about to enter into an event of default as well as other duties set forth under section 1808.606(d) of this interim rule;

(aaa) *State* means any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Island, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory of the United States;

(bbb) *Statement of Proposed Sources and Uses of Funds* means the component of the Guarantee Application that describes the proposed uses of Bond Proceeds and the proposed sources of funds to repay principal and interest on the Bonds and the Bond Loans;

(ccc) *Targeted Population* means individuals or an identifiable group of individuals who are Low-Income persons or lack adequate access to Financial Products or Financial Services and meet the requirements of 12 CFR 1805.201(b)(3)(iii);

(ddd) *Trust Estate* means the Bond Loan agreement and promissory notes evidencing the Bond Loan, all funds and accounts related to the Bonds and held by the Master Servicer/Trustee pursuant to the Bond Trust Indenture including, but not limited to, the Revenue Accounts and the Relending Accounts (as such terms are defined in subsection 1808.606(f)), and any additional collateral pledged directly by the Eligible CDFI;

(eee) *Underserved Rural Area* means an area that has significant unmet needs for loans, Equity Investments, or Financial Services (as those terms are defined in 12 CFR 1805.104) and is not contained within either a Consolidated Metropolitan Statistical Areas (CMSA) or Primary Metropolitan Statistical Areas (PMSA), as such areas are defined in OMB Bulletin No. 99–04 (Revised Statistical Definitions of Metropolitan Areas (MAs) and Guidance on Uses of MA Definitions); and

(fff) *Verifiable Losses of Principal, Interest, and Call Premium* means any portion of required debt payments related to or arising out of a Bond and Bond Loan, or the enforcement of either of them, that the Qualified Issuer is unable satisfy.

§ 1808.103 Participant not instrumentality.

No participant in the CDFI Bond Guarantee Program shall be deemed to be an agency, department, or instrumentality of the United States.

§ 1808.104 Deviations.

To the extent that such requirements are not specified by statute, the Secretary of the Treasury in consultation with the Office of Management and Budget, may authorize deviations on an individual or general basis from the requirements of this interim rule upon a finding that such deviation is essential to program objectives, and the special circumstances stated in the proposal make such deviation clearly in the best interest of the Federal Government. All proposals must be in writing and supported by a statement of the facts and the grounds forming the basis of the deviation. For deviations of general applicability, after a determination is made by the Secretary of the Treasury based on the deviation proposal, the CDFI Fund must publish notification of granted deviations in the **Federal Register**. Any deviation that was not captured in the original credit subsidy cost estimate will require either additional fees, or discretionary appropriations to cover the cost.

§ 1808.105 Relationship to other CDFI Fund programs.

Award funds received under any other CDFI Fund program cannot be used by any participant, including Qualified Issuers, Eligible CDFIs and Secondary Borrowers, to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool.

§ 1808.106 OMB control number.

The collection of information requirements in this part are subject to the review of the Office of Management and Budget (OMB).

Subpart B—Eligibility

§ 1808.200 Qualified Issuers.

(a) *Requirements and qualifications.* An applicant shall be deemed a Qualified Issuer if it is determined, in writing by the CDFI Fund, to meet the following criteria:

(1) The applicant must be a Certified CDFI, or an entity designated by a Certified CDFI to issue Bonds on its behalf;

(2) The applicant must have appropriate expertise, capacity, and experience, or otherwise be qualified to issue Bonds for Eligible Purposes;

(3) The applicant must have appropriate expertise, capacity, and experience, or otherwise be qualified to make Bond Loans for Eligible Purposes;

(4) The applicant must have appropriate expertise, capacity, and experience to serve or have identified qualified entities that will serve as its Program Administrator and Servicer; and

(5) The applicant must meet such other criteria as may be required by the CDFI Fund pursuant to this interim rule and the applicable Notice of Guarantee Availability.

(b) *Approval.* The designation of an applicant as a Qualified Issuer does not ensure that the Guarantor will approve a Guarantee Application or issue a Guarantee. In order for the Guarantor to approve a Qualified Issuer's Guarantee Application, the Qualified Issuer must meet all applicable Guarantee Application requirements including, but not limited to, creditworthiness and other requirements.

(c) *Qualified Issuer responsibilities.* The responsibilities of a Qualified Issuer shall include, but are not limited to:

(1) Preparing and submitting the Guarantee Application on behalf of Eligible CDFI applicants that designated it to serve as Qualified Issuer, including providing any additional information needed for review by the CDFI Fund;

(2) During the CDFI Fund's review and evaluation of the Guarantee Application, serving as primary point of contact between the CDFI Fund and the Eligible CDFI applicants that designated the Qualified Issuer to serve on their behalf;

(3) Issuing the Bond for purchase by the Bond Purchaser;

(4) Making Bond Loans to Eligible CDFIs, ensuring that 100 percent of Bond Proceeds are used to make Bond Loans;

(5) Charging interest on the Bond Loans as set forth in this interim rule and Bond Loan documents, and providing for such a schedule of repayment of Bond Loans as will, upon the timely repayment of the Bond Loans, provide adequate and timely funds for the payment of principal and interest on the Bonds;

(6) During the duration of the Bonds and the Bond Loans, serving as primary point of contact between the CDFI Fund and Eligible CDFIs;

(7) Overseeing the work of, or serving in the capacity of, the Program Administrator and Servicer;

(8) Enforcing the terms and requirements of the Bond Trust Indenture including, but not limited to: ensuring the repayment of Bond Loans in a timely manner pursuant to the terms of Bond Loan documents; assigning delinquent Bond Loans to the Guarantor upon demand by the CDFI Fund or the Guarantor; and ensuring that the Master Servicer/Trustee establishes and maintains the Risk-Share Pool throughout the term of the Guarantee;

(9) Reviewing collateral and Credit Enhancement requirements for each Bond Loan and providing information on such collateral and Credit Enhancement, as requested, to the CDFI Fund;

(10) Making payment of the Agency Administrative Fee to the CDFI Fund;

(11) Submitting all required reports and additional documentation (including reconciling financial data and Capital Distribution Plan updates, as necessary); and

(12) Such other duties and responsibilities as the CDFI Fund, the Guarantor, or the Bondholder may require.

(d) *Bond Issuance Fees.* The Qualified Issuer may charge Bond Issuance Fees and all fees reasonable and necessary for administering and servicing the Bonds or the Bond Loans, post issuance, to Eligible CDFIs.

(e) *Restriction.* A Qualified Issuer may not receive a Bond Loan under any Bond Issuance for which it serves as a Qualified Issuer.

§ 1808.201 Designated Bonding Authority.

(a) *General.* In its sole discretion, the CDFI Fund may solicit Qualified Issuer Applications from entities proposing to serve as the Designated Bonding Authority (DBA). The CDFI Bond Guarantee Program shall only have one DBA at any given time. In order to be selected to serve as the DBA, the entity must meet all qualifications of a Qualified Issuer set forth in section 1808.200 of this interim rule; additional qualifications may be set forth in the applicable NOGA as determined by the CDFI Fund.

(b) *Selection.* The DBA will serve as a CDFI Fund-selected Qualified Issuer and designated Qualified Issuer for Eligible CDFIs that do not elect to designate another Qualified Issuer. The DBA will prepare and submit a Guarantee Application on behalf of such Eligible CDFI applicants, in accordance with such criteria set forth in this interim rule, the applicable Notice of Guarantee Availability and the Qualified Issuer Application.

§ 1808.202 Eligible CDFIs.

Each Eligible CDFI applicant seeking a Bond Loan must meet the following criteria:

(a) Be certified by the CDFI Fund as meeting the eligibility requirements set forth in 12 CFR 1805.201;

(b) Have the appropriate expertise, capacity, and experience, or otherwise be qualified to use the proceeds of Bond Loans for Eligible Purposes; and

(c) Meet such other criteria and requirements set forth in the applicable Notice of Guarantee Availability, the Guarantee Application, the Bond Loan Requirements, related Bond and Bond Loan documents, and such other requirements of the CDFI Fund.

Subpart C—Interest Rates; Terms and Conditions of Bonds, Bond Loans, and Secondary Loans

§ 1808.300 Interest rates.

(a) *Interest rates.* (1) A Bond Rate will be established by the Bond Purchaser as of the date of the respective advance of funds, as provided in the Bond. The Bond Rate for each advance of funds must be fixed and consistent with Federal credit policies outlined in OMB Circular A–129. The FFB, as Bond Purchaser, will set rates to the borrower pursuant to section 6(b) of the Federal Financing Bank Act (12 U.S.C. 2285(b)) and the FFB Lending Policy. This rate will be indexed to the appropriate Treasury rate based on the Treasury yield curve and include a spread to be determined by the Bond Purchaser; variable Bond Rates are not permitted.

(2) Interest on each advance of funds under a Bond shall be computed as provided in the Bond.

(3) A principal and interest payment schedule will be determined and provided to the Qualified Issuer for each advance of funds under a Bond, based on the Bond Rate established for the respective advance. The final principal and interest payment schedule for amounts due under a Bond will be the aggregation of the individual principal and interest payment schedules for all advances of funds under the Bond.

(4) The Bond Loan Rate shall be the same as the Bond Rate on the particular advance of funds under the Bond that funds the Bond Loan.

(5) The rate of interest for each Secondary Loan shall be established by the Eligible CDFI in accordance with subsection 1808.307(c), and may be subject to limitations specified in the applicable NOGA.

(b) *Bond Loan payment default interest rate.* In the event of a payment default on a Bond Loan, the Eligible CDFI shall pay interest on any overdue amount from its due date to the date of actual payment at the Bond Loan Payment Default Rate. The Bond Loan Payment Default Rate shall be calculated in the same manner as a late charge is calculated under the underlying Bond.

§ 1808.301 Eligible uses of Bond Proceeds.

Bond Proceeds must be used by a Qualified Issuer to finance Bond Loans or Refinance loans to Eligible CDFIs for Eligible Purposes as defined in section 1808.102 of this interim rule. A Qualified Issuer that is also a Certified CDFI may not finance a Bond Loan to itself or refinance its own loan. One hundred percent of the principal amount of each Bond must be used to make Bond Loans. As a Bond Loan is repaid, such repaid Bond Loan proceeds in excess of those required for debt service payments on the Bond must be used to repay the Bond or held in the Relending Account and used for additional Secondary Loans, to the extent authorized under § 1808.308.

§ 1808.302 Bond terms and conditions.

(a) *Maturity date.* As required by 12 U.S.C. 4713a(e)(1)(D), the maturity date of a Bond shall not be later than 30 years after the Bond Issue Date. The maturity date for any advance of funds under a Bond shall not be later than the maturity date of the Bond.

(b) *Nonrecourse obligation.* Each Bond shall be a nonrecourse obligation of the Qualified Issuer, payable solely

from amounts available pursuant to the Bond Documents.

(c) *Terms.* The Bonds may contain only terms that are consistent with the lending policies and terms of the Bond Purchaser.

(d) *No subordination.* The Bonds or Bond Loans may not be subordinated to any new or existing liability and effective subordination of the Bonds or Bond Loans to tax-exempt obligations will render the Guarantee void, in accordance with OMB Circular No. A–129 (Policies for Federal Credit Programs and Non-Tax Receivables) and applicable provisions of the Internal Revenue Code.

(e) *Other limitations.* The CDFI Fund may impose other limitations as appropriate to administer the CDFI Bond Guarantee Program including, but not limited to, requiring Qualified Issuers to obtain Credit Enhancement to safeguard against the risk of default.

(f) *Terms for Bond issuance and disbursement of Bond Proceeds.* (1) The Qualified Issuer must execute Bond Loan documents for 100 percent of the principal amount of each Bond on the Bond Issue Date. There will be an annual assessment to determine whether the Qualified Issuer is subject to the repayment provision established in 12 U.S.C. 4713a(c)(4). Terms and conditions for the annual assessment will be set forth in the applicable Notice of Guarantee Availability.

(2) Disbursements of Bond Proceeds to the Qualified Issuer shall be made pursuant to an advance request process established by the Bond Purchaser and the CDFI Fund under which the Qualified Issuer shall request an advance of funds under a Bond.

(g) *Amortization of Bond.* The principal amount of each advance of funds under a Bond shall amortize in level debt service payments of principal and interest, which payments shall be due either quarterly or semi-annually, as determined by the Qualified Issuer and the Bond Purchaser, and which shall begin on the first principal payment date specified in the Bond, as determined by the Qualified Issuer and the Bond Purchaser. Prior to the first principal payment date, interest accrued shall be due on the payment dates specified in the Bond, as determined by the Qualified Issuer and the Bond Purchaser.

(h) *Optional prepayment of Bonds.* All or a portion of any advance of funds under a Bond, or the Bond in its entirety, may be prepaid by the Qualified Issuer at any time. Any partial prepayment of an advance shall be in an amount equal to at least $100,000 of principal. Each partial prepayment of an advance of funds under a Bond shall be applied in the manner set forth in the Bond. Any partial or full prepayment of an advance of funds under a Bond shall be subject to the payment of a prepayment price, as provided in the Bond Documents.

(i) *Mandatory prepayment of Bonds.* (1) Any Bond shall be subject to mandatory prepayment if Bond Loans or Secondary Loans are not made in a timely manner, as follows:

(i) On the Calculation Date (as defined in subsection 1808.308(e)) of each year, any amount retained in the Relending Subaccount that exceeds the Relending Subaccount Maximum (as defined in subsection 1808.308(d)) by $100,000 or more shall be applied to prepay Bonds on the next succeeding payment date.

(ii) Any amounts derived from the liquidation of collateral from the Bond Loan and/or Secondary Loan in connection with the exercise by the Guarantor, the Qualified Issuer or the Bondholder of remedies upon default of the Bond Loan shall be applied, immediately upon liquidation, in the following order (inclusive of reasonable fees and expenses associated therewith):

(A) To the repayment of any amounts drawn under the Guarantee;

(B) To the prepayment of Bonds, in a like amount;

(C) To the replenishment of any funds drawn from the Risk-Share Pool Fund; and

(D) To the Eligible CDFI for application in accordance with the Secondary Loan documents.

(2) When an amount is required to be applied as a mandatory prepayment of Bonds, the Qualified Issuer may select which advances of funds under a Bond are to be prepaid. Any amount applied as a partial prepayment of an advance under a Bond shall be applied as provided in the Bond. Any partial or full prepayment of an advance of funds under a Bond shall be subject to the payment of a prepayment price, as provided in the Bond Documents.

§ 1808.303 Risk-Share Pool.

The Master Servicer/Trustee, on behalf of the Qualified Issuer and for the benefit of the Bondholder, shall establish a Risk-Share Pool that is funded at each disbursement of the Bond Loan proceeds by payment from each Eligible CDFI in accordance with 12 U.S.C. 4713a(d). The Risk-Share Pool must remain in place throughout the term of the Guarantee. Amounts in the Risk Share Pool Fund will not be returned to Eligible CDFIs until maturity of all of the Bonds, and termination of all of the Bond Loans, within a Bond Issue.

(a) At each disbursement of the Bond Loan proceeds, each Eligible CDFI shall deposit an amount that is equal to three percent of the disbursement, for a total of three percent of the guaranteed amount outstanding of the Bond, from monies other than Bond Loan proceeds, into the applicable subaccount of the Risk-Share Pool Fund. Such monies shall remain in said account throughout the term of the Bond.

(b) Any interest on a Bond Loan in excess of the Bond Loan Rate derived by the Qualified Issuer during any period during which the Bond Loan Payment Default Rate applies shall also be deposited in the Risk-Share Pool Fund.

(c) The Risk-Share Pool Fund shall be applied by the Master Servicer/Trustee to payments of debt service on the Bond Issue in the event that the Eligible CDFI defaults in the corresponding payment of debt service on the Bond Loan. The defaulted Eligible CDFI's deposit shall be applied first to any such payment of debt service. After depletion of the defaulted Eligible CDFI's deposit, each remaining Eligible CDFI's deposit shall be applied prorata to any such payment of debt service. Monies on deposit in the Risk-Share Pool Fund shall be applied to such payments and shall be depleted in full prior to any draw on the Guarantee.

(d) Eligible CDFIs (excluding the Eligible CDFI in default and responsible for a draw) shall not be required to replenish the Risk-Share Pool Fund in the event of a draw.

(e) The Risk Share Pool deposit shall be sufficient collateral to secure any draw on Bond Loan proceeds related to the costs of issuance pursuant to 1808.304(b).

(f) In the event of a payment default on the Bond Loan by an Eligible CDFI, the Qualified Issuer shall notify the CDFI Fund and request permission to draw from the Risk-Share Pool to cover any default of principal and interest payments due to the Bond Purchaser.

(g) Amounts in the Risk Share Pool Fund will not be returned to Eligible CDFIs until maturity of all of the Bonds, and termination of all of the Bond Loans, within a Bond Issue. Upon maturity of all of the Bonds, and termination of the Bond Loans, within a Bond Issue, the pro rata amount of each Eligible CDFI's payments in the Risk-Share Pool shall be returned to each Eligible CDFI; provided however, that such Eligible CDFI has properly replenished any draws on the Risk-Share Pool attributed to nonpayment of its Bond Loan and the corresponding Bond.

§ 1808.304 Eligible uses of Bond Loan proceeds.

(a) *Eligible uses.* Bond Loan proceeds shall be only used for Eligible Purposes, to prefund one monthly installment of Bond Loan payments, and to pay Bond Issuance Fees. As a Bond Loan is repaid, such repaid Bond Loan proceeds must be held in the Relending Account and used for additional Secondary Loans, to the extent authorized under § 1808.308.

(b) *Bond Issuance Fees.* (1) Amounts not to exceed one percent of Bond Loan proceeds may be applied to pay Bond Issuance Fees. Bond Loan proceeds that are used to pay Bond Issuance Fees shall be applied in the following order of priority:

(i) To pay reasonable transaction fees and expenses of the Qualified Issuer, its advisors and consultants, related to the Bond issuance (but not including any salaries or administrative costs of the Qualified Issuer unrelated to the Bond issuance);

(ii) To pay reasonable transaction fees and expenses of the Master Servicer/Trustee, its advisors and consultants, related to the Bond issuance; and

(iii) To pay reasonable transaction fees and expenses of the Eligible CDFI, its advisors and consultants, related to the making of the Bond Loan.

(2) Any fees and expenses arising out of each transaction which, in the aggregate, exceed the one percent limit on Bond Issuance Fees payable from Bond Loan proceeds must be paid by the Eligible CDFI from monies other than Bond Loan proceeds.

(c) *Prefunding of Bond Loan payments.* Bond Loan proceeds may be used to prefund one monthly installment of Bond Loan payments.

§ 1808.305 Bond Loan terms and conditions.

(a) *Maturity date.* The maturity date of a Bond Loan shall not be later than 30 years after the Bond Issue Date. The maturity date of Bond Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond.

(b) *Bond Loan general recourse obligation; Collateral.* (1) The Bond Loan shall be a general recourse obligation of the Eligible CDFI.

(2) The Bond Loan shall be further secured by a first lien of the Master Servicer/Trustee, on behalf of the Bondholder, on:

(i) The Trust Estate;

(ii) Qualified Secondary Loan Receivables; and

(iii) Either:

(A) An assignment of the Secondary Loan collateral (other than a Principal Loss Collateral Provision) from the Eligible CDFI to the Master Servicer/Trustee; or

(B) Provision of a Principal Loss Collateral Provision for the benefit of the Master Servicer/Trustee, in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(3) The CDFI Fund may, in its sole discretion, approve alternative forms of Bond Loan collateral.

(4) A parity first lien on pledged collateral may be accepted, in the sole discretion of the CDFI Fund.

(5) If any collateral becomes non-performing during the term of the Bond Loan, the Guarantor may require the applicable Eligible CDFI to substitute other collateral that is of equal quality to the initial collateral, when performing, acceptable to the Guarantor in its sole discretion.

