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Presidential Documents

Title 3—

The President

Proclamation 8693 of July 24, 2011

Suspension of Entry of Aliens Subject to United Nations Security Council Travel Bans and International Emergency Economic Powers Act Sanctions

By the President of the United States of America

A Proclamation

In light of the firm commitment of the United States to the preservation of international peace and security and our obligations under the United Nations Charter to carry out the decisions of the United Nations Security Council imposed under Chapter VII, I have determined that it is in the interests of the United States to suspend the entry into the United States, as immigrants or nonimmigrants, of aliens who are subject to United Nations Security Council travel bans as of the date of this proclamation. I have further determined that the interests of the United States are served by suspending the entry into the United States, as immigrants or nonimmigrants, of aliens whose property and interests in property have been blocked by an Executive Order issued in whole or in part pursuant to the President's authority under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*).

NOW, THEREFORE, I, BARACK OBAMA, by the authority vested in me as President by the Constitution and the laws of the United States of America, including section 212(f) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1182(f)), and section 301 of title 3, United States Code hereby find that the unrestricted immigrant and nonimmigrant entry into the United States of persons described in section 1 of this proclamation would be detrimental to the interests of the United States. I therefore hereby proclaim that:

Section 1. The entry into the United States, as immigrants or nonimmigrants, of the following persons is hereby suspended:

(a) Any alien who meets one or more of the specific criteria for the imposition of a travel ban provided for in a United Nations Security Council resolution referenced in Annex A to this proclamation.

(b) Any alien who meets one or more of the specific criteria contained in an Executive Order referenced in Annex B to this proclamation.

Sec. 2. Persons covered by section 1 of this proclamation shall be identified by the Secretary of State or the Secretary's designee, in his or her sole discretion, pursuant to such standards and procedures as the Secretary may establish.

Sec. 3. The Secretary of State shall have responsibility for implementing this proclamation pursuant to such procedures as the Secretary, in consultation with the Secretary of the Treasury and Secretary of Homeland Security, may establish.

Sec. 4. Section 1 of this proclamation shall not apply with respect to any person otherwise covered by section 1 where entry of the person into the United States would not be contrary to the interests of the United States, as determined by the Secretary of State. In exercising the functions and authorities in the previous sentence, the Secretary of State shall consult

the Secretary of Homeland Security on matters related to admissibility or inadmissibility within the authority of the Secretary of Homeland Security.

Sec. 5. Nothing in this proclamation shall be construed to require actions that would be inconsistent with the United States obligations under applicable international agreements.

Sec. 6. This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 7. This proclamation is effective immediately and shall remain in effect until such time as the Secretary of State determines that it is no longer necessary and should be terminated, either in whole or in part. Any such termination shall become effective upon publication in the *Federal Register*.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of July, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

Billing code 3195–W1–P

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6) UNSCR 1844 (2008) (concerning Somalia): http://www.un.org/sc/committees/751/
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9) UNSCR 1929 (2010) (concerning Iran): http://www.un.org/sc/committees/1737/
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1) Executive Order 12947 of January 23, 1995 (Prohibiting Transactions With Terrorists Who Threaten to Disrupt the Middle East Peace Process), as amended by Executive Order 13099 of August 20, 1998 (Prohibiting Transactions With Terrorists Who Threaten to Disrupt the Middle East Peace Process)
2) Executive Order 12978 of October 21, 1995 (Blocking Assets and Prohibiting Transactions With Significant Narcotics Traffickers)
3) Executive Order 13067 of November 3, 1997 (Blocking Sudanese Government Property and Prohibiting Transactions With Sudan)
4) Executive Order 13219 of June 26, 2001 (Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans), as amended by Executive Order 13304 of May 28, 2003 (Termination of National Emergencies With Respect to Yugoslavia and Modification of Executive Order 13219 of June 26, 2001)
5) Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), as amended by Executive Order 13268 of July 2, 2002 (Termination of Emergency With Respect to the Taliban and Amendment of Executive Order 13224 of September 23, 2001)
6) Executive Order 13288 of March 6, 2003 (Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe), as amended by Executive Order 13391 of November 22, 2005 (Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe)
7) Executive Order 13310 of July 28, 2003 (Blocking Property of the Government of Burma and Prohibiting Certain Transactions)
8) Executive Order 13315 of August 28, 2003 (Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions), superseded in part by Executive Order 13350 of July 29, 2004 (Termination of Emergency Declared in Executive Order 12722 With Respect to Iraq and Modification of Executive Order 13290, Executive Order 13303, and Executive Order 13315)
9) Executive Order 13338 of May 11, 2004 (Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria), as amended by Executive Order 13460 of February 13, 2008 (Blocking Property of Additional Persons in Connection With the National Emergency With Respect to Syria)
10) Executive Order 13348 of July 22, 2004 (Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia)
11) Executive Order 13382 of June 28, 2005 (Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters)
12) Executive Order 13396 of February 7, 2006 (Blocking Property of Certain Persons Contributing to the Conflict in Côte d'Ivoire)

13) Executive Order 13399 of April 25, 2006 (Blocking Property of Additional Persons in Connection With the National Emergency With Respect to Syria)
14) Executive Order 13400 of April 26, 2006 (Blocking Property of Persons in Connection With the Conflict in Sudan's Darfur Region)
15) Executive Order 13405 of June 16, 2006 (Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus)
16) Executive Order 13412 of October 13, 2006 (Blocking Property of and Prohibiting Transactions With the Government of Sudan)
17) Executive Order 13413 of October 27, 2006 (Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo)
18) Executive Order 13438 of July 17, 2007 (Blocking Property of Certain Persons Who Threaten Stabilization Efforts in Iraq)
19) Executive Order 13441 of August 1, 2007 (Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions)
20) Executive Order 13448, of October 18, 2007 (Blocking Property and Prohibition Certain Transactions Related to Burma)
21) Executive Order 13460 of February 13, 2008 (Blocking Property of Additional Persons in Connection With the National Emergency With Respect to Syria)
22) Executive Order 13464 of April 30, 2008 (Blocking Property and Prohibiting Certain Transactions Related to Burma)
23) Executive Order 13469 of July 25, 2008 (Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe)
24) Executive Order 13536 of April 12, 2010 (Blocking Property of Certain Persons Contributing to the Conflict in Somalia)
25) Executive Order 13551 of August 30, 2010 (Blocking Property of Certain Persons With Respect to North Korea)
26) Executive Order 13566 of February 25, 2011 (Blocking Property and Prohibiting Certain Transactions Related to Libya)
27) Executive Order 13572 of April 29, 2011 (Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria)
28) Executive Order 13573 of May 18, 2011 (Blocking Property of Senior Officials of the Government of Syria)
29) Executive Order 13581 of July 24, 2011 (Blocking Property of Transnational Criminal Organizations)

[FR Doc. 2011–19155
Filed 7–26–11; 8:45 am]
Billing code 4710–10–C

Presidential Documents

Executive Order 13581 of July 24, 2011

Blocking Property of Transnational Criminal Organizations

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, find that the activities of significant transnational criminal organizations, such as those listed in the Annex to this order, have reached such scope and gravity that they threaten the stability of international political and economic systems. Such organizations are becoming increasingly sophisticated and dangerous to the United States; they are increasingly entrenched in the operations of foreign governments and the international financial system, thereby weakening democratic institutions, degrading the rule of law, and undermining economic markets. These organizations facilitate and aggravate violent civil conflicts and increasingly facilitate the activities of other dangerous persons. I therefore determine that significant transnational criminal organizations constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and hereby declare a national emergency to deal with that threat.

Accordingly, I hereby order:

Section 1. (a) All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order and

(ii) any person determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State:

(A) to be a foreign person that constitutes a significant transnational criminal organization;

(B) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order; or

(C) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the types of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by subsection (a) of this section.

(c) The prohibitions in subsection (a) of this section include, but are not limited to:

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

(d) The prohibitions in subsection (a) of this section apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 2. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 3. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term ''foreign person'' means any citizen or national of a foreign state, or any entity organized under the laws of a foreign state or existing in a foreign state, including any such individual or entity who is also a United States person; and

(e) the term ''significant transnational criminal organization'' means a group of persons, such as those listed in the Annex to this order, that includes one or more foreign persons; that engages in an ongoing pattern of serious criminal activity involving the jurisdictions of at least two foreign states; and that threatens the national security, foreign policy, or economy of the United States.

Sec. 4. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1(a) of this order.

Sec. 5. The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA, as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of the NEA (50 U.S.C. 1641(c)) and section 204(c) of IEEPA (50 U.S.C. 1703(c)).

Sec. 7. The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, is hereby authorized to determine that

circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 8. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 9. This order is effective at 12:01 a.m. eastern daylight time on July 25, 2011.

THE WHITE HOUSE,
July 24, 2011.

Billing code 3195–W1–P

ANNEX

Entities

1. THE BROTHERS' CIRCLE (f.k.a. FAMILY OF ELEVEN; f.k.a. THE TWENTY)
2. CAMORRA
3. YAKUZA (a.k.a. BORYOKUDAN; a.k.a. GOKUDO)
4. LOS ZETAS

[FR Doc. 2011–19156
Filed 7–26–11; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 76, No. 144
Wednesday, July 27, 2011

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

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.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD94

Remittance Transfers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Interim final rule with request for comments.

SUMMARY: NCUA is amending its rules to conform to amendments made to the Federal Credit Union Act (FCU Act) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The interim final rule adds remittance transfers, as now defined under the Electronic Fund Transfer Act (EFTA), as an example of money transfer instruments Federal credit unions (FCUs) may provide to persons within their fields of membership.

DATES: This interim final rule is effective July 27, 2011. Comments must be received by NCUA on or before September 26, 2011.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Interim Final Rule, Part 701, Remittance Transfers'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Chrisanthy Loizos, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

In 2006, the Financial Services Regulatory Relief Act of 2006 (Reg Relief Act), Public Law 109–351, relieved a longstanding limitation on FCUs regarding financial services. Specifically, Section 503 of the Relief Act amended the FCU Act to permit FCUs to provide certain financial services to all persons within their fields of membership. Congress intended to allow FCUs ''to sell negotiable checks, money orders, and other similar transfer instruments, including international and domestic electronic fund transfers, to anyone eligible for membership, regardless of their membership status.'' S. Rpt. 109–256, p. 5; H. Rpt. 109–356 Part 1, p. 63. To implement this authority, NCUA created a new regulatory section to address the provision of financial services to persons within an FCU's field of membership and issued § 701.30 to implement Section 503. 71 FR 62875 (Oct. 27, 2006) (interim final rule); 72 FR 7927 (Feb. 22, 2007) (final rule).

Section 1073 of the Dodd-Frank Act added a new Section 919 to the EFTA, entitled ''Remittance Transfers.'' Public Law 111–203, § 1073, 124 Stat. 2066 (2010). The new Section 919 of the EFTA creates protections for consumers who, through remittance transfer providers, send money to designated recipients located in foreign countries. 15 U.S.C. 1693o–1. Paragraph (d) of Section 1073 of Dodd-Frank amended the FCU Act to specify that a remittance transfer, as defined by new Section 919 of the EFTA, is an example of a money transfer instrument that FCUs may sell to persons within their fields of membership. 12 U.S.C. 1757(12)(A).

Section 919(g)(2) of the EFTA, defines a remittance transfer as an electronic transfer of funds requested by a sender to a designated recipient that is initiated by a remittance transfer provider, regardless of whether the sender has an account with the remittance transfer provider or whether the transfer meets the statute's definition of an EFT. 15 U.S.C. 1693o–1(g)(2). The law excludes small value transactions from the definition. Remittance transfers, typically consumer to consumer payments, may be executed through a variety of means, including international wire transfers, international automated clearing house transactions, other account-to-account or account-to-cash products, and reloadable prepaid cards. The law requires remittance transfer providers to give consumers certain disclosures, including a receipt that contains remittance transfer fees, the exchange rate to be used by the remittance transfer provider, the amount of currency to be received by the recipient and the estimated date of delivery. In addition, the law requires the sender to receive a statement that addresses error resolution rights. The Federal Reserve Board's recently proposed remittance transfer rule, which addresses disclosure requirements and error resolution, provides a detailed analysis of the services offered by remittance transfer providers. 99 FR 29902 (May 23, 2011).

FCUs have had the authority to transfer funds at the request of consumers within their fields of membership to recipients internationally since the adoption of the Reg Relief Act. The amendment to the FCU Act's powers provision by the Dodd-Frank Act makes plain that FCUs may offer all variations of remittance transfers, as now defined by the EFTA, for the benefit of consumers within their fields of membership, subject to certain consumer protections. The addition of remittance transfers as an example of permissible money transfer instruments, in addition to the newly-enacted consumer disclosures and rights, demonstrate the clear intention of Congress to promote access to remittance transfers and ensure protections for consumers.

Finally, Section 1073(d) of the Dodd-Frank Act adjusted Section 107(12) of the FCU Act by removing the reference to the receipt of international and domestic EFTs from subparagraph (B). As explained below, this simply eliminates a redundancy and does not affect the ability of FCUs to offer EFT services.

II. Summary of the Rule

Similarly to the rulemakings that implemented Section 503 of the Reg Relief Act, the NCUA Board (Board) is adopting amendments to § 701.30 that directly track the statutory provisions of Section 1073 of the Dodd-Frank Act. The Board amends paragraph (a) of § 701.30 to include remittance transfers as defined by Section 919 of the EFTA as an example of permissible money transfer instruments. The Board also makes a corresponding amendment to paragraph (b) to remove the language referring to an FCU's receipt of international and domestic EFTs.

The Board notes the amendment to § 701.30(b) will have no effect on FCUs. The Board views the deletion of the phrase ''and receive international and domestic electronic fund transfers'' from the Section 107(12)(B) of the FCU Act as a housekeeping amendment.

When adopting the phrase in Section 107(12)(B) through the Reg Relief Act, Congress simply clarified the authority it granted to FCUs in Section 107(12)(A). 12 U.S.C. 1757(12). Section 903 of the EFTA defines ''electronic fund transfer'' as ''any transfer of funds * * * initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.'' 15 U.S.C. 1693a(6); *see also* 12 CFR 205.3(b). By expressly authorizing FCUs ''to sell'' international and domestic EFTs in Section 107(12)(A) of the FCU Act, Congress permitted FCUs to send or receive funds upon instruction because, by definition, EFTs are authorizations to debit or credit an account. To read the power ''to sell'' EFT services separately from the ability to ''receive'' EFTs would be wholly inconsistent with Congressional intent to provide EFT services to persons in the field of membership, particularly for those who may not have ready and affordable access to these services. It would also be unfeasible for an FCU to offer consumers the ability to initiate transfers from their accounts but not receive EFTs. As discussed above, Congress clearly intended to promote the availability of services to consumers under Section 1073 of the Dodd-Frank Act by explicitly referencing remittance transfers services. The amendment to FCU Act Section 107(12)(B) was not meant to restrict or otherwise limit an FCU's ability to effectively provide services to consumers.

III. Interim Final Rule

As with the initial rulemaking adopting § 701.30, the Board is issuing this rulemaking as an interim final rule because there is a strong public interest in having advantageous and consumer-oriented rules that enhance credit union services for members and consumers. The amendments of Section 1073 of the Dodd-Frank Act are self-implementing. The rule strictly conforms to the statutory language and expressly recognizes FCU authority to provide remittance transfers to persons within their fields of membership, subject to new consumer protections. The Board finds these reasons are good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the Administrative Procedure Act. Accordingly, the Board finds that, pursuant to 5 U.S.C. 553(b)(3), notice and public procedures are unnecessary and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule will be effective upon publication in the **Federal Register.** Although the rule is being issued as an interim final rule and is effective upon publication, the Board encourages interested parties to submit comments.

IV. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule only clarifies and improves the available services FCUs may provide to their members and persons within their fields of membership, without imposing any regulatory burden. The interim final amendments would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the interim final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget. 44 U.S.C. 3501 *et seq.;* 5 CFR part 1320.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The interim final rule would not have substantial direct effects on the states, on the connection between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this interim final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (SBREFA), provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA. 5 U.S.C. 551. NCUA has requested a SBREFA determination from the Office of Management and Budget, which is pending. As required by SBREFA, NCUA will file the appropriate reports with Congress and the General Accounting Office so that the interim rule may be reviewed.

Agency Regulatory Goal

NCUA's goal is to promulgate clear and understandable regulations that impose minimal regulatory burden. We request your comments on whether the proposed amendments are understandable and minimally intrusive if implemented as proposed.

List of Subjects in 12 CFR Part 701

Credit unions.

By the National Credit Union Administration Board on July 21, 2011.

Mary Rupp,

Secretary of the Board.

For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR part 701 as set forth below:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767,1782, 1784, 1786, 1787, and 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3619. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.30 [Amended]

■ 2. Amend § 701.30 as follows:

■ a. Add to paragraph (a) the phrase ''and remittance transfers, as defined in section 919 of the Electronic Fund Transfer Act'' after the words ''electronic fund transfers.''

■ b. Remove the phrase ''and receiving international and domestic electronic fund transfers'' after the words ''money orders'' from paragraph (b).

[FR Doc. 2011–18930 Filed 7–26–11; 8:45 am]

BILLING CODE 7535–01–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

12 CFR Chapter XIII and Part 1320

RIN 4030–AA01

Authority To Designate Financial Market Utilities as Systemically Important

AGENCY: Financial Stability Oversight Council.

ACTION: Final rule.

SUMMARY: Section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''DFA'') provides the Financial Stability Oversight Council (the ''Council'') the authority to designate a financial market utility (''FMU'') that the Council determines is or is likely to become systemically important because the failure of or a disruption to the functioning of the FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the United States financial system. This final rule describes the criteria that will inform and the processes and procedures established under the DFA for the Council's designation of FMUs as systemically important under the DFA. The Council published an advance notice of proposed rulemaking regarding the designation criteria in section 804 on December 21, 2010, followed by a notice of proposed rulemaking (''NPRM'') on March 28, 2011. The Council notes that this final rule only addresses the designation of FMUs. The Council expects to address the designation of payment, clearing, or settlement activities as systemically important in a separate rulemaking.

DATES: *Effective date:* August 26, 2011.

FOR FURTHER INFORMATION CONTACT: Lance Auer, Deputy Assistant Secretary (Financial Institutions), Treasury, at (202) 622–1262, Patrick Pinschmidt, Senior Policy Advisor, Treasury, at (202) 622–2495, Jordan Bleicher, Financial Analyst, Treasury, at (202) 622–6491 or Steven D. Laughton, Senior Counsel, Office of the General Counsel, Treasury, at (202) 622–8413.

SUPPLEMENTARY INFORMATION:

I. Background

Dodd-Frank Wall Street Reform and Consumer Protection Act

Title VIII of the DFA is entitled the ''Payment, Clearing, and Settlement Supervision Act of 2010.'' [1] FMUs form a critical part of the nation's financial infrastructure. They exist in many markets to support and facilitate the transfer, clearing or settlement of financial transactions, and their smooth operation is integral to the soundness of the financial system and the overall economy. However, their function and interconnectedness also concentrate a considerable amount of risk in the financial system due, in large part, to the interdependencies, either directly through operational, contractual or affiliation linkages, or indirectly through payment, clearing, and settlement processes. In other words, problems at one FMU could trigger significant liquidity and credit disruptions at other FMUs or financial institutions.