(6) An Eligible CDFI's parent organization, Affiliate, or an entity that is related to the Eligible CDFI through its management structure, may assume limited recourse obligation for the Bond Loan if it provides Credit Enhancement and/or pledges financial resources or such other financial support or risk mitigation that would enhance the Eligible CDFI's creditworthiness and its ability to repay the Bond Loan, thereby decreasing the risk underlying the Guarantee.

(c) *Disbursement of Bond Loan proceeds.* (1) Bond Loans shall be draw-down loans. Disbursements of Bond Loan proceeds to the Eligible CDFI shall be made pursuant to a requisition process established by the Bond Purchaser and the CDFI Fund, which shall include a process by which the Qualified Issuer shall request an advance from the Bondholder under the Bond and a process by which the Eligible CDFI shall request disbursement from the Qualified Issuer.

(2) Each requisition shall be accompanied by invoices and certifications by the Eligible CDFI (and the Secondary Borrower, if applicable) as to expenditure of proceeds for Eligible Purposes.

(3) No Bond Loan proceeds may be disbursed later than 60 months after the Bond Issue Date. Any Bond Loan proceeds not disbursed will have been forfeited by the Eligible CDFI.

(4) Disbursements to capitalize the Eligible CDFI's Loan Loss Reserves shall be made pursuant to a requisition process established by the Qualified Issuer and the CDFI Fund.

(d) *Amortization of Bond Loan.* Each Bond Loan shall amortize in the same manner as the corresponding Bond; provided that principal and/or interest on each Bond Loan shall be payable to the Qualified Issuer in monthly installments based on the required quarterly or semi-annual installments, as applicable, due on the corresponding Bond; provided further, that each Eligible CDFI shall prefund one monthly payment installment not later than the thirtieth day prior to the first payment date of the corresponding Bond so that on the thirtieth day prior to such Bond payment date, the Eligible CDFI shall have paid in full all amounts due on the Bond payment date.

(e) *Optional prepayment of Bond Loan.* The Bond Loan shall be subject to prepayment, in whole or in part, at the option of the Eligible CDFI in accordance with the optional prepayment provisions of the corresponding Bond (including the required prepayment minimums of $100,000) and shall be subject to the payment of a prepayment price, as determined by the Bondholder in accordance with the corresponding Bond.

(f) *Mandatory prepayment of Bond Loan.* The Bond Loan shall be subject to mandatory prepayment by the Eligible CDFI in accordance with the mandatory prepayment provisions of the corresponding Bond.

§ 1808.306 Conditions precedent to Bond and Bond Loan.

The ability of the Qualified Issuer to issue a Bond and make a Bond Loan shall be subject to the satisfaction of the following conditions precedent:

(a) Evidence satisfactory to the Qualified Issuer that the Eligible CDFI will comply with the terms and conditions of the Bond Loan documents, including repayment of the Bond Loan;

(b) Evidence satisfactory to the Qualified Issuer, the Guarantor, and the CDFI Fund that the Eligible CDFI has the authority to enter into the Bond Loan, has secured the Credit Enhancement, if any, demonstrated a reasonable prospect of repayment of the Bond Loan, and pledged the collateral (including executed security documents, UCC–1 financing statements or mortgages, as applicable);

(c) A Guarantee Application that has been approved by the Guarantor;

(d) A satisfactory credit review by the CDFI Fund and in compliance with the Bond Loan Requirements, including submission of complete and accurate Guarantee Application materials, submitted in a timely manner, demonstrating the Eligible CDFI's ability to repay the Bond Loan;

(e) Opinions of legal counsel to the Qualified Issuer and the Eligible CDFI;

(f) Executed Bond Loan documents;

(g) Organizational documents of the Eligible CDFI;

(h) Certifications by the Qualified Issuer and Eligible CDFIs that Bond Proceeds and Bond Loan proceeds will not be used for lobbying by recipients of Federal loans or guarantees;

(i) A statement that no default, event of default, or due and unsatisfied liability has occurred and is continuing with respect to any obligations of the Qualified Issuer and each Eligible CDFI to the CDFI Fund, the Guarantor, the Bond Purchaser, the U.S. Internal Revenue Service, or any other agency, authority or instrumentality of the Federal Government; and

(j) Any other conditions precedent set forth in the Bond Loan documents, including documentation that any credit enhancements have been secured by the Eligible CDFI.

§ 1808.307 Secondary Loan Eligible Purposes; Terms and conditions.

(a) *Eligible Purposes.* Eligible CDFIs must make Secondary Loans for Eligible Purposes. Secondary Loan proceeds may not be used to capitalize loan loss reserves.

(b) *Making Secondary Loans.* (1) If the Eligible CDFI uses Bond Loan proceeds to make Secondary Loans, the Eligible CDFI must execute Secondary Loan documents (in the form of promissory notes) with Secondary Borrowers as follows:

(i) Not later than 12 months after the Bond Issue Date, Secondary Loan documents representing at least 50 percent of the Eligible CDFIs' Bond Loan proceeds allocated for Secondary Loans; and

(ii) Not later than 24 months after the Bond Issue Date, Secondary Loan documents representing 100 percent of the Eligible CDFIs' Bond Loan proceeds allocated for Secondary Loans (excluding any amounts used for payment of Bond Issuance Fees pursuant to section 1808.304(b)).

(2) In the event that the Eligible CDFI does not comply with the foregoing requirements of paragraphs (b)(1)(i) and (ii) of this section, the available Bond Loan proceeds at the end of the applicable period shall be reduced by an amount equal to the difference between the amount required by paragraphs (b)(1)(i) and (ii) minus the amount previously committed to the Secondary Loans in the applicable period. Consistent with the corresponding Bond Loan, the Secondary Loans shall be drawn down by the Secondary Borrowers upon demonstration of an Eligible Purpose.

(c) *Secondary Loan interest rate.* The rate of interest with respect to each Secondary Loan shall be determined by each Eligible CDFI in accordance with the following limitations:

(1) With respect to each Secondary Loan, the Eligible CDFI will be required to propose to the CDFI Fund:

(i) A minimum and maximum spread over the corresponding Bond Loan Rate which will represent the standard minimum and maximum interest rate (Minimum Secondary Loan Rate and Maximum Secondary Loan Rate, respectively); and

(ii) A maximum spread over the Maximum Secondary Loan Rate in event of a Secondary Loan default (Maximum Secondary Loan Default Spread).

(2) The CDFI Fund reserves the right to evaluate, approve, modify, or disapprove the proposed Minimum Secondary Loan Rate, Maximum Secondary Loan Rate, and Maximum Secondary Loan Default Spread before approving any Guarantee Application.

(d) *Secondary Loan default rate.* The Eligible CDFI may charge a default rate on the Secondary Loan so long as such rate does not exceed the Maximum Secondary Rate, plus the Maximum Secondary Loan Default Spread.

(e) *Secondary Loan maturity.* The maturity date with respect to the Secondary Loan shall be in accordance with the requirements of the applicable Secondary Loan Requirements. The maturity date of Secondary Loans may be earlier than, but may not be later than, the maturity date of the corresponding Bond.

(f) *Secondary Loan collateral.* (1) The Secondary Loan shall be payable from amounts made available pursuant to the Secondary Loan documents, and secured by:

(i) A first lien of the Eligible CDFI on pledged collateral in an amount that is consistent with the loan-to-value ratio requirements set forth in the Secondary Loan Requirements; or

(ii) A Principal Loss Collateral Provision for the benefit of the Master Servicer/Trustee, in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(2) Qualified Secondary Loan Receivables may be used as collateral; provided however, that such collateral is secured by a first lien on the Secondary Loan collateral in accordance with the Bond Loan Requirements and the Secondary Loan Requirements, as applicable.

(3) A parity first lien on pledged collateral may be accepted, in the sole discretion of the CDFI Fund.

(g) *Commitments for Secondary Loans.* Each proposed Secondary Loan shall be approved by the credit committee of the Eligible CDFI or its equivalent, in accordance with the applicable Secondary Loan Requirements and the Eligible CDFI's own underwriting requirements.

(h) *Disbursement of Secondary Loan proceeds.* (1) Consistent with the corresponding Bond Loan, Secondary Loans shall be draw-down loans. Disbursements of Secondary Loan proceeds to the Secondary Borrower shall be made pursuant to a requisition process established by the Qualified Issuer and the CDFI Fund and shall mirror the requirements for the disbursement of Bond Proceeds.

(2) Each requisition shall be accompanied by invoices and certifications by the Secondary Borrower as to expenditure of proceeds for Eligible Purposes. The Eligible CDFI must also attest that the Secondary Loan conforms to the requirements set forth in the applicable Secondary Loan Requirements. In the case of Refinancings, the Eligible CDFI must also attest that the original loan was used for an Eligible Purpose.

(3) Secondary Loan proceeds shall be disbursed in accordance with the applicable Secondary Loan Requirements which shall set forth, among other requirements, that Secondary Loan disbursements shall be made in accordance with commercially reasonable standards and timeframes for disbursement based on the nature of the Eligible Purposes. The Secondary Loan Requirements shall also specify what constitutes a commercially reasonable timeframe for disbursement in connection with specific types of Eligible Purposes. Notwithstanding the foregoing, each Eligible CDFI shall propose a timeframe for disbursement in connection with each Secondary Loan, which timeframe shall be subject to the requirements set forth in the Secondary Loan Requirements.

(i) *Amortization of Secondary Loans.* Secondary Loans shall amortize as determined by the Eligible CDFI; provided that Secondary Loan amortization installments shall conform to the requirements of the applicable Secondary Loan Requirements.

(j) *Prepayment of Secondary Loans.* Secondary Loans shall be subject to prepayment as determined by the Eligible CDFI; provided that the Secondary Loan documents may provide for modification of Secondary Loan terms (so long as such modification does not affect the corresponding Bond or Bond Loan) and shall provide for mandatory prepayment of the Secondary Loan from liquidation of collateral upon the exercise of default remedies by the Eligible CDFI, the

Qualified Issuer or the Guarantor as required by the Bond, the Bond Loan documents, or the Agreement to Guarantee, as applicable.

(k) *Repayment of Secondary Loans.* As Secondary Loans are repaid, the Eligible CDFI may, through the Relending Fund, Refinance and substitute as collateral for the Bond Loan other loan(s) for Eligible Purposes that meet the required Secondary Loan Requirements, provided that the Eligible CDFI makes Bond Loan payments as required. If the outstanding principal balance of the Bond Loan exceeds the outstanding principal balance of the Bond Loan in use for the Eligible Purposes, the Eligible CDFI shall repay the difference, which shall be deposited in the Relending Account, and credited to the corresponding Relending Subaccount.

§ 1808.308 Relending Fund; Relending Account.

(a) *General.* As Bond Loans are repaid, such amounts in excess of those required for debt service payments on the Bonds may be held in the Relending Account and used for additional Secondary Loans, to the extent authorized in this section.

(b) *Application of funds to Secondary Loans.* Amounts on deposit in the Relending Account shall be applied by the Eligible CDFI to make additional Secondary Loans, the term of which shall not exceed the maturity of the Bond.

(c) *Requirements of Secondary Loans from Relending Account.* Secondary Loans made from the Relending Account shall meet all the requirements of the Secondary Loan Requirements, and conform to the following additional conditions:

(1) The Qualified Issuer has received and approved a Bond Loan commitment request submitted by the Eligible CDFI;

(2) No material event has occurred and is continuing or is threatened at the Eligible CDFI level or Qualified Issuer level that adversely affects the Eligible CDFI, the Bond or the Bond Loan;

(3) No Eligible CDFI event of default has occurred and is continuing with respect to the Bond Loan;

(4) No Qualified Issuer event of default has occurred and is continuing with respect to the Bond;

(5) There exists no unreplenished draw on the Risk-Share Pool Fund by the Eligible CDFI;

(6) The maturity of Secondary Loans made from the Relending Fund shall not extend beyond the maturity date of the corresponding Bond; and

(7) Any other conditions set forth in this interim rule, the applicable Notice of Guarantee Availability, the Secondary Loan Requirements or the Bond Loan documents.

(d) *Relending Subaccounts.* The balance of each subaccount of the Relending Fund (each a Relending Subaccount) shall not equal more than 10 percent of the principal amount outstanding of the Bond Loan, minus the prorata share of the Risk-Share Pool, as of the Calculation Date (the Relending Subaccount Maximum).

(e) *Notification Date.* For purposes of this section, Notification Date means the date on which the Master Servicer/Trustee notifies the Eligible CDFI that the balance in the applicable Relending Subaccount exceeds the applicable Relending Subaccount Maximum. Calculation Date means, following the Notification Date, the earlier of:

(1) The date on which the balance in such Relending Subaccount becomes less than or equal to the applicable Relending Subaccount Maximum, or

(2) Six months following the Notification Date.

(f) *Mandatory redemption.* Any amounts retained in the Relending Subaccount that exceeds the Relending Subaccount Maximum by $100,000 or more as of the applicable Calculation Date shall be transferred to the Redemption Account of the Debt Service Fund (as defined in § 1808.606(f)) to effectuate a mandatory redemption of the corresponding Bond in accordance with the terms of the Bond Trust Indenture. The determination of the actual amount on deposit on any Calculation Date shall exclude amounts then obligated pursuant to any executed promissory notes, whether then disbursed or undisbursed.

§ 1808.309 Restrictions on uses of Bond Proceeds and Bond Loan proceeds.

Pursuant to 12 U.S.C. 47123a(c)(5), Bond Loan proceeds shall not be used for:

(a) Political activities;

(b) Lobbying, whether directly or through other parties;

(c) Outreach;

(d) Counseling services;

(e) Travel expenses;

(f) For the salaries or administrative costs of the Qualified Issuer or any recipients of Bond Proceeds, other than those costs covered by Bond Issuance Fees;

(g) To fund the Risk-Share Pool;

(h) To pay fees other than Bond Issuance Fees; or

(i) Any other use as may be specified in the applicable Notice of Guarantee Availability.

Subpart D—Applications for Guarantee and Qualified Issuer

§ 1808.400 Notice of Guarantee Availability.

Interested parties will be invited to submit Qualified Issuer Applications and Guarantee Applications in accordance with this interim rule and the applicable Notice of Guarantee Availability. The NOGA will set forth application and eligibility requirements for an entity that wishes to be designated as a Qualified Issuer (including, in the CDFI Fund's sole discretion, the Designated Bonding Authority) and a Qualified Issuer that wishes to be approved to receive a Guarantee. The NOGA may also contain eligibility requirements, application procedures, and additional terms and conditions for entities wishing to serve as Servicers, Program Administrators, and other roles as may be determined by the CDFI Fund. The NOGA will advise interested parties on how to apply and will establish criteria, deadlines, and other Qualified Issuer and Guarantee Application requirements, including specifying any additional terms and conditions, limitations, special rules, procedures, and restrictions for a given application period.

§ 1808.401 Application requirements.

(a) *Qualified Issuer Application.* A Qualified Issuer applicant shall provide all required information in its Qualified Issuer Application to establish that it meets all criteria for designation as a Qualified Issuer and can carry out all Qualified Issuer responsibilities and requirements including, but not limited to, information that demonstrates that the applicant has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes. After receipt of a Qualified Issuer Application, the CDFI Fund may request additional information and clarifying or technical information on the materials submitted as part of the Qualified Issuer Application. The CDFI Fund will provide the template for the Qualified Issuer Application.

(b) *Guarantee Application.* (1) A Qualified Issuer shall provide all required information in its Guarantee Application to establish that it meets all criteria set forth in this interim rule to receive a Guarantee and can carry out all Guarantee requirements including, but not limited to, information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience and is qualified to make, administer and service Bond Loans for Eligible Purposes. The Guarantee

Application shall include a Capital Distribution Plan and a Secondary Capital Distribution Plan for each potential Eligible CDFI, as well as any other requirements set forth in the applicable Notice of Guarantee Availability or as may be required by the CDFI Fund in its sole discretion for the evaluation and selection of Guarantee applicants. After receipt of a Guarantee Application, the CDFI Fund may request additional information and clarifying or technical information on the materials submitted as part of the Guarantee Application. The CDFI Fund will provide the template for the Guarantee Application.

(2) The Capital Distribution Plan shall include, but not be limited to, the following information:

(i) Statement of Proposed Sources and Uses of Funds;

(ii) For the Qualified Issuer and each Certified CDFI seeking a Bond Loan, an organizational capacity statement, a plan that describes how the proposed Bond Loan will meet Eligible Purposes, and a description of Credit Enhancement, if any;

(iii) A Secondary Capital Distribution Plan, if applicable; and

(iv) Assurances and certifications that not less than 100 percent of the principal amount of Bonds will be used to make Bond Loans for Eligible Purposes beginning on the Bond Issue Date, and that Secondary Loans shall be made as set forth in subsection 1808.307(b).

Subpart E—Evaluation and Selection

§ 1808.500 Evaluation of Qualified Issuer Applications.

(a) *General.* Each Qualified Issuer Application will be evaluated by the CDFI Fund and, if acceptable, the applicant will be designated as a Qualified Issuer, at the sole discretion of the CDFI Fund. The Qualified Issuer Application review and evaluation process will be based on established standard operating procedures, which may include interviews of applicants and/or site visits to applicants conducted by the CDFI Fund. Through the application review process, the CDFI Fund will evaluate Qualified Issuer applicants on a merit basis and in a fair and consistent manner. Each Qualified Issuer applicant will be reviewed on its ability to successfully implement the activities proposed in its Qualified Issuer Application and carry out the responsibilities of a Qualified Issuer over the life of the Bond. The CDFI Fund will periodically reevaluate the Qualified Issuer over the life of the Bond to ensure it meets the performance standards over the life of the facilities.

(b) *Eligibility and completeness.* A Qualified Issuer applicant will not be eligible to be designated as a Qualified Issuer if it fails to meet the eligibility requirements described in § 1808.200 of this part and the applicable NOGA, or if it has not submitted complete and timely Qualified Issuer Application materials. The CDFI Fund reserves the right to request additional information from the Qualified Issuer applicant, as the CDFI Fund deems appropriate.

(c) *Substantive review.* When evaluating Qualified Issuer Applications and selecting applicants to be designated as Qualified Issuers, the CDFI Fund will apply the criteria set forth in the Act at 12 U.S.C. 4713a(a)(8), this interim rule, and the applicable NOGA including, but not limited to, the following evaluation factors:

(1) The extent to which the Qualified Issuer Application demonstrates that the applicant possesses the appropriate expertise, capacity and experience, or other qualifications to manage the Bond Issue on the terms and conditions set forth in this interim rule and the applicable NOGA;

(2) The expertise and experience of its Program Administrator and Servicers;

(3) The Qualified Issuer applicant's demonstrated performance of financially sound business practices relative to the industry norm for bond issuers, as evidenced by reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, and/or auditors;

(4) Information that demonstrates the applicant, its Program Administrator and Servicers have the appropriate expertise, capacity, and experience or otherwise be qualified to originate, underwrite, service and monitor loan portfolios that serve Eligible Purposes and are targeted toward Low-Income and Underserved Rural Areas; and

(5) Such other criteria that the CDFI Fund deems appropriate for purposes of evaluating the merits of a Qualified Issuer Application.

§ 1808.501 Evaluation of Guarantee Applications.

(a) *General.* After being designated as a Qualified Issuer, the Qualified Issuer may submit a Guarantee Application, seeking authority to issue Bonds and receive a Guarantee on the proposed Bond Issue. A successful Guarantee Application must:

(1) Demonstrate that the Qualified Issuer and the proposed Eligible CDFIs have a feasible plan to successfully repay the Bond (including principal, interest, and call premium) and Bond Loans according to their respective terms, to the satisfaction of the CDFI Fund; and

(2) Meet any other requirements deemed appropriate by the CDFI Fund and the Guarantor.

(b) *Eligibility and completeness.* A Qualified Issuer will not be eligible to receive a Guarantee if it fails to meet the eligibility requirements set forth in § 1808.200 of this part and the applicable NOGA, or if it has not submitted complete and timely Guarantee Application materials. The CDFI Fund reserves the right to request additional information from the Qualified Issuer, or to reject a Guarantee Application as the CDFI Fund may deem appropriate.

(c) *Substantive review.* In evaluating Guarantee Applications and selecting a Qualified Issuer to receive a Guarantee, the CDFI Fund and the Guarantor will apply the criteria set forth in this interim rule and the applicable NOGA including, but not limited to, the following evaluation factors:

(1) The extent to which the Guarantee Application proposes strategies that demonstrate the Qualified Issuer's ability to implement the Capital Distribution Plan;

(2) The adequacy of proposed risk mitigation provisions designed to protect the financial interests of the Federal Government based on information that includes, but is not limited to: the amount and quality of any Credit Enhancements; the amount and quality of any other financial resources to be pledged or risk mitigation to be provided by an Affiliate to the Eligible CDFI through its management structure, that will assume limited obligation for the Bond Loan and enhance the Eligible CDFI's creditworthiness and its ability to repay the Bond Loan; and the provision for an orderly retirement of principal;

(3) The extent to which the Guarantee Application demonstrates that the Qualified Issuer possesses the appropriate expertise, capacity and experience, or other qualifications to manage the Bond Issue on the terms and conditions set forth in this interim rule and the applicable NOGA;

(4) The Qualified Issuer's demonstrated performance of financially sound business practices relative to the industry norm for bond issuers, as evidenced by financial audits and reports of Appropriate Federal Banking Agencies, Appropriate State Agencies, independent regulators, or auditors;

(5) Information that demonstrates that the Qualified Issuer has the appropriate expertise, capacity, and experience or is

otherwise qualified to make, service and monitor Bond Loans;

(6) The extent to which the proposed Bond Loans are likely to serve Low-Income Areas or Underserved Rural Areas; and

(7) Such other criteria that the CDFI Fund and the Guarantor deem appropriate for purposes of evaluating the merits of a Guarantee Application.

§ 1808.502 Evaluation of Designated Bonding Authority Applications.

In addition to the evaluation criteria for Qualified Issuers set forth above, DBA applicants must demonstrate the existence of resources to perform functions of the DBA as set forth in section 1808.201 and meet any other criteria set forth in the applicable NOGA and that may be required by the CDFI Fund.

§ 1808.503 Consultation with Appropriate Regulatory Agencies.

In the case of any CDFI Bond Guarantee Program applicant that is a Federally regulated financial institution (or an Affiliate thereof), the CDFI Fund may consult with the Appropriate Federal Banking Agency or Appropriate State Agency prior to designating the applicant as a Qualified Issuer, Servicer, Master Servicer/Trustee, Program Administrator or other role, making a final Guarantee commitment, issuing a Guarantee, and/or entering into an Agreement to Guarantee. The CDFI Fund also reserves the right, in its sole discretion, to consult with the Appropriate Federal Banking Agency and Appropriate State Agency with respect to any Eligible CDFI that is proposed to receive a Bond Loan or any Secondary Borrower that is proposed to receive a Secondary Loan.

§ 1808.504 Selection of Qualified Issuers; Approval for Guarantee.

(a) *General.* Designation of an applicant as a Qualified Issuer shall be based on the foregoing evaluation criteria and processes, and any other requirements or processes that may be set forth in the applicable NOGA. An applicant may simultaneously apply for Qualified Issuer designation and a Guarantee; however, the entity must be designated as a Qualified Issuer before being selected to receive a Guarantee.

(b) The Guarantor will determine whether a Qualified Issuer will be authorized to issue Bonds and receive a Guarantee based on the foregoing evaluation criteria and processes, and any other requirements or processes set forth in the applicable NOGA.

(1) Not later than 30 days after receipt of a complete Guarantee Application (or 30 days after designation as a Qualified Issuer, if submitting simultaneous applications) by a Qualified Issuer, the CDFI Fund shall provide an internal Department Opinion regarding compliance by the Qualified Issuer with the requirements of the CDFI Bond Guarantee Program.

(2) The Guarantor shall approve or deny a Guarantee Application no later than 90 days after receipt of a complete Guarantee Application, and all other required information by the CDFI Fund or the Guarantor with respect to a request for such Guarantee.

(c) The Guarantor may limit the number of Guarantees made per year or Guarantee Applications accepted to ensure that a sufficient examination of Guarantee Applications is conducted.

(d) The CDFI Fund shall notify the Qualified Issuer in writing of the Guarantor's approval or disapproval of a Guarantee Application.

(e) The Guarantor reserves the sole discretion to approve a Guarantee Application for a Guarantee amount that is less than that which is requested.

(f) In the event that there are material changes after submission of a Guarantee Application (including, but not limited to, a revision of the Capital Distribution Plan or a change in the Certified CDFIs that are proposed for receiving Bond Loans) prior to or after the designation as a Qualified Issuer or approval of a Guarantee Application or Guarantee, the Qualified Issuer or Guarantee applicant must notify the CDFI Fund of such material changes information in a timely and complete manner. The Guarantor will evaluate such material changes, along with the Guarantee Application, to approve or deny the Guarantee Application and/or determine whether to modify the terms and conditions of the Guarantee.

Subpart F—Terms and Conditions of Guarantee

§ 1808.600 Full faith and credit and incontestability of Guarantee.

The full faith and credit of the Federal Government is pledged to the payment of all Bonds issued as part of a Bond Issue with respect to Verifiable Losses of Principal, Interest, and Call Premium. An executed Guarantee shall be conclusive evidence that: the Guarantee has been properly authorized; the underlying Bond qualified for such Guarantee; and, but for fraud or material misrepresentation, such Guarantee will be presumed to be legally valid, binding, and enforceable.

§ 1808.601 Assignment and transfer of Guarantee.

The Guarantee shall be fully assignable and transferrable to the capital markets, on terms and conditions that are consistent with comparable bonds guaranteed by the Federal Government and satisfactory to the Guarantor and the CDFI Fund.

§ 1808.602 Offer of Guarantee.

Upon approval of the Guarantee Application, the Qualified Issuer will receive from the Guarantor an offer of Guarantee that will set forth certain required terms and conditions to be fulfilled prior to issuance of the Guarantee.

§ 1808.603 Issuance of Guarantee.

(a) *Conditions precedent.* The commitment of the Guarantor to issue a Guarantee shall be subject to conditions precedent that are usual and customary for financings of this type or otherwise deemed appropriate by the Guarantor including, but not limited to, the following:

(1) The conditions precedent to the Bond Issue and the making of the Bond Loan have been satisfied, including a credit review that indicates a reasonable prospect of repayment as demonstrated by the CDFI Fund's analysis of the cash flow and collateral provisions of the Eligible CDFI;

(2) The Qualified Issuer shall have submitted to the CDFI Fund a complete Guarantee Application, containing all required information relating to the Bond and the Bond Loan, as required by the Guarantor;

(3) There have been no material changes to the Bond and Bond Loan documents from the forms thereof approved by the Guarantor and the CDFI Fund;

(4) The Bond Purchaser and the Qualified Issuer shall have executed a Bond Purchase Agreement; and

(5) Such additional information or documents as may be required by the CDFI Fund, the Guarantor, or the Bond Purchaser.

(b) *Rescission of approval.* The Guarantor, in its sole discretion, may rescind its approval of a Guarantee Application if:

(1) The Guarantor or the CDFI Fund determines that the Qualified Issuer cannot, or is unwilling to, provide adequate documentation and proof of compliance with paragraph (a) of this section within the time provided for in the offer of Guarantee, or

(2) The Guarantor or the CDFI Fund determines, in its sole discretion, that the Qualified Issuer no longer meets applicable CDFI Bond Guarantee Program criteria and requirements.

§ 1808.604 Agreement to Guarantee.

(a) *General.* The Qualified Issuer must enter into an Agreement to Guarantee

that sets forth the terms and conditions on which the Guarantor will provide the Guarantee of the Bonds issued as part of a Bond Issue.

(b) *Terms and conditions.* The terms and conditions of the Agreement to Guarantee may include, but are not limited to, the following:

(1) The form and amount of Guarantee;

(2) Any prohibited amendments of Bond Documents or limitations on transfer of the Guarantee;

(3) Terms and conditions of the Risk-Share Pool and any Credit Enhancement that may be required by the CDFI Fund and the Guarantor;

(4) Provisions regarding the Agency Administrative Fee;

(5) Representations and warranties of the Qualified Issuer;

(6) Pledged security;

(7) Financial covenants;

(8) Events of default and remedies;

(9) Assignment of Bond Loans to the Guarantor;

(10) Guarantor payment does not discharge Qualified Issuer; subrogation;

(11) Undertakings for the benefit of the Bondholder including: notices, registration, prohibited amendments, prohibited transfers, and indemnification;

(12) Governing law;

(13) Terms and conditions of Bond Loans;

(14) Prohibition against subordination; and

(15) Such other matters as the Guarantor or the CDFI Fund may deem necessary or appropriate.

(c) *Access to funds.* In the event that the Qualified Issuer does not execute Bond Loan agreements for 100 percent of the Bond principal on the Bond Issue Date, the Qualified Issuer will have no further access to the amount of funds for which Bond Loan agreements were not executed.

§ 1808.605 Agency Administrative Fee.

The Qualified Issuer shall pay the CDFI Fund annually a fee equal to 10 basis points (0.1 percent) of the amount of the unpaid principal of the Bond(s). The initial Agency Administrative Fee must be paid in full as a condition to closing any Agreement to Guarantee, no later than the effective date of the Agreement to Guarantee.

§ 1808.606 Program Administrator; Servicer; Master Servicer/Trustee.

(a) *General.* Bond Loans shall be overseen by qualified Program Administrators, Servicers, and a Master Servicer/Trustee. For purposes of maximizing efficiencies and minimizing costs, Program Administrator and Servicer duties may be consolidated and performed by Qualified Issuers.

(b) *Program Administrator.* (1) *Duties.* The duties of a Program Administrator, which may be performed by the Qualified Issuer, shall include, but not be limited to:

(i) Approving and qualifying Eligible CDFI applications for participation in the Guarantee Application;

(ii) Bond and Bond Loan packaging;

(iii) Reviewing and approving Secondary Loan commitments from Eligible CDFIs for funds from the Bondholder or the Relending Account based on the Secondary Loan Requirements;

(iv) Compliance monitoring of Bond Loans and Secondary Loans;

(v) Preparing and submitting reports required by this interim rule; and

(vi) All other duties and related services that are customarily expected of a Program Administrator, and as may be required by the CDFI Fund or the Guarantor.

(2) *Selection.* There shall be one Program Administrator for each Bond Issue. The Qualified Issuer applicant shall provide, in its Qualified Issuer Application, information on its proposed Program Administrator that demonstrates the appropriate expertise, capacity and experience, as well as any additional information that may be required to meet the criteria set forth in the applicable Notice of Guarantee Availability, including, but not limited to, information on the entity's management and organization, loan administration, and financial capability.

(3) *Fees and expenses.* The Program Administrator's administrative fees and expenses shall be paid by the Eligible CDFI in accordance with applicable financing documents.

(c) *Servicer.* (1) *Duties.* The duties of a Servicer, which may be performed by the Qualified Issuer, shall include, but not be limited to:

(i) Billing and collecting Bond Loan payments from Eligible CDFIs;

(ii) Initiating collection activities on past-due Bond Loans;

(iii) Transferring Bond Loan payments to the respective funds and accounts managed by the Master Servicer/Trustee;

(iv) Bond Loan administration and servicing;

(v) Systematic and timely reporting of Bond Loan performance through remittance and servicing reports, and providing such reports as may be required by this interim rule;

(vi) Proper measurement of annual outstanding Bond Loan requirements; and

(vii) All other duties and related services that are customarily expected of Servicers, and as may be required by the CDFI Fund or the Guarantor.

(2) *Selection.* There shall be one Servicer for each Bond Issue. Each Qualified Issuer applicant shall provide, in its Qualified Issuer Application, information on its proposed Servicer that demonstrates the appropriate expertise, capacity and experience, as well as any additional information that as may be required to meet the criteria set forth in the applicable Notice of Guarantee Availability including, but not limited to, information on the entity's management and organization, loan servicing, and financial capability.

(3) *Fees and expenses.* The Servicer's administrative fees and expenses for each Bond Issue shall be paid by the associated Eligible CDFIs in accordance with applicable financing documents.

(d) *Special Servicer.* (1) *Duties.* The duties of the Special Servicer shall be performed by the Master Servicer/Trustee and shall include, but not be limited to:

(i) Negotiating the restructuring of Bond Loans that are in or about to enter into an event of Default;

(ii) Initiating foreclosure action and appointing a receiver; and

(iii) Enforcing deficiency judgments.

(2) Evaluation. The Master Servicer/Trustee applicant shall provide, in its Master Servicer/Trustee application, information on its proposed Special Servicer capabilities and experience. These capabilities may be performed by the Master Servicer/Trustee or an entity designated by the Master Servicer/Trustee. The CDFI Fund shall evaluate the Master Servicer/Trustee applicant's or its designee's ability to perform the duties of Special Servicer based on the capacity and experience in the following areas:

(i) Restructuring, recovery, and foreclosure of loans that are similar to Bond Loans;

(ii) Financial strength and capacity;

(iii) Managing regional or national intake, processing, or servicing operational systems and infrastructure of loans that are similar to Bond Loans;

(iv) Managing regional or national originator communication systems and infrastructure;

(v) Developing and implementing training and other risk management strategies on a regional or national basis;

(vi) Compliance monitoring and reporting; and

(vii) Such other criteria that may be required by the CDFI Fund.

(3) Fees and expenses. The Bond Trust Indenture will outline the Special Servicer's administrative fees and expenses; these fees shall be paid by the Eligible CDFI in accordance with the

Bond Trust Indenture and related documents.

(e) *Master Servicer/Trustee.* (1) *Duties.* The duties of the Master Servicer/Trustee shall include, but not be limited to:

(i) The fiduciary power to enforce the terms of Bonds and the Bond Loans pursuant to the Bond Trust Indenture;

(ii) Establishing and managing the funds and accounts set forth in this interim rule;

(iii) Providing such reports as required;

(iv) Overseeing the activities of Servicers and managing loan administration;

(v) Servicing and monitoring of Bond Issues with respect to repayment obligations to the Bondholder and the terms of the Agreement to Guarantee;

(vi) Tracking the movement of funds between the accounts of the Master Servicer/Trustee and all Servicers;

(vii) Ensuring orderly receipt of the monthly remittance and servicing reports of the Servicers;

(viii) Monitoring collection and foreclosure actions;

(ix) Aggregating the reporting and distribution of funds to the Qualified Issuer, CDFI Fund, and the Bondholder, as necessary;

(x) Removing and replacing Servicers, as necessary;

(xi) Performing systematic and timely reporting of Bond Loan performance compiled from Servicers' reports, and providing such reports as required in this interim rule;

(xii) Ensuring proper distribution of funds to Eligible CDFIs, servicing the Bonds, and repayment to the Bondholder; and

(xiii) All other duties and related services that are customarily expected of a Master Servicer/Trustee, and as may be required by the CDFI Fund.

(2) *Selection.* There shall be one Master Servicer/Trustee for the CDFI Bond Guarantee Program. The CDFI Fund shall solicit applications and make a selection of a Master Servicer/Trustee based on the capacity and experience of the applicant in the areas set forth in paragraph (a)(1) of this section and in the following paragraphs (a)(2)(i) through (vi):

(i) Administration, servicing, and monitoring of loans that are similar to Bond Loans;

(ii) Financial strength and capacity;

(ii) Managing regional or national intake, processing, or servicing operational systems and infrastructure of loans that are similar to Bond Loans;

(iii) Managing regional or national originator communication systems and infrastructure;

(iv) Developing and implementing training and other risk management strategies on a regional or national basis;

(v) Compliance monitoring and reporting; and

(vi) Such other criteria that may be required by the CDFI Fund.

(3) *Fees and expenses.* The Master Servicer/Trustee's administrative fees and expenses shall be paid by the Eligible CDFI in accordance with the Bond Trust Indenture and related documents.

(f) *Funds and accounts.* The following funds shall be established by the Master Servicer/Trustee at the time of execution of the Bond Trust Indenture, on behalf of the Qualified Issuer and for the benefit of the Bondholder. On the Bond Issue Date, separate accounts shall be established therein for each Bond and, furthermore, within each account there shall be established a subaccount for each Bond Loan on the date of the closing of each Bond Loan:

(1) The Project Fund, and therein a Project Account for each Bond: All disbursements of Bond Proceeds from the Bondholder pursuant to the requisition processes shall be deposited in the applicable Project Account or Subaccount, and the Master Servicer/Trustee shall disburse advances with respect to the Bond Loan to the Eligible CDFI therefrom;

(2) The Revenue Fund, and therein a Revenue Account for each Bond: All payments of debt service or prepayments on the Bond Loan pursuant to the Bond Loan documents, other payments by the Eligible CDFI pursuant to the Bond Loan documents, and any investment income derived from the corresponding accounts or subaccounts in the Debt Service Fund shall be deposited in the accounts and subaccounts of the Revenue Fund;

(3) The Debt Service Fund, and therein an Interest Account, a Principal Account and a Redemption Account for each Bond: Not later than 30 days prior to a Bond payment date, the Master Servicer/Trustee shall make the following transfers from the applicable account or subaccount of the Revenue Fund:

(i) All scheduled payments (amortization installments or at maturity) of principal received from the Eligible CDFI on the Bond Loan shall be transferred to the Principal Account or Subaccount;

(ii) All scheduled payments (amortization installments or at maturity) of interest received from the Eligible CDFI on the Bond Loan shall be transferred to the Interest Account or Subaccount; and

(iii) All prepayments of principal, interest and premium, if any, received from the Eligible CDFI on the Bond Loan shall be transferred to the Redemption Account or Subaccount;

(4) The Administrative Fees Fund, and therein an Administrative Fees Account for each Bond: All fees necessary for administering and servicing the Bond or the Bond Loan (including the Agency Administrative Fee and Bond Issuance Fees), payable by the Eligible CDFI pursuant to the Bond Loan documents, shall be deposited in the applicable account or subaccount of the Administrative Fees Fund and, thereafter, shall be disbursed by the Master Servicer/Trustee to the subject recipient in accordance with the terms of each such payment;

(5) The Risk-Share Pool Fund, and therein a Risk-Share Pool Account for each Bond, in accordance with § 1808.303 of this part;

(6) The Relending Fund, and therein a Relending Account for each Bond, in accordance with § 1808.308 of this part; and

(7) Such other funds and accounts as may be required by the CDFI Fund and the Qualified Issuer in connection with a Bond Issue, Bond or Bond Loan.

(g) *Other funds and accounts.* The Master Servicer/Trustee shall be permitted to establish such other funds and accounts as deemed necessary to administer the requirements of the Bond Trust Indenture. Each account shall be designated by the name of the applicable Bond and each subaccount shall be designated by the name of the applicable Bond Loan.

(h) *No commingling of funds.* No commingling of monies shall be permitted between accounts or subaccounts.

(i) *Permitted investments.* Monies on deposit in the Revenue Fund, the Debt Service Fund, the Risk-Share Pool Fund, the Relending Fund, if invested, shall be invested in U.S. Treasury securities with maturities that do not exceed the dates on which monies will be required for anticipated purposes and may be sold to the extent funds are needed sooner than anticipated. All interest shall be credited to the relevant account in the relevant fund.

§ 1808.607 Representations and warranties of Qualified Issuer with respect to Guarantee.

The Qualified Issuer shall represent and warrant to the Guarantor, at the execution of any Agreement to Guarantee to which it is a party and thereafter at the closing of any Bond Loan and the issuance of any Bond, the following:

(a) The Qualified Issuer is duly organized, validly existing and in good standing in its State of organization with the power and authority to enter into the agreements and consummate the transactions thereby contemplated;

(b) The information contained in the Qualified Issuer Application is true and correct;

(c) The Bonds, when executed, are and will be duly authorized, executed, valid, binding and enforceable obligations of the Qualified Issuer;

(d) Except as disclosed to the Guarantor, no claim or litigation is pending or threatened which would materially adversely affect the Qualified Issuer's ability to consummate the transactions contemplated by the Agreement to Guarantee, the Bond, or the Bond Loan;

(e) The consummation of the transactions contemplated by the Agreement to Guarantee, the Bond, and the Bond Loan will not conflict with or constitute an event of default under any law or agreement to which the Qualified Issuer is subject;

(f) No authorization, approval or consent of a governmental authority is necessary on the part of the Qualified Issuer to consummate the transactions contemplated by the Bond or the Bond Loan which has not been obtained;

(g) No funds from any other CDFI Fund program are being used to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool; and

(h) Any other representation or warranty deemed appropriate by the Guarantor, the CDFI Fund or the Bond Purchaser.