Section 804(a)(1) of the DFA states that the Council, ''on a nondelegable basis and by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.'' Subject to certain exclusions, the DFA defines an FMU as ''any person that manages or operates a multilateral system for the purposes of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person.'' [2]

Section 111 of the DFA establishes the Council. Among the duties of the Council under section 112(a)(2) is to ''identify systemically important FMUs,'' as defined in the statute.[3] Section 804 of the DFA requires the Council, after consultation with the Board of Governors of the Federal Reserve System (the ''Board of Governors'') and the relevant federal agency that has primary jurisdiction over an FMU under federal banking, securities, or commodity futures laws (''Supervisory Agency''), to identify and designate an FMU that is, or is likely to become, systemically important if the Council determines that a failure of or disruption to an FMU could create, or increase, the risk of significant liquidity or credit problems spreading across financial institutions and markets and thereby threaten the stability of the U.S. financial system.[4]

The designation of an FMU as systemically important by the Council subjects the designated FMU to the requirements of Title VIII of the DFA (''Title VIII''). For example, section 805(a) authorizes the Board of Governors, the Commodity Futures Trading Commission (''CFTC''), and the Securities and Exchange Commission (''SEC''), in consultation with the Council and one or more Supervisory Agencies and taking into consideration relevant international standards and existing prudential requirements, to prescribe risk management standards governing the operations related to the payment, clearing, and settlement activities of systemically important FMUs.[5] The objectives and principles for the risk management standards are to promote robust risk management and safety and soundness, reduce systemic risk, and support the stability of the broader financial system.[6] These standards may address areas, as outlined in section 805(c), such as risk management policies and procedures, margin and collateral requirements, participant or counterparty default policies and procedures, the ability to complete timely clearing and settlement of financial transactions, capital and financial resource requirements for designated FMUs, as well as other areas that are necessary to achieve these

[1] 12 U.S.C. 5461 *et seq.*

[2] *See* 12 U.S.C. 5462(6). Section 5462(6)(B) specifically excludes a number of entities, such as designated contract markets and national securities exchanges meeting certain criteria, from the definition of an FMU.

[3] *See* 12 U.S.C. 5322(a)(2)(J).

[4] Section 804(a)(1) of the DFA states that the Council, ''on a nondelegable basis and by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson of the Council, shall designate those financial market utilities or payment, clearing, or settlement activities that the Council determines are, or are likely to become, systemically important.'' 12 U.S.C. 5463(a)(1). *See also* DFA section 803(9) (defining systemic importance). 12 U.S.C. 5462(9).

[5] *See* 12 U.S.C. 5464(a).

[6] *See* 12 U.S.C. 5464(b).

objectives and principles.[7] Designation also subjects the FMU to additional examinations and reporting requirements, as well as potential enforcement actions. In addition, as set forth in section 806(a), the Board of Governors may authorize a Federal Reserve Bank to establish and maintain an account for a designated FMU and provide the services listed in section 11A(b) of the Federal Reserve Act to the designated FMU.[8]

Designation of Financial Market Utilities: Overview of the Proposed Rule

In March 2011, the Council issued, and requested public comment on, an NPRM that included the analytical framework that the Council would use to determine whether an FMU should be designated as systemically important in accordance with Title VIII.[9] As noted in the NPRM, section 804(a)(2) of the DFA provides that, in determining whether an FMU should be designated as systemically important, the Council must consider:

A. The aggregate monetary value of transactions processed by the FMU;

B. The aggregate exposure of the FMU to its counterparties;

C. The relationship, interdependencies, or other interactions of the FMU with other FMUs or payment, clearing or settlement activities;

D. The effect that the failure of or a disruption to the FMU would have on critical markets, financial institutions, or the broader financial system; and

E. Any other factors that the Council deems appropriate.[10]

Under the approach described in the NPRM, the Council would evaluate FMUs under each of the four specific statutory considerations, as well as any other factors the Council deems relevant, using quantitative metrics where possible and appropriate. Informed by data collected with respect to each statutory consideration, the Council would use its judgment to determine whether an FMU should be designated as systemically important and thus subject to the relevant heightened risk management standards prescribed by the Board of Governors, the SEC, or the CFTC. Any determinations of the Council would ultimately be based on an evaluation of whether the failure or disruption of the FMU could pose a threat to the financial stability of the U.S. financial system as described in DFA section 803(9).[11]

The NPRM indicated that the Council expected to use the statutory considerations discussed above as the base line criteria for assessing an FMU's systemic importance, regardless of the type of payment, clearing or settlement activities that the FMU is engaged in. However, the NPRM also stated that the application of the statutory considerations would be adapted for the risks presented by a particular type of FMU and business model. For example, the metrics that are best suited for assessing the systemic importance of a central counterparty will likely differ from the metrics used to assess the importance of an interbank payment system. In light of such differences, the Council will apply metrics in a manner that is appropriate to a specific FMU or market segment.[12]

In addition, the NPRM sets out a two-stage process for evaluating the systemic importance of an FMU prior to a vote of proposed designation by the Council. The first stage would consist of a largely data-driven process for the Council, working with its committees, to identify a preliminary set of FMUs, whose failure or disruption could potentially threaten the stability of the U.S. financial system.[13] In the second stage, the FMUs identified through the first stage would be subject to a more in-depth review, with a greater focus on qualitative factors, in addition to institutional and market specific considerations. If an FMU reached the second stage of the evaluation process, the Council would notify the FMU under consideration and provide the FMU with an opportunity to submit written materials to the Council in support of or in opposition to designation as outlined in proposed rule section 1320.11. In the case of a proposed designation of systemic importance, an FMU would be notified and given the opportunity to request a written or oral hearing before the Council to demonstrate that the proposed determination is not supported by substantial evidence as outlined in proposed rule section 1320.12. Following this hearing, the Council would complete its considerations and carry out its final vote and notification to the FMU.[14]

Overview of the Public Comments

The Council received 15 comments in response to the NPRM—including submissions from industry groups, clearinghouses, retail payment systems and other financial institutions [15]—addressing a wide variety of issues. Commenters submitted suggestions regarding the substantive criteria for designation, including the relevance of certain considerations to various types of FMUs operating across different markets, quantitative designation thresholds and other matters related to the description of potential metrics to be used by the Council, as outlined in the NPRM. With respect to the designation process, commenters made recommendations regarding the ability of an FMU to apply for designation or rescission, the periodic reevaluation of designated and non-designated FMUs, Council communication to FMUs, the collection of information from FMUs, deadlines for FMUs to request hearings and submit information, Council voting procedures, and the confidentiality of proceedings, notifications and information gathered by the Council. Several commenters addressed potential designations of FMUs operating ''retail payment systems,'' with some arguing that the final rule should categorically exclude, or contain a presumption against, the designation of retail payment systems, and others recommending designation of at least some retail payment systems. Commenters also suggested that, given the global nature of payment, clearing and settlement flows, the designation framework should account for international regulatory oversight and standards. Specific comments are discussed in more detail in the relevant portions of the section-by-section analysis.

II. Final Rule

Overview

After considering the comments, the Council has adopted a final rule to implement section 804 of the DFA. The final rule is substantially similar to the proposed rule, maintaining the two-stage designation process and the key considerations and the subcategories for

[7] *See* 12 U.S.C. 5464(c).

[8] *See* 12 U.S.C. 5465(a).

[9] Authority To Designate Financial Market Utilities as Systemically Important, 76 FR 17047 (March 28, 2011).

[10] 12 U.S.C. 5463(a)(2).

[11] Authority To Designate Financial Market Utilities as Systemically Important, 76 FR at 17055.

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] Comments were received from: Americans for Financial Reform, the American Bankers Association, American Express, Better Markets, Robert Brasell, the Committee on Capital Markets Regulation, the Council of Institutional Investors, LCH.Clearnet Group Limited, MasterCard Worldwide, the National Automated Clearing House Association, Sun Hong Rie, The Clearing House Association L.L.C. and The Clearing House Payments Company L.L.C., The Depository Trust & Clearing Corporation, The Financial Services Roundtable, and The Options Clearing Corporation.

designation. However, the application of certain subcategories and illustrative metrics have been moved from stage one to stage two and the Council has added procedural provisions affording FMUs the right to an after-the-fact hearing following the Council's waiver or modification of a notice, hearing, or other requirement.[16] A summary of the key provisions of the rule, highlighting certain portions of the designation process and analytical criteria, is provided below. This summary is followed by a section-by-section analysis of key sections of the regulatory text, relevant comment letters, and changes to the proposed rule.

The Council expects to use a two-stage process for evaluating FMUs prior to a vote of proposed designation. The first stage will consist of a largely data-driven process for the Council to identify a preliminary set of FMUs, whose failure or disruption could potentially threaten the stability of the U.S. financial system. In the second stage, the FMUs identified through the first stage of review will be subject to a more in-depth review, with a greater focus on qualitative factors, in addition to other institution and market specific considerations.

The Council's analytical framework, which was summarized in the NPRM, is outlined below. As discussed in more detail in the section-by-section analysis, metrics referenced herein are offered for purposes of illustration and their application will vary by specific market or institution. If information for a specific metric described below is not available or is not relevant to an FMU under consideration, the Council may consider an alternate or substitute metric for which information is available or which the Council considers more relevant. In appropriate cases, the Council may exclude a metric from consideration for a particular FMU. The Council may revise the metrics as new data become available and as the process for evaluating FMUs for designation evolves.

Analytical Framework: Stage One

The Council is establishing subcategories to further address the specific statutory considerations that are set forth in section 804(a)(2) of the DFA. These subcategories are substantively similar to those contained in the proposed rule. Certain subcategories and associated metrics are described below to illustrate how the considerations will be taken into account in assessing systemic importance.

Consideration (A): Aggregate Monetary Value of Transactions Processed by an FMU

- Subcategory (A)(1): Number of transactions processed, cleared or settled by the FMU

Within subcategory (A)(1), examples of the types of metrics that the Council may consider include daily average [17] and historical peak gross volumes processed, cleared or settled.

- Subcategory (A)(2): Value of transactions processed, cleared or settled, by the FMU

Within subcategory (A)(2), examples of the types of metrics that the Council may consider include daily average and historical peak gross values processed, cleared or settled.

- Subcategory (A)(3): Value of other financial flows that may flow through an FMU

Within subcategory (A)(3), the Council may consider the daily average and historical peak value of variation margin, as well as the change in average daily and peak daily initial margin.

Consideration (B): Aggregate Exposure of an FMU to Its Counterparties

- Subcategory (B)(1): Credit exposures [18] to counterparties

Within subcategory (B)(1), the Council may consider the use of metrics that measure the average aggregate daily value and peak aggregate dollar value of collateral (before or after haircut) posted to the FMU; average daily and peak aggregate intraday credit provided by an FMU to participants; and the mean and peak daily value of initial margin held by an FMU.

- Subcategory (B)(2): Liquidity exposures to counterparties

Within subcategory (B)(2), the Council may consider measures of the estimated peak liquidity need in the case of the default of the largest single counterparty to the FMU and the average and peak daily aggregate dollar value of pay outs by an FMU to its counterparties.

Consideration (C): Relationship, Interdependencies, or Other Interactions of an FMU With Other FMUs or Payment, Clearing or Settlement Activities

Within consideration (C), the Council may consider metrics that measure the relationships and interdependencies of an FMU, including those that measure interactions of an FMU with different participants, such as systemically important financial and/or nonfinancial companies, central banks, or other payment, clearing or settlement systems, with trading platforms (such as exchanges and alternative trading systems), and with the market environment more generally, including contractual relationships, that support the operations of an FMU.

Consideration (D): Effect That the Failure of or Disruption to an FMU Would Have on Critical Markets, Financial Institutions or the Broader Financial System

- Subcategory (D)(1): Role of an FMU in the market served

Within subcategory (D)(1), the Council may consider market share metrics such as an FMU's volume as a percentage of total market volume or value as a percentage of total market value.

- Subcategory (D)(2): Availability of substitutes

Within subcategory (D)(2), the Council may consider whether there exist, and if so, the number of other FMUs that may provide the same function or product, or provide an alternative payment mechanism, and how readily available a potential substitute would be for participants, considering such additional factors as operational capability and timing.

Consideration (E): Any Other Factors That the Council Deems Appropriate

Under this statutory consideration, the Council retains its ability to consider additional subcategories, metrics and qualitative factors as may be relevant and appropriate. Such additional factors may be based on the

[16] In the NPRM, the Council laid out its analytical framework for stage one in which it proposed to begin considering each of the subcategories with corresponding illustrative metrics. Upon further evaluation, the Council has decided to begin applying certain subcategories and metrics in stage two rather than stage one to further enhance the transparency of the stage one process by relying upon readily available data that is generally easy to quantify.

Specifically, the Council will begin applying the following four subcategories in section 1320.10(d)(3)–(6) at stage two: concentration of participants, concentration by product type, the degree of tiering, and potential impact or spillover in the event of a failure or disruption.

The Council also decided to clarify several of the illustrative metrics or to begin considering such metrics at stage two. For example, certain metrics in stage one will be calculated on ''average'' values, a more generic term, rather than the more specific ''mean'' or ''median'' terms for value, as indicated in the NPRM. The Council also moved the consideration of ''the mean and peak aggregate value of an FMU's financial resources held to address the credit risks arising from a potential participant default (i.e., participant, clearing or margin fund)'' from stage one to stage two.

[17] In considering ''average'' data, the Council will use mean or median values, depending on which is appropriate in a particular case.

[18] In the context of derivatives clearing, the term ''credit exposures'' refers to potential future exposures.

particular characteristics of an FMU being reviewed, such as the nature of the FMU's operations, the FMU's corporate structure or the FMU's business model.

Analytical Framework: Stage Two

The second stage will provide the Council with the opportunity to perform a more in-depth review and analysis of specific FMUs from both a quantitative and qualitative perspective. In this stage, the Council will place a greater focus on any elements that may be particular to a specific FMU or a market. The Council will conduct a tailored analysis of each FMU under consideration to determine whether it is or is likely to become systemically important.

Relationship Between Considerations (A)–(E) and the Statutory Basis for Designation

Ultimately, the Council will use its assessment of Considerations (A) through (E), as described above, to reach a conclusion regarding whether an FMU meets the statutory basis for designation under section 804(a)(1) of the DFA, which directs the Council to designate FMUs that the Council determines are, or are likely to become, systemically important.[19] ''Systemically important'' is defined in section 803(9) of the DFA, and in section 1320.2 of the final rule, as a ''situation where the failure of or disruption to the functioning of a financial market utility * * * could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.''[20] Thus, the two critical determinations for an FMU designation are:

(1) Whether the failure of or a disruption to the functioning of the FMU now or in the future could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets (the ''First Determination''); and

(2) Whether the spread of such liquidity or credit problems among financial institutions or markets could threaten the stability of the financial system of the United States (the ''Second Determination'').

Considerations (A) and (C) primarily relate to the First Determination. Whether the failure of or a disruption to the functioning of the FMU could create or increase the risk of significant liquidity or credit problems is a function of, among other things, the value of the transactions the FMU processes (Consideration (A)). The risk of significant liquidity or credit problems also depends on the interactions between the FMU and other FMUs or payment, clearing, or settlement (''PCS'') activities (Consideration (C)). For example, the risk of liquidity or credit problems is greater if the failure of an FMU would cause other FMUs to fail, but mitigated if other FMUs could, in a timely manner, act as substitutes for the failed FMU.

Consideration (B) relates to both the First and the Second Determinations. The aggregate exposure of an FMU to its counterparties (Consideration (B)) is positively correlated with the probability that any failure or disruption of the FMU could potentially destabilize counterparties or the financial system. Consideration (D) primarily relates to the Second Determination.

In light of the language and purpose of Title VIII, the Council notes that the judgment involved in the Second Determination is substantially informed by the First Determination. Title VIII enhances the supervision of systemically important FMUs and payment, clearing, and settlement activities so that the economy can enjoy the advantages of efficiency and risk reduction that these institutions provide to the financial system.[21] A failure or disruption of an FMU that could create the risk of ''significant liquidity or credit problems spreading among financial institutions or markets'' will, absent extraordinary circumstances, weaken the financial system's ability to serve the economy and dramatically increase the risk of financial instability and economic downturn. The Second Determination, therefore, largely assesses whether possible disruptions are potentially severe, not necessarily in the sense that they themselves might trigger damage to the U.S. economy, but because such disruptions might reduce the ability of financial institutions or markets to perform their normal intermediation functions.

Section-by-Section Analysis

Section 1320.1 Authority and Purpose

Proposed section 1320.1(a) states that sections 111, 112, 804, 809, and 810 of the DFA provide the statutory authority for the Council to designate FMUs. Proposed section 1320.1(b) explains that the purpose of part 1320 is to set forth standards and procedures governing the Council's designation of FMUs that the Council determines are, or are likely to become, systemically important.

The Council did not receive any comments that requested changes to this section. The Council made one technical, non-substantive change.

Section 1320.2 Definitions

In the proposed rule, the Council defined terms that are necessary to implement the final rule. The definitions (including ''financial market utility,'' ''Supervisory Agency,'' and ''systemically important and systemic importance'') use the statutory definitions in sections 2 and 803 of the DFA.[22] The definitions in the final rule are unchanged, except that the Council has made a technical addition to the definition of the term ''Supervisory Agency'' and added a definition of the term ''hearing date.''

Financial Market Utility. One commenter suggested that, in evaluating systemic importance, the Council should identify the FMU functions within an organization, and separately apply the standards for systemic importance set forth in section 1320.10 of the proposed rule to individual subsidiaries performing such functions.[23] The commenter stated that the Council should not apply the standards for systemic importance to non-FMU operating subsidiaries or at the parent-company level. The Council generally agrees with the comment; specifically, where there is a parent holding company that has, for example, separately incorporated FMU subsidiaries whose operations and activities are not significantly interconnected, the Council expects to separately apply the standards for systemic importance set forth in section 1320.10 to each FMU subsidiary that potentially meets the standards of systemic importance. The Council generally does not expect to apply the standards for systemic importance to a parent holding company or subsidiaries that are not themselves FMUs. However, there may be instances of overlap between affiliates in the operation or management of FMU or PCS activities making it appropriate for the Council to evaluate whether more than one affiliate meets the standards for systemic importance, for example, if the parent holding company is actively managing the operations of a subsidiary that performs the function in question.

Hearing date. The final rule includes a new definition of the term ''hearing

[19] *See* 12 U.S.C. 5463(a)(1).

[20] *See* 12 U.S.C. 5462(9).

[21] *See* 12 U.S.C. 5461.

[22] 12 U.S.C. 5301 and 5462.

[23] *See* comment letter from The Depository Trust & Clearing Corporation (May 27, 2011) (hereinafter ''DTCC letter''), p. 5.

date'' to be used to establish the date by which the Council must provide an FMU written notification of the final determination of the Council after a hearing under section 1320.14 or section 1320.15 of the final rule. The definition of the term ''hearing date'' distinguishes between hearings conducted through the submission of written materials and hearings conducted through oral argument and oral testimony. The Council expects to develop and implement more detailed procedures governing the conduct of hearings under this part at a later date.

Payment, clearing, or settlement activity. One commenter suggested expanding the types of activities that fall within the definition of ''payment, clearing, or settlement activity'' to include key risk management controls exercised by clearinghouses.[24] The Council considered this comment and determined that the concept of risk management controls are already included in the proposed definition of payment, clearing, or settlement activity, which encompasses ''the management of risks and activities associated with continuing financial transactions.'' [25] As such, expanding the definition of payment, clearing, or settlement activities to include risk management controls exercised by clearinghouses, but not other FMUs, is unnecessary.

Supervisory Agency. One commenter noted that while the definition of the term ''Supervisory Agency'' in the proposed rule would extend only to designated FMUs, the context of other sections of the proposed rule requires that it also apply to undesignated FMUs that are being considered for designation.[26] Consistent with this comment, the commenter suggested a technical revision to apply the definition to both designated and undesignated FMUs. The final rule incorporates the suggested technical revision so that the definition of the term ''Supervisory Agency'' will apply to both designated and undesignated FMUs.

Systemically important and systemic importance. One commenter suggested that a term contained within the definitions of ''systemically important'' and ''systemic importance''—specifically, ''significant liquidity or credit problems''—should also be defined.[27] Specifically, the commenter suggested that the Council should take into consideration definitions under deliberation by other G–20 countries, and coordinate the Council's efforts with those of the Committee on Payment and Settlement Systems (CPSS) and the International Organization of Securities Commissions (IOSCO) when crafting these and other relevant definitions. The Council considered this comment and determined that it is appropriate to leave unchanged the statutory definitions of systemically important and systemic importance. Doing so does not preclude the Council from taking into account definitions under consideration by, or from coordinating its efforts with, international organizations, including CPSS and IOSCO. Moreover, the Council believes that the term ''significant liquidity or credit problems'' does not lend itself to a specific definition in the context of this final rule because the nature of liquidity and credit problems will depend on particular facts and circumstances, and the Council will take those facts and circumstances into consideration in making designation determinations.