§ 1808.608 Representations and warranties of Eligible CDFI with respect to each Bond Loan.

The Eligible CDFI shall represent and warrant to the Qualified Issuer, at the execution of each set of Bond Loan documents and, thereafter, until repayment in full of such Bond Loan, the following:

(a) The performance by the Eligible CDFI under the Bond Loan documents is duly authorized, does not require consent or approval of any governmental authority not already obtained, does not constitute a default of any law or agreement to which the Eligible CDFI is subject, will not result in the imposition of any lien (other than pursuant to the Bond Loan), and constitutes a valid, binding and enforceable obligation of the Eligible CDFI;

(b) The information provided by the Eligible CDFI fairly represents the financial position (in conformity with generally accepted accounting principles), experience and capacity of the Eligible CDFI, and there have been no material adverse changes in the Eligible CDFI's financial condition since the date of such financial information;

(c) No claim or litigation is pending or threatened which would materially adversely affect the Eligible CDFI's ability to consummate the transactions contemplated by the Bond Loan, or repay the Bond Loan;

(d) No event of default or other material event which could become an event of default has occurred and is continuing;

(e) The Eligible CDFI has filed all Federal, State and local tax returns required and paid all liabilities in connection therewith;

(f) The Eligible CDFI has good and marketable title to the collateral;

(g) The Bond Loan will be applied to Eligible Purposes;

(h) The information provided in the Guarantee Application is true and accurate;

(i) No default, event of default or due and unsatisfied liability has occurred and is continuing with respect to any obligations of the Eligible CDFI to the Guarantor, the CDFI Fund, the Bond Purchaser, the U. S. Internal Revenue Service, or any other agency, authority or instrumentality of the Federal Government;

(j) No funds from any other CDFI Fund program are being used to pay principal, interest, fees, administrative costs, or issuance costs (including Bond Issuance Fees) related to the CDFI Bond Guarantee Program, or to fund the Risk-Share Pool; and

(k) Any other representations and warranties set forth in the Bond Loan documents.

§ 1808.609 Representations and warranties of Secondary Borrower.

Each Secondary Borrower shall make identical representations and warranties as the Eligible CDFI and shall make specific representations and warranties with respect to the collateral and the project that is proposed to be financed by the Secondary Loan, upon which the Eligible CDFI, the Qualified Issuer, the Bondholder, the Guarantor, and the CDFI Fund may rely. These representation and warranties shall be to the satisfaction of the Guarantor and the CDFI Fund.

§ 1808.610 Covenants of Qualified Issuer with respect to Guarantee.

The Qualified Issuer shall covenant in the Agreement to Guarantee that it will:

(a) Furnish to the CDFI Fund, at the Qualified Issuer's expense, all annual and periodic financial reporting as described in § 1808.619 of this part;

(b) Maintain books and records related to each Bond Loan, the collateral and the project that is to be financed by Bond Proceeds, and allow inspection thereof;

(c) Preserve its corporate existence and Certified CDFI status, if applicable;

(d) Comply with all laws to which it is subject;

(e) Maintain its solvency;

(f) To the extent it assigns any of its obligations under the agreement to an Affiliate, guarantee performance of such obligations;

(g) Allow audits and investigations by the CDFI Fund, the Treasury Inspector General, the Comptroller General, or such other Federal Government offices as may be designated by the Guarantor or the CDFI Fund;

(h) Provide such reports as required in § 1808.619 of this part;

(i) Make, execute and deliver such instruments as the Guarantor or the CDFI Fund may reasonably request;

(j) Sign and certify as true and correct all Bond Documents and Bond Loan documents;

(k) Not amend or modify any agreement related to the Bond without the consent of the Bondholder, the Guarantor, or the CDFI Fund, as applicable;

(l) Comply with the terms and conditions of the Agreement to Guarantee, the Bond Trust Indenture, and the Bond and Bond Loan documents;

(m) Immediately notify the Guarantor and the CDFI Fund of any material change or event that affects any representation, warranty or covenant of the Guarantee, Bond or Bond Loan documents;

(n) Pay and discharge all Federal, State and local taxes;

and

(o) Comply with all other covenants set forth in the Bond Documents and Bond Loan documents.

§ 1808.611 Covenants of Eligible CDFI with respect to Bond and each Bond Loan.

The Eligible CDFI shall covenant in the Bond Loan agreement that it will:

(a) Furnish to the Qualified Issuer, at the Eligible CDFI's expense, certain annual and periodic financial and performance reporting;

(b) Maintain books and records related to the Bond Loan and Secondary Loans, the collateral and the project that is to be financed by Bond Loan proceeds, and allow inspection thereof;

(c) Preserve its corporate existence and Certified CDFI status;

(d) Comply with all laws to which it is subject;

(e) Maintain insurance, as required by the Qualified Issuer, against such risks as would customarily be maintained by commercially reasonable companies in a similar line of business;

(f) Pay and discharge all Federal, State and local taxes;

(g) Ensure proper use of proceeds of the Bond Loan;

(h) Pay all required administrative expenses;

(i) Indemnify the Guarantor, the CDFI Fund, the Qualified Issuer and the Master Servicer/Trustee and their Affiliates;

(j) Collaterally assign all rights, title, and interest in and to Secondary Loan collateral to the Master Servicer/Trustee;

(k) Maintain the collateral;

(l) Enforce the covenants against the Secondary Borrowers;

(m) Be bound, to the extent applicable, to provisions of the Bond Trust Indenture;

(n) Periodically, as directed by the CDFI Fund, furnish certain information designed to measure the impacts of the Bond Loan and the CDFI Bond Guarantee Program;

(o) Periodically, as directed by the CDFI Fund, furnish to the Qualified Issuer and/or the CDFI Fund updates to the Capital Distribution Plan; and

(p) Comply with all other representations and warranties set forth in the Bond Loan documents.

§ 1808.612 Specific financial covenants of Eligible CDFI.

The Eligible CDFI shall covenant in Bond Loan documents that it will comply with specific financial requirements as required by the Guarantor and the CDFI Fund. Such financial requirements will be determined based upon the quantity and the character of the existing loan facilities of the Eligible CDFI, among other factors. The specific financial covenants may include, but are not limited to, one or more of the following measures: consolidated net asset ratio; consolidated unrestricted net asset ratio; and minimum available liquidity (or, in the case of Eligible CDFIs that are regulated financial institutions, such ratios and information as may be required by the applicable Appropriate Federal Banking Agency or Appropriate State Agency). The specific financial requirements shall be measured based upon such Eligible CDFI's financial statements prepared in accordance with generally accepted accounting principles and consistent with historically applied accounting policies and practices.

§ 1808.613 Negative covenants of Eligible CDFI.

The Eligible CDFI will covenant in Bond Loan documents that it will comply with certain negative covenants, as required by the CDFI Fund including, but not limited to, that it will:

(a) Not incur or issue additional long-term or short-term debt to the extent that the incurrence of such additional debt would violate the specific financial covenants of such Eligible CDFI under the Bond Loan; and

(b) Not permit liens on all or any part of the Bond Loan collateral, except as permitted pursuant to the Bond Loan documents, and only then to the extent consistent with the applicable laws and regulations governing the Bond Loan and as approved by the CDFI Fund.

§ 1808.614 Covenants of Secondary Borrower with respect to Secondary Loan.

In addition to making specific representations and warranties with respect to the collateral and the project being financed by the Secondary Loan proceeds, each Secondary Borrower shall covenant in the Secondary Loan agreement that it will:

(a) Periodically, as directed by the Eligible CDFI, furnish to the Eligible CDFI certain annual and periodic financial and performance reporting;

(b) Maintain books and records related to the Secondary Loan, the collateral and the project that is to be financed by Bond Loan proceeds, and allow inspection thereof;

(c) Preserve its corporate existence, as applicable;

(d) Comply with all laws to which it is subject;

(e) Maintain insurance, as directed by the Eligible CDFI, against such risks as would customarily be maintained by commercially reasonable companies in a similar line of business;

(f) Pay and discharge all Federal, State and local taxes;

(g) Ensure proper use of proceeds of the Secondary Loan;

(h) Maintain the collateral;

(i) Periodically, as directed by the Eligible CDFI, furnish to the Eligible CDFI certain information designed to measure the impacts of the Bond Loan and the CDFI Bond Guarantee Program; and

(j) Comply with all other representations and warranties set forth in the Secondary Loan documents.

§ 1808.615 Negative covenants of Secondary Borrower.

Any additional debt of the Secondary Borrower shall be in accordance with the requirements set forth in the applicable Secondary Loan Requirements and the Secondary Loan agreement, and may include, but shall not be limited to, that:

(a) The Secondary Borrower will not incur or issue additional long-term or short-term debt payable from and having a lien on all or a portion of the Secondary Loan collateral that is

(1) Equally and ratably secured; or

(2) Superior or senior to the lien thereon of the Secondary Loan as more specifically set forth in the Secondary Loan agreement; and

(b) So long as no event of default has occurred and is continuing, the Secondary Borrower may, subject to the approval of the Eligible CDFI, incur or issue at any time additional debt payable from and having a lien on all or a portion of the Secondary Loan collateral that is subordinate or junior to the lien thereon of the Secondary Loan and enter into subordinate credit facility agreements, provided that no events of default have occurred and are continuing under the Secondary Loan documents or any parity senior loan documents and that such debt meets the requirements set forth in paragraph (a) of this section.

§ 1808.616 Events of default and remedies with respect to Bonds.

(a) *Events of default.* An event of default with respect to any Bond shall include, but not be limited to:

(1) Nonpayment of interest or the Agency Administrative Fee when due and payable;

(2) Nonpayment of principal or prepayment price when due and payable;

(3) The use of Bond Proceeds for any purpose other than an Eligible Purpose; and

(4) Any other events of default set forth in the Bond or the Bond Trust Indenture.

(b) *Default of other Bonds.* An event of default under one Bond shall not constitute an event of default under another Bond.

(c) *Remedies.* Pursuant to the Agreement to Guarantee and the Bond Trust Indenture, remedies upon an event of default shall include, but not be limited to, the following:

(1) Declaring the entire amount of unpaid principal and interest on the applicable Bond immediately due and payable; and

(2) Exercising all remedies available under the applicable Agreement to Guarantee and the Bond Trust Indenture.

(d) Notice and comment. Prior to imposing any remedies pursuant to this section or the Agreement to Guarantee, the Guarantor shall, to the maximum

extent practicable, provide the Qualified Issuer with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide a Qualified Issuer the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

§ 1808.617 Events of default and remedies with respect to Bond Loans.

(a) *Events of default.* The following shall constitute an event of default with respect to each Bond Loan:

(1) Nonpayment of interest when due and payable;

(2) Nonpayment of principal or prepayment price when due and payable;

(3) Failure of the Eligible CDFI to perform any condition or covenant under any Bond Loan document;

(4) Any representation or warranty of the Eligible CDFI made in connection with the Guarantee Application or the Bond Loan is false or incorrect in any material respect;

(5) Principal or interest on any indebtedness of the Eligible CDFI or any subsidiary of the Eligible CDFI in excess of $100,000 is not paid when due (subject to a cure period);

(6) The holder of any junior or parity lien on collateral institutes a proceeding to enforce a lien on the collateral;

(7) The Eligible CDFI files bankruptcy or consents to the appointment of a receiver or trustee for itself or the collateral;

(8) Any money judgment is filed against the Eligible CDFI and remains unvacated for a period of 60 days from filing;

(9) The use of Bond Loan proceeds for any purpose other than an Eligible Purpose; or

(10) Any other events of default set forth in the Bond Loan documents.

(b) *Remedies.* Remedies of the Qualified Issuer upon an event of default include, but are not limited to, the following:

(1) Declaring the entire amount of unpaid principal and interest on the applicable Bond Loan immediately due and payable;

(2) Applying for appointment of a receiver or trustee for the collateral;

(3) At the direction of the Guarantor, terminating the Bond Loan agreement, declaring the entire amount of unpaid principal and interest on the applicable Bond Loan immediately due and payable; and

(4) Exercising all remedies available under the applicable Bond Loan agreement, including declaring the Bond Loan Payment Default Rate in effect.

(c) *Enforcement rights.* The Guarantor reserves all rights to enforce remedies upon an event of default.

§ 1808.618 Events of default and remedies with respect to Secondary Loans.

(a) *Events of default.* The following shall constitute an event of default with respect to each Secondary Loan:

(1) Nonpayment of interest when due and payable;

(2) Nonpayment of principal when due and payable;

(3) Failure of the Secondary Borrower to perform any condition or covenant under any Secondary Loan document;

(4) Any representation or warranty of the Secondary Borrower made in connection with the Secondary Loan application or the Secondary Loan documents is false or incorrect in any material respect;

(5) Principal or interest on any indebtedness of the Secondary Borrower or any subsidiary of the Secondary Borrower in excess of $100,000 is not paid when due (subject to a cure period);

(6) The holder of any junior or parity lien on collateral institutes a proceeding to enforce a lien on the collateral;

(7) The Secondary Borrower files bankruptcy or consents to the appointment of a receiver or trustee for itself or the collateral;

(8) Any money judgment is filed against the Secondary Borrower and remains unvacated for a period of 60 days from filing; or

(9) Any other events of default set forth in the Secondary Loan documents.

(b) *Remedies.* The Qualified Issuer and the Guarantor will reserve certain rights to enforce (or direct enforcement of) remedies upon an event of default under the Secondary Loan documents.

§ 1808.619 Reporting requirements.

The Bond Documents and Bond Loan documents shall specify such monitoring and financial reporting requirements as deemed appropriate by the CDFI Fund including, but not limited to the following:

(a) *Data—General.* As long as the Bonds remain outstanding, a Qualified Issuer shall provide such reports and shall maintain such records as may be prescribed by the CDFI Fund that are necessary to:

(1) Disclose the manner in which Bond Proceeds are used, including providing documentation to demonstrate proceeds of the Bond Loans were used for Eligible Purposes;

(2) Demonstrate compliance with the requirements of this part and the Bond Documents;

(3) Evaluate the impact of the CDFI Bond Guarantee Program;

(4) Ensure the Qualified Issuer meets the performance standards over the life of the facilities; and

(5) Accomplish such other purposes that the CDFI Fund may deem appropriate.

(b) *Customer profiles.* The Qualified Issuer shall require each Eligible CDFI to compile such data on the gender, race, ethnicity, national origin, or other information on individuals and entities that utilize its products and services as the CDFI Fund shall prescribe and as is permissible under applicable law. In general, such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Bond Guarantee Program.

(c) *Audits; Access to records.* (1) The CDFI Fund may, if it deems appropriate, audit Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, and/or the Master Servicer/Trustee, or provide for or require an audit, at least annually. Portfolio management and loan monitoring will also employ risk-based, on-site verification of the Eligible CDFI's lending activities to Secondary Borrowers and compliance with the terms in Secondary Lending Requirements.

(2) Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, the Master Servicer/Trustee, as applicable, must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the CDFI Fund to ensure compliance with the requirements of this interim rule and to evaluate the impact of the CDFI Bond Guarantee Program.

(3) The Federal Government, including the U.S. Department of the Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to such entities' offices and facilities and all books, documents, records, and financial statements relating to the Guarantee and may copy such documents as they deem appropriate

(4) The CDFI Fund, if it deems appropriate, may prescribe audit and access to record requirements for Eligible CDFIs and Secondary Borrowers.

(d) *Retention of records.* Qualified Issuers, Eligible CDFIs, Program Administrators, the Master Servicer/Trustee, and Servicers shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Data collection and reporting.* Qualified Issuers, Eligible CDFIs, the

Program Administrator, the Master Servicer/Trustee, and Servicers, as applicable, shall submit to the CDFI Fund, monthly, quarterly, and annually, as specified in the Bond Documents, and as long as the Bond shall remain outstanding, such information and documentation that will permit the CDFI Fund to review compliance with the Capital Distribution Plan and the terms and conditions of the Bond Documents, and to perform adequate portfolio management and loan monitoring. The information and documentation may include, but not be limited to, the following:

(1) Financial statements, including but not limited to:

(i) Annual financial statements for the Qualified Issuer and each Eligible CDFI that have been audited in conformity with generally accepted auditing principles; and

(ii) With respect to any nonprofit Qualified Issuer and any Eligible CDFI that is required to have its financial statements audited pursuant to OMB Circular A–133 Audits of States, Local Governments and Non-Profit Organizations, annual A–133 audited financial statements. Non-profit Qualified Issuers and Eligible CDFIs that are not required to have financial statements audited pursuant to OMB Circular A–133 must submit to the CDFI Fund a statement signed by the Qualified Issuer or Eligible CDFI's authorized representative or certified public accountant, asserting that a single audit pursuant OMB Circular A–133 is not required;

(2) Pro forma projection of the Qualified Issuer's and Eligible CDFI's respective balance sheet, income statement, and statement of cash flows over the ensuing five years, or such other time period as specified by the CDFI Fund;

(3) Such institution-level and transaction-level reports as may be required by the CDFI Fund;

(4) Information necessary to measure the financial condition of the Eligible CDFI. This includes, but is not limited to, measuring solvency by collecting data on fixed charge coverage, capital adequacy, debt coverage, and measuring liquidity by collecting data on core financial ratios, including current ratios, quick ratios, working capital, and operating liquidity ratio. This will also include credit reporting, financial statement analysis, trend analysis of financial conditions, market valuation, loan performance (30/60/90 payment history) of Bond Loans and Secondary Loans, valuation and eligibility of Secondary Loan collateral, and management and organization changes;

(5) Information necessary to assess Program impact performance and outcome measures, including information necessary to evaluate the credit-worthiness of loan applicants; and

(6) Other such information and reports as may be requested by the CDFI Fund.

(f) *Qualified Issuer reports.* Qualified Issuers are responsible for the timely and complete submission of all required information and reports, even if all or a portion of the documents actually are completed by the Eligible CDFI. The CDFI Fund reserves the right to contact the Qualified Issuer or Eligible CDFI and require that additional information and documentation be provided.

(g) *Regulator information.* The CDFI Fund's review of a regulated Qualified Issuer's or regulated Eligible CDFI's performance or compliance with the Bond Documents may also include information provided by the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(h) *Public inspection.* The CDFI Fund shall make reports described in this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests pursuant to all applicable laws and regulations.

(i) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (*http://www.whitehouse.gov/omb/grants_circulars/*); and

(2) Government Accountability Office materials may be obtained from GAO Distribution, 700 4th Street NW., Suite 1100, Washington, DC 20548.

§ 1808.620 Investments in Guaranteed Bonds ineligible for Community Reinvestment Act Purposes.

Notwithstanding any other provision of law, any investment by a financial institution in Bonds shall not be taken into account in assessing the record of such institution for purposes of the Community Reinvestment Act of 1977 (12 U.S.C. 2901). Other forms of participation by financial institutions in CDFI Bond Guarantee Program transactions may be eligible for inclusion in Community Reinvestment Act records to the extent permitted by the Appropriate Federal Banking Agency.

§ 1808.621 Conflict of interest requirements.

(a) *Provision of Bond Loans or Secondary Loans to Affiliates.* (1) A Qualified Issuer or Eligible CDFI that is not regulated by an Appropriate Federal Banking Agency or Appropriate State Agency may not use any Bond Proceeds or Bond Loan proceeds to make any Bond Loans or Secondary Loans available to an Affiliate unless it meets the following restrictions:

(i) The loan must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Affiliate receiving the loan shall not participate in any way in the decision-making regarding such loan;

(iii) The board of directors or other governing body of the lender shall approve the extension of the loan; and

(iv) The loan must be provided in accordance with a policy regarding credit to Affiliates that has been approved in advance by the CDFI Fund.