Section 1320.10 Factors for Consideration in Designation

In the proposed rule, the Council listed five considerations that section 804(a)(2) of the DFA requires the Council to consider in making such determinations. Of these considerations, four were specific: (1) Aggregate monetary value of transactions; (2) aggregate counterparty exposure; (3) relationships, interdependencies, or other interactions with market participants; and (4) the effect that a failure or disruption of an FMU would have on critical markets, financial institutions, or the broader financial system. The fifth consideration—any other factors that the Council deems appropriate—is open-ended. For each of the four specific considerations—the proposed rule contained non-exclusive subcategories to provide greater transparency as to how the Council will apply each of the specific considerations. The proposed rule did not provide for any categorical exclusions or exemptions.

These considerations and subcategories, as well as the metrics discussed earlier, prompted a broad range of responses from commenters addressing how these considerations are formulated and the nature of proposed subcategories, including additional considerations for inclusion, and qualitative and quantitative assessments on the appropriateness of certain criteria or metrics.

While several comments requested more detailed criteria, the Council believes that the establishment and application of rigid ''bright-line'' standards or thresholds would unduly constrain the designation process. The Council believes that the diverse nature of businesses operated by FMUs—spanning a broad range of asset classes, counterparties and market structures—does not lend itself to a fixed formula drawn consistently from an array of pre-determined considerations. In this context, the Council believes that a reasonable degree of flexibility is appropriate to permit refinement of its approach to designations as market structure, technology and competition evolve across key markets.

Two commenters observed that the standards for determining whether an FMU is, or is likely to become, systemically important are influenced by the financial market and economic conditions that might exist at the time of failure or disruption.[28] In testing for systemic importance, both of these commenters recommended that the Council assume that the failure or disruption of an FMU occurs at a time of ''extreme but plausible market conditions.'' They warned against relying on purely historical data in identifying such conditions on the grounds that damage caused by a build-up of systemic risk is most likely to occur as a result of unprecedented events. The Council considered these comments and agrees that, in determining whether the failure or disruption of an FMU could create, or increase, the risk of significant liquidity or credit problems, it should generally consider a range of circumstances, including ''extreme but plausible'' events. In considering such circumstances, the Council does not anticipate limiting itself to historical data.

With respect to the aggregate monetary value of transactions processed by an FMU, one commenter urged the Council to adopt a methodology for valuing derivatives transactions that does not distort comparisons made with securities or commodity transactions and suggested

[24] *See* comment letter from LCH.Clearnet Group Limited (May 27, 2011) (hereinafter ''LCH letter''), p. 4.

[25] *See* 12 U.S.C. 5462(7)(C)(iv).

[26] *See* comment letter from The Options Clearing Corporation (May 26, 2011) (hereinafter ''OCC letter''), p. 2.

[27] *See* comment letter from The Financial Services Roundtable (May 27, 2011) (hereinafter ''Financial Services Roundtable letter''), p. 3.

[28] *See* comment letter from Americans for Financial Reform (May 27, 2011) (hereinafter ''Americans for Financial Reform letter''), pp. 3–4; and *see* comment letter from Better Markets (May 27, 2011) (hereinafter ''Better Markets letter''), p. 2.

that the Council analyze evaluation criteria in light of the currencies in which an FMU's obligations are denominated.[29] This commenter also recommended that, in the case of an FMU that is a clearinghouse, any assessment of the FMU's potential liquidity exposures should consider liquidity strains from: (i) The failure of a bank or dealer which is a market counterparty of the clearinghouse for the purposes of investment of margin or other collateral; (ii) a delay in, or disruption to, collateral liquidation in the event of a participant's default; (iii) and the failure of a settlement bank. Finally, this commenter asserted that the Council should, in assessing the potential systemic importance of a clearinghouse, take into account its linkages to other clearinghouses and the regulatory oversight of an FMU's participants or members. As a general matter, the Council agrees with these comments and expects to apply the considerations set forth in section 1320.10 in a manner that is consistent with these recommendations, as appropriate to the circumstances of each FMU. However, as noted below, the Council does not believe that the extent of regulatory oversight of an FMU is a dispositive consideration because Congress recognized that most FMUs are already subject to regulatory oversight, but nevertheless found that enhancements to the existing regulation of systemically important FMUs are necessary to mitigate systemic risk and promote financial stability.[30]

Quantifiable benchmarks. Two commenters recommended that the final rule contain quantifiable benchmarks to better equip an FMU to assess the likelihood of being designated.[31] Conversely, two other commenters recognized the difficulty of establishing quantifiable benchmarks that would function as a bright-line standard for determining whether an FMU is systemically important.[32] The latter two commenters noted that bright-line designation criteria could overly restrict the Council's ability to designate systemically important FMUs that might not otherwise meet certain size or risk thresholds, with one commenter specifically noting that it will be difficult to discern bright-line criteria in advance, as there is not always a correlation between size and risk. Another commenter noted that the Council should have flexibility to respond to the evolving market landscape, maintaining the ability to respond to unforeseen risks that may be difficult to define today.[33]

While clear, identifiable ''triggers'' could provide predictable outcomes, the application of bright-line standards is not likely to achieve the stated purposes of Title VIII given the breadth of FMUs operating across diverse and rapidly evolving marketplaces. The Council believes that any degree of certainty provided by quantifiable benchmarks is outweighed by the risk that such benchmarks could prevent the Council from designating systemically important FMUs in as effective a manner as necessary to achieve the objectives of Title VIII.

Therefore, the Council does not believe that it can effectively fulfill its mandate to mitigate risk and promote financial stability if it were to establish in advance bright-line triggers for determining systemic importance. This conclusion is underscored by the lack of consensus among commenters on the relative merits of certain subcategories, metrics, or other considerations to inform the designation process. Given the breadth of affected markets, not all metrics can be applied consistently across firms or asset classes. The Council serves its statutory mandate in preserving the flexibility to seek out and utilize substitute subcategories and metrics when appropriate to better inform the Council's assessment of systemic importance.

At this stage, while the Council believes that it would be premature to pre-judge or otherwise narrow the identification and collection of pertinent data, the Council does not anticipate that it will employ all of the identified metrics in every determination, and expects to refine its approach, as appropriate, as its work progresses and markets evolve.[34] The Council intends to rely on quantitative measures as inputs to the process, particularly for making its initial assessments at stage one of the designation process. As outlined in the NPRM, these metrics do not represent quantifiable thresholds, but rather provide an illustrative list of the types of metrics that will inform the Council's work. The Council believes that, in most cases, much of this data is available to regulators, although the relevance of particular metrics will vary by institution or market segment. If data are not available or otherwise applicable, the Council will endeavor to identify appropriate substitutes. In addition, the Council will, to the extent practicable, seek to avoid unnecessary and unintended anti-competitive effects from its selection of appropriate metrics.

Retail payment systems. Several commenters made suggestions regarding the Council's consideration of FMUs operating retail payment systems, which one commenter defined as including check, Automated Clearing House (''ACH''), and debit and credit card networks.[35] Specifically, a number of these commenters stated that retail payment systems are not systemically important and should not be designated as such for a variety of reasons, including the fact that they process low aggregate value transactions with broad availability of substitutes. These commenters urged the Council to reconsider its position against including a categorical exclusion of retail payment systems from consideration.[36] Two commenters acknowledged the Council's proposed rationale for not categorically excluding retail payment systems, but suggested that the final rule contain a rebuttable presumption that retail payment systems are not systemically important.[37] Some commenters suggested that in the absence of a categorical exclusion, the Council consider the extent of existing regulatory oversight over retail payment systems, the different structures of retail payment systems, and finality in settlement.[38] One of these commenters suggested that the Council broadly interpret the ''availability of substitutes'' subcategory contained in section 1320.10(d)(2) of the proposed rule to include any payment method that satisfies the same payment need.[39] Conversely, one commenter urged the Council to, at a minimum, designate large credit card systems, on the basis that not doing so would put the Council in a position where it would not be

[29] LCH letter, *supra,* at 5.

[30] See 12 U.S.C. 5461(a)(4).

[31] *See* comment letters from the National Automated Clearing House Association (May 26, 2011) (hereinafter ''NACHA letter''), p. 2 and MasterCard letter, *supra,* at 2.

[32] *See* DTCC letter, *supra,* p.2; and see comment letter from The Clearing House Association, L.L.C. and The Clearing House Payments Company L.L.C. (May 20, 2011) (hereinafter ''The Clearing House letter''), p. 3.

[33] Americans for Financial Reform letter, *supra,* at 4.

[34] In utilizing a more flexible approach, one commenter urged the Council to consider the potential for creating inconsistent standards that may lead to unintended competitive advantages. *See* DTCC letter, *supra,* p. 4.

[35] *See* comment letter from the American Bankers Association (May 27, 2011) (hereinafter ''ABA letter''), p. 4.

[36] *See e.g.,* MasterCard letter, *supra,* at 2 and AMEX letter, *supra,* at 2.

[37] MasterCard letter, *supra,* at 2, and NACHA letter, *supra,* at 3.

[38] AMEX letter, *supra,* at 2–5, and NACHA letter, *supra,* at 3

[39] *See e.g.,* NACHA letter, *supra,* at 4.

fulfilling its responsibilities under the DFA.[40]

The Council recognizes that the definition of an FMU covers a large number of systems and a larger number of system operators. Within payment systems, the Council expects to focus on FMUs that operate large-value systems and not on FMUs that operate low-value systems for which there appear to be readily available and timely alternative payment mechanisms. However, the Council has decided against including in the final rule any categorical exclusion for FMUs operating retail payment or other systems, both because there are not clear distinctions between various types of systems, and because such an exclusion would impair the Council's ability to respond appropriately to new information, changed circumstances, and future developments. The Council has also decided against including in the final rule a rebuttable presumption that retail payment systems are not systemically important. The Council believes that such a presumption is unnecessary because the initial task of determining whether any FMU is systemically important already rests with the Council.[41]

The Council also decided not to add considerations more narrowly tailored to the characteristics of retail payment systems, because the Council does not believe additional considerations are necessary or appropriate at this time. For example, as discussed above, the Council does not believe that the extent of regulatory oversight is an appropriate consideration.[42] Lastly, under section 1320.10(d)(2), the Council will consider with respect to retail payment systems, the availability of substitute mechanisms to make low-value payments.

Subcategories. In the NPRM, the Council requested comment on whether the subcategories in the proposed rule for each specific consideration were clear, sufficiently detailed, and appropriate. To the extent applicable, the Council also sought feedback on the merits of potential additional subcategories, as well as the elimination or modification of the subcategories.

The Council received several comments on the proposed subcategories. One commenter suggested that the Council consider a common methodology for determining the value of derivatives transactions across various asset classes and currencies; an FMU's potential liquidity exposure in the event of a participant default; counterparty credit exposure to the FMU; and the nature of regulatory oversight and intermarket linkages of a particular FMU.[43] Another commenter asserted that corporate governance arrangements and risk management oversight practices should be considered by the Council.[44]

The Council has considered these recommendations for designation determinations and has adopted the proposed subcategories in the final rule, with one technical change in section1320.10(c) regarding interactions with participants to make clear that the Council should consider interactions between participants of the same type of FMU or PCS activity. Importantly, these subcategories are neither exclusive nor rigid, and are provided as illustrative examples of potential criteria to improve transparency to market participants regarding factors that may be considered in the Council's determinations. Nonetheless, the comments offered on the subcategories will inform the Council's analysis. Furthermore, the Council may consider additional subcategories or find certain subcategories inapplicable to specific cases.

Section 1320.11 Stage Two Consultation With Financial Market Utility

In general. In the NPRM, the Council outlined the two-stage process that the Council, working with its committees, will use to designate FMUs. The NPRM described the stage one assessment process and explained that those FMUs that are determined to warrant further assessment will advance to stage two (such advancement does not require a two-thirds vote of Council members then serving).[45] The NPRM explained that FMUs that advance to stage two will receive written notification from the Council that they are under consideration for designation, and that each such FMU may voluntarily submit written materials to the Council in support of, or in opposition to, designation by the Council within such time as the Council determines appropriate. The Council stated that the stage two consultation process would help the Council make better informed decisions in determining whether to propose or not propose the designation of an FMU. The Council also noted that the stage two consultation process would benefit an FMU by, for example, enabling it to demonstrate that it is not systemically important.

Section 1320.11(a) Content of consultation notices. Two commenters suggested that the Council's notices should specify why the Council is considering the FMU for potential designation so that the FMU can prepare an appropriate response.[46] One commenter suggested that the Council provide the FMU with all applicable information the Council relied on in making the determination to advance an FMU to stage two.[47] The Council agrees that some degree of specificity is appropriate in all circumstances, and additional clarification may be appropriate under certain circumstances, such as when the Council believes it will help an FMU tailor its response. Accordingly, under section 1320.12(a) of the final rule, the Council's notice of proposed determination to designate an FMU as systemically important will contain proposed findings of fact supporting the Council's proposed determination. Further, the Council expects that additional clarity, for example, may be appropriate where an FMU operates more than one system and the Council is focusing on only one particular system for designation. Under those circumstances, the Council expects that its notice will identify the system the Council is reviewing when considering the FMU for designation.

The Council has decided not to include in the rule a standard or requirement to provide FMUs with the stage one information that informed its decision to advance an FMU to stage two. The Council anticipates relying upon publicly available information and data from the appropriate Supervisory Agencies during stage one. Accordingly, information obtained from one or more federal agencies with jurisdiction over an FMU could in some instances contain confidential supervisory information not appropriate for disclosure. Because an FMU under consideration will have an opportunity

[40] Americans for Financial Reform letter, *supra,* at 3.

[41] *See* 12 U.S.C. 5463(c)(2)(C), which provides that an FMU may request a hearing before the Council to demonstrate that the Council's proposed determination is not supported by substantial evidence.

[42] *See* 12 U.S.C. 5461.

[43] LCH letter, *supra,* at 5.

[44] *See* comment letter from the Council of Institutional Investors (May 13, 2011) (hereinafter ''Council letter''), p. 1.

[45] Section 804 of the DFA requires a vote of no fewer than two-thirds of the members of the Council then serving, including the affirmative vote of the Chairperson of the Council, before the Council may either designate an FMU or rescind the designation of an FMU. 12 U.S.C. 5463. The stage 1 and stage 2 processes, including the section 1320.11 consultation process, precede any Council proposed or final determination to designate an FMU.

[46] *See e.g.,* AMEX letter, *supra,* at 5–6.

[47] Financial Services Roundtable letter, *supra,* at 2.

to understand the information considered by the Council to be most relevant if the Council proposes to designate the FMU, the Council believes its decision not to include in the rule a standard or requirement regarding providing stage one information to an FMU to be appropriate.

Confidentiality of notices. One commenter suggested that the final rule should clarify that the Council will keep confidential a notice or information request to an FMU regarding its potential designation.[48] Another commenter suggested that the Council implement procedures that provide market participants the opportunity to offer input on the possible designation of an FMU.[49] The Council considered these two comments and determined that it will not publicize the notices or information requests [50] submitted to FMUs. The Council understands that maintaining the confidentiality of the notices and information requests is important to prevent potentially destabilizing market speculation that could occur if the Council were to make such notices public. This approach also is consistent with the DFA, which provides that any materials prepared by the Council regarding its assessment of the systemic importance of FMUs shall be exempt from disclosure pursuant to the Freedom of Information Act.[51] Finally, the Council will in its annual report to Congress disclose publicly its final designation determinations and the basis for those determinations as required by Section 112 of the DFA.[52]

Section 1320.11(b) Timeframe to respond to notices. In the NPRM, the Council requested comment on the merits of establishing a set time period for FMUs to submit written materials to the Council or whether flexibility in the time permitted for FMUs to submit information is appropriate. One commenter stated that FMUs should have at least 60 days to provide information to the Council after receiving a consultative notice and that the final rule should contain a mechanism by which an FMU can request an extension.[53] Another commenter suggested that, in the absence of an emergency, FMUs should be given 90 days to respond to Council notices or requests.[54] The Council considered these comments and determined that a set 60-day or 90-day response time is too inflexible and, in most cases, too long, particularly in light of the fact that any FMU that the Council may later propose to designate will have a second opportunity to submit written materials to the Council under section 1320.12 of the final rule. However, the Council believes that there may be exceptional circumstances where a 60-day, 90-day, or even longer response time may be appropriate. As a result, the Council believes that it is appropriate to preserve administrative flexibility to tailor a response time to the particular facts and circumstances for each FMU, so as to avoid *pro forma* delay in inappropriate circumstances.

Therefore, the final rule is substantively similar to the proposed rule, except that the Council revised section 1320.11(b)(3) to require the Council to consider only those written materials that are ''timely'' submitted by the FMU.

Section 1320.12 Advance Notice of Proposed Determination

The proposed rule outlined the process by which the Council will provide an FMU with advance notice and an opportunity for a hearing to contest the Council's proposed designation of an FMU as systemically important or a proposed rescission of a prior designation. One commenter noted that a two-thirds vote of the Council is necessary for a proposed designation and suggested that section 1320.12 directly state the two-thirds Council vote standard.[55] The Council agrees with the suggestion, and has revised section 1320.12(a) of the final rule to state that a proposed determination of designation or rescission shall be made by a vote of the Council under section 1320.13(c).

The Council has also made several non-substantive changes to section 1320.12 to provide greater clarity.[56]

Section 1320.13 Council Determination Regarding Systemic Importance

The proposed rule set out the requirement for the Council to designate an FMU and rescind the designation of an FMU depending on whether the FMU is, or is likely to become, systemically important. The proposed rule provided that any proposed or final determination by the Council is non-delegable and requires at least a two-thirds vote of the voting members then serving, including the affirmative vote of the Chairperson of the Council. These requirements track the language in section 804(a)(1) of the DFA.[57]

In the NPRM, the Council proposed to reassess designated FMUs at least annually, as well as conduct stage one reviews of FMUs that appear to be, or that appear likely to become, systemically important. One commenter recommended adding a provision allowing an FMU to apply to be designated as systemically important as well as to apply to have such designation rescinded.[58] Another commenter suggested that the final rule provide for periodic reexamination and reevaluation of FMU designations.[59] The Council agrees that a periodic review of each designated FMU should help to maintain the integrity of the designation process and minimize the risk of unnecessary regulatory burdens on a designated FMU, particularly in light of the fact that an FMU's role in the financial system will not be static. Similarly, the Council believes that a periodic review of any FMUs that are potentially systemically important, but that have not been designated as such, is important to evaluate any new developments in the roles these FMUs have in the financial system. As a result, the Council anticipates conducting reviews of both designated FMUs and potentially systemically important FMUs on a periodic basis.

However, the Council believes that it is important to retain flexibility in the timing for periodic reviews in order to take into account evolving market conditions. Accordingly, the Council is not including a provision regarding periodic reviews in the final rule. In addition, taking into consideration the anticipated periodic reviews, the Council does not believe that it is necessary or appropriate to include provisions in the final rule for an ''application process'' that an FMU could use to apply for designation or to seek rescission of a designation.

[48] AMEX letter, *supra,* at 5.

[49] DTCC letter, *supra,* at 6.

[50] Council information requests to FMUs are covered by section 1320.20 of the proposed rule, which provides that the Council's notice must describe the basis for the Council's belief that the FMU is, or is likely to become, systemic important.

[51] 5 U.S.C. 552. *See* 12 U.S.C. 5468(g). At the same time, the Council recognizes that the FMU itself (as opposed to the Council or a Supervisory Agency) may be required to disclose notices or information requests to the extent required by applicable law, particularly if the FMU is a public company required to comply with federal securities laws.