(2) A Qualified Issuer or Eligible CDFI that is an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union (as such terms are defined in 12 CFR 1805.104) shall comply with the restrictions on insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(b) *Standards of conduct.* Qualified Issuers, Eligible CDFIs, Program Administrators, the Master Servicer, and Servicers shall maintain a code or standards of conduct acceptable to the CDFI Fund that govern the performance of employees engaged in the awarding and administration of any loan. No employee of a Qualified Issuer, Eligible CDFI, Program Administrators, the Master Servicer, and Servicer shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers for such loans. Such policies shall provide for disciplinary actions to be applied for violation of the standards by employees.

§ 1808.622 Compliance with government requirements.

In carrying out its responsibilities pursuant to any agreements associated with the CDFI Bond Guarantee Program, all Qualified Issuers, Eligible CDFIs, Program Administrators, Servicers, and the Master Servicer/Trustee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders, including restrictions on lending to entities with delinquent Federal debt.

§ 1808.623 Lobbying restrictions.

No fees or funds made available under this part may be expended by a party to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

§ 1808.624 Criminal provisions.

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds are applicable to all CDFI Bond Guarantee Program participants and insiders.

§ 1808.625 CDFI Fund deemed not to control.

The CDFI Fund shall not be deemed to control a CDFI Bond Guarantee Program participant by reason of any Guarantee provided under the Act for the purpose of any applicable law.

§ 1808.626 Limitation on liability.

The liability of the Federal Government arising out of any fees or funds obtained by a CDFI Bond Guarantee Program participant in accordance with this interim rule shall be limited to the amount of the fees or funds obtained by the CDFI Bond Guarantee Program participant. The Federal Government shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

§ 1808.627 Fraud, waste and abuse.

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of any Guarantee, Bond, Bond Loan or Secondary Loan provided under this interim rule must report such incidents to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: January 24, 2013.

Donna J. Gambrell,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2013–02055 Filed 2–1–13; 8:45 am]

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Part V

Department of Housing and Urban Development

24 CFR Part 242

Federal Housing Administration (FHA): Hospital Mortgage Insurance Program—Refinancing Hospital Loans; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 242

[Docket No. FR–5334–F–02]

RIN 2502–AI74

Federal Housing Administration (FHA): Hospital Mortgage Insurance Program—Refinancing Hospital Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Final rule.

SUMMARY: This rule revises the regulations governing FHA's Section 242 Hospital Mortgage Insurance Program (Section 242 program) for the purpose of codifying, in regulation, FHA's implementation of its authority to refinance existing loans of hospitals without FHA-insured mortgages, without conditioning the exercise of such authority on the expenditure of funds for construction or renovation. Hospitals with FHA's Section 242 mortgage insurance may refinance existing debt under section 223(a)(7) of the National Housing Act, and such refinancing under section 223(a)(7) is not conditioned upon the hospital undertaking new construction or renovation. When credit availability contracted considerably in 2008, FHA, in 2009, commenced the exercise of its authority to refinance the capital debt of hospitals without section 242 mortgage insurance. FHA exercised this authority through notices issued on July 1, 2009, and February 22, 2010. FHA initiated rulemaking to make this refinancing authority a permanent part of the Section 242 regulatory program through a January 29, 2010, proposed rule, which solicited comment on HUD's implementation of this refinancing authority to date.

This final rule provides for codification in regulation of HUD's refinancing of existing debt and acquisitions for non-FHA insured loans of hospitals without conditioning such refinancing and acquisition on new construction or renovation. This rule makes certain changes to the regulations proposed January 2010 in response to public comments submitted on the proposed rule and further consideration of issues by HUD.

DATES: *Effective Date:* March 7, 2013.

FOR FURTHER INFORMATION CONTACT: Roger E. Miller, Deputy Assistant Secretary for Healthcare Programs, Office of Healthcare Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410–8000; telephone number 202–708–0599 (this is not a toll-free number). Hearing- and speech-impaired persons may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

FHA's Section 242 program, by insuring the mortgages of hospitals, serves as credit enhancement, offering borrowers the opportunity to issue bonds up to the equivalent of an ''AA'' or ''AAA'' rating, receive lower interest rates, lower monthly debt service costs, and borrow funds for renovations or new construction. This rule amends the Section 242 program regulations to exercise statutory authority to insure refinancing to hospitals that do not have FHA-insured mortgages, and to do so without conditioning such refinancing on new construction or renovation. While HUD has long had the authority to provide such refinancing, HUD had taken the position that, for hospitals without FHA-insured mortgages, private capital for refinancing debt was sufficient, and the demand for refinancing existing debt was not as great as the need for financing new construction, renovation and rehabilitation, and equipment purchases. However, when the credit markets became more restrictive in 2008, hospitals, organizations representing hospitals, and members of Congress appealed to HUD to use its authority to help hospitals without FHA-insured financing to refinance their debt. In 2009, HUD commenced exercising this authority, initially by notice. This rulemaking, which commenced with a January 29, 2010, proposed rule, reflects HUD's commitment to make the refinancing of debt of hospitals without FHA-insured mortgages a permanent part of the Section 242 program. In doing so, HUD will provide, through clear requirements, including eligibility requirements for the refinancing, a needed source of funding for hospitals that will aid in reducing interest rates, eliminating restrictive debt covenants, and stabilizing the hospital's financial situation so that the hospital can continue to provide healthcare to the community it serves.

B. Summary of the Major Provisions of the Regulatory Action

Consistent with implementation to date, this rule allows for 100 percent of the mortgage amount to be used for refinancing, with less than 20 percent eligible to be used for construction and/or equipment. The rule establishes threshold requirements that are designed to determine the need of the hospital for the refinancing that would not be available through other sources, and to eliminate from eligibility hospitals with poor financial performance. The rule requires that applicants for refinancing must provide a description of any repairs, renovations, and/or equipment to be financed with mortgage proceeds and how those repairs, renovations, and/or equipment will affect the hospital. The rule allows for insurance of advances in cases where there is a need for advances to fund construction activities and the purchase of equipment. The rule revises the existing application process to minimize burden and to also minimize the possibility that meritorious applicants will be eliminated before their application is given full consideration. The rule also adds terminology, based on experience to date, to facilitate understanding how the Section 242 program works.

C. Costs and Benefits

This rule will not address all financing needs of hospitals. The program is not designed for the entire industry of 5,000 hospitals. The pool of applicants is limited by eligibility restrictions. The goal of the rule is to assist those hospitals saddled with unexpectedly high interest rates and where refinancing is urgently needed for the hospital to continue to remain open and adequately serve its surrounding community.

HUD expects the rule to result in a $1.26 million transfer per year per healthcare facility. The estimate of healthcare facilities assisted per year under the Section 242 program is 10 facilities, resulting in an aggregate annual impact is $12.59 million. A multiyear scenario, in which the number of participants increases to 17, yields an aggregate annualized transfer to hospitals of $17.63 million by the third year of the program. HUD estimates that this program will raise net receipts of the Federal Government by $79 million (from $79 million to $158 million). Costs of the rule include up-front application costs, which may be as high as $870,000 per applicant but which are likely to be much lower given that non-FHA insured lenders impose transaction costs as well. HUD does not have enough information to quantify or evaluate the opportunity costs or distortionary effects of the program.

The primary benefit of this rule is to keep hospitals with a high degree of

financial strength operating in their communities. Allowing refinancing can reduce the probability of default and the expected social cost of hospital foreclosure. If closure of a hospital were to occur, the negative economic impacts would be drastic. In addition to loss of needed healthcare options, hospitals are among the largest employers in their communities. Therefore the benefits of this rule can be twofold—maintaining needed healthcare services in a community as well as avoiding loss of jobs.

II. Background—The Section 242 Hospital Mortgage Insurance Program

Section 242 of the National Housing Act (12 U.S.C. 1715z–7) authorizes FHA to insure mortgages to finance the construction or rehabilitation of public or private nonprofit and proprietary hospitals, including insurance for major movable equipment, as well as to refinance existing debt. Section 242 of the National Housing Act (NHA) provides this authority to FHA to: (1) assist in maintaining the availability of hospitals needed for the care and treatment of persons who are acutely ill or who otherwise require medical care and related services of the kind customarily furnished only (or most effectively) by hospitals (see 12 U.S.C. 1715z–7(a)); and (2) encourage the provision of comprehensive health care, including outpatient and preventive care, as well as hospitalization. In the case of public hospitals, section 242 of the NHA is designed to encourage programs to provide healthcare services to all members of a community regardless of ability to pay. (See 12 U.S.C. 1715z–7(f).)

The regulations for the Section 242 program are codified in 24 CFR part 242. Prior to the refinancing changes proposed to the Section 242 program in 2009, HUD had taken the position that, for hospitals without FHA insured mortgages, private capital for refinancing debt was sufficient, and that the demand for refinancing debt was not as great as the need for financing for new construction, renovation and rehabilitation, and equipment purchases. In fact, HUD has long had the authority, under section 223(f) of the NHA,[1] to provide for refinancing of hospital debt to hospitals without FHA insured mortgages without conditioning such refinancing on new construction or renovation (See 12 U.S.C. 1715n(f)).

When the credit crisis emerged, both the hospital industry and congressional members, commencing in 2009, urged HUD to use its statutory authority under section 223(f) to provide refinancing to hospitals without FHA insured mortgages. HUD responded to the credit crisis promptly by implementing its authority through notice, Housing Notice H–09–05, issued July 1, 2009, which was amended and superseded by Housing Notice H–10–06, issued February 22, 2010. On January 29, 2010 (at 75 FR 4964), HUD published a proposed rule to commence the process to provide for permanent regulatory codification of its refinancing authority, and to seek public comment on the HUD's implementation of its 223(f) refinancing authority, as set out in the Housing notices.

The January 29, 2010, rule proposed to establish in regulation the criteria and procedures set forth in notice, by which HUD would refinance hospital debt under section 223(f). The preamble to the January 29, 2010, proposed rule sets out in detail the proposed changes to HUD's regulations in 24 CFR part 242 to implement its section 223(f) refinancing authority, referred to in this preamble as Section 242/223(f) refinancing.

III. Overview of Key Changes Made at Final Rule Stage

HUD is making several changes to the January 29, 2010, proposed rule in response to public comment, HUD's experience in administering its refinancing authority to date, and further consideration of issues by HUD.

Changes Made in Response to Public Comment

Key changes made to the proposed rule by this final rule in response to public comment include the following. The final rule:

- Adopts certain new definitions that describe the costs that can be insured under the Section 242 program. Adds definitions of ''acquisition'' and ''refinancing'' to the definitions of activities eligible for insurance. The proposed rule listed ''acquisition'' and ''refinancing'' as eligible categories, but did not include definitions for these terms. Including definitions in the final regulation is intended to facilitate borrower's understanding of the distinctions between the financing categories.
- Adds a definition of ''capital debt'' in part in response to comments requesting that HUD provide flexibility to allow certain financing costs approved by HUD to be included as part of a refinancing mortgage. HUD is including a definition of ''capital debt'' as ''the outstanding indebtedness used for the construction, rehabilitation, or acquisition of the physical property and equipment of a hospital, including those financing costs approved by HUD. This gives HUD the flexibility to approve certain financing costs associated with a refinancing as part of the refinancing mortgage. Examples of financing costs are found in the definition of ''soft costs'', as provided in the discussion below.
- Reorganizes § 242.16 to consolidate certain paragraphs and divide other. Additionally, revises certain threshold factors that make an initial determination of a hospital's eligibility for Section 242/223(f) refinancing, which are designed to enhance screening for applicant eligibility for Section 242/223(f) refinancing and assure that HUD is assisting hospitals that merit serious consideration based on need and financial strength. The revision to the threshold factor includes a supplement to the factor that requires the hospital to have an aggregate operating margin of at least zero percent, and an average debt service coverage ratio of at least 1.40, when calculated from the three most recent annual audited financial statements. The supplementary provision to this factor provides that in performing such calculations, if HUD finds that performance in one of the three years was affected by exceptional, one-time events that substantially altered financial performance, HUD may calculate three-year performance based on the four most recent years with the unusual year omitted.
- Requires, consistent with current practice, that the inspection fee be paid no later than at the time of initial endorsement.
- Provides a sliding scale for inspection fees that is developed based upon the mortgage amount attributable to the newly defined ''hard costs.''
- Specifies insurance upon completion when advances are not needed for limited rehabilitation.
- Revises requirements for the § 242.16(d) application process to introduce more flexibility for applicants and minimize the possibility that meritorious applicants will be screened out.

[1] Section 223(f)(1) of the National Housing Act provides that ''Notwithstanding any of the provisions of this Act, the Secretary is authorized, in his discretion, to insure under any section of this title a mortgage executed in connection with the purchase or refinancing of an existing multifamily housing project or the purchase or refinancing of existing debt of an existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof).'' (12 U.S.C. 1715n(f).)

Changes Initiated by HUD Based on Section 242/223(f) Refinancing Experience to Date

In addition to changes that HUD is making at this final rule stage in response to public comments, and which are discussed in detail in Section III of this preamble, HUD is making the following changes at this final rule stage based on HUD's experience to date in implementing the Section 242/223(f) refinancing authority.

To complement a definition of ''hard costs'' contained in the proposed rule, the final rule adds a new definition of ''soft costs'' and, to complement the definition of ''substantial rehabilitation,'' adds a definition of ''limited rehabilitation'' incorporating into the regulation terms that reflect these categories of Section 242/223(f) refinancing.

Definitions (Section 242.1)

Soft Costs. Based on HUD's experience to date administering its Section 242/223(f) refinancing authority, and in response to questions from refinancing applicants about the scope of ''hard costs,'' HUD determined that it would be helpful to specify those costs that constitute ''soft costs.'' Accordingly, the final rule defines ''soft costs'' as follows: ''Soft costs means reasonable and customary legal, organizational, consulting, and such other costs associated with effecting the proposed project and its financing or refinancing, including, but not limited to, interest capitalized during construction, permanent financing fees, initial service charge, tax, title and recording expenses, special tax assessments, Allowance to Make Project Operational (AMPO),[2] insurance costs during construction, FHA fees and charges including application, commitment and inspection fees; mortgage insurance premium for advances during construction, prepayment penalties associated with retiring the hospital's existing bonds; and termination costs for interest rate protection facilities that are integrated into the original financing, as applicable.''

Limited rehabilitation. HUD is also including a definition of ''limited rehabilitation'' in this final regulation, which describes categories of construction costs distinguishable from substantial rehabilitation. As noted, in § 242.91(b)(2) of the January 29, 2010, proposed rule, the proceeds of any refinancing can be employed to pay for repairs totaling less than 20 percent of the mortgage amount. The final rule adopts the numeric criteria for repairs that were included in the proposed regulation as the definition of ''limited rehabilitation.''

Funds and Finances; Deposits and Letters of Credit (Section 242.49)

This section establishes the requirements mortgagees must meet for funds deposited to support the project. HUD did not receive public comment on this issue. However, in the course of operating the Section 242 program over the last several years, HUD has found that some mortgagees are not able to hold funds on behalf of the mortgagor. Several state healthcare finance agencies have mentioned this problem to HUD with respect to the Mortgage Reserve Fund defined in codified § 242.1, stating that, under their state laws, state healthcare finance agencies are not authorized to hold such funds. In such cases, the deposits must be with a depository acceptable to the mortgagee and HUD. HUD recognizes the issues involved in the state law requirements, and accordingly is modifying its regulations in § 242.49 to specify that the depository which has the funds, rather than the mortgagee, will be legally responsible in those cases.

Maximum Mortgage Amounts and Cash Equity Requirements (Section 242.23)

This section establishes the maximum mortgage amounts and cash equity amounts for mortgages insured under Section 242/223(f). The proposed rule revised the maximum mortgage amount to provide that the amount would not exceed the cost to refinance the existing indebtedness as defined in § 242.23. The final rule retains the proposed rule language but revises this provision to incorporate the terms that are being newly defined in this rule.

IV. Discussion of Public Comments and HUD Responses

The public comment period on the proposed rule closed March 30, 2010, and HUD received seven comments. The public commenters included national trade associations involved in healthcare financing, national and state hospital and healthcare associations, national associations of healthcare financial management professionals, law professors, and attorneys who are active in the field. Although one commenter supported the rule as proposed, the remaining six commenters submitted suggestions for changes to the manner in which HUD implements its Section 242/223(f) refinancing authority. The changes suggested by the commenters included expansion of the program by, among other things, relaxing the threshold financial screening tests to allow more hospitals to meet the eligibility requirements for financing, covering additional costs, and permitting the leasing of hospitals with Section 242 financing to operators.

HUD did not receive comments on the following sections of the proposed rule: §§ 242.4; 242.15; 242.16(b)(3) and (b)(6); 242.16(d); and 24 CFR 242.17(a)(2). While Section 242.15 is not revised in this final rule, the other sections are revised in the final rule to be consistent with HUD changes to definitions or other elements of the final rule.

Definitions (Section 242.1)

The proposed rule added the following three definitions to 24 CFR part 242: ''hard costs,'' ''Section 242/223(f),'' and ''substantial rehabilitation.'' The definition of ''Section 242/223(f)'' was included as an easy way to refer to HUD's refinancing authority under section 223(f) of the NHA as applied to hospitals financed under section 242 of the NHA. The term ''hard costs'' was defined to mean the costs of the construction and equipment, including construction-related fees such as architect and construction manager fees. The term ''substantial rehabilitation'' was defined to address ''cases where the hard costs of construction and equipment are equal to or greater than 20 percent of the mortgage amount.'' HUD did not receive any comments on these terms and the final rule adopts these definitions without change.

Commenters proposed changes to other definitions included in the proposed rule, and suggested that additional terms be defined. HUD has adopted certain of the commenters' recommendations and made some additional changes to other definitions to reflect adoption of the new terms. Accordingly, the final rule includes several new terms beyond those included in the proposed rule: ''acquisition,'' ''capital debt,'' ''limited rehabilitation,'' ''refinancing,'' and ''soft costs.'' In addition, HUD is revising definitions already in the current regulations to respond to the inclusion

[2] Allowance to Make Project Operational (AMPO) relates to nonprofit projects and means a fund that is primarily for accruals during the course of construction for mortgage insurance premiums (MIPs), taxes, ground rents, property insurance premiums, and assessments, when funds available for these purposes under the Building Loan Agreement have been exhausted; and also for allocation to such accruals after completion of construction, if the income from the hospital at that time is insufficient to meet such accruals. AMPO may also be used for such other purposes as approved by HUD. Any balance remaining unused in the fund at final endorsement will be treated in accordance with 24 CFR 242.43.

of these categories in the terms ''construction,'' ''project,'' and ''substantial rehabilitation.''

Comment: Include definitions for ''acquisition,'' ''capital debt,'' and ''refinancing.'' Commenters recommended adding definitions for the terms ''acquisition,'' ''capital debt'' and ''refinancing'' to ensure clarity with respect to the indebtedness eligible for Section 242/223(f) refinancing.

A commenter suggested adding a definition of acquisition as follows: ''Acquisition'' means the purchase by an eligible mortgagor of an existing hospital facility and ancillary property associated therewith.''

A commenter was particularly concerned that the term ''capital debt'' be defined to confirm that termination costs for ''interest rate protection facilities [3]'' (such as fixed to variable interest rate swaps used as a hedge against rising variable interest rates) constitutes a type of debt eligible for refinancing. The commenter stated that the 2007–2008 collapse of the auction rate and variable rate markets had created significant issues for those hospitals which had used ''interest rate protection facilities'' to achieve savings, because they were not shown as ''debt'' on hospital financial statements under Generally Accepted Accounting Principles (GAAP) [4] methodology. The commenter submitted that instead Internal Revenue Service guidance should be used to categorize these transactions. In addition, the commenter further stated that ''termination costs'' for interest rate protection facilities should be considered the functional equivalent of prepayment premiums due in connection with the early redemption of capital debt. The commenter stated that those prepayment premiums are routinely permitted as eligible program costs by HUD in connection with the refinancing of capital debt in the basic Section 242 construction program.