[52] 12 U.S.C. 5322(a)(2)(N)(iv).

[53] Financial Services Roundtable letter, *supra,* at 2.

[54] AMEX letter, *supra,* at 5.

[55] Financial Services Roundtable letter, *supra,* at 2.

[56] For example, changes to § 1320.12 clarify that before the Council makes a final determination to rescind a designated FMU's designation of systemic importance, the Council must provide the designated FMU with advance notice of the proposed rescission, including the right to request a written or oral hearing to challenge the proposed rescission.

[57] *See* 12 U.S.C. 5463(a)(1).

[58] *See* LCH letter, *supra,* at 7.

[59] *See* DTCC letter, *supra,* at 4.

Section 1320.13(a) Likely to become systemically important. One commenter suggested that when a designation is based on an assessment that an FMU is likely to become systemically important, as opposed to an FMU already being systemically important, the Council should make this differentiation clear.[60] The Council considered this comment and expects that it will state in both its proposed determination letter, under section 1320.12, and its final determination letter, under section 1320.15, whether the proposed and final determinations are based on whether the FMU is systemically important or is likely to become systemically important.

The Council also recognizes that for newly formed or start-up FMUs, complete information regarding each of the four specific considerations may not be available or cover a sufficient historical period. In such cases, the Council will need to consider whether such an FMU ''is likely to become systematically important.'' In doing so, the Council will take into consideration available information regarding the four specific considerations, including estimates and projections of volume and value of cleared or settled transactions. In addition, the Council will consider the importance to the financial system and financial institutions of the market(s) and products to be supported by the FMU, the availability of substitutes for the FMU, the type and nature of expected participants and risks to be borne by the FMU. In designating a newly formed FMU that is likely to become systemically important, the Council also recognizes that the FMU may not in fact ultimately achieve over time a level and scope of activity that would pose systemic risk to the U.S. financial system. As a general matter, the Council expects to evaluate annually whether any previous designations should be rescinded. Where a newly formed FMU does not achieve a level and scope of activity that would pose systemic risk to the U.S. financial system, the Council would then consider rescinding the FMU designation under section 1320.13(b).

Section 1320.13(c) Council membership at time of designation determinations. One commenter suggested that the Council make no proposed or final determinations regarding designations of FMUs until all voting and non-voting members of the Council are in place.[61] The Council determined that this suggestion conflicts with language in the DFA specifying that designations are to be made ''by a vote of not fewer than ⅔ of members *then serving.* * * *''[62] As a result, the Council decided to retain the language of the proposed rule. The Council has also made several non-substantive changes to provide greater clarity with regard to proposed and final determinations.

Section 1320.14 Emergency Exception

The proposed rule authorized the Council to waive or modify any or all of the notice, hearing, and other requirements of sections 1320.11 and 1320.12 with respect to an FMU if (1) the Council determined that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the FMU and (2) the Council provides notice of the waiver or modification to the applicable FMU, as soon as practicable, but not later than 24 hours after the waiver or modification. Invoking the emergency exception would require the affirmative vote of at least two-thirds of the Council members then serving, including the affirmative vote of the Chairperson of the Council. The Council requested comment on whether it should provide a designated FMU an opportunity for a hearing to contest the Council's determination to waive the notification and hearing requirements and the extent to which the opportunity for a hearing should mirror section 113(f)(4) and (5) of the DFA.

One commenter suggested that, when the Council invokes the emergency exception, the Council should disclose the basis for its decision and give the FMU the option of an after-the-fact hearing to contest such decision.[63] The Council agrees with the comment and has revised section 1320.14 accordingly. The procedures governing the conduct of an after-the-fact hearing are substantively similar to those contained in section 1320.12 of the final rule, except that any waiver or modification under the emergency exception will take effect immediately.

Section 1320.15 Notification of Final Determination Regarding Systemic Importance

The proposed rule set the deadline for the Council to notify an FMU of the Council's final determination after providing the FMU notice of the proposed determination and an opportunity for a hearing. The proposed rule substantially mirrored the requirements contained in the DFA. The Council requested comment on whether it should provide findings of fact in its final determination notification to an FMU that did not timely request a hearing. One commenter suggested that the Council's final determination notification to an FMU that did not timely request a hearing should include the Council's factual findings.[64] The Council has decided not to include findings of fact in the ''notification of final determination if no hearing'' because the section substantively mirrors the DFA.[65] The Council revised section 1320.15 of the final rule to clarify the date by which the Council must provide to an FMU written notification of the final determination of the Council after a hearing. Specifically, the Council must provide written notification within 60 calendar days of the ''hearing date.'' The definition of the term ''hearing date'' distinguishes between hearings conducted through the submission of written materials and hearings conducted through oral argument and oral testimony.

Section 1320.16 Extension of Time Period

The proposed rule authorized the Council to extend the time periods by which an FMU may request a hearing and submit written materials to contest the Council's proposed determination, the 24 hour time period for the Council to notify an FMU of an emergency designation, and the time period for the Council to notify an FMU of its final determination. One commenter suggested that FMUs should have no longer than 90 days to request a hearing and submit written materials to contest a proposed determination; that the Council should not extend the 24-hour time period for the Council to notify an FMU of an emergency designation; and that the Council should notify an FMU of its final determination within 90 days.[66] The Council considered the suggestions and decided to adopt section 1320.16 substantially as proposed, because it substantively mirrors the DFA and provides the Council with flexibility to grant itself and FMUs extensions of time as necessary or appropriate.[67] The final rule contains one change in that it clarifies that the Council may extend ''any'' time period established in sections 1320.12, 1320.14, or 1320.15.

[60] LCH letter, *supra,* at 7.

[61] Financial Services Roundtable letter, *supra,* at 2.

[62] 12 U.S.C. 5463(a)(1) (emphasis added).

[63] LCH letter, *supra,* at 8.

[64] LCH letter, *supra,* at 8.

[65] *See* 12 U.S.C. 5463(d)(2).

[66] LCH letter, *supra,* at 8.

[67] *See* 12 U.S.C. 5363(e).

Section 1320.20 Council Information Collection and Coordination

The proposed rule authorized the Council to require an FMU to submit information that the Council may require for the sole purpose of assessing whether the FMU is systemically important. However, before the Council may impose an information collection burden on an FMU, the Council must have reasonable cause to believe that the FMU meets the standards for systemic importance. The Council must also coordinate with the FMU's Supervisory Agency to determine if the requested information is available from or may be obtained by the Supervisory Agency. If the Supervisory Agency is unable to provide the Council with the requested information in less than 15 calendar days after the date the material is requested, the Council may then request the information directly from the FMU. In requesting information from an FMU, the Council must provide a written explanation of the basis for the Council's reasonable cause determination. The Council requested comment on the utility of providing an FMU with a written explanation of the basis for its belief that the FMU is systemically important.

Several commenters generally supported the proposed approach. For example, one commenter agreed that, before requiring an FMU to provide information for purposes of assessing systemic significance, the Council should determine that it has reasonable cause to believe that the FMU meets the standards for systemic importance and that such information cannot be timely obtained from the FMU's Supervisory Agency.[68] Another commenter agreed that the Council should provide an FMU with a written explanation of the basis for the Council's belief that the FMU is systemically important before requiring an FMU to provide information to the Council.[69]

Several commenters, on the other hand, suggested revisions. For example, one commenter stated that FMUs should be able to bypass information submission requirements by consenting to designation.[70] Another commenter suggested that the Council redraft the regulatory text to make clear that the Council will not collect information directly from FMUs during stage one.[71] This commenter also suggested that the Council take into account the expense of the FMU data collection process when it makes requests for information from retail FMUs.[72]

The Council considered these comments and has determined to adopt section 1320.20 substantially as proposed. The Council will not allow an FMU to bypass information submission requirements by consenting to designation. The Council has a responsibility to determine whether an FMU meets the standards for systemic importance. With respect to the suggestion that the Council restrict itself from collecting information directly from FMUs during stage one and that the Council take into account the expenses involved in data collection, the Council expects, as a general matter, not to collect any information from FMUs during stage one; rather, the Council expects that, in most instances, it will obtain the required information during stage one from publicly available sources and an FMU's Supervisory Agency. Nevertheless, the final rule limits the Council's ability to require FMUs to submit information by providing that the Council can request information only if it has reasonable cause to believe the FMU is, or is likely to become, systemically important and after coordinating with the FMU's Supervisory Agency. Accordingly, the Council has not adopted additional restrictions on the methods or timing of collecting information from FMUs in the final rule because the Council believes that these restrictions appropriately balance the needs of the Council to timely obtain sufficient information about FMUs with the costs associated with collecting such information. Once the Council has completed at least one full cycle of designations and reevaluations of designated FMUs, the Council will reexamine whether any changes to its analytical framework are warranted, including whether any changes to the information-collection provisions of the rule may be appropriate.

Moreover, the final rule makes clarifying changes to one of the prerequisites for the Council to collect information from an FMU. The proposed rule required the Council to determine that it has reasonable cause to believe that an FMU meets the standards for systemic importance. The final rule provides that the Council must determine that it has reasonable cause to believe that the FMU is, or is likely to become, systemically important. The Council made this change to conform this information collection prerequisite to the standard in section 1320.10 by which the Council will determine whether to make a proposed or final determination.

III. Administrative Law Matters

Regulatory Flexibility Act

The Council certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule would apply only to FMUs whose failure could pose a threat to the stability of the U.S. financial system. Size is an important factor, although not the exclusive factor, in assessing whether an FMU's failure could pose a threat to the stability of the U.S. financial system. However, the Council does not expect the rule to directly affect a substantial number of small entities. Accordingly, a final regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) is not required.

Paperwork Reduction Act

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1505–. An agency may not conduct or sponsor, and an organization is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information that is contained in this final rulemaking is found in sections section 1320.11, section 1320.12, section 1320.14, and section 1320.20. The collection of information in section 1320.11 affords financial market utilities that are under consideration for designation, or rescission of designation, an opportunity to submit written materials to the Council in support of, or in opposition to, designation or rescission of designation. The collection of information in section 1320.12 is required by section 804(c)(2)(C) of the DFA and affords financial market utilities an opportunity to contest a proposed determination of the Council by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony and oral argument). The collection of information in section 1320.14 affords financial market utilities an opportunity to contest the Council's waiver or modification of the notice, hearing, or other requirements contained in section 1320.11 and section 1320.12 by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony

[68] Financial Services Roundtable letter, *supra,* at 4.

[69] LCH letter, *supra,* at 9.

[70] OCC letter, *supra,* at 2.

[71] ABA letter, *supra,* at 4.

[72] ABA letter, *supra,* at 3.

and oral argument). The collection of information in section 1320.20 is authorized by section 809 of the DFA and will be used by the Council to determine whether to designate or rescind the designation of an FMU. The collection of information under section 1320.20 is mandatory. The likely respondents are businesses or other for-profit and not-for-profit organizations.

The estimated total annual reporting burden associated with the collection of information in this final rule is 500 hours.

Executive Order 12866

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

IV. Text of Final Rule

List of Subjects in 12 CFR Part 1320

Administrative practice and procedure, Banks, Banking, Commodity futures, Electronic funds transfers, Financial market utilities, Securities.

For the reasons set forth in the preamble, the Financial Stability Oversight Council establishes 12 CFR chapter XIII, consisting of part 1320, to read as follows:

CHAPTER XIII—FINANCIAL STABILITY OVERSIGHT COUNCIL

PART 1320—DESIGNATION OF FINANCIAL MARKET UTILITIES

Sec.

Subpart A—General

1320.1 Authority and purpose.
1320.2 Definitions.

Subpart B—Consultations, Determinations and Hearings

1320.10 Factors for consideration in designations.
1320.11 Consultation with financial market utility.
1320.12 Advance notice of proposed determination
1320.13 Council determination regarding systemic importance.
1320.14 Emergency exception.
1320.15 Notification of final determination regarding systemic importance.
1320.16 Extension of time periods.

Subpart C—Information Collection

1320.20 Council information collection and coordination.

Authority: 12 U.S.C. 5321; 12 U.S.C. 5322; 12 U.S.C. 5463; 12 U.S.C. 5468; 12 U.S.C. 5469

Subpart A—General

§ 1320.1 Authority and purpose.

(a) *Authority.* This part is issued by the Financial Stability Oversight Council under sections 111, 112, 804, 809, and 810 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') (12 U.S.C. 5321, 5322, 5463, 5468, and 5469).

(b) *Purpose.* The purpose of this part is to set forth the standards and procedures governing the Council's designation of a financial market utility that the Council determines is, or is likely to become, systemically important.

§ 1320.2 Definitions.

The terms used in this part have the following meanings:

Appropriate Federal banking agency. The term ''*appropriate Federal banking agency*'' has the same meaning as in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), as amended.

Board of Governors. The term ''*Board of Governors*'' means the Board of Governors of the Federal Reserve System.

Council. The term ''*Council*'' means the Financial Stability Oversight Council.

Designated clearing entity. The term ''*designated clearing entity*'' means a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1).

Designated financial market utility. The term ''*designated financial market utility*'' means a financial market utility that the Council has designated as systemically important under § 1320.13.

Financial institution. The term ''*financial institution*''—

(1) Means—

(i) A depository institution as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

(ii) A branch or agency of a foreign bank, as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101);

(iii) An organization operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a and 611 through 631);

(iv) A credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(v) A broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c);

(vi) An investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3);

(vii) An insurance company, as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2);

(viii) An investment adviser, as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2);

(ix) A futures commission merchant, commodity trading advisor, or commodity pool operator, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); and

(x) Any company engaged in activities that are financial in nature or incidental to a financial activity, as described in section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Does not include designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), or national securities exchanges, national securities associations, alternative trading systems, securities information processors solely with respect to the activities of the entity as a securities information processor, security-based swap data repositories, and swap execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), or designated clearing entities, provided that the exclusions in this paragraph apply only with respect to the activities that require the entity to be so registered.

Financial market utility. The term ''financial market utility''—

(1) Means any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person; and

(2) Does not include—

(i) Designated contract markets, registered futures associations, swap data repositories, and swap execution facilities registered under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), or national securities exchanges,

national securities associations, alternative trading systems, security-based swap data repositories, and swap data execution facilities registered under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), solely by reason of their providing facilities for comparison of data respecting the terms of settlement of securities or futures transactions effected on such exchange or by means of any electronic system operated or controlled by such entities, provided that the exclusions in this clause apply only with respect to the activities that require the entity to be so registered; and

(ii) Any broker, dealer, transfer agent, or investment company, or any futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator, solely by reason of functions performed by such institution as part of brokerage, dealing, transfer agency, or investment company activities, or solely by reason of acting on behalf of a financial market utility or a participant therein in connection with the furnishing by the financial market utility of services to its participants or the use of services of the financial market utility by its participants, provided that services performed by such institution do not constitute critical risk management or processing functions of the financial market utility.

Hearing date. The term ''hearing date'' means the later of—

(1) The date on which the Council receives all of the written materials timely submitted by the financial market utility for a hearing that is conducted without oral testimony; or

(2) The final date on which the Council convenes for the financial market utility to present oral testimony.

Payment, clearing, or settlement activity.

(1) The term ''payment, clearing, or settlement activity'' means an activity carried out by 1 or more financial institutions to facilitate the completion of financial transactions, but shall not include any offer or sale of a security under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), or any quotation, order entry, negotiation, or other pre-trade activity or execution activity.

(2) For purposes of paragraph (1) of this definition, the term ''financial transaction'' includes—

(i) Funds transfers;

(ii) Securities contracts;

(iii) Contracts of sale of a commodity for future delivery;

(iv) Forward contracts;

(v) Repurchase agreements;

(vi) Swaps;

(vii) Security-based swaps;

(viii) Swap agreements;

(ix) Security-based swap agreements;

(x) Foreign exchange contracts;

(xi) Financial derivatives contracts; and

(xii) Any similar transaction that the Council determines to be a financial transaction for purposes of this part.

(3) When conducted with respect to a financial transaction, payment, clearing, and settlement activities may include—

(i) The calculation and communication of unsettled financial transactions between counterparties;

(ii) The netting of transactions;

(iii) Provision and maintenance of trade, contract, or instrument information;

(iv) The management of risks and activities associated with continuing financial transactions;

(v) Transmittal and storage of payment instructions;

(vi) The movement of funds;

(vii) The final settlement of financial transactions; and

(viii) Other similar functions that the Council may determine.

(4) Payment, clearing, and settlement activities shall not include public reporting of swap transactions under section 727 or 763(i) of the Dodd-Frank Act.

Supervisory Agency. (1) The term ''Supervisory Agency'' means the Federal agency that—

(i) Has primary jurisdiction over a designated financial market utility under Federal banking, securities, or commodity futures laws as follows—

(A) The Securities and Exchange Commission, with respect to a designated financial market utility that is a clearing agency registered with the Securities and Exchange Commission;

(B) The Commodity Futures Trading Commission, with respect to a designated financial market utility that is a derivatives clearing organization registered with the Commodity Futures Trading Commission;

(C) The appropriate Federal banking agency, with respect to a designated financial market utility that is an institution described in section 3(q) of the Federal Deposit Insurance Act;

(D) The Board of Governors, with respect to a designated financial market utility that is otherwise not subject to the jurisdiction of any agency listed in paragraphs (1)(i), (ii), and (iii) of this definition; or

(ii) Would have primary jurisdiction over a financial market utility if the financial market utility were a designated financial market utility under paragraph (1) of this definition.

(2) If a financial market utility is subject to the jurisdictional supervision of more than one agency listed in paragraph (1) of this definition, then such agencies should agree on one agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which is the Supervisory Agency for purposes of this part.

Systemically important and systemic importance. The terms ''systemically important'' and ''systemic importance'' mean a situation where the failure of or a disruption to the functioning of a financial market utility could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States.

Subpart B—Consultations, Determinations and Hearings

§ 1320.10 Factors for consideration in designations.

In making any proposed or final determination with respect to whether a financial market utility is, or is likely to become, systemically important under this part, the Council shall take into consideration:

(a) The aggregate monetary value of transactions processed by the financial market utility, including without limitation—

(1) The number of transactions processed, cleared or settled;

(2) The value of transactions processed, cleared or settled; and

(3) The value of other financial flows.

(b) The aggregate exposure of the financial market utility to its counterparties, including without limitation—

(1) Credit exposures, which includes but is not limited to potential future exposures; and

(2) Liquidity exposures.

(c) The relationship, interdependencies, or other interactions of the financial market utility with other financial market utilities or payment, clearing, or settlement activities, including without limitation interactions with different types of participants in those utilities or activities.

(d) The effect that the failure of or a disruption to the financial market utility would have on critical markets, financial institutions, or the broader financial system, including without limitation—

(1) Role of the financial market utility in the market served;

(2) Availability of substitutes;

(3) Concentration of participants;

(4) Concentration by product type;

(5) Degree of tiering; and

(6) Potential impact or spillover in the event of a failure or disruption.

(e) Any other factors that the Council deems appropriate.

§ 1320.11 Consultation with financial market utility.

Before providing a financial market utility notice of a proposed determination under § 1320.12, the Council shall provide the financial market utility with—

(a) Written notice that the Council is considering whether to make a proposed determination with respect to the financial market utility under § 1320.13; and

(b) An opportunity to submit written materials to the Council, within such time as the Council determines to be appropriate, concerning—

(1) Whether the financial market utility is systemically important taking into consideration the factors set out in § 1320.10; and

(2) Proposed changes by the financial market utility that could—

(i) Reduce or increase the inherent systemic risk the financial market utility poses and the need for designation under § 1320.13; or

(ii) Reduce or increase the appropriateness of rescission under § 1320.13.

(3) The Council shall consider any written materials timely submitted by the financial market utility under this section before making a proposed determination under section 1320.13.

§ 1320.12 Advance notice of proposed determination.

(a) *Notice of proposed determination and opportunity for hearing.* Before making any final determination on designation or rescission under § 1320.13, the Council shall propose a determination and provide the financial market utility with advance notice of the proposed determination, and proposed findings of fact supporting that determination. A proposed determination shall be made by a vote of the Council in the manner described in § 1320.13(c).

(b) *Request for hearing.* Within 30 calendar days from the date of any provision of notice of the proposed determination of the Council, the financial market utility may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the proposed designation or rescission of designation is not supported by substantial evidence.

(c) *Written submissions.* Upon receipt of a timely request, the Council shall fix a time, not more than 30 calendar days after receipt of the request, unless extended by the Council at the request of the financial market utility, and place at which the financial market utility may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Council, oral testimony and oral argument.

§ 1320.13 Council determination regarding systemic importance.

(a) *Designation determination.* The Council shall designate a financial market utility if the Council determines that the financial market utility is, or is likely to become, systemically important.

(b) *Rescission determination.* The Council shall rescind a designation of systemic importance for a designated financial market utility if the Council determines that the financial market utility no longer meets the standards for systemic importance.

(c) *Vote required.* Any determination under paragraph (a) or (b) of this section and any proposed determination under § 1320.12 shall—

(1) Be made by the Council and must not be delegated by the Council; and

(2) Require the vote of not fewer than two-thirds of the members of the Council then serving, including the affirmative vote of the Chairperson of the Council.

(d) *Consultations.* Before making any determination under paragraph (a) or (b) of this section or any proposed determination under § 1320.12, the Council shall consult with the relevant Supervisory Agency and the Board of Governors.

§ 1320.14 Emergency exception.

(a) *Emergency exception.* Notwithstanding §§ 1320.11 and 1320.12, the Council may waive or modify any or all of the notice, hearing, and other requirements of §§ 1320.11 and 1320.12 with respect to a financial market utility if—

(1) The Council determines that the waiver or modification is necessary to prevent or mitigate an immediate threat to the financial system posed by the financial market utility; and

(2) The Council provides notice of the waiver or modification, and an explanation of the basis for the waiver or modification, to the financial market utility concerned, as soon as practicable, but not later than 24 hours after the waiver or modification.

(b) *Vote required.* Any determination by the Council under paragraph (a) to waive or modify any of the requirements of §§ 1320.11 and 1320.12 shall—

(1) Be made by the Council; and

(2) Require the affirmative vote of not fewer than two-thirds of members then serving, including the affirmative vote of the Chairperson of Council.

(c) *Request for hearing.* Within 10 calendar days from the date of any provision of notice of waiver or modification of the Council, the financial market utility may request, in writing, an opportunity for a written or oral hearing before the Council to demonstrate that the basis for the waiver or modification is not supported by substantial evidence.

(d) *Written submissions.* Upon receipt of a timely request, the Council shall fix a time, not more than 30 calendar days after receipt of the request, and place at which the financial market utility may appear, personally or through counsel, to submit written materials, or, at the sole discretion of the Counsel, oral testimony and oral argument.

(e) *Notification of hearing determination.* If a financial market utility makes a timely request for a hearing under paragraph (c) of this section, the Council shall, not later than 30 calendar days after the hearing date, notify the financial market utility of the determination of the Council, which shall include a statement of the basis for the determination of the Council.

§ 1320.15 Notification of final determination regarding systemic importance.

(a) *Notification of final determination after a hearing.* Within 60 calendar days of the hearing date, the Council shall provide to the financial market utility written notification of the final determination of the Council under § 1320.13, which shall include findings of fact upon which the determination of the Council is based.

(b) *Notification of final determination if no hearing.* If the Council does not receive a timely request for a hearing under § 1320.12, the Council shall provide the financial market utility written notification of the final determination of the Council under § 1320.13 not later than 30 calendar days after the expiration of the date by which a financial market utility could have requested a hearing.

§ 1320.16 Extension of time periods.

The Council may extend any time period established in §§ 1320.12, 1320.14, or 1320.15 as the Council determines to be necessary or appropriate.

Subpart C—Information Collection

§ 1320.20 Council information collection and coordination.

(a) *Information collection to assess systemic importance.* The Council may require any financial market utility to

submit such information to the Council as the Council may require for the sole purpose of assessing whether the financial market utility is systemically important.

(b) *Prerequisites to information collection.* Before requiring any financial market utility to submit information to the Council under paragraph (a) of this section, the Council shall—

(1) Determine that it has reasonable cause to believe that the financial market utility is, or is likely to become, systemically important, considering the standards set out in § 1320.10; or

(2) Determine that it has reasonable cause to believe that the designated financial market utility is no longer, or is no longer likely to become, systemically important, considering the standards set out in § 1320.10; and

(3) Coordinate with the Supervisory Agency for the financial market utility to determine if the information is available from, or may be obtained by, the Supervisory Agency in the form, format, or detail required by the Council.

(c) *Timing of response from the appropriate Supervisory Agency.* If the information, reports, records, or data requested by the Council under paragraph (b)(3) of this section are not provided in full by the Supervisory Agency in less than 15 calendar days after the date on which the material is requested, the Council may request the information directly from the financial market utility with notice to the Supervisory Agency.

(d) *Notice to financial market utility of information collection requirement.* In requiring a financial market utility to submit information to the Council, the Council shall provide to the financial market utility the following—

(1) Written notice that the Council is considering whether to make a proposed determination under § 1320.12; and

(2) A description of the basis for the Council's belief under paragraphs (b)(1) or (b)(2) of this section.

Dated: July 20, 2011.

Alastair Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 40

RIN 3038–AD07

Provisions Common to Registered Entities

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'') is adopting regulations to implement certain statutory provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The Commission also is amending its existing regulations governing the submission of new products, rules, and rule amendments. The final regulations establish the Commission's procedural framework for the submission of new products, rules, and rule amendments by designated contract markets (''DCMs''), derivatives clearing organizations (''DCOs''), swap execution facilities (''SEFs''), and swap data repositories (''SDRs''). In addition, the final regulations prohibit event contracts involving certain excluded commodities, establish special submission procedures for certain rules proposed by systemically important derivatives clearing organizations (''SIDCOs''), and stay the certifications and the approval review periods of novel derivative products pending jurisdictional determinations.

DATES: Effective date: September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Bella Rozenberg, Assistant Deputy Director, Division of Market Oversight (''DMO''), at 202–418–5119 or *brozenberg@cftc.gov,* Riva Spear Adriance, Associate Director, DMO at 202–418–5494 or *radriance@cftc.gov,* Phyllis Dietz, Associate Director, Division of Clearing and Intermediary Oversight at 202–418–5449 or *pdietz@cftc.gov,* and Joseph R. Cisewski, Attorney Advisor, DMO at 202–418–5718 or *jcisewski@cftc.gov,* in each case, at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

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I. Background

On November 2, 2010, the Commission published proposed regulations to implement certain statutory provisions of the Dodd-Frank Act and to amend existing regulations governing the submission of new products, rules, and rule amendments.[1] The Commission is hereby adopting final regulations 40.1 through 40.8, as amended below, and new regulations 40.10 through 40.12 to implement certain provisions of the Dodd-Frank Act, to clarify submission-related regulatory obligations of registered entities, and to enhance the Commission's administration of the Commodity Exchange Act (''Act'').

The Commission's final regulations implement, among other provisions, Section 745 of the Dodd-Frank Act, which, effective July 16, 2011, amended Section 5c of the Act to provide new procedures for the submission of rules and rule amendments by DCMs, SEFs, DCOs, and SDRs.[2] The final regulations also amend existing requirements for the submission of new products and prohibit the listing and clearing of products based upon certain excluded commodities, if such products involve statutorily-specified activities or similar activities determined, by rule or regulation, to be contrary to the public interest. In addition, the Commission is adopting special submission procedures for certain risk-related rules proposed

[1] 17 CFR part 40 Provisions Common to Registered Entities, 75 FR 67282 (Nov. 2, 2010).

[2] Sections 728 and 733 of the Dodd-Frank Act created two new categories of registered entities, SEFs and SDRs. Provisions related to the regulation of these entities will be promulgated in other Commission rulemakings.

by SIDCOs.[3] The SIDCO regulations implement Section 806(e)(1) of the Dodd-Frank Act by requiring, among other things, 60-days advance notice of proposed rules that may materially affect the nature or level of risk presented by the SIDCO. Finally, the Commission is adopting previously proposed regulations to stay certifications and toll approval review periods for novel derivative products subject to jurisdictional determinations by the Commission or the Securities and Exchange Commission (''SEC'').

Part 40 of the Commission's regulations, as amended herein, will become effective sixty days after publication in the **Federal Register**.

II. Amendments to Part 40 of the Commission's Regulations

The Commission received nine comment letters during the 60-day public comment period following the publication of its notice of proposed rulemaking. Seven of these comment letters were submitted by registered entities subject to the proposed regulations. Five comments were submitted on behalf of DCMs—the CME Group, Inc. (''CME''), ICE Futures U.S., Inc. (''ICE''), the Kansas City Board of Trade (''KCBOT''), the Minneapolis Grain Exchange, Inc. (''MGEX''), and OneChicago LLC Futures Exchange (''OCX'')—and two comments were submitted on behalf of registered DCOs—the Options Clearing Corporation (''OCC'') and LCH.Clearnet Ltd (''LCH'').[4] The Commission also received comments from the Futures Industry Association (''FIA''), an organization representing futures commission merchants, and the American Benefits Council (''ABC''), an organization representing pension funds and other buy-side swaps users.

Many of the comments received by the Commission offered specific recommendations for clarification or modification of proposed regulations; other comments generally objected to certain aspects of the proposal. The Commission, in consideration of these comments and as detailed below, is modifying its proposed rules to clarify regulatory obligations under certain provisions of part 40. The Commission has otherwise determined to implement its regulations as originally published on November 2, 2010.

a. Definitions (§ 40.1)

Three registered entities submitted comments concerning the proposed definitions of ''rule'' and ''terms and conditions'' in § 40.1 of the Commission's regulations. The Commission has determined to revise both definitions to address these comments. In addition, the Commission is adopting revised language in the definition of ''terms and conditions'' to provide specific examples of terms and conditions frequently included in swaps.

The FIA asked the Commission to consider whether an amendment to the § 40.1 definition of ''rule'' might be appropriate to ensure that the Commission's regulations captured advisories, interpretations, and less formal means of communicating policies to market participants. The FIA noted that registered entities, including DCMs, may be able to circumvent regulatory obligations by issuing communications under a category not enumerated in the proposed definition of ''rule.'' The Commission notes that ''interpretations'' and ''stated policies'' are explicitly included in the present definition of ''rule'' and that the non-exclusive categories enumerated in that definition are merely examples of the types of actions that are subject to Commission review. The Commission's position has always been that the definition of ''rule'' turns more on substance than form; that is, a registered entity cannot avoid regulatory obligations by adopting what is in substance a policy or interpretation by formally issuing the communication under a category that is not enumerated in the definition of ''rule.''

The Commission nevertheless has determined to add the term ''advisory'' to the list of categories constituting ''rules'' under § 40.1, which should ensure that registered entities issue advisories in compliance with all regulations applicable to ''rules.'' In consideration of the FIA's comments, the Commission also has determined to move the phrase ''in whatever form adopted'' to ensure that an addition or deletion to a communication constitutes a ''rule'' under § 40.1, without regard to the particular form in which a registered entity adopts such an amendment. In this regard, the Commission is clarifying that the language ''in whatever form adopted'' applies to all non-exclusive categories of ''rules'' enumerated in § 40.1 and that the enumeration of particular examples of ''rules'' does not imply the exclusion of others.

MGEX commented on the proposed definition of ''rule'' as well. In its comments, MGEX suggested that the Commission may be exceeding its authority by requiring DCMs to submit market maker and trading incentive programs as ''rules'' subject to the provisions of part 40. MGEX also commented that the terms and conditions of such programs should not be submitted to the Commission for approval, because, as a policy matter, the Commission should not substitute its judgment for ''the business judgment of the registered entities.'' Moreover, in MGEX's view, the publication of program terms and conditions could inhibit negotiations with market participants. The Commission disagrees with MGEX and, for the reasons discussed below, has determined to continue requiring registered entities to submit the complete terms and conditions of market maker and trading incentive programs to the Commission, with an appropriate request for confidential treatment.[5]

A DCM's rules implementing market maker and trading incentive programs fall within the Commission's oversight authority. Indeed, a number of core principles touch upon trading issues that may be implicated by the design of such programs. Core Principle 9, for example, establishes the Commission's framework for regulating the execution of transactions, requiring DCMs, like MGEX, to provide a competitive, open, and efficient market and mechanism for execution. The newly-amended Core Principle 12 also requires DCMs to establish and enforce rules to protect markets and market participants from abusive practices and to promote fair and equitable trading on designated contract markets. In addition, market maker and trading incentive programs frequently touch upon Core Principle 19, which requires that DCMs avoid adopting any rules or taking any actions that result in unreasonable restraints of trade.

It is not always clear in the first instance whether the rules implementing market maker and trading incentive programs have implications for a DCM's compliance with these core principles. Consequently, for many years, the Commission has required registered entities to submit the terms and conditions of all market maker and

[3] A SIDCO is a DCO that has been designated as a systematically important financial market utility by the Financial Stability Oversight Council pursuant to Section 804 of the Dodd-Frank Act and for which the Commission is the Supervisory Agency. *See* below section II.i. (discussing § 40.10).

[4] CME also submitted a comment on the Commission's cost-benefit analysis subsequent to the close of the public comment public for the proposed rulemaking. The Commission has addressed CME's comments in its cost-benefit analysis, below. CME, KCBOT, and MGEX are also registered DCOs and they commented on clearing-related issues.

[5] Pursuant to § 145.9 of the Commission's regulation, registered entities requesting confidential treatment for program terms and conditions must, among other things, file a written justification for the confidential treatment request.

trading incentive programs to ensure that, among other things, they do not incentivize manipulative activities, unreasonably restrain competition on or between exchanges, or otherwise interfere with the fair and efficient functioning of the marketplace. Reviewing program rules for compliance with applicable law is not tantamount to substituting the Commission's judgment for the business judgment of the registered entity.

The Commission continues to view such programs as ''agreements * * * corresponding'' to a ''trading protocol'' within the § 40.1 definition of ''rule'' and, as such, all market maker and trading incentive programs must be submitted to the Commission in accordance with procedures established in part 40. In addition, to further clarify submission obligations, the Commission intends to continue reminding each newly-designated contract market, in its designation letter, that such programs are considered ''rules'' under § 40.1. The Commission would like to emphasize, however, that such programs need not be submitted to the Commission for approval, as suggested in MGEX's comment. Market maker and trading incentive programs may be submitted for approval under § 40.5, but they also may be certified and submitted in accordance with the provisions of § 40.6, which has been the favored process for submission of market maker and trading incentive programs to date.

In a similar comment concerning the Commission's authority to amend rules relating to margin, MGEX stated that ''DCMs and DCOs are best qualified to set margins'' in light of their ''extensive historical record for doing this well.'' MGEX recommended that the Commission provide DCOs ''the broadest latitude possible'' to establish appropriate margin rules. The Commission believes that the final definition of ''rule,'' as adopted herein—and which does not restrict the Commission's review of rules relating to margin levels—is not inconsistent with the comment submitted by MGEX. As discussed in the proposed rulemaking, Section 736 of the Dodd-Frank Act amends Section 8a(7) of the Act to permit the Commission to alter or supplement the rules of a registered DCO by issuing rules, regulations or orders regarding margin requirements. To ascertain whether or not and under what conditions to issue such rules, regulations, or orders, the Commission must be able to review rules ''relating to the setting of levels of margin'' in the first instance, although the Commission is not authorized to ''set specific margin amounts'' under Section 8a(7)(D)(iii) of the Act. The Commission's review of such rules is an appropriate exercise of its DCO oversight responsibilities and may not result in the Commission taking action under Section 8(a)(7).

Finally, OCC recommended that the Commission reconsider certain language within the proposed definition of ''terms and conditions'' in § 40.1(j). Specifically, OCC suggested that the Commission delete language that would have required ''proposed swap or contract terms and conditions * * * [to] conform to industry standards or those terms and conditions adopted by comparable contracts.'' In OCC's view, novel products, by their nature, contain provisions that deviate somewhat from those in comparable contracts. The Commission, as suggested by OCC, intended to prevent registered entities from designing products that are economically identical to existing products but that have ''one or more unique features that serve no apparent purpose but to prevent fungibility.'' Given the potential adverse effect on innovation and other proposed regulatory provisions, the Commission has determined to revise the definition of ''terms and conditions'' to delete the above-cited language.

To further clarify the definition of ''terms and conditions,'' the Commission is revising § 40.1(j) to differentiate between the ''terms and conditions'' generally applicable to a contract for the purchase or sale of a commodity for future delivery, or an option on such a contract or an option on a commodity—not including an option on a commodity that falls within the definition of a swap—(''commodity futures and options contracts'') in paragraph (j)(1) and the ''terms and conditions'' generally applicable to a swap in paragraph (j)(2). Some of the ''terms and conditions'' associated with commodity futures and options contracts are different from those associated with swaps and, accordingly, the revised format for identifying particular examples of ''terms and conditions'' applicable to each product type may clarify certain submission requirements that are dependent on this definition. For example, the Commission has determined to revise the introductory paragraph to the definition of ''terms and conditions'' to include language that describes a swap's underlying ''trading unit'' or ''commodity'' as a ''description of the payments to be exchanged under a swap.''

The examples of ''terms and conditions'' generally applicable to commodity futures and options contracts and contained in paragraph (j)(1) are being adopted as proposed, except that the Commission has determined to amend the definition to include ''no cancellation ranges'' within subparagraph (vi). However, as discussed above, the Commission also has determined to amend and clarify the definition of ''terms and conditions'' by separating those terms and conditions generally applicable to commodity futures and options contracts from those generally applicable to swaps.[6] Accordingly, the new and final § 40.1(j)(2) provides examples of ''terms and conditions'' frequently associated with swaps,[7] which the Commission has determined to clarify and/or renumber as follows:

- Paragraph (j)(2)(i) defines as a ''term'' or ''condition'' the ''identification of the major group, category, type or class in which the swap falls'' and ''any further sub-group, category, type or class that further describes the swap.''[8] To clarify the meaning of this phrase, a parenthetical lists ''interest rate, commodity, credit, or equity'' swaps as non-exclusive examples of major swap groups. This is equivalent to a description of the ''quality and other standards that define the commodity or instrument underlying the contract'' applied to commodity futures and options contracts in § 40.1(j)(1)(i);
- Paragraph (j)(2)(ii) refers to ''[n]otional amounts, quantity standards, or other unit size characteristics.'' This provision, as proposed in paragraph (j)(15)(i), previously referred only to ''notional values.'' The revision clarifies that there may be more than one way to state the size of a swap;
- Paragraphs (j)(2)(iii) (any applicable premiums or discounts for delivery of nonpar products) and (iv) (trading hours and the listing of swaps) are parallel to paragraphs (j)(1)(iii) and (iv), which are applicable to commodity futures and options contracts;
- Paragraph (j)(2)(v) for swaps, like paragraph (j)(1)(v) for commodity

[6] The examples of terms and conditions proposed as paragraphs (j)(1)–(14) are being renumbered as paragraphs (j)(1)(i) through (xiv) to reflect the inclusion of paragraph (j)(2) for swaps.