A commenter suggested including the following definition of ''refinancing'': ''Refinancing means the discharging of the existing capital debt of a hospital.''

HUD Response: HUD has added new definitions to clarify the types of costs that would be eligible for Section 242/223(f) refinancing. Rather than adopt other recommendations of the commenters pertaining to new definitions, HUD has developed alternative definitions that define the categories of eligible costs which applicants must identify in their applications. The definitions and HUD responses are outlined as follows:

Acquisition: As recommended by a commenter, HUD has defined ''acquisition'' to mean ''the purchase by an eligible mortgagor of an existing hospital facility and ancillary property associated with the facility.'' Through this definition, the purchase of the hospital and such items as medical equipment and ambulances will be eligible for financing under HUD's Section 242 program.

Capital Debt: For some time, HUD has recognized the risks inherent in interest rate protection facilities. Consequently, the regulations at § 242.63 that address additional indebtedness and leasing prohibit hospitals with FHA-insured loans from engaging in such transactions without prior HUD approval. Specifically, the regulations provide that ''the mortgagor shall not enter into any * * * derivative-type transactions, except in conformance with policies and procedures established by HUD.'' Also, HUD will maintain its policy that hospitals with interest rate protection facilities seeking FHA-insured financing must terminate those facilities in order to be eligible for a mortgage insurance commitment.

Therefore, to address the request for a definition of ''capital debt'' and to provide a definition that also addresses HUD's policy concerns, the final rule defines ''capital debt'' as ''the outstanding indebtedness used for the construction, rehabilitation, or acquisition of the physical property and equipment of a hospital, including those financing costs approved by HUD.'' Examples of financing costs are reasonable and customary legal, organizational, consulting, and such other costs associated with effecting the proposed project and its financing or refinancing, including, but not limited to, interest capitalized during construction; permanent financing fees; initial service charge; tax; title and recording expenses; special tax assessments; AMPO; insurance costs during construction; FHA fees and charges, including application, commitment and inspection fees; mortgage insurance premium for advances during construction; prepayment penalties associated with retiring the hospital's existing bonds; and termination costs for interest rate protection facilities that are integrated into the original financing. This gives HUD the flexibility to consider a range of financing costs associated with the refinancing mortgage.

In this regard, HUD also revises the definition of ''construction'' to mean ''the creation of a new or replacement hospital facility, the substantial rehabilitation of an existing facility, or the limited rehabilitation of an existing facility. The cost of acquiring new or replacement equipment may be included in the cost of construction.'' HUD adds a definition for ''limited rehabilitation,'' which is defined as ''additions, expansion, remodeling, renovation, modernization, repair, and alteration of existing buildings, including acquisition of new or replacement equipment in cases where the hard costs of construction and equipment are less than 20 percent of the mortgage amount.''

Refinancing: In this final rule, HUD is largely adopting the commenter's definition of ''refinancing.'' The final rule defines ''refinancing'' as the discharging of the existing capital debt of a hospital through entering into a new debt.

Eligible Hospitals (Section 242.4)

HUD's codified regulation in § 242.4, entitled ''Eligibility for insurance and transition provision,'' provides that a hospital to be financed with an FHA insured mortgage shall involve the construction of a new hospital or the substantial rehabilitation (or replacement) of an existing hospital. The proposed rule expanded eligibility for insurance to include ''refinancing of the capital debt of an existing hospital pursuant to section 223(f) of the NHA (Section 242/223(f)).''

At this final rule stage, HUD changes the heading of § 242.4 to read simply ''Eligible hospitals'' and revises the definition of eligible hospitals to accommodate the new definitions of ''limited rehabilitation,'' ''acquisition,'' and ''refinancing'' that are being added by this final rule.

Applications (Section 242.16)

HUD's existing regulation at § 242.16(a)(2)(ii) provides that hospitals with an average debt service coverage ratio of less than 1.25 in the three most recent audited years are not eligible for Section 242 insurance, unless HUD determines, based on the audited financial data, that the hospital has achieved a financial turnaround resulting in a debt service coverage ratio

[3] An interest rate swap is a derivative in which one party exchanges a stream of interest payments for another party's stream of cash flows. Interest rate swaps can be used by hedgers to manage their fixed or floating assets and liabilities. They can also be used by speculators to replicate unfunded bond exposures to profit from changes in interest rates. Interest rate swaps are very popular and highly liquid instruments.

[4] The common set of accounting principles, standards and procedures that companies use to compile their financial statements. GAAP are a combination of authoritative standards (set by policy boards) and simply the commonly accepted ways of recording and reporting accounting information.

of at least 1.40 in the most recent year.[5] Section 242.16(a)(2)(ii) further provides that, in cases of refinancing at a lower interest rate, HUD may authorize the use of the projected debt service requirement in lieu of the historical debt service in calculating the debt service coverage ratios for each of the prior 3 years. In cases where HUD authorizes the use of the projected debt service requirement in lieu of the historical debt service to determine the debt service coverage ratio, hospitals must have an average debt service coverage ratio of 1.40 or greater.

In implementing its Section 242/223(f) refinancing authority, HUD relied on the existing threshold factors in § 242.16(a)(2). HUD stated that to receive consideration for Section 242/223(f) refinancing, a hospital must meet two financial thresholds. First, the hospital must have a 3-year aggregate operating margin of at least zero percent and a 3-year average debt service coverage ratio of at least 1.40. Second, the hospital must demonstrate that its financial performance would be materially improved by refinancing its existing capital debt. The hospital must also demonstrate that it provides an essential healthcare service to the community in which it operates. The inclusion of these threshold factors to determine hospitals eligible for consideration for Section 242/223(f) refinancing was designed to assure that HUD is assisting those hospitals that merit serious consideration based on their financial strength and on need—theirs and that of the communities they serve.

In implementing its Section 242/223(f) refinancing authority, HUD took a conservative approach intended to attract those hospital applicants that already meet the minimum operating margin and debt service coverage ratios required for application approval under the current Section 242 program. Under the existing Section 242 regulations, HUD also looks at financial feasibility. As implemented for Section 242/223(f) refinancing, HUD established a threshold requirement to determine the hospital's need for refinancing that would not be available through nongovernmental sources. This threshold requirement would also screen out hospitals that would have little or no chance of having a formal application approved, based on their financial performance.

As noted earlier in this preamble, HUD revised, at this final rule stage, the structure of § 242.16 and in the discussion that follows strives to distinguish the applicable paragraph in the proposed rule and the redesignated paragraph in the final rule.

Comment: Calculation of operating margin excludes qualified applicants. A commenter stated that using a 3-year average to calculate the operating margin[6] and debt service coverage ratio has the potential to exclude well-qualified providers. The commenter stated that temporary declines in these ratios might be a direct result of the recent economic downturn and credit market crisis. The commenter suggested that many providers might need to exit a financing arrangement in which the interest rate has already increased substantially due to problems in the credit market, causing a decrease in operating margin and debt service coverage ratio. The commenter suggested that using a 5-year average would provide a more accurate picture of a hospital's performance and financial stability.

Another commenter stated that the recasting of debt service in proposed § 242.16(a)(3)(ii), which involves recalculating the operating margin and debt service coverage with a projected interest rate rather than the historical rate, should be a mandatory rather than an optional requirement to avoid the arbitrary application of this threshold limitation in the cases of otherwise eligible projects that would benefit under the new program.

HUD Response: With respect to the suggestion made by the first commenter, HUD recognizes that extending the time period to calculate the operating margin and debt service coverage may moderate vacillations caused by economic variability and interest rate fluctuations, but HUD finds a 3-year average to present a reasonable and preferred time frame for evaluating potential borrowers.

In response to the second commenter's concern, HUD has revised proposed § 242.16(a)(3)(iii) (now § 242.16(a)(3)(ii) in the final rule) to make the recasting mandatory rather than optional. It is HUD's position that the commenter's concern is addressed by the provision that if the operating margin and debt service coverage thresholds are not met, HUD will recast the operating margin and debt service coverage ratio for prior periods by using the estimated projected interest rate in lieu of the historical interest rate. HUD agrees that this will provide a uniform standard that will result in an equitable standard evaluation of the financial strength of the hospital.

Comment: More flexible screening criteria needed. A commenter suggested that HUD adopt more flexible threshold criteria. Specifically, the commenter stated that the requirement that hospitals meet three of seven benchmarks will prevent FHA from considering some meritorious applications that either narrowly miss some of the benchmarks, or that could establish legitimate financial need but under different criteria. The commenter requested that FHA consider accepting evidence that (1) the hospital provides access to essential health services, (2) the hospital has few alternative vehicles for affordable refinancing, and (3) the financial health of the hospital depends on refinancing.

HUD Response: The requirement that a hospital meet only three out of seven benchmarks provides considerable flexibility for a hospital to pass the threshold screening. In particular, potential program applicants should recognize that one of the seven benchmarks provides applicants with an opportunity to supplement their application with unique, specific materials to support their need for refinancing. Specifically, § 242.16(a)(3)(vi)(B)(7) of this final rule (§ 242.16(a)(3)(iv)(B)(7) of the proposed rule) states that ''there are other circumstances that demonstrate that the hospital's financial performance would be materially improved by refinancing its existing capital debt.''

However, to improve flexibility and to reduce the possibility that meritorious hospitals will be screened out, HUD has made the following changes:

Section 242.16(a)(3)(iv) in the proposed rule stated that ''The hospital must demonstrate that its financial health depends upon refinancing its existing capital debt * * *'' This requirement could be read to mean that the hospital must be in desperate financial trouble to qualify, which was not HUD's intent. Therefore, the wording of § 242.16(a)(3)(iv) in this final rule has been changed to: ''The hospital must document that * * * its financial performance would be materially improved by refinancing its existing capital debt.'' Where the same language appears in § 242.16(a)(3)(vi)(B))(7) of this final rule, the same change is made.

Section 242.16(a)(3)(iv)(B) in the proposed rule would have required the hospital to demonstrate that ''there are few alternative affordable financing

[5] Debt Service Coverage Ratio (DSC).The debt service coverage ratio measures a hospital's ability to pay interest and principal with cash generated from current operations. A high coverage ratio indicates that an institution is in a good financial position to meet its long-term obligations (including its FHA-insured loan) and service its debt. Higher values are preferable.

[6] Operating margin is the ratio of operating income divided by operating expense.

vehicles available to the hospital.'' HUD has retained this provision, with minor edits, and the provision is now found in § 242.16(a)(3)(vi)(A) of this final rule.

Section 242.16(a)(3)(iv)(B)(6) in the proposed rule would have required that ''The hospital is party to overly restrictive or onerous bond covenants.'' Because ''overly restrictive or onerous'' is not defined and could be interpreted as referring to only the very worst covenants (from a hospital's point of view), this wording has been replaced by the following: ''The hospital is party to bond covenants that are substantially more restrictive than the Section 242 mortgage covenants,'' and this provision is now in § 242.16(a)(3)(vi)(B)(6) in this final rule.

These changes will provide more flexibility to hospitals in meeting the threshold requirements while still indicating that the hospitals have a strong business need to refinance.

Comment: Expand the definition of service beyond health service. A commenter submitted that § 242.16(a)(3)(iv) of the proposed rule would have required HUD to determine that the hospital provide ''an essential service'' to a hospital's community. The commenter stated that an overly narrow interpretation of the undefined term ''service'' to apply only to medical considerations may inadvertently limit sponsor eligibility. The commenter stated that hospitals provide other significant community benefit services, such as employment, neighborhood stability, community health initiatives, and civic educational programs. Another commenter stated that hospitals in urban areas that serve discrete and insular communities, such as HIV or mental health patients, meet a special need. The commenter stated that closure of hospitals that treat these illnesses would create hardship for those sectors of the communities.

HUD Response: If a hospital ceases to operate and its community suffers no inadequacies in essential medical services as a result, there is good reason to believe that there was no market need for the hospital in the first instance. HUD has statutory authority to assist in the provision of urgently needed hospitals for the care and treatment of persons who are acutely ill or who otherwise require medical care and related services of the kind customarily furnished only (or most effectively) by hospitals. (See 12 U.S.C. 1715z–7(a).) Consistent with this authority, it is HUD's position that while hospitals provide other community benefits, the medical services provided by hospitals must be the focus in considering the need for a facility. Accordingly, in the proposed rule, HUD offered language in § 242.16(a)(3)(iv) consistent with the language in currently codified regulations in § 242.16(a)(1), *Market Need,* which emphasizes the healthcare services provided by the hospital. However, to eliminate any possible ambiguity, the final rule revises § 242.16(a)(3)(iv) to include the word ''healthcare'' before ''service'' and, therefore, confirm that the test of ''essential service'' applies to healthcare services.

Comment: Applicants should meet several of the threshold screening elements. A commenter suggested that a typographical correction is needed to insert an ''and'' after proposed § 242.16(a)(3)(iv)(B) and before § 242.16(a)(3)(iv)(C).

HUD Response: HUD agrees with the commenter and adopted the recommendation. However, in the final rule, the ''and'' is now found after 242.16(a)(3)(vi)(A) and before § 242.16(a)(3)(vi)(B). Inserting the word ''and'' clarifies that a hospital demonstrating that its financial health depends upon refinancing would have to document all elements of the threshold test rather than individual discrete elements. Specifically, the hospital would have to document that (1) the community would suffer from inadequate access to an essential service that the hospital provides, (2) there are few alternative financing vehicles, and (3) three of the additional seven criteria are met. Review of all of these elements will assure that there will be strong justifications for the refinancing.

Comment: Expand the covenant test to include the hospital system. A commenter stated that the concept of ''overly restrictive or onerous'' covenants in proposed § 242.16(a)(3)(iv)(C)(6) is appropriate in determining the need for refinancing, and suggested clarifications to cover situations in which a hospital is subject to such covenants as a member of a system and not independently.

HUD Response: Because ''overly restrictive or onerous'' is not defined and could be interpreted as referring to only the very worst covenants (from a hospital's point of view), this wording has been replaced by the following: ''The hospital is party to bond covenants that are substantially more restrictive than the Section 242 mortgage covenants,'' and this provision is now in § 242.16(a)(3)(vi)(B)(6) in this final rule.

Comment: Provide a separate threshold test for acquisitions. One commenter stated that the threshold requirements in proposed § 242.16(a)(3) provide guidance for determining the need for a ''refinancing.'' The commenter stated that its application to ''acquisitions'' requires clarification.

HUD Response: The same requirements that apply to the basic Section 242 program apply to acquisitions. Therefore, changes have been made in this final rule to clarify that the basic Section 242 program requirements apply to acquisitions. These clarifying amendments are made in the following sections: §§ 242.1, 242.4, 242.17, and 242.23 to reflect appropriate differences.

Comment: Market Need study requirements should be revised. Section 242.16(b)(5) of the proposed rule provided that the study of market need may not be required, subject to HUD's discretion, for an application for Section 242/223(f) mortgage insurance. However, HUD anticipated that, in most cases, this study would be required. In addition, although HUD may determine not to require a study of market need with respect to a Section 242/223(f) refinance transaction, HUD will always consider market need in the preliminary threshold requirement phase, as discussed in § 242.16(b)(5). In the proposed rule, HUD emphasized that market need varies from case to case.

A commenter stated that needy hospitals would be screened out because of the strong emphasis the threshold requirements put on the financial strength of a hospital. The commenter contended that the language demonstrates that the program is not focused on helping the most struggling hospitals, even though they are the hospitals most likely serving the neediest populations. The commenter suggested that the market need study should include a more detailed look at discrete, vulnerable populations.

HUD Response: HUD declines to adopt the commenter's recommendation. Section 242 is a mortgage insurance program, not a grant program. As an insurance program, there is a need to weigh the public benefit provided by a hospital facility against the risk that the hospital may not be able to meet its mortgage debt service obligations. While the program emphasizes market need, the program also emphasizes—and must—emphasize financial strength of the hospital.

Comment: Need analysis should address refinancing and hard costs. The proposed rule at § 242.16(b)(5) provides that a study of market need may be required in the case of a Section 242/223(f) refinancing. A commenter expressed recognition that a market need analysis for new construction projects is required, but submitted that a sponsor's compliance with the

threshold requirements under § 242.16(a)(3) should be sufficient to establish the need for the refinance portion of the project. The commenter recommended that HUD bifurcate its need analysis into two parts. The first inquiry would be the need for the refinancing portion, and the second would be the need for the ''hard costs'' portion of the project, if any. The commenter stated that, if the threshold requirements of § 242.16(a)(3) are satisfied, the hospital should be deemed to have satisfied the need requirement as to the refinance portion of the proposed project.

HUD Response: The assessment of market need should be consistent in the Section 242 program and not vary according to the amount of refinancing versus hard costs proposed for insured financing.

Section 242.16(d) was revised in this final rule to specify that an application for Section 242/223(f) mortgage insurance shall be on an approved FHA form submitted jointly by an approved mortgagee and the prospective mortgagor. HUD has determined, at this point, that specifying this requirement is not necessary, and that the current regulatory requirements are sufficient. The proposed revision eliminates the name of the HUD office that takes these applications in order to eliminate the need for future regulatory changes if the name of the office is revised.

Commitments (Section 242.17)

Section 242.17(a) (Issuance of Commitment) of the proposed rule included a new paragraph (a)(2) that provided, in the case of an application for Section 242/223(f) refinancing and where advances are not needed for funding any limited rehabilitation of the hospital, a commitment for insurance upon completion shall include the mortgage amount, interest rate, mortgage term, date of commencement of amortization, and other requirements pertaining to the mortgage.[7] The final rule retains new paragraph (a)(2) with a modification to accommodate inclusion of limited rehabilitation.

Section 242.17(a) provides for insurance of advances in cases where there is a need for advances to fund construction activities and the purchase of equipment. This type of insurance is provided for section 242 projects and section 242 projects insured pursuant to section 241of the NHA. Section 241 insures mortgage loans to finance repairs, additions, and improvements to multifamily rental housing and healthcare facilities with FHA-insured first mortgages or HUD-held mortgages. However, in section 242 projects insured pursuant to section 223(f), the circumstances of each case will determine whether the commitment will be for insurance of advances or insurance upon completion. In a pure refinancing or acquisition, or a refinancing with minor limited rehabilitation that can be funded from operations and cash reserves, there is no need for advances and the commitment will be for insurance upon completion. However, if a significant portion of the mortgage proceeds (subject to the 20 percent limitation) is to be used for limited rehabilitation, and the hospital cannot fund these from its own cash, then the commitment may provide for insurance of advances.

Comment: Require insurance upon completion when advances are not needed for construction. A commenter submitted that the proposed language in § 242.17(b) appeared somewhat inconsistent with the language of § 242.17(a)(2), which states: ''In the case of an application for Section 242/223(f) insurance where advances are not needed for funding any limited rehabilitation, a commitment for insurance upon completion will be issued.'' The commenter states that there is no provision for HUD discretion in § 242.17(a)(2), but there is allowance for HUD discretion in proposed in § 242.17(b), which provided HUD discretion for issuing the commitment. The commenter suggested that language of § 242.17(b) be revised to eliminate HUD discretion in those instances where insured advances are not needed for funding limited rehabilitation approved by HUD.

HUD Response: HUD agrees with the commenter and has added language to § 242.17(b) to clarify that HUD shall issue the commitment.

Comment: Make insurance upon completion available for acquisitions. A commenter suggested that HUD clarify in § 242.17(b) that the option of insurance upon completion should be made available for acquisition as well as refinancing transactions. The commenter suggested that an advantage of insurance upon completion is that it could potentially enable a determination to be made in advance of loan closing that the FHA-insured loan will qualify for Real Estate Mortgage Investment Conduit (REMIC) securitization and the lower interest rates that REMIC status provides. The commenter suggested that this potential advantage should be made available for acquisition as well as refinancing transactions.