[7] The Commission notes that the definition of ''swap'' in Section 1a(47)(A)(i) of the Act includes an option (''any agreement, contract or transaction (i) that is a put, call, cap, floor, collar, or similar option of any kind that is for the purchase or sale, or based on the value of 1, or more interest or other rates, currencies. * * *''

[8] The terminolory used in this provision, *i.e.,* ''group, category, type, or class,'' is used to describe swaps in section 723 of the Dodd-Frank Act, codified in section 2(h)(2) of the Act, regarding the review of swaps for a mandatory clearing determination. *See also* proposed § 39.5 (process for review of swaps for mandatory clearing; 75 FR 67277 (Nov. 2, 2010)).

futures and options contracts, addresses the pricing basis of the instrument. It refers to ''pricing basis for establishing the payment obligations under, and mark-to-market value of, the swap including, as applicable, the accrual start dates, termination or maturity dates, and, for each leg of the swap, the initial cash flow components, spreads, and points, and the relevant indexes, prices, rates, coupons, or other price reference measures.'' This incorporates the provisions of proposed paragraphs (j)(15)(iii) (indexes), (iv) (relevant prices, rates or coupons), (vi) (initial cash flow components), and (x) (spreads and points). The Commission notes that other ''price reference measures'' could include any factor that might have a bearing on the price of a swap, including pricing curves, reference prices, reference entities or obligations, reference currencies, disruption fallbacks, or, given the variety of existing and potential swap products, any other term or condition that affects the pricing basis of the swap;

- Paragraphs (j)(2)(vi) (any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices) and (vii) (position limits, position accountability standards, and position reporting requirements) for swaps are the same as paragraphs (j)(1)(vi) and (vii), respectively, as applied to commodity futures and options contracts;
- Paragraph (j)(2)(viii) refers to ''payment and reset frequency, day count conventions, business calendars, and accrual features.'' It incorporates proposed paragraphs (j)(15)(ii) (relevant dates, tenor and day count conventions), (vii) (payment and reset frequency), (viii) (business calendars), and (ix) (accrual type). Included within this category are such specifications as payment, delivery, pricing and reset dates, day count fractions, holiday calendars, and accrual features such as compounding;
- Paragraph (j)(2)(ix) addresses specifications related to physical delivery, if physical delivery applies. The enumerated features are the same as those listed for commodity futures and options contracts in paragraph (j)(1)(ix);
- Paragraph (j)(2)(x) relates to cash settlement and provides ''[i]f cash settled, the definition, composition, calculation and revision of the cash settlement price, and the settlement currency.'' This is the same as paragraph (j)(1)(x) for commodity futures and options contracts, except that the new paragraph contains an additional reference to settlement currency that incorporates proposed paragraph (j)(15)(v) (currency);
- Paragraphs (j)(2)(xi), (xii), (xiii) and (xiv), relating to swaps that are options, parallel paragraphs (j)(1)(xi), (xii), (xiii) and (xiv) relating to commodity options contracts;
- Paragraph (j)(2)(xv) lists ''[l]ife cycle events'' as a term or condition. Originally included in proposed paragraph (j)(15)(vi), this encompasses provisions relating to such attributes as special assignment, novation, exchange or other transfer rights or limitations, special termination events, amendment provisions, rights to extinguish obligations under the swap, and special notice requirements.

The Commission would like to clarify that these ''terms and conditions'' apply to the submission of products for listing or trading by DCMs and SEFs. The Commission's proposed swap-related examples referenced ''swaps cleared by a derivatives clearing organization,'' which may have suggested that the examples were relevant only in connection with rules submitted by DCOs. The ''terms and conditions'' of a swap are relevant to rules that may be submitted by DCMs and SEFs, as well as DCOs, and the reference to swaps cleared by DCOs therefore has been removed.

b. Listing Products for Trading by Certification (§ 40.2)

The Commission previously proposed to amend § 40.2(a) to require registered entities to accompany their submissions with the documentation relied upon to establish the basis for compliance with the Act and the Commission's regulations. The Commission received a number of comments regarding the proposed documentation requirement in § 40.2(a)(3)(v). Two registered entities, ICE Futures and CME, commented that the Commission may not have the authority to require the submission of documentation with newly-certified products. A number of registered entities also found the proposed provision unclear or overly prescriptive. The Commission, in consideration of these comments, has determined to amend its regulations to clarify the filing obligations of registered entities and to ameliorate the perceived burdens associated with the proposal.

ICE Futures and CME suggested that the Commission may not have the authority to amend the product submission requirements, because the Dodd-Frank Act, while substantially amending statutory provisions relevant to the submission of rules and rule amendments, did not amend the Act's provisions governing the certification and approval of products. The Commission would like to clarify that its proposed rulemaking concerned not only Dodd-Frank related amendments but also certain amendments that facilitate the Commission's administration of the Act. Thus, although the Dodd-Frank Act did not substantively change the product certification provisions in Section 5c(c) of the Act, the Commission proposed the documentation requirement in § 40.2, as well as other provisions,[9] to expedite the submission review process and to ensure adequate consideration is given to legal and financial issues arising from new product and rule submissions.

In this regard, the Commission continues to view its product submission requirements as a logical adjunct to the certification provisions of Section 5c(c)(1) of the Act. To argue that the Commission's proposal exceeds statutory authority, the product submission provisions of the Act would need to be read strictly to require that registered entities merely make—and not support—certifications of compliance with the Act and regulations thereunder. This interpretation ignores the Commission's product oversight function and its duty to examine support for certifications of compliance with core principles, including certifications that new products are not susceptible to manipulation. The Commission has long recognized ''the need to balance the flexibility'' that the Act, as amended by the Commodity Futures Modernization Act (''CFMA''), gives ''a DCM in being able to [quickly] self-certify new products * * * against the obligations of both the DCM and the Commission to assure themselves that the certification is accurate—*i.e.,* that the product or rule does indeed comply with applicable * * * core principles.'' [10]

The Commission nevertheless agrees with ICE Futures that it might be ''more useful'' for staff to have ''a written explanation'' of the newly-certified product than to receive ''pages of reports, data and other records.'' The Commission therefore has determined to substantially revise § 40.2(a)(3)(v) to require product certifications be supported by a ''concise explanation and analysis'' of the certified product

[9] *See* proposed §§ 40.3, 40.5, 40.6, and 40.10, 17 CFR part 40 Provisions Common to Registered Entities, 75 FR 57282 (Nov. 2, 2010).

[10] See Technical Clarifying Amendmens to Rules for Exempt Markets, Derivatives Transaction Executiion Facilities and Designated Contract Markets, and Procedural Changes for Derivatives Clearing Organization Registration Applications, 71 FR 1953, 1956 (Jan. 12, 2006).

and its compliance with applicable law. This ''explanation and analysis'' must either (1) be accompanied by supporting documentation, *or* (2) incorporate the information contained in such documentation, with appropriate citations to data sources.[11] Thus, under final § 40.2(a)(3)(v), registered entities certifying new products with an appropriately detailed and cited ''explanation and analysis'' do not have to submit supporting documentation.

The submission of an explanation and analysis is necessary for the Commission's review of a new product certification. The Commission has encountered numerous instances in which registered entities provided only cursory supporting analyses for their product submissions or, in certain cases, failed to document the evidentiary basis for their certifications altogether. The Commission also has experienced undue delays in receiving certain requested information, suggesting that supporting analyses had not been prepared by the registered entities as of the time of request.[12] Without prompt receipt of supporting information, the staff must expend significant resources and time to replicate existing analyses or to otherwise independently establish a product's compliance with applicable law. In addition, the staff frequently has found it necessary to contact registered entities for additional guidance on product submissions. To address these problems, final § 40.2(a)(3)(v) facilitates the staff's review of new products subsequent to certification while discouraging unsupported certification of products in the first instance.[13] The more flexible and substantially revised provision permits registered entities to support product certifications in a manner that may be most effective and least costly under the circumstances.

The Commission notes that the explanation and analysis supporting a product certification requires the incorporation of information that, in many cases, is already collected or reviewed by registered entities. For example, registered entities complying with the guidance and acceptable practices in the Guideline No. 1 Appendix to part 40 presently must review and, if necessary, develop the evidentiary basis for certain certifications prior to submitting new products for Commission review. Moreover, under existing § 40.2(b), registered entities must, upon receipt of a staff request, submit this or other supporting information to substantiate product submissions. The routine provision of a concise explanation and analysis should be no more burdensome than compliance with existing regulations requiring registered entities to collect supporting information and to further explain and submit such information upon request.

To further address comments concerning the perceived burdens of the product submission requirements, the Commission also has determined to streamline the product certification process for a significant percentage of swap contracts [14] by permitting DCMs and SEFs to certify, within a single submission, one or more swaps without submitting each swap and its supporting information to the Commission. To list a particular swap or a particular number of swaps through the class certification provisions of new § 40.2(d), the DCM or SEF must certify that each of the individual contracts within the certified class complies with certain conditions.

A DCM or SEF may submit a class certification only if each swap within the certified class of swaps complies with the conditions specified in § 40.2(d)(1)(i)–(iv). First, each swap within the certified class of swaps must be based upon an ''excluded commodity,'' as defined in § 40.2(d)(1); these swaps include, for example, interest rate swaps, swaps on widely-held and liquid currencies, and swaps based upon the occurrence or non-occurrence of certain events or contingencies. Second, if more than one swap is included in a single filing under § 40.2(d), each particular swap within the certified class of swaps must be based upon an excluded commodity with an identical pricing source and methodology for calculating reference prices and payment obligations. This ensures that DCMs and SEFs simultaneously certify, for example, only those interest rate swaps with a common pricing source—such as Thomson Reuters on behalf of the British Bankers' Association (''BBA'')—and a common methodology for calculating the reference rates for swaps with varying maturities—such as the contributor averaging methodology used to calculate each of the BBA's fifteen London Interbank Offer Rates (''LIBOR'') for a particular currency. Thus, a DCM or SEF may class certify (*i.e.,* include in a single submission under § 40.2) a number of LIBOR-based interest rate swaps for a particular currency notwithstanding the varying underlying maturities or varying tenors of swaps within the certified class.

Third, the regulation limits class certifications to swaps based upon sources and methodologies that the Commission previously reviewed in connection with a certified or approved futures or swap contract. This ensures that the Commission had an opportunity to review the particular pricing source and methodology used in each of the swaps within the certified class of swaps.[15] Fourth and finally, each particular swap within the certified class of swaps must be based upon an excluded commodity involving an identical currency or identical currencies. For example, a swap based upon 3-month LIBOR for U.S. Dollars may not be submitted in the same submission as a swap based upon the 3-month LIBOR rate for any of the other 9 currencies presently included in the BBA survey.

To further streamline the new product submission process, the Commission also has determined to permit DCOs to submit products accepted for clearing under the forthcoming provisions of § 39.5. As proposed, the second provision of § 40.2(a) would have retained the existing requirement that, prior to accepting any over-the-counter product for clearing, a DCO must submit the new product pursuant to the provisions of part 40. Comments submitted in connection with the proposed process for review of swaps for mandatory clearing indicated some confusion about the interplay between the § 40.2 product submission process and the § 39.5 submission process for a mandatory clearing determination. In light of the introduction of procedures for a DCO to submit swap products for a mandatory clearing determination under § 39.5 and the potential for confusion as to the interaction between

[11] For example, registered entities could incorporate a summarized record in the product explanation and analysis with reference to a Web site link containing the information relied upon to establish compliance with applicable law.

[12] Staff recently received a number of self-certified submissions containing insufficient information for several products, implicating a number of core principles. Each submission's deficiencies were corrected only after numerous discussions with the Commission's staff, a process that exhausted significant resources and time.

[13] Moreover, the Dodd-Frank Act's elimination of certain exemptions and exclusions relied upon by currently operating exempt entities may encourage these entities to register with the Commission, thereby increasing the number of product certifications subject to staff review.

[14] According to a recently published report by the International Organization of Securities Commissions (''IOSCO''), interest rate swaps comprised approximately 77.5% of the total outstanding notional value of over-the-counter swaps. Foreign exchange swaps accounted for another 9.1%. *See* Technical Committee of IOSCO, Report on Trading of OTC Derivatives, 1, 6 (Feb. 3, 2011).

[15] Based upon its experience with § 40.2(d), the Commission may consider expanding the classes of commodities eligible for class certification in a future rulemaking.

the two regulatory provisions, the Commission has reconsidered what would have been a dual submission requirement. The Commission therefore is deleting from § 40.2 the provision requiring submission of new products by a DCO.[16] A DCO may submit a single filing in accordance with § 39.5 instead of submitting two filings—one under § 40.2 and one under § 39.5—and the information required for the § 39.5 submission encompasses the information that would otherwise be required under § 40.2. The Commission believes that this revision will facilitate the product submission process without adversely affecting the supervisory purpose of regulations requiring the submission of products for Commission review.

In other comments related to product certification requirements, registered entities stated that the price certification provision in proposed § 40.2(a)(3)(vi) required unclear or vague certifications concerning matters unrelated to the Commission's core regulatory functions. CME commented that registered entities already have sufficient incentives—for example, avoiding possible litigation—to ensure that products meet applicable legal standards. In addition, ICE Futures commented that the Commission's proposal ''exceed[ed] the requirements contained in [the] Dodd-Frank [Act]'' and ''inappropriately inject[ed] the Commission into the commercial and business practices of registered entities.'' In its view, the Commission should not be the ''business and legal sounding board for each registered entity in the area of intellectual property and other legal conditions.'' Moreover, ICE Futures questioned ''whether the Commission would be properly positioned to make * * * complex [intellectual property] determinations'' as part of the product review process. The OCC did not object to the price certification requirement but questioned whether it served a ''useful purpose.'' The OCC correctly stated that registered entities are required to abide by the Act and the Commission's regulations, which contemplate appropriate due diligence concerning intellectual property and pricing issues, ''whether or not [they] give[] * * * a [special] certification'' to that effect.

The Commission, in consideration of these comments, has determined not to adopt proposed § 40.2(a)(3)(vi). The Commission recognizes that registered entities should, and generally are, sensitive to intellectual property issues that might arise in the course of developing a new product and that the general certification provision in § 40.2(a)(3)(iv) captures the more specific settlement price certification proposed in § 40.2(a)(3)(vi).[17] However, in light of recent experience, the Commission disagrees with the assertion that registered entities, without exception, sufficiently account for intellectual property issues when listing new products for trading. In fact, a DCM was recently involved in a legal dispute concerning the use of certain published third-party prices. Although the DCM had been facilitating trading in contracts referencing these prices, another entity obtained an exclusive license to use the third party's prices and, accordingly, threatened to seek legal action to enjoin the DCM from further referencing those prices to cash settle its products. The DCM ultimately found an alternative means for settlement of its existing contracts but not without some disruption to the market. The episode highlights the relevance and necessity of appropriate due diligence in referencing third-party prices for purposes of cash settlement. Market participants should be able to enter into positions in a newly-certified contract without concerns that the registered entity's use of a particular price may be subject to legal challenge. Legal challenges or disputes can be not only disruptive to the marketplace but also may undermine confidence in the futures and derivatives markets. Moreover, such challenges or disputes can affect the value of positions taken in contracts subject to the controversy.

Thus, although the Commission has determined not to adopt the proposed pricing certification provisions, it notes that the staff, in its discretion and as part of its due diligence reviews of new product submissions, may request information under § 40.2(b) concerning whether a registered entity has obtained the legal rights to use or reference proprietary prices, including third-party index prices, in connection with the listing or trading of a product. Registered entities submitting a product that uses prices published by another market or that references third-party prices should include all information relevant to the cash settlement of the product with its accompanying explanation and analysis. In this regard, a simple statement that the registered entity has the legal rights to use or reference a particular price could expedite Commission staff review without imposing a material burden on either the Commission or registered entities.

Finally, the Commission notes that registered entities frequently submit product ''terms and conditions'' with accompanying rules—for example, rules establishing block trade thresholds—that, upon the effective date of these regulations, will be subject to a new rule certification review process. Such ''rules'' or ''rule amendments'' submitted in connection with the listing or trading of a product, if not included in the definition of ''terms and conditions,'' will not be effective and cannot be implemented until properly submitted for Commission review under §§ 40.5 or 40.6. The Commission also notes that the ''terms and conditions'' of a product, as defined in § 40.1(j), must be submitted in connection with the listing or trading of a product and therefore would become effective one full business day after the business day of submission. However, if ''terms and conditions'' submitted in connection with the listing or trading of a particular contract would amend the existing terms or conditions of a previously certified or approved product, such ''terms and conditions'' must be certified under § 40.6 or submitted for approval under § 40.5 as well.

c. Voluntary Submission of New Products for Commission Review and Approval (§ 40.3)

For the reasons noted in its explanation of amendments to § 40.2, the Commission has determined to revise its documentation provisions in proposed § 40.3(a)(4) and to eliminate the price certification provisions in proposed § 40.3(a)(9). The amendments parallel those adopted with respect to product certifications under § 40.2. Final § 40.3(a)(4) requires that products submitted for Commission approval be accompanied by an explanation and analysis of the product and its compliance with applicable law and either (1) the documentation relied upon to establish the basis for compliance with applicable law, or (2) the information contained within such documentation, with appropriate citations to data sources.

The Commission received a comment concerning its existing regulation governing staff requests for additional information under final § 40.3(a)(10). The OCC commented that the two-day deadline for responses to requests for additional information may be insufficient and impractical in certain circumstances. It reasoned that

[16] DCOs voluntarily seeking prior approval to clear a new product under § 40.3 may still submit two filings—one under § 40.3 and one under § 39.5.

[17] Accordingly, implicit in any certification that a product complies with the Act and the Commission's regulations is an assertion that the submitting entity has the rights to use or reference a particular price. Filing a false certification could result in a Commission action under § 40.2(c).

registered entities generally seek to provide ''additional materials as soon as possible in order to expedite the staff's review of the new product'' and that the regulation's inflexible deadline therefore was unnecessary. The OCC also suggested that the Commission adopt alternative language to permit registered entities to ''notify the Commission'' that additional time is ''reasonably required to provide the requested evidence'' and, in such cases, to require the submission of this information no later than ten business days subsequent to the request, or at the completion of a longer period specified by staff.

The Commission has determined that a longer response period is not appropriate for the submission of additional information. The Commission has a limited timeframe for making final determinations under the product approval provisions of § 40.3 and the prompt receipt of requested information frequently is requisite to its determination regarding the submission. In light of the OCC's comment, however, the Commission has determined to amend the final § 40.3(a)(10) to permit, at the discretion of its staff and upon receipt of a written request from the registered entity, an extension of time for the submission of additional information.

d. Amendments to Terms or Conditions of Enumerated Agricultural Contracts (§ 40.4)

The Commission has determined to adopt technical amendments to § 40.4(b)(3) to permit registered entities to implement ''[c]hanges in no cancellation ranges'' for enumerated agricultural contracts without prior approval, provided these rules are properly submitted to the Commission pursuant to § 40.6. Newly-certified products frequently include terms and conditions related to ''no cancellation ranges'' and the Commission does not believe it appropriate to delay implementation of a no cancellation range for products involving enumerated agricultural commodities, especially when those products may be actively trading through a registered entity.

e. Voluntary Submission of Rules for Commission Review and Approval (§ 40.5)

For the reasons noted below, the Commission has determined to eliminate the documentation provision previously proposed in § 40.5(a)(7), to revise existing § 40.5(a)(5) to be similar to final § 40.6(a)(7)(v), and to eliminate proposed § 40.5(a)(10). The Commission notes that the ''explanation and analysis'' requirement in final § 40.5(a)(5) does not include the qualifier that the submission be ''concise.'' The Commission requires registered entities to provide a more detailed explanation and analysis of rules voluntarily submitted for Commission approval under the provisions of § 40.5.

f. Self-Certification of Rules (§ 40.6)

The Commission received a number of comments concerning the proposed documentation requirement in § 40.6(a)(7)(v) and its application to routine rules and rule amendments. The OCC, for example, commented that it is frequently ''obvious'' that a routine rule submission complies with applicable statutory and regulatory provisions and that the documentation requirement failed to account for the fact that many rules warrant the submission of minimal, if any, supporting documentation. Similarly, KCBOT commented that many rule submissions need be supported only by a ''cursory review of the rule or rule change in relation to Commission regulations,'' with little or no ''significant benefit'' to be gained from the collection or provision of supporting documentation. Like comments concerning the submission of documentation in §§ 40.2 and 40.3, a number of comments also stated that the submission of documentation in connection with all new rules and rule amendments would be burdensome and unlikely to yield benefits that outweighed costs.

The Commission has determined, in consideration of these comments, to eliminate its proposed documentation requirement in § 40.6(a)(7)(v) and to insert in its place a requirement that registered entities provide a ''concise explanation and analysis'' of the ''operation, purpose, and effect'' of certified rules, consistent with the existing requirement in § 40.5(a)(5). Unlike the certification provisions applicable to new products, the rule certification provisions of the Act provide the staff ten-business days to review new rules and rule amendments and, if necessary, to prevent them from becoming effective until staff receives adequate information from the submitting entity.[18] Registered entities therefore should have sufficient incentives to provide adequate explanations of new submissions under § 40.6 without the provision of actual documentation.[19]

The ''concise explanation and analysis'' will facilitate the Commission's review of newly-certified rules and rule amendments. Registered entities recently have submitted rule submissions with only a cursory explanation of the rule change and a conclusory statement concerning the submission's compliance with core principles. As a consequence, the staff frequently has found it necessary to contact registered entities for additional guidance on submissions and the potential implications for compliance with core principles. The Commission's review of the explanation and analysis will be less burdensome—both for the Commission and registered entities—than the current practice of contacting registered entities to request explanations and analyses subsequent to each rule submission.[20] Like the explanation and analysis required for new product submissions, the explanation and analysis of certified rules or rule amendments should be a

[18] Pursuant to Section 745 of the Dodd-Frank Act, the Commission has ten-business days to review rule certifications and to determine whether to stay certain submissions—including those submitted with inadequate information—for as many as 90 additional days. Moreover, the Commission's staff may request additional information at any time during the applicable rule review period pursuant to existing § 40.6(a)(8).

[19] CME commented that the extended review period should not be ''mandatorily invoked in the event a rule submission [is] stayed due to the provision of inadequate information.'' In its view, the public comment period associated with stayed rules is designed to solicit external perspectives regarding only ''controversial'' submissions. The Commission does not, however, have the authority to prevent a stayed submission from being subject to the extended review and public comment requirements. Section 745 of the Dodd-Frank Act provides that the Commission's issuance of a notification ''shall stay the certification of the new rule or rule amendment'' and that ''[t]he Commission shall provide a not less than 30-day public comment period.'' However, the Commission acknowledges that its authority to issue a notification of stay in the first instance is discretionary rather than mandatory. Under § 40.6(c), the Commission ''may stay the certification of a new rule or rule amendment'' for the enumerated reasons, but it may also request a revised submission that would render a notice of stay unnecessary. Accordingly, the Commission's regulations permit—but do not require—a stay of any submission that omits information that could ''reasonably be deemed important by the Commission,'' as noted by FIA.

[20] The Commission believes that its final regulations will conserve both Commission and registered entity resources. Subsequent to the effective date of the Dodd-Frank, the Commission anticipates an increase in the number of new and amendatory rule submissions implementing the Dodd-Frank Act and forthcoming regulations, as well as an increase in the number of registered entities submitting such rules. Concise explanations and analyses will assist the Commission's staff in conducting its due diligence within the initial 10-business-day review period, thereby minimizing potential delays for registered entities. Moreover, registered entities presently submit a large number of rules and rule amendments throughout the year; CME, for example, noted that it submitted more than 342 rules in the last calendar year alone.

clear and informative—but not necessarily lengthy—discussion of the submission, the factors leading to the adoption of the rule or rule amendment, and the expected impact of the rule or rule amendment on the public and market participants.

In another comment concerning proposed § 40.6, the FIA encouraged the Commission to adopt regulations that would maximize the transparency of the rule submission process, as well as account for the expertise of market participants. The Commission, in consideration of the FIA's comment, intends to continue its practice of publishing all incoming submissions on its Web site and will continue developing a Web portal at cftc.gov that, once completed, should expedite both Commission and public review of submissions.[21] The Commission also intends to facilitate public comment by enabling interested parties to submit comments directly from the submissions page on the Commission's Web site. As noted in the notice of proposed rulemaking, the Commission presently is working on enhancements to its Web site and information technology systems that will, among other things, enable the Commission to promptly inform the public of rule submissions and stays of rule submissions. The Commission also intends to continue using its current ability to provide notice through e-mail notifications and RSS feeds to those who choose to sign-up for them.

The Commission would like to note that the ''industry filings'' tab on the Commission's Web site currently consolidates all filings onto a single Web page and posts them for public review with a brief explanation of the rule or rule amendment. Market participants and the public can click on a link within this Web page and access all rule filings by registered entities. Thus, although the Commission does not intend to publish a ''daily rule digest,'' as suggested by the FIA, all market participants currently have and will continue to have access to submissions in an organized format, which will be complemented by the ''concise explanation and analysis'' accompanying each submission.

The FIA also commented that, with respect to rules submitted in response to an emergency pursuant to § 40.6(a)(6), the Commission should not limit the ability of registered entities ''to respond as may be necessary to the unforeseen circumstances of an emergency situation.'' The FIA expressed concerns, however, that a registered entity could potentially ''cite an emergency event as the grounds for a fundamental recasting'' of regulatory responsibilities. The Commission agrees that registered entities must be able to respond flexibly and decisively to emergencies. In addition, the Commission acknowledges the possibility that a registered entity could attempt to immediately implement a rule and bypass the rule certification process by asserting that the rule is in response to an emergency. The final regulations accordingly clarify that registered entities are required to certify any rule implemented in response to an emergency under the procedures set forth in § 40.6. The staff will review such certifications for compliance with applicable law in situations where the rule, by necessity, has been implemented and in situations where the rule is intended for implementation prior to the completion of the 10-business-day review period. In either situation, the staff may permit the registered entity's rule to remain effective or it may determine that the implemented rule should be stayed for an extended review.[22]

The Commission is adopting three revisions to its proposed regulations in § 40.6. First, the price certification in proposed § 40.6(a)(7)(viii) has been eliminated for the reasons discussed in connection with revisions to proposed §§ 40.2(a)(3)(vi), 40.3(a)(9), and 40.5(a)(10). Second, the Commission, in consideration of comments from both CME and OCX, has determined to amend § 40.6(a) to make rules delisting or withdrawing the certification of products effective upon submission to the Commission. The Commission agrees that such submissions should be exempt from the 10-business-day review period in order to avoid complicating the delisting of the product by providing market participants an opportunity to enter into contracts between the time period of submission and the effective date of the rule.[23] Finally, the Commission, in response to a comment from the OCC, is retaining the existing language in § 40.6(d) that permits certain non-substantive rules to take effect without certification to the Commission.

g. Delegations (§ 40.7)

The Commission is correcting a typographical error that appeared in proposed § 40.7(a)(1) by replacing the reference to ''§ 40.5(c)(1)(B)'' with a reference to ''§ 40.5(c)(1)(ii).''

h. Availability of Public Information (§ 40.8)

The Commission has determined to adopt technical amendments to § 40.8 to reflect possible changes in the designation or registration application procedures for DCMs, SEFs, DCOs and SDRs.[24] Specifically, § 40.8(a) will make public the following: (1) The transmittal letter and first page of the ''cover sheet'' of applications; (2) the applicant's regulatory ''compliance chart;'' and (3) the ''narrative summary'' of the applicant's proposed activities.'' [25]

i. Special Certification Procedures for Submission of Rules by Systemically Important Derivatives Clearing Organizations (§ 40.10)

CME, FIA, LCH, and OCC submitted comments regarding the Commission's proposed regulations to implement Section 806 of the Dodd-Frank Act. Section 806 requires a financial market utility that has been designated by the Financial Stability Oversight Council (''FSOC'') to be systemically important to provide its Supervisory Agency with 60 days advance notice of any proposed changes to rules, procedures, or operations that could materially affect the nature or level of risks presented by the financial market utility. Section 40.10 sets forth implementing requirements for SIDCOs.

Proposed § 40.10(a) required that all SIDCOs provide 60 days advance notice to the Commission in accordance with Section 806 of the Dodd-Frank Act. In a separate proposed rulemaking, the Commission proposed to define a ''systemically important derivatives clearing organization'' to mean a ''financial market utility that is a derivatives clearing organization registered under section 5b of the Act (7 U.S.C. 7a–1), which has been designated by the FSOC to be systemically

[21] Given the short time period for the Commission's review, the Commission agrees with FIA that immediate Web site notice is ''a far superior alternative to waiting several days for **Federal Register** publication of the rule or product filing.''

[22] The Commission's staff may stay a rule or rule amendment implemented in response to an emergency for the same reasons that it may stay other rules or rule amendments submitted pursuant to the procedures in part 40. Specifically, the staff may stay the rule for an extended review if the submission insufficiently explains the emergency or the registered entity's response, presents novel or complex issues warranting further consideration, or is potentially inconsistent with the Act or regulations thereunder.

[23] The Commission has the discretion to permit certain rules to become effective prior to the expiration of the 10-business-day rule review period, provided it establishes the effective date of such rules by rule or regulation. *See* Section 5c(c)(2) of the Act, as amended by Section 745(b) of the Dodd-Frank Act.

[24] *See, e.g.,* 76 FR 3698 (Jan. 20, 2011) (proposing revisions to DCO application procedures).

[25] *See id.* at 3718 (proposing a parallel public information provision in § 39.3(a)(5)).

important.'' [26] Under this definition, a DCO could be a SIDCO even if the Commission was not its Supervisory Agency and, as an unintended result, proposed § 40.10 would require such a DCO to provide advance notice to the Commission.

OCC pointed out this issue, noting that the authority for § 40.10(a) is Section 806(e)(1)(A) of the Dodd-Frank Act, which requires a systemically important financial market utility to provide 60 days advance notice to ''its Supervisory Agency.'' Under Section 803(8)(B) of the Dodd-Frank Act, there can be only one Supervisory Agency for a financial market utility designated as systemically important.[27]

The Commission recognizes that some DCOs, like OCC, may be regulated by more than one Federal agency. In the case of OCC, if it were designated as a systemically important financial market utility, it is possible that it would be so designated because of its activities as a securities clearing agency, not because of its activities as a DCO. Accordingly, the SEC, not the Commission, would likely be its Supervisory Agency.

OCC recommended revising the language in § 40.10(a) to clarify that advance notice to the Commission would be required only for DCOs for which the Commission is the Supervisory Agency.[28] Although the Commission is adopting § 40.10(a) as proposed, it intends to act on OCC's suggestion by revising the definition of ''systemically important derivatives clearing organization'' in a future final rulemaking to clarify that a SIDCO is a financial market utility that has been designated by the FSOC to be systemically important and for which the Commission acts as its Supervisory Agency pursuant to section 803(8) of the Dodd-Frank Act. This clarification will address the issue raised by OCC in connection with § 40.10 and will serve to clarify the scope of any other regulations relating to SIDCOs.

Proposed § 40.10(a) required a SIDCO to notify the Commission of a change in rules, procedures, or operations that could materially affect the nature or level of risks presented by the SIDCO. OCC and CME commented that a SIDCO would be required to notify the Commission of proposed changes that could *decrease* the nature or level of risk in addition to changes that could *increase* the nature or level of risk. OCC does not believe that a SIDCO should be required to report a change that could materially reduce risk under § 40.10 because the proposed change would be subject to a 60-day ''waiting period,'' and the goal of reducing risk is not served by requiring that such a change be subject to delay.

Similarly, CME expressed the view that the Dodd-Frank Act does not provide the Commission with authority to impose a 60-day advance notice requirement for changes in rules, procedures, or operations that could improve the operations of a SIDCO, and it believes the Commission should exercise its authority over risk-reducing changes under the certification procedures of § 40.6.

OCC and CME proposed that the Commission change § 40.10(a) to cover only a proposed change in rules, procedures, or operations that could have a materially adverse impact on risk. The Commission has determined not to adopt this suggested revision for the reasons discussed below.

As a preliminary matter, the Dodd-Frank Act does not distinguish between a change that could materially increase or decrease the nature or level of risks presented by a SIDCO. Although Congress could reasonably have expected that risk-related changes are almost always intended to reduce risk, it required advance notice of ''any'' change that could ''affect'' risk and did not limit Section 806 to only those instances where a change could increase risk. Moreover, the purpose of advance notice is to assist the Commission in monitoring systemic risk and in seeing that SIDCOs effectively manage risk in furtherance of compliance with the core principles. The Commission acknowledges that requiring a SIDCO to notify the Commission under § 40.10 of a change that could materially reduce risk could delay the time when that change becomes effective. However, a proposed change that could materially reduce risk in certain respects also could materially increase risk in other respects, and a SIDCO and the Commission might come to different conclusions when evaluating whether a particular change could increase or decrease risk, overall. For example, a SIDCO could reduce risk by requiring heightened membership requirements, but this might also reduce the number of clearing members and therefore increase concentration of risk. As a practical matter, even for ostensibly risk-reducing changes, there may be adverse consequences that the Commission should have the opportunity to consider in the time frame set forth in Section 806 of the Dodd-Frank Act.

The Commission notes that, as proposed, § 40.10(g) provides that a SIDCO may implement a change in less than 60 days from the date the Commission receives the notice of proposed change or the date the Commission receives any further information it has requested, if the Commission notifies the SIDCO in writing that it does not object to the proposed change and authorizes implementation of the change on an earlier date, subject to any conditions imposed by the Commission. To further address the concerns expressed by the commenters, the Commission is adding a new paragraph (a)(3) that provides that a SIDCO may request that the Commission expedite the review on the grounds that the change would materially decrease risk. The Commission, in its discretion, may expedite the review and, pursuant to paragraph (g) of this section, notify the SIDCO in less than 60 days.

The concern that § 40.10 prevents a SIDCO from instituting a risk-reducing change in less than 60 days may be overstated. Section 40.10(g) allows a SIDCO to implement a change in less than 60 days if the Commission notifies the SIDCO in writing that it does not object to the change. Moreover, unless an emergency exists, it is unlikely the market would be significantly harmed if implementation of the change were delayed for more than 10 days, which is the basic time period for the Commission's review of certified rules under § 40.6.

Proposed § 40.10(h) required a SIDCO to provide notice to the Commission of an emergency change no later than 24 hours after implementation of the change.[29] Among other things, the proposed rule required the notification to include the information set forth in proposed § 40.10(a). OCC commented that it is not practical to require a SIDCO's emergency filing to conform to the requirements of § 40.10(a) within 24

[26] *See* 75 FR 77576, 77586 (Dec. 13, 2010).

[27] Section 803(8)(B) provides as follows: ''Multiple Agency Jurisdiction: If a designated financial market is subject to the jurisdictional supervision of more than 1 agency listed in subparagraph (A), then such agencies should agree on 1 agency to act as the Supervisory Agency, and if such agencies cannot agree on which agency has primary jurisdiction, the Council shall decide which agency is the Supervisory Agency for purposes of this title.''

[28] OCC suggested revising § 40.10(a) to read, in relevant part: ''A registered derivatives clearing organization that has been designated by the Financial Stability Oversight Council as a systemically important derivatives clearing organization and for which the Commission acts as the Supervisory Agency pursuant to Section 803(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act shall provide notice to the Commission * * *'' *See* OCC letter at 7.

[29] This standard is consistent with the 24-hour requirement for emergency rule certifications under § 40.6(a)(6).

hours of implementing the change. OCC proposed a two-stage approach whereby the SIDCO would file an initial notice within 24 hours of the change and would submit a more extensive filing conforming to § 40.10(a) as soon as reasonably practicable thereafter, but in any event not more than 30 days after implementation of the change.

The Commission notes that § 40.10(h)(1) codifies Section 806(e)(2)(B) of the Dodd-Frank Act, which requires that the emergency notice be provided as soon as practicable and no later than 24 hours after implementation of the change. Section 40.10(h)(2) codifies Section 806(e)(2)(C), which requires that the notice contain the information that must be submitted for changes subject to advance notice, plus a description of the nature of the emergency and the reason the change was necessary for the SIDCO to continue to provide its services in a safe and sound manner. These provisions do not provide for partial or late submissions, as suggested by OCC. However, the Commission believes that it can adequately address the concern expressed by OCC.

As proposed, § 40.10(a) required a SIDCO to provide the information required by proposed § 40.6(a)(7) within 24 hours. OCC singled out the documentation requirement in proposed § 40.6(a)(7)(v) as one that would be difficult to satisfy within 24 hours. As discussed above, that provision, as adopted herein, has been revised to significantly reduce the perceived burden of the proposed rule, and the Commission believes that a SIDCO should be able to provide the required ''concise explanation and analysis,'' as well as other required information within 24 hours.

LCH observed that the Commission may require modification or rescission of an emergency change if it finds that the change is not consistent with the Act or the Commission's regulations. According to LCH, this could lead to legal uncertainty regarding activities undertaken while the emergency change is in effect. As a result, LCH proposed that the Commission revise § 40.10(h)(3) by adding a provision to immunize from legal challenge any action taken by a SIDCO pursuant to an emergency change that is later modified or rescinded by the Commission.[30] The Commission is not taking further action on LCH's suggestion because it believes that the existing enforceability provisions in § 39.6 of the Commission's regulations adequately address the concern expressed by LCH.[31]

In the notice of proposed rulemaking, the Commission solicited comment as to whether there are any changes a SIDCO should be prohibited from adopting on an emergency basis. FIA and CME did not favor imposing any restrictions on a SIDCO's response to an emergency. CME also noted that a DCO does not have unfettered discretion to act in an emergency situation. Rather, a DCO's ability to act is limited by the emergency rules and procedures that have been vetted previously by the Commission.[32] The Commission agrees that there should not be any express limitation on the type of actions that a SIDCO can take in responding to an emergency, primarily because it is difficult to pre-judge the permissibility of an emergency action taken in the context of particular circumstances.

Finally, the Commission is making a technical revision to the proposed § 40.10(a)(2) requirement that concurrent with providing the Commission with the advance notice or any request or other information related to the advance notice, the SIDCO provide the Board of Governors of the Federal Reserve System (''Board'') with a copy of the submission. The Commission is adding the instruction that such notice, request or other information must be filed in the same format and manner as the Board requires for those designated financial market utilities for which it is the Supervisory Agency pursuant to section 803(8) of the Dodd-Frank Act.

j. Review of Event Contracts Based Upon Certain Excluded Commodities (§ 40.11)

Pursuant to Section 745(b) of the Dodd-Frank Act, the Commission proposed § 40.11(a)(1) to prohibit the listing of certain contracts involving terrorism, assassination, war, gaming, or activities that are unlawful under any State or Federal law. The CME commented that the term ''gaming'' should be further defined to ensure that registered entities do not confront difficult legal questions with respect to the applicability of the ''gaming'' prohibition in § 40.11(a)(1). In this regard, the CME noted that the courts have struggled to arrive at an appropriate legal definition for ''gaming'' for many years and that the Commission's prohibition on contracts involving ''gaming'' could introduce uncertainty into the markets.

The Commission agrees that the term ''gaming'' requires further clarification and that the term is not susceptible to easy definition. Indeed, in its ''Concept Release on the Appropriate Regulatory Treatment of Event Contracts,'' the Commission solicited public comments on the best approach for addressing the ''the potential gaming aspects of some event contracts and the potential pre-emption of state laws.'' [33] The Commission received a number of responses to its concept release, including several comments articulating bases for distinguishing trading in contracts linked to the occurrence (or non-occurrence) of events and participation in traditional ''gaming'' activities. The Commission continues to consider these comments and may issue a future rulemaking concerning the appropriate regulatory treatment of ''event contracts,'' including those involving ''gaming.'' In the meantime, the Commission has determined to prohibit contracts based upon the activities enumerated in Section 745 of the Dodd-Frank Act and to consider individual product submissions on a case-by-case basis under § 40.2 or § 40.3.

The Commission would like to note that registered entities may receive a definitive resolution of any questions concerning the applicability of § 40.11(a)(1) by submitting a particular product for Commission approval under to § 40.3. If the submitted product is approved, the registered entity may list it for trading or clearing with an

[30] LCH proposed that the Commission add the following language adapted from Section 739 of the Dodd-Frank Act (regarding swaps): ''* * * However, no modification or rescission shall retroactively affect the enforceability of any power exercised by the SIDCO, nor shall any agreement, contract or transaction entered into by the SIDCO or its counterparty pursuant to the exercise by such SIDCO of any emergency change, be void, voidable, or unenforceable, and no party to such agreement, contract, or transaction shall be entitled to rescind, or recover, any payment made with respect to, the agreement, contract, or transaction under this section or any other provision of Federal or State law.''