HUD Response: As a result of the commenter's suggestion, HUD has reexamined its proposed rule language. HUD agrees that the option of insurance upon completion should, consistent with HUD's statutory authority, be expanded beyond refinancing transactions to acquisition transactions.[8] Accordingly, HUD has revised the commitment language in § 242.17 to cover acquisitions. A corresponding change is also made in paragraph (b) of § 242.39 (Insurance Endorsement). HUD is refraining from commenting on the impact of these changes for REMIC eligibility of the insured loans as interpretation of the tax code does not fall within HUD's statutory authority.

Inspection Fee (Section 242.18)

The proposed rule included an amendment to § 242.18 to provide that, in the case of mortgages insured under Section 242/223(f), the inspection fee shall be paid at endorsement, as provided in § 242.39, which is discussed below. In the traditional Section 242 program, the inspection fee is generally 50 basis points on all loans. This fee covers such activities as review of architectural plans and specifications, and periodic inspection during construction. For applicants seeking refinancing only, an inspection fee that would involve generally no more than a site visit by HUD architects and engineers will not exceed 10 basis points on the loan.

Comment: Pay the inspection fee no later than the time of initial endorsement. A commenter suggested that the inspection fee be paid no later than the time of initial endorsement because many projects involve precommitment or early start of construction work.

HUD Response: HUD agrees with this recommendation. The language change is consistent with FHA's current procedures. FHA currently charges an inspection fee if precommitment or early start work is undertaken prior to initial endorsement.

Comment: Modify the inspection fee to account for hard costs. A commenter

[7] *Note* that since there is an existing paragraph (a)(2) in § 242.17, the existing paragraph ((a)(2)) and the paragraphs that follow will be redesignated accordingly). This rule amends § 242.17(b) (Type of Commitment) to provide that in the case of a commitment for Section 242/223(f) insured refinancing, the commitment will provide for insurance upon completion.

[8] Section 223(f)(1) of the National Housing Act provides that ''Notwithstanding any of the provisions of this Act, the Secretary is authorized, in his discretion, to insure under any section of this title a mortgage executed in connection with * * * the purchase or refinancing of existing debt of an existing hospital (or existing nursing home, existing assisted living facility, existing intermediate care facility, existing board and care home, or any combination thereof).'' (12 U.S.C. 1715n(f).).

stated that the proposed language in § 242.18 limits the inspection fee amount only in connection with projects which have no applicable hard costs. The commenter suggested that this would mean that the full 50 basis point inspection fee would otherwise apply, even if the hard costs were minimal; e.g., 1 percent of the commitment amount. The commenter suggested that an additional inspection fee, if any, should be based on the amount of actual hard costs exclusive of equipment, calculated at five dollars per thousand dollars of the hard costs.

HUD Response: HUD agrees that the inspection fee should better reflect the portion of the mortgage amount that will be used for hard costs. In the basic Section 242 program, in which hard costs must amount to 20 percent or more of the mortgage amount, the maximum inspection fee of 50 basis points is routinely charged. For a pure refinancing with zero hard costs, the proposed rule set a maximum inspection fee at 10 basis points (reflecting that even with no hard costs, the facility must be inspected to assess its condition). HUD has determined that where hard costs are between zero and 20 percent, an inspection fee that is between 10 and 50 basis points would be reasonable, and accordingly is including a schedule in the final rule. However, HUD does not agree to exclude the cost of equipment from ''hard costs.'' Equipment is included in ''hard costs'' for the basic Section 242 program and equipment should also be included for refinancing. Major medical equipment has implications for facility design, and can complicate review of plans and construction. Accordingly, HUD has revised the inspection fees to correlate with hard costs.

Maximum Mortgage Amounts and Cash Equity Requirements (Section 242.23)

One of the key changes proposed to the regulations in 24 CFR part 242 is the change proposed to § 242.23, which establishes the maximum mortgage amounts and cash equity amounts for mortgages insured under Section 242/223(f). The proposed rule revised the maximum mortgage amount to provide that the amount would not exceed the cost to refinance the existing indebtedness as defined in § 242.23. The final rule adopts this language but revises this formula to coordinate those provisions with the new definitions.

Comment: Modify the financing terms to coordinate with the new definitions. Section 242.23(a) and new paragraphs (b) and (c) identified the amounts that would be included in the Section 242/223(f) loan. A commenter stated that further clarification was needed to coordinate those provisions with the definitions that commenters proposed be included in the final rule. (Please see earlier discussion under ''Definitions'' of Section IV of the preamble, in which commenters recommended that the final rule define additional terms such as ''acquisition,'' ''capital debt,'' and ''refinancing.'')

HUD Response: HUD agrees with the commenter's general concerns, and has revised applicable definitions to specify potential costs in § 242.23(a), which establishes the adjusted mortgage amount for rehabilitation projects, and § 242.23 (b), which establishes the adjusted mortgage amount for refinancing and acquisitions.

This final rule revises paragraph (a) of § 242.23 to reflect the definition of the new term ''capital debt'' and revises new paragraph (b) of § 242.23, which was included in the proposed rule to reflect new terminology defined in this rule. In this final version, language has been added to paragraph (b), which uses new definitions for ''soft costs'' and replaces ''indebtedness'' with ''capital debt'' in the list of items that will provide the total mortgage amount in a rehabilitation project with an existing mortgage. Paragraph (b) is further revised in the final rule to cover acquisitions, and address the categories of hard and soft costs.

Mortgage Lien Certifications (Section 242.35)

This section requires the mortgagor to notify HUD in writing of unpaid liens prior to initial or final endorsement of the mortgage note. Although the proposed rule did not contain a revision to this section, the final rule modifies the mortgagor's responsibilities to include notification of liens in conection with limited rehabilitation, which term is defined by this final rule.

Insurance Endorsement (Section 242.39)

The final rule amends § 242.39 to divide this regulatory section into two main parts. The existing section is designated as paragraph (a) and entitled ''New Construction/Substantial Rehabilitation.'' A new paragraph (b), entitled ''Section 242/223(f) Refinancing/Acquisition,'' is proposed to be added to address the Section 242/223(f) process. The Section 242/223(f) process, as presented in the proposed rule, provided that, in cases that do not involve advances of mortgage proceeds, endorsement shall occur after all relevant terms and conditions have been satisfied, including, if applicable, completion of any limited rehabilitation, or upon assurance acceptable to the FHA that all required limited rehabilitation will be completed by a date certain following endorsement. Proposed new paragraph (b) provided that, in cases where advances of mortgage proceeds are used for limited rehabilitation, endorsement shall occur as described in § 242.39(a) (Insurance Endorsement) for the initial endorsement for new construction/substantial rehabilitation.

The final rule adopts these provisions, with modifications to include the new categories of definitions and to address the commenter's concerns about insurance upon completion described in the following section.

Comment: Make the option of insurance upon completion available for acquisition. As noted previously under the comments to § 242.17(b), a commenter suggested that the final rule clarify that the option of insurance upon completion of any rehabilitation should be made available for acquisition as well as refinancing transactions. The commenter stated that an advantage of insurance upon completion is that it could potentially enable a determination to be made, in advance of loan closing, that the FHA-insured loan will qualify for REMIC securitization and the lower interest rates that REMIC provides. The commenter stated that this potential advantage should be made available for acquisition as well as refinancing transactions.

HUD Response: HUD agrees that there is no reason to limit the option of insurance upon completion to refinancing transactions. Therefore, in this final rule, HUD has revised this regulatory section, as was § 242.17, to include acquisitions. These changes do not address the commenter's statements regarding REMIC eligibility as interpretation of the tax code is not within HUD's statutory authority.

Early Commencement of Work (Section 242.45)

Comment: Remove the 2-year aging requirement. A commenter submitted that in § 242.45 (Early Commencement of Work), the requirement that existing capital debt be at least 2 years old is a serious threshold impediment to many hospitals that need, and would otherwise be eligible for, Section 242/223(f) refinancing. The commenter suggested language that, if added to § 242.45(b), would allow hospitals with construction less than 2 years old to apply for mortgage insurance on the same basis as hospitals whose structures are more than 2 years old.

The commenter stated that they had no disagreement with the basic purpose of § 242.45(b), which was initially

implemented by HUD in connection with its sections 221(d)(4)/223(f) and 232/223(f) multifamily and skilled nursing programs. The commenter stated that it understood that HUD's rationale was to preclude projects that were intentionally constructed with conventional short-term bank financing in order to avoid prevailing wage, inspections, and other federal construction requirements from using a section 223(f) loan as a source of refunding the sponsor's conventional financing with long-term FHA fixed rate debt.

The commenter suggested that hospitals that had and have no intention of avoiding HUD construction requirements should not be restricted. The commenter stated that any conclusion to the contrary would directly conflict with the proposed rule's public purpose to ''contribute to alleviating financial stress on hospitals and maintaining the availability of hospitals in many communities.'' The commenter submitted that conditioning eligibility on the 2-year rule developed for an entirely different fact pattern would contravene this intention.

The commenter stated that the FHA Commissioner has waived a similar requirement in the multifamily housing program to address the lack of refinancing alternatives in the current marketplace.[9] The commenter suggested extending a similar policy to hospitals where a hospital can demonstrate that there was no attempt to circumvent federal requirements.

HUD Response: HUD declines to adopt the commenter's recommendation. The change would encourage developers to build facilities with conventional short-term bank financing in order to avoid prevailing wage, inspections, and other federal construction requirements, then attempt to refinance their short-term debt with long-term FHA-insured financing. The commenter suggests that only applicants who had no intention of avoiding the federal requirements would be allowed. HUD should not be put in the difficult, if not impossible, position of judging intent. It is HUD's position that if a hospital can demonstrate that it has no access to capital—so that the hospital may refinance to lower its debt-service burden and secure permanent long term financing—other than an FHA insured loan, the hospital may request a waiver of § 242.45(b) in connection with its request for a preliminary review. Addressing these situations with waivers allows HUD to assess the unique circumstances presented by a hospital and make a determination whether granting of a waiver would be appropriate.

Labor Standards (Section 242.55)

Comment: Remove the Davis-Bacon requirements for refinancing. The January 29, 2010, rule proposed an amendment to § 242.55(c) to reflect that the labor standards referenced in that regulatory section, Davis-Bacon requirements, were applicable to a refinancing loan under section 223(f) of the NHA. The commenter proposed that financing be provided if the mortgagor provides a certification or other evidence that construction was undertaken in good faith without intent to avoid any requirement of section 242.

HUD Response: HUD determined that Davis-Bacon requirements were presently inapplicable to limited rehabilitation in connection with refinancing and, accordingly, is removing this language in the final rule.

Leasing of Hospital (Section 242.72)

Comment: Establish an Operating Lease Ownership structure to meet REMIC requirements. A commenter stated that in cases where insurance of advances is needed for a project (whether in the basic Section 242 new construction/substantial rehabilitation program or with respect to Section 242/223(f) refinancing or acquisition) the existing regulations prevent HUD from implementing a solution that would permit the insured loans to become REMIC eligible.

The commenter stated that the so-called ''80 percent test'' of the Internal Revenue Service provides that, as of loan origination, the value of real property securing the FHA-insured loan must be at least equal to 80 percent of the loan amount. The commenter stated that the problem is that, with insurance of advances, there is a time lag between the date of initial endorsement and the date upon which the certification of costs of improvements funded with loan advances becomes incontestable (final endorsement), during which time the value of the underlying real property can change. The commenter stated that since one cannot be assured as of the initial endorsement date whether the loan will be in compliance at the later final endorsement date, the REMIC sponsor will not provide a pricing commitment to the FHA lender reflective of REMIC eligibility and the lender in turn cannot pass on the benefit of REMIC pricing to the hospital borrower.

The commenter suggested an ''alternative test'' for REMIC securitization which would provide that an obligation ''is principally secured by an interest in real property if substantially all of the proceeds of the obligation were used to acquire or to improve or protect an interest in real property that, at the origination date, is the only security for the obligation* * *''

The commenter suggested that FHA-insured loans could qualify under the alternative test if § 242.72 would permit a hospital to separate ownership of real property from non-real property (i.e., equipment). The commenter stated that this would involve an operating lease ownership structure where substantially all of the section 242 or section 242/223(f) loan proceeds would be used for financing real estate owned by the mortgagor and for improvements made to real estate. The commenter stated that the operator, not the mortgagor, would own the hospital equipment used in operating the hospital. The commenter stated that no non-real estate assets would be pledged as security for the loan, nor would any loan proceeds be used to pay for non-real estate costs.

HUD Response: HUD declined to adopt the commenter's recommendations. Limiting security to real estate assets would expose FHA to unacceptable risk of loss in the event of an insurance claim. Accordingly, there is no change § 242.72 as currently codified in the CFR.

Eligibility of Refinancing Transactions (Section 242.91)

The proposed rule amended § 242.91 to consolidate existing § 242.91 into a new paragraph (a) and to add a new paragraph (b) to provide that a mortgage given to refinance the debt of an existing hospital under section 242 of the NHA could be insured pursuant to section 223(f) of the NHA. The proposed new paragraph (b) also provided that a mortgage could be executed in connection with the purchase or refinancing of an existing hospital without substantial rehabilitation. In addition, new paragraph (b) provided that the FHA Commissioner should prescribe such terms and conditions as the Commissioner deemed necessary to assure that: (1) the refinancing is employed to lower the monthly debt service costs (taking into account any fees or charges connected with such refinancing) of such existing hospital; (2) the proceeds of any refinancing would be employed only to: (a) Retire the existing indebtedness; (b) pay for limited rehabilitation totaling less than 20 percent of the mortgage amount; and

[9] Copies of these documents and other HUD notices are available on HUD's Web page *http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/notices/hsg.*

(c) pay the necessary cost of refinancing on such existing hospital; (3) such existing hospital is economically viable; and (4) the applicable requirements of section 242 for certificates, studies, and statements have been met.

In response to comments submitted on this regulatory section, HUD made several revisions at the final rule stage, as described in this discussion of § 242.91.

Comment: Revise the calculation of debt service costs. One commenter suggested three additions to provide details on the calculation of the monthly debt service cost savings required by § 242.91(b)(1). First, the commenter suggested that HUD exclude the monthly debt service on the new 242/223(f) insured loan attributable to any new hard costs included in the insured loan. Second, the commenter suggested that HUD consider additional factors that will predictably increase monthly debt service on the loan to be refinanced above the monthly payment in effect at the time of the commitment, such as default interest rates upon the expiration of any credit enhancement facility. Third, the commenter suggested that, if the existing capital debt to be refinanced consists of more than one loan, the determination of debt service cost savings take into account the weighted average of the monthly debt service payments of the loans to be refinanced.

HUD Response: HUD notes that the commenter's second point is addressed elsewhere in the regulations. HUD declines to adopt the commenter's other suggestions. Namely, § 242.16(a)(3) already provides that refinancing candidates demonstrate that the interest rate is very likely to increase by one percentage point within one year of the date of application. Although they do not appear unreasonable, HUD has determined that the issues concerning exclusion of the monthly debt service on the new 242/223(f) insured loan attributable to hard costs and issues related to refinancing multiple loans should be addressed in subsequent guidance. Accordingly, this section has only been revised from the proposed regulation to reflect the newly adopted definitions of capital debt and limited rehabilitation.

V. Applicability of Revised Part 242 Regulations

This final rule, when issued and in effect, will apply to applications submitted for Section 242/223(f) refinancing authority following the effective date of the rule.

VI. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

With respect to Executive Order 12866, this rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of the Executive Order (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order). The final rule will not have costs, benefits, or transfers greater than $100 million.

As discussed in this preamble, this rule revises the regulations governing FHA's Section 242 Hospital Mortgage Insurance Program for the purpose of codifying, in regulation, FHA's implementation of its authority that allows hospitals to refinance existing loans and provide for acquisitions, without requiring such actions only in conjunction with the expenditure of funds for construction or renovation. The section 223(f) is not designed for the entire industry of 5,000 hospitals. The pool of applicants is limited by eligibility restrictions. At the time the proposed rule was published on January 29, 2010 (75 FR 4964), industry experts estimated that FHA would receive from 25 to 40 applications during the first year that Section 242/223(f) refinancing was offered. In fact, FHA received only 15 preliminary stage applications, and most of those were eliminated based on a failure of the hospital to meet the threshold requirements in Section 242. FHA issued only one insurance commitment for Section 242/223(f) refinancing in the amount of $29 million.

For this final rule, HUD expects the rule to result in a $1.26 million transfer per year, per hospital, and if refinancing is provided to over 10 hospitals, the aggregate annual impact is $12.59 million. A multiyear scenario, in which the number of participants increases to 17, yields an aggregate annualized transfer to hospitals of $17.63 million by the third year of the program. HUD estimates that this program will raise net receipts of the Federal Government by $79 million (from $79 million to $158 million). Costs of the rule include up-front application costs, which may be as high as $870,000 per applicant but which are likely to be much lower given that non-FHA insured lenders impose transaction costs as well. HUD does not have enough information to quantify or evaluate the opportunity costs or distortionary effects of the program

With respect to Executive Order 13563, HUD is offering needed refinancing authority to hospitals without FHA-insured loans. By offering this product to such hospitals, the hospitals are able to reduce their capital costs by refinancing into a lower interest rate loan through the proposed program. The opportunity to refinance to lower interest rates can also make the difference of whether a hospital can continue operating in the community it serves. The opportunity for an FHA-insured loan to refinance existing debt can reduce a hospital's probability for default and possible foreclosure and thereby also reduce the social welfare loss, in healthcare services and in jobs that result from foreclosure.

The complete regulatory impact analysis (also referred to as a cost-benefit analysis) is published at *www.regulations.gov* along with this final rule, under docket number FR–5334–F–02.

The docket file is available for public inspection at *www.regulations.gov* under docket number FR–5334–F–02.

Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted for review and approval by OMB under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The information collection requirements for the Hospital Mortgage Insurance (Section 242) program are assigned OMB control number 2502–2602. The information collection requirements in this final rule do not introduce new information collection requirements but make modifications to existing requirements to reflect the inclusion of regulatory text to provide refinancing for hospitals without existing FHA-insured mortgages. The sections in this rule that contain the current information collection requirements and the estimated adjusted

time to fulfill each requirement that is affected by this rule are set forth in the following table. The following table includes only the revisions to burden hours affected by the codification of the changes to HUD's regulations included in this rule to implement Section 223(f) refinancing and acquisition for hospitals.

Recently, HUD conducted a review of the paperwork burden associated with the hospital mortgage insurance program. As a result of that review, there were changes to the number of respondents, frequency of response, burden hours per response, and hourly cost per response for many data collection items affecting various aspects of the program. HUD believes that the changes lead to a much more realistic estimate of burden hours. A modified supporting statement incorporating the results of HUD's review shows, for the same assumed annual volume of 15 Section 242 applications, 74,825 annual burden hours for an annual cost of $7,471,875. This modified estimate of burden hours and cost became the new baseline against which program changes, or changes in program volume, were assessed.

This final rule contains provisions that increase the number of applications for Section 242 refinancing. HUD expects initially to insure five Section 242/223(f) loans per year, increasing application volume from 15 to 20, and is changing some forms and procedures. When the modified estimates of burden hours and cost are applied to the additional volume, the results are 98,819 burden hours for an annual cost of $9,882,200. These are the numbers that appear in the modified Supporting Statement OMB Number 2502–0602 that HUD has submitted for OMB approval. These information collection documents can be found at *http://www.reginfo.gov/public/do/PRAMain.*

The difference between the 15 applications and the 20 applications is an additional *23,994* burden hours and *$2,410,325* in cost. This is the PRA impact of introducing Section 223(f) refinancing and acquisition loans as part of the Section 242 hospital mortgage insurance program and processing five additional Section 242/223(f) applications per year.

CFR Section (related forms referenced)	Respondent universe (mortgages)	Total annual responses*	Average time per response** (hours)	Total annual burden hours**
Subpart B—Application Procedures and Commitments				
242.16. Applications—Prepare full application for hospital mortgage insurance. (HUD–92013–HOSP)	20	20	4,664	93,280
242.17. Commitments—Review HUD insurance commitment. Negotiate desired changes with HUD, and accept commitment. (HUD–92453, HUD–92432, HUD–92580)	20	40	18	720
Subpart C—Mortgage Requirements				
242.35. Mortgage lien certifications. Paragraph (d) requires the mortgagor to notify HUD in writing of all unpaid obligations in connection with the mortgage transaction, among other things. (Information is provided to HUD in a letter, not a form)	20	40	1	40
Subpart D—Endorsement for Insurance				
242.39 Request final endorsement (HUD–92023)	20	20	1.5	30

*The total annual response assumes15 Section 242 loans (including Section 241 supplemental loans and Section 223(a)(7) refinancing loans) and 5 Section 223(f) refinancing or acquisition loans.

**The average response times for the sections of the rule are based on a review of recent program applications. The resulting increases in total annual burden hours reflect the adjusted average response time and the increase in the loan volume of five additional loans due to 223(f).

All estimates include the time for reviewing instructions, searching existing data sources, gathering or maintaining the needed data, and reviewing the information.

The docket file is available for public inspection. For information or a copy of the submission to OMB, contact Colette Pollard at 202–708–0306 (this is not a toll free number) or via email at *Colette.Pollard@hud.gov.*

In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI remains applicable to this final rule and is available for public inspection at *www.regulations.gov* under docket number FR–5334–F–02.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule would not impose a federal mandate on any state, local, or tribal government or on the private sector, within the meaning of UMRA.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) 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. At the proposed rule stage, HUD certified that this rule, if issued in final, would not have a significant economic impact on a substantial number of small entities, within the meaning of the Regulatory Flexibility Act (See 75 FR 4969). HUD continues to stand by its findings on this issue.

This final rule will expand the availability of financing for hospitals and healthcare facilities, both large and small, by FHA's offer of Section 242/

223(f) refinancing. HUD defines a small hospital entity similar to the definition used by the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, as a hospital of 50 or fewer beds. As noted earlier in this preamble, hospitals, large or small, are eligible for Section 242/223(f) refinancing. HUD has approached development of its eligibility for section 223(f) refinancing to take into consideration criteria that all hospitals, large or small, can meet. The basis for FHA's implementation of its refinancing authority, as has been discussed in this preamble, is to assist hospitals that provide valuable services needed by the communities in which they are located, and for which other refinancing sources are not available. It is HUD's position that the criteria presented in this rule strikes the appropriate balance.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 242 to read as follows:

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

■ 1. The authority citation for 24 CFR part 242 is revised to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715n(f), and 1715u; 42 U.S.C. 3535(d).

■ 2. In § 242.1, definitions for ''acquisition,'' ''capital debt,'' ''hard costs,'' ''limited rehabilitation,'' ''refinancing,'' ''Section 242/223(f), and ''soft costs,'' are added in alphabetical order, and the definitions of ''construction,'' ''project,'' and ''substantial rehabilitation'' are revised to read as follows:

§ 242.1 Definitions.

* * * * *

Acquisition means the purchase by an eligible mortgagor of an existing hospital facility and ancillary property associated therewith.

* * * * *

Capital debt means the outstanding indebtedness used for the construction, rehabilitation, or acquisition of the physical property and equipment of a hospital, including those financing costs approved by HUD.

* * * * *

Construction means the creation of a new or replacement hospital facility, the substantial rehabilitation of an existing facility, or the limited rehabilitation of an existing facility. The cost of acquiring new or replacement equipment may be included in the cost of construction.

* * * * *

Hard costs means the costs of the construction and equipment, including construction-related fees such as architect and construction manager fees.

* * * * *

Limited rehabilitation means additions, expansion, remodeling, renovation, modernization, repair, and alteration of existing buildings, including acquisition of new or replacement equipment, in cases where the hard costs of construction and equipment are less than 20 percent of the mortgage amount.

* * * * *

Project means the construction (which may include replacement of an existing hospital facility), or the substantial or limited rehabilitation of an eligible hospital, including equipment, which has been proposed for approval or has been approved by HUD under the provisions of this subpart, including the financing and refinancing, if any, plus all related activities involved in completing the improvements to the property. However, in particular closing documents, ''project'' may be used to mean the mortgagor entity, the operation of the mortgagor, the facility, or all of the mortgaged property, depending on the context in which the term ''project'' is used.

* * * * *

Refinancing means the discharging of the existing capital debt of a hospital through entering into new debt.

* * * * *

Section 242/223(f) refers to a loan insured under Section 242 of the Act pursuant to Section 223(f) of the Act.

* * * * *

Soft costs means reasonable and customary legal, organizational, consulting, and such other costs associated with effecting the proposed project and its financing or refinancing, including, but not limited to, interest capitalized during construction; permanent financing fees; initial service charge; tax; title and recording expenses; special tax assessments; AMPO; insurance costs during construction; FHA fees and charges, including application, commitment, and inspection fees; mortgage insurance premium for advances during construction; prepayment penalties associated with retiring the hospital's existing bonds; and termination costs for interest rate protection facilities that are integrated into the original financing, as applicable.

Substantial rehabilitation means additions, expansion, remodeling, renovation, modernization, repair, and alteration of existing buildings, including acquisition of new or replacement equipment, in cases where the hard costs of construction and equipment are equal to or greater than 20 percent of the mortgage amount.

* * * * *

■ 3. In § 242.4, the section heading and paragraph (a) are revised to read as follows:

§ 242.4 Eligible hospitals.

(a) The hospital to be financed with a mortgage insured under this part shall involve the construction of a new hospital, the substantial rehabilitation (or replacement) of an existing hospital, the limited rehabilitation of an existing hospital, the acquisition of an existing hospital, or the refinancing of the capital debt of an existing hospital pursuant to Section 223(a)(7) or Section 223(f).

* * * * *

■ 4. Section 242.15 revised to read as follows:

§ 242.15 Limitation on refinancing existing indebtedness.

(a) Some existing capital debt may be refinanced with the proceeds of a section 242-insured loan; however, the hard costs of construction and equipment must represent at least 20 percent of the total mortgage amount.

(b) In the case of a loan insured under Section 242/223(f), there is no requirement for hard costs. However, if there are hard costs, such costs must total less than 20 percent of the total mortgage amount.

■ 5. Amend § 242.16 as follows:

■ a. Revise paragraph (a)(2)(ii), redesignate paragraphs (a)(3) through (a)(5) as (a)(4) through (a)(6), and add new paragraph (a)(3).

■ b. Revise redesignated paragraph (a)(6) introductory text.

■ c. Revise paragraphs (b (3), (5), and (6) and paragraph (d) to read as follows:

§ 242.16 Applications.

(a) * * *

(2) * * *

(ii) Hospitals with an average debt service coverage ratio of less than 1.25 in the 3 most recent audited years are not eligible for Section 242 insurance, unless HUD determines, based on the audited financial data, that the hospital has achieved a financial turnaround resulting in a debt service coverage ratio of at least 1.4 in the most recent year. In cases of refinancing at a lower interest rate, HUD may authorize the use of the projected debt service requirement in lieu of the historical debt service in calculating the debt service coverage ratios for each of the prior 3 years. In cases where HUD authorizes the use of the projected debt service requirement in lieu of the historical debt service to determine the debt service coverage ratio, hospitals must have an average debt service coverage ratio of 1.4 or greater.

(3) *Threshold requirements—refinancing candidates.* For an application to be considered for refinancing pursuant to Section 223(f), a hospital must meet the following requirements in lieu of those described in paragraph (a)(2) of this section:

(i) The hospital must have an aggregate operating margin and average debt service coverage ratio as follows:

(A) The hospital must have an aggregate operating margin of at least zero percent, when calculated from the three most recent annual audited financial statements.

(B) The hospital must have an average debt service coverage ratio of at least 1.4 when calculated from the three most recent annual audited financial statements; or

(ii) If the requirements of paragraphs (a)(3)(i)(A) and/or (B) of this section are not satisfied, HUD will recast the operating margin and debt service coverage ratio for prior periods by applying its estimate of the projected interest rate at the time the mortgage is expected to close in lieu of the historical interest rate(s).

(iii) In performing the calculations called for in paragraphs (a)(3)(i)(A) and (B) of this section, if HUD finds that performance in one of the three years was affected by exceptional, one-time events that substantially altered financial performance, HUD may calculate the three-year performance based on the four most recent years with the unusual year omitted.

(iv) The hospital must document that it provides an essential healthcare service to the community in which it operates and that its financial performance would be materially improved by refinancing its existing capital debt.

(v) The hospital may show that it provides an essential healthcare service to the community in which it operates by submitting an analysis quantifying how the community in which it presently operates would suffer from inadequate access to an essential healthcare service that the hospital presently provides if the hospital were no longer in operation.

(vi) The hospital may show that its financial performance would be materially improved by providing documentation of the following:

(A) There are limited comparable affordable refinancing vehicles available to the hospital; and,

(B) The hospital meets three of the following seven criteria:

(*1*) The proposed refinancing would reduce the hospital's total operating expenses by at least 0.25 percent;

(*2*) The interest rate of the proposed refinancing would be at least 0.5 percentage points less than the interest rate on the debt to be refinanced;

(*3*) The interest rate on the debt that the hospital proposes to refinance has increased by at least one percentage point at any time since January 1, 2008, or is very likely to increase by at least one percentage within one year of the date of application;

(*4*) The hospital's annual total debt service is in excess of 3.4 percent of total operating revenues, based on its most recent audited financial statement;

(*5*) The hospital has experienced a withdrawal or expiration of its credit enhancement facility, or the lender providing its credit enhancement facility has been downgraded, or the hospital can demonstrate that one of these events is imminent;

(*6*) The hospital is party to bond covenants that are substantially more restrictive than the Section 242 mortgage covenants; and

(*7*) There are other circumstances that demonstrate that the hospital's financial performance would be materially improved by refinancing its existing capital debt.

* * * * *

(6) *Preapplication meeting.* The next step in the application process is the preapplication meeting (this step is optional, at HUD's discretion, in Section 242/223(f) cases). At HUD's discretion, this meeting may be held at HUD Headquarters in Washington, DC, or at another site agreeable to HUD and the potential applicant. The preapplication meeting is an opportunity for the potential mortgagor to summarize the proposed project and refinancing, if any; for HUD to summarize the application process; and for issues that could affect the eligibility or underwriting of the project to be identified and discussed to the extent possible. Following the meeting, HUD may:

* * * * *

(b) * * *

(3) A description of the project, the business plan of the hospital, and how the project will further that plan, or, for applications pursuant to Section 223(f), a description of any limited rehabilitation to be financed with mortgage proceeds and how that limited rehabilitation will affect the hospital;

* * * * *

(5) A study of market need and financial feasibility, addressing the factors listed in paragraphs (a)(1)(ii) and (a)(2), or (a)(3) of this section, (whichever applies), with assumptions and financial forecast clearly presented. The study should be prepared by a certified public accounting firm acceptable to HUD. In the case of an application for Section 242/223(f) mortgage insurance, the study may not be required to address market need and there may be no requirement for involvement of a certified public accounting firm;

(6) Architectural plans and specifications in sufficient detail to enable a reasonable estimate of cost (not applicable to a Section 242/223(f) application, except when architectural plans and specifications are requested by HUD);

* * * * *

(d) *Filing of application.* An application for insurance of a mortgage on a project shall be submitted on an approved FHA form, by an approved mortgagee and by the sponsors of such project, to FHA.

* * * * *

■ 6. In § 242.17, paragraphs (a)(2), (a)(3), (a)(4), and (a)(5) are redesignated as paragraphs (a)(3), (a)(4), (a)(5), and (a)(6) respectively, a new paragraph (a)(2) is added. and paragraph (b) is revised to read as follows:

§ 242.17 Commitments.

(a) * * *

(2) In the case of an application for Section 242/223(f) insurance where advances are not needed for funding any limited rehabilitation: a commitment for insurance upon completion, reflecting the mortgage amount, interest rate, mortgage term, date of commencement of amortization, and other requirements

pertaining to the mortgage and to any limited rehabilitation;

* * * * *

(b) *Type of commitment.* The commitment will provide for the insurance of advances of mortgage funds during construction. In the case of a commitment for Section 242/223(f) insured refinancing or acquisition financing of an existing hospital, the commitment shall provide for insurance upon completion unless insured advances are needed for funding any limited rehabilitation approved by HUD, in which case the commitment shall provide for insurance of advances.

* * * * *

■ 7. Section 242.18 is revised to read as follows:

§ 242.18 Inspection fee.

(a) The commitment may provide for the payment of an inspection fee in an amount not to exceed $5 per thousand dollars of the commitment. The inspection fee shall be paid no later than the time of initial endorsement.

(b) In the case of mortgages where the applicant is seeking only refinancing or acquisition, the inspection fee will not exceed 10 basis points on the loan. For applicants seeking a loan for refinancing or acquisition that also involves limited rehabilitation, the commitment shall provide for an inspection fee according to the following schedule:

Hard cost % of mortgage amount	Inspection fee limit (basis points)
Less than 5%	10
5% or greater but less than 10%	20
10% or greater but less than 15%	30
15% or greater but less than 20%	40
20% or greater	50

■ 8. In § 242.23, paragraph (a)(2)(ii) is revised, paragraphs (b) and (c) are redesignated as (c) and (d) respectively, and new paragraph (b) is added to read as follows:

§ 242.23 Maximum mortgage amounts and cash equity requirements.

(a) * * *

(2) * * *

(ii) Such portion of the capital debt as does not exceed 90 percent of HUD's estimate of the fair market value of such land and improvements prior to substantial rehabilitation.

* * * * *

(b) *Section 242/223(f) refinancing and acquisition—additional limits.* (1) In addition to meeting the requirements of § 242.7, if the hospital's existing capital debt is to be refinanced by the insured mortgage (i.e., without a change in ownership or with the hospital sold to a purchaser who has an identity of interest as defined by the Commissioner with the seller), the maximum mortgage amount must not exceed the cost to refinance the existing indebtedness, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(i) The amount required to pay off the existing capital debt;

(ii) The estimated hard costs, if any, totaling less than 20 percent of the mortgage amount; and

(iii) Soft costs that would normally be allowable in a Section 242 insured loan.

(2) In addition to meeting the requirements of § 242.7, if mortgage proceeds are to be used for an acquisition, the maximum mortgage amount must not exceed the cost to acquire the hospital, which will consist of the following items, the eligibility and amounts of which must be determined by the Commissioner:

(i) The actual purchase price of the land and improvements or HUD's estimate (prior to repairs, renovation, and/or equipment replacement) of the fair market value of such land plus the replacement cost of improvements, whichever is the lesser;

(ii) The estimated hard costs, if any, totaling less than 20 percent of the mortgage amount; and

(iii) Soft costs that would normally be allowable in a Section 242 insured loan.

* * * * *

■ 9. In § 242.35, paragraph (d) is revised to read as follows:

§ 242.35 Mortgage lien certifications.

* * * * *

(d) The mortgagor has notified HUD in writing of all unpaid obligations in connection with the mortgage transaction, the purchase of the mortgaged property, the construction, limited rehabilitation, or substantial rehabilitation of the project, or the purchase of the equipment financed with mortgage proceeds.

■ 10. Section 242.39 is revised to read as follows:

§ 242.39 Insurance endorsement.

(a) *New construction/substantial rehabilitation.* Initial endorsement of the mortgage note shall occur before any mortgage proceeds are insured, and the time of final endorsement shall be as set forth in paragraph (a)(2) of this section.

(1) *Initial endorsement.* The Commissioner shall indicate the insurance of the mortgage by endorsing the original mortgage note and identifying the section of the Act and the regulations under which the mortgage is insured and the date of insurance.

(2) *Final endorsement.* When all advances of mortgage proceeds have been made and all the terms and conditions of the commitment have been met to HUD's satisfaction, HUD shall indicate on the original mortgage note the total of all advances approved for insurance and again endorse such instrument.

(b) *Section 242/223(f) refinancing/acquisition.* (1) In cases that do not involve advances of mortgage proceeds, endorsement shall occur after all relevant terms and conditions have been satisfied, including, if applicable, completion of any limited rehabilitation, or upon assurance acceptable to the Commissioner that all limited rehabilitation will be completed by a date certain following endorsement.

(2) In cases where advances of mortgage proceeds are used to fund limited rehabilitation, endorsement shall occur as described in paragraph (a) of this section immediately above, for new construction/substantial rehabilitation.

(c) *Contract rights and obligations.* The Commissioner and the mortgagee or lender shall be bound from the date of initial endorsement by the provisions of the Contract of Mortgage Insurance stated in subpart B of part 207, which is hereby incorporated by reference into this part.

■ 11. In § 242.49, paragraph (a) is revised to read as follows:

§ 242.49 Funds and finances: deposits and letters of credit.

(a) *Deposits.* Where HUD requires the mortgagor to make a deposit of cash or securities, such deposit shall be with

the mortgagee or a depository acceptable to the mortgagee and HUD. Any such deposit shall be held in a separate account for and on behalf of the mortgagor, and shall be the responsibility of that mortgagee or depository.

* * * * *

■ 12. In § 242.55, paragraph (c) is revised to read as follows:

§ 242.55 Labor standards.

* * * * *

(c) Each laborer or mechanic employed on any facility covered by a mortgage insured under this part (except under 24 CFR 242.91), but including a supplemental loan under section 241 of the Act made in connection with a loan insured under this part) shall receive compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in any workweek in excess of 8 hours in any workday or 40 hours in the workweek.

* * * * *

■ 13. Section 242.91 is revised to read as follows:

§ 242.91 Eligibility of refinancing transactions.

(a) *Refinancing an FHA-insured mortgage.* A mortgage given to refinance an existing insured mortgage under Section 241 or Section 242 of the Act covering a hospital may be insured under this subpart pursuant to Section 223(a)(7) of the Act. Insurance of the new, refinancing mortgage shall be subject to the following limitations:

(1) *Principal amount.* The principal amount of the refinancing mortgage shall not exceed the lesser of:

(i) The original principal amount of the existing insured mortgage; or

(ii) The unpaid principal amount of the existing insured mortgage, to which may be added loan closing charges associated with the refinancing mortgage, and costs, as determined by HUD, of improvements, upgrading, or additions required to be made to the property.

(2) *Debt service rate.* The monthly debt service payment for the refinancing mortgage may not exceed the debt service payment charged for the existing mortgage.

(3) *Mortgage term.* The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that the new mortgage may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which HUD determines that the insurance of the mortgage for an additional term will inure to the benefit of the FHA Insurance Fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, and the remaining economic life of the property.

(4) *Minimum loan amount.* The mortgagee may not require a minimum principal amount to be outstanding on the loan secured by the existing mortgage.

(b) *Refinancing capital debt not insured by FHA.* A mortgage given to refinance the capital debt of an existing hospital that is not insured under section 241 or section 242 of the Act may be insured under this subpart pursuant to Section 223(f) of the National Housing Act. The mortgage may be executed in connection with the purchase or refinancing of an existing hospital without substantial rehabilitation. A mortgage insured pursuant to this subpart shall meet all other requirements of this part. The FHA Commissioner shall prescribe such terms and conditions as the FHA Commissioner deems necessary to assure that:

(1) The refinancing is employed to lower the monthly debt service costs (taking into account any fees or charges connected with such refinancing) of such existing hospital;

(2) The proceeds of any refinancing will be employed only to retire the existing capital debt; pay for limited rehabilitation totaling less than 20 percent of the mortgage amount; and pay the necessary cost of refinancing on such existing hospital;

(3) Such existing hospital is economically viable; and

(4) The applicable requirements of Section 242 for certificates, studies, and statements have been met.

Dated: January 29, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–02404 Filed 2–4–13; 8:45 am]

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H.R. 152/P.L. 113–2
Making supplemental appropriations for the fiscal year ending September 30, 2013, to improve and streamline disaster assistance for Hurricane Sandy, and for other purposes. (Jan. 29, 2013; 127 Stat. 4)

Last List January 23, 2013

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