[31] Section 39.6 provides as follows:

An agreement, contract or transaction submitted to a derivatives clearing organization for clearance shall not be void, voidable, subject to rescission, or otherwise invalidated or rendered unenforceable as a result of:

(a) A violation by the derivatives clearing organization of the provisions of the Act or of Commission regulations; or

(b) Any Commission proceeding to alter or supplement a rule under section 8a(7) of the Act, to declare an emergency under section 8a(9) of the Act, or any other proceeding the effect of which is to alter, supplement, or require a derivatives clearing organization to adopt a specific rule or procedure, or to take or refrain from taking a specific action. *See also* § 38.6 (comparable enforceability provisions for DCMs); and proposed § 37.6, 76 FR 1214, 1240 (Jan. 7, 2011) (comparable enforceability provisions for SEFs).

[32] Under proposed § 40.6(a)(6), new rules or rule amendments that establish standards for responding to an emergency must be submitted pursuant to § 40.6.

[33] Concept Release on the Appropriate Regulatory Treatment of Event Contracts, 73 FR 25669, 25670 (May 7, 2008).

assurance that the Commission reviewed and did not object to the submission based on the prohibitions in § 40.11(a). In addition, registered entities may always certify products pursuant to the procedures in § 40.2. If the Commission determines during its review of a product that the submission may violate the prohibitions in § 40.11(a)(1)–(2), the Commission may request that the registered entity suspend the trading or clearing of the contract pending the completion of a 90-day extended review. Upon the completion of that review, the Commission must issue an order, pursuant to Section 745(b) of the Dodd-Frank Act, finding either that the product violates or does not violate the prohibitions in § 40.11(a)(1)–(2).

The Commission's staff also may, at its discretion and upon a request from a registered entity, review a draft product submission or proposal and provide guidance concerning the product's compliance with core principles and § 40.11(a). The Commission would like to note, however, that the staff's guidance concerning drafts and proposals is preliminary and non-binding. The staff formally reviews products only at such time as a compliant submission is provided to the Commission pursuant to § 40.2 or § 40.3.

Finally, the Commission would like to note that its prohibition of certain ''gaming'' contracts is consistent with Congress's intent to ''prevent gambling through the futures markets'' [34] and to ''protect the public interest from gaming and other events contracts.'' [35] The Commission may, at some future time, adopt regulations that prohibit products that are based upon activities ''similar to'' those enumerated in Section 745 of the Dodd-Frank Act. It has determined not to propose such regulations at this time.

k. Staying of Certification and Tolling of Review Period Pending Jurisdictional Determination (§ 40.12)

The OCC objected to the Commission's use of the term ''derivative'' in proposed § 40.12(a)(1), which, the Commission agrees, is an undefined term encompassing products within the jurisdiction of both the SEC and the Commission. The Commission therefore has determined to delete the word ''a derivative'' from § 40.12(a)(1) and to insert in its place ''a contract for the sale of a commodity for future delivery (or an option on such contract or an option on a commodity).'' The final regulation thereby codifies the Dodd-Frank Act's provisions concerning ''novel derivative products having elements of both securities and contracts for the sale of a commodity for future delivery (or options on such contracts or options on commodities).'' In addition, the Commission has determined to limit the application of § 40.12 to only those novel agreements, transactions, or contracts that are not subject to a separate process for requesting interpretations of the characterization of swaps, security-based swaps, and mixed swaps pursuant to § 1.8 of this chapter.[36]

The Commission also is amending proposed § 40.12(b) to clarify that the receipt of a request for a jurisdictional determination ''tolls'' both the applicable product certification and the applicable approval review period until the issuance of a final determination. In this regard, the Commission has determined to insert ''shall be stayed'' after ''the product certification,'' which more appropriately characterizes the Commission's action with respect to certified products and distinguishes that action from the suspension of the approval review period under § 40.3.[37] Similarly, in § 40.12(b)(2), the Commission has determined to clarify that the stay shall be withdrawn and that the submission review period shall resume upon the issuance of a final determination order finding that the Commission has jurisdiction over the submission.

The Commission would like to note that the suspension of a product's certification would permit continued trading for liquidation purposes. That is, the stay of certification under § 40.12 would not prevent market participants from entering into positions that offset others taken while the product certification remained in effect. The Commission will provide to the registered entity a written notice of stay pending issuance of a final determination order by the Commission.[38]

Finally, the Commission notes that Section 718(a)(2) of the Dodd-Frank Act provides the Commission explicit authority to request a jurisdictional determination concerning a novel derivative product having elements of both a security and a contract for the sale of a commodity for future delivery (or an option on such contract or an option on a commodity) at any time subsequent to the effective date of a product containing such elements, provided no notice of a novel derivative product filing has been received from the SEC pursuant to Section 718(a)(1) of the Dodd-Frank Act.

III. Cost-Benefit Considerations

Section 15(a) of the Act requires the Commission to ''consider the costs and benefits'' of its actions before promulgating a regulation.[39] In particular, these costs and benefits must be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. In conducting its analysis, the Commission may, in its discretion, give greater weight to any one of the five enumerated areas and it may determine that, notwithstanding costs, a particular rule is necessary to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.[40]

Certain of the regulations promulgated in this final rule are mandated by the Act, as amended by the Dodd-Frank Act, and, for those

[34] Congressional Record—Senate, S5906 (July 15, 2010).

[35] *Id.* Senator Lincoln, in a colloquy with Senator Feinstein, emphasized that the Commission ''needs the power to, and should, prevent derivatives contracts that are contrary to the public interest because they exist predominantly to enable gambling through supposed event contracts.''

[36] *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 FR 29818 (May 23, 2011).

[37] Section 717(d) of the Dodd-Frank Act amended Section 5c(c)(1) of the Act to ''stay the certification of a product pending a determination by the Commission upon a request of the Securities and Exchange Commission * * * that the Commission issue a determination as to whether'' a novel derivative product is within the jurisdiction of the Commission. However, Section 745 of the Dodd-Frank Act amended the Act by striking Section 5c in its entirety and inserting language that did not include the stay provision in Section 717(d) of the Dodd-Frank Act. The Commission would like to clarify that the stay provisions adopted in final § 40.12 of its regulations do not give effect to the stay provisions in Section 717(d) of the Dodd-Frank Act, given inconsistent amendments to Section 5c(c). The Commission is adopting its stay provisions pursuant to its Section 8a(5) authority to ''make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any purposes of the Act.''

[38] A final determination, for purposes of § 40.12(b) of this part, shall be a determination order issued pursuant to Section 718(a)(3) of the Dodd-Frank Act.

[39] 7 U.S.C. 19(a).

[40] *See, e.g., Fisherman's Doc Co-op., Inc* v. *Brown, 75 F.3d 164 (4th Cir. 1996); Center for Auto Safety* v. *Peck,* 751 F.2d 1336 (DC Cir. 1985) (noting that an agency has discretion to weigh factors in undertaking cost-benefit analysis).

provisions, the Commission does not have the authority to consider alternatives to the statute's prescribed procedures. For example, the final regulations implement, among other provisions, Section 745 of the Dodd-Frank Act, which specifies new procedures for the submission of certain rules and rule amendments and new default timelines for the Commission's review of rule submissions. Many of these new procedures—for example, the 30-day public comment period following the stay of a submitted rule—are statutorily mandated and the Commission's final regulations have been drafted to remain within the confines of the enabling language. Similarly, the Commission's SIDCO provisions, in large part, codify the procedures established by Section 806 of the Dodd-Frank Act. For those final regulations not mandated by the Dodd-Frank Act, the Commission has adopted the least-cost alternative consistent with achieving the purposes of the Act.

The Commission invited but did not receive public comments specific to its cost-benefit discussion within the initial comment period following the Commission's proposal. The Commission also invited the public ''to submit any data or other information that [it] may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.'' The Commission received no such data or other information. The Commission did, however, receive general comments on the ''burden'' associated with the documentation and pricing source certification requirements proposed in §§ 40.2, 40.3, 40.5, and 40.6. Those comments suggested that the new provisions could substantially increase the time and resources required to prepare submissions and could potentially delay the introduction of new products and implementation of rules. However, none of these comments suggested feasible alternatives to the statutory mandate. Nor did such comments show how and to what extent those burdens would be increased by the implementing proposal.

In a comment concerning the Commission's cost-benefit analysis, the CME stated that the CFMA streamlined the product and rule submission process to eliminate the ''substantial unnecessary paperwork'' previously required to be submitted to the Commission. In the CME's view, the documentation and pricing source certification requirements effectively reinstated the pre-CFMA submission process by mandating that registered entities submit ''massive amounts of documentation'' for Commission review. In addition, CME stated that the part 40 proposal's cost-benefit discussion did not ''acknowledge that a fully-functional and less costly system of self-certification is already in place'' and that the Commission failed to justify what CME characterized as ''onerous requirements'' with few public benefits. CME also stated that the Commission's proposal did not ''address any actual costs'' to industry, including ''the cost of compiling all documentation relied upon to determine whether a new product, new rule or rule amendment complies with the Core Principles'' and the costs of ''enabl[ing] foreign competitors'' to introduce products that compete with domestic DCM product innovations.

The Commission, after consideration of the public interest factors specified in section 15(a) of the Act, has determined, as set forth below, that the costs associated with its final regulations will not have a material effect on the efficiency, competitiveness, and financial integrity of the futures and swaps markets and should substantially benefit registered entities by facilitating and expediting the Commission's review of product and rule submissions. The Commission has considered the costs and benefits of its regulations throughout the preamble and generally views the related matters section of this final rulemaking to be an extension of that discussion. Estimates pursuant to the Paperwork Reduction Act are a subset of and incorporated into the overall compliance costs associated with final part 40.

The Commission's final regulations address the relevant areas of market and public concern specified in section 15(a) of the Act. Specifically, the Commission's certification and approval procedures ensure that registered entities do not enact rules that, among other things, harm market participants or the public, result in unreasonable restraints of trade or material anticompetitive burdens on trading, or have other effects that are detrimental to the public interest. In addition, the special certification procedures for SIDCOs and certain event contracts implement Sections 806 and 745 of the Dodd-Frank Act, respectively, and ensure that the Commission has adequate time and information to analyze certain risk-related rules and novel products based upon certain excluded commodities. The SIDCO notice requirement is important to the Commission's oversight of sound risk management practices and to its efforts to monitor and mitigate systemic risks. The proposed event contract provisions, consistent with the intent of Congress, prevent individuals from speculating on activities that are potentially harmful to national security or detrimental to the stability of the futures markets. Finally, the ''concise explanation and analysis'' required for the submission of new products is a less-costly alternative to the Commission's proposed documentation requirement and will assist the Commission in protecting the price discovery function of the markets.

The final certification and approval procedures are necessary to fulfill the requirements of the Dodd-Frank Act, to protect market participants, to enhance the Commission's administration of the Act, and to ensure the continued competitiveness and financial integrity of the futures and swaps markets. Moreover, in response to public comments and after consultations with market participants and prudential regulators, the proposed rules have been amended to implement, where possible, a less costly alternative that achieves the statutory objectives of the Act, as amended by the Dodd-Frank Act.

With respect to costs, the Commission recognizes that its final regulations may increase compliance costs by requiring the submission of a ''concise explanation and analysis'' and by requiring registered entities to certify that they posted the complete submission on the registered entity's Web site at the time of filing. The Commission believes that these costs will be *de minimis.* A ''concise explanation and analysis'' should be a clear and informative—but not necessarily lengthy—description of the product or rule and its implications for compliance with applicable law. Moreover, the explanation and analysis incorporates information that is, in many cases, already required to be reviewed or collected by registered entities. A concise description and examination of the submission should impose minimal costs on registered entities, because it requires the registered entity merely to memorialize its due diligence in certifying compliance with applicable law. Posting this information on the registered entity's Web site should be as simple as providing an electronic copy of the submission to appropriate personnel. All current registered entities maintain a Web site and therefore this new requirement may increase the overall cost, if at all, by only a negligible margin.

In addition, the proposed price certification provisions are not being adopted and the proposed documentation provisions have been revised—and, in some cases, removed from the final regulations—to permit

registered entities more flexibility in complying with the Act and Commission's regulations, to reduce potential administrative and compliance costs, and to adopt, where possible, less burdensome alternatives to the Commission's proposal. For example, under the Commission's final product submission regulations, registered entities, including CME, are not required to submit ''massive amounts of documentation'' with their new product submissions. Instead, as suggested by ICE Futures, the Commission will allow registered entities to submit an explanation and analysis of the product with the information contained in such documentation and citations to relevant data sources. Moreover, the Commission finds that the submission of an explanation and analysis is necessary for its review of product and rule certifications. Although CME correctly notes that self-certification regime has been retained under the Act, as amended by the Dodd-Frank Act, the Commission has encountered numerous instances in which registered entities provided only cursory supporting analyses for their product submissions or, in certain cases, failed to document the evidentiary basis for their certifications altogether. As discussed in the preamble, the staff must expend significant resources and time to replicate existing analyses or to otherwise independently establish a product's compliance with applicable law when submissions are not adequately explained or supported by registered entities.

With respect to the new SIDCO provisions in § 40.10, the cost of creating the advance notice will not be substantial. A SIDCO should have this information prior to determining whether to implement a change and, consequently, the marginal cost of drafting and submitting the notice will be small. On the other hand, the Commission believes that the benefit of this information is significant because it is necessary to assess the effect that the proposed change would have on the nature or level of risks. The final provisions of § 40.10 parallel the requirements of the Dodd-Frank Act. The Commission's proposal effectively mirrors the enabling provisions of the statute and, accordingly, the Commission's ability to revise the proposed requirements is limited.

As discussed above, advance notice of all changes that materially impact risk—increasing or decreasing risk—is necessary for the Commission to monitor systemic risk and to see that SIDCOs effectively manage risk in furtherance of compliance with the core principles. The Commission acknowledges that requiring a SIDCO to notify the Commission under § 40.10 of a change that could materially reduce risk could delay the time when that change becomes effective. However, even for ostensibly risk-reducing changes, there may be adverse consequences that the Commission should have the opportunity to consider in the time frame set forth in Section 806 of the Dodd-Frank Act.

Moreover, the Commission and the Board have statutory obligations to review proposed changes to SIDCO rules, procedures and operations that materially impact risks and Section 806 of the Dodd-Frank Act mandates the time period for review. The Commission also notes that, in appropriate cases, the staff may permit a risk-related rule to become effective prior to the expiration of the 60-day notice period.

The costs associated with the emergency notice required in § 40.10(h) are similarly minimal and include the cost of drafting and submitting the notice and any cost associated with the possibility that the Commission could rescind or modify the emergency change. There also may be a cost of requiring notice within 24 hours; however, section 806(e)(2)(B) of the Dodd-Frank Act mandates notices be provided within this timeframe. The substantive requirements of the notice provisions also are outlined by section 806(e)(2)(C) of the Dodd-Frank Act and, as explained above, the Commission believes that the cost of providing the information required for an advance notice will be small. The marginal cost of providing additional information concerning an emergency notice should be similarly small because a SIDCO will already know the nature of the emergency and will have determined that the change was necessary for the SIDCO to continue to provide its services in a safe and sound manner prior to implementing the emergency change. The Commission believes that the information is necessary for it to review an emergency change.

Having considered the costs of its proposal, the Commission is adopting these final regulations, including changes to the proposed regulations as summarized below, to further reduce the information collection burdens on and associated costs for registered entities as follows:

- The Commission is revising the proposed documentation requirements in § 40.2 and § 40.3 to permit the submission of an appropriately detailed and cited explanation and analysis in lieu of documentation;
- The Commission is amending § 40.2 to apply only to DCMs and SEFs and intends to implement new product clearing submission requirements in a new § 39.5 (in a separate rulemaking);
- The Commission is eliminating the documentation requirements in § 40.5 and § 40.6;
- The Commission is providing new provisions for class certifications of certain swaps;
- The Commission is amending § 40.6(a) to make effective upon submission rules delisting or withdrawing the certification of products;
- The Commission is eliminating the proposed certification requirement concerning the use of third-party prices;
- The Commission is eliminating a previously proposed provision requiring ''[w]henever possible, all proposed swap or contract terms and conditions [to] conform to industry standards or those terms and conditions adopted by comparable contracts;''
- The Commission is limiting the application of § 40.12 to novel derivative products that are not subject to the forthcoming provisions of § 1.8.

The resulting final rules should impose significantly lower costs on registered entities than the proposed rules. The average annual burden for the 70 anticipated registered entities may be reduced by more than one-third in comparison to the initial proposed requirements—from an estimated 324 hours per year per registered entity to approximately 202 hours per year per registered entity. To the extent that the Commission's final regulations impose any additional costs or burdens on registered entities, these costs or burdens would require a single part-time staff person to handle new requirements related to product and rule submissions to the Commission; the total time cost may be as little as four hours per week per registered entity. Thus, the Commission has determined that these final regulations are necessary to enable the Commission to perform its oversight functions and to carry out its statutory responsibilities under the Act.

IV. Related Matters

a. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[41] requires agencies to consider whether final regulations have a significant economic impact on a substantial number of small entities and, where the regulations do so, to provide a regulatory flexibility analysis concerning the impact of such

[41] 5 U.S.C. 601 *et seq.*

regulations.[42] The final rules require DCOs, DCMs, SEFs, and SDRs to submit to the Commission new products, rules, and rule amendments, before they become effective, with either a request for Commission approval or a certification that the products or rules comply with the Act and Commission regulations. In addition, the Commission's new regulations require product submissions be accompanied by a concise explanation and analysis that incorporates information contained in supporting documents, whereas the new requirements for rule certifications simply require the submission of a concise explanation and analysis of the purpose, operation, and effect of the filing. Accordingly, these product and rule approval and self-certification regulations are not complex and do not impose a significant economic impact on any registered entity.

Moreover, the Commission previously determined that DCMs, DCOs, SEFs, and SDRs are not ''small entities'' for purposes of the RFA.[43] In determining that these registered entities are not ''small entities,'' the Commission reasoned that it designates a contract market or registers a DCO, SEF, or SDR only if the entity meets a number of specific criteria, including the expenditure of sufficient resources to establish and maintain an adequate self-regulatory program.[44] Because DCMs, DCOs, SEFs and SDRs are required to demonstrate compliance with Core Principles, including principles concerning the maintenance or expenditure of financial resources, the Commission previously determined that SEFs and SDRs, like DCMs and DCOs, are not ''small entities'' for the purposes of the RFA.

The Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that these regulations do not have a significant impact on a substantial number of small entities.

b. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a registered entity is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number. Amendments to §§ 40.2, 40.3, 40.5, 40.6, and 40.10 impose new information collection requirements on registered entities within the meaning of the Paperwork Reduction Act.[45] Accordingly, the Commission requested and OMB assigned a control number for the required collections of information. The Commission has submitted this notice of final rulemaking along with supporting documentation for OMB's review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this collection of information is ''Part 40, Provisions Common to Registered Entities, OMB control number 3038–D07.'' Many of the responses to this new collection of information are mandatory.

The Commission protects proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

These rules require DCMs, DCOs, and new registered entities, SEFs and SDRs, to collect and submit to the Commission information concerning new products, rules, and rule amendments pursuant to the procedures outlined in §§ 40.2, 40.3, 40.5, 40.6, and 40.10. The Commission is adopting these information collection requirements in order to give effect to various notice, rule certification, and rule approval provisions of the Dodd-Frank Act, to expedite the staff's review of newly-certified and submitted products, and to improve the Commission's administration of the Act.

The Commission estimated the final information collection burdens on registered entities below. These estimates account for the following: (1) The number of respondents; (2) the number of responses required of each respondent; (3) the average hours required to produce each response; and (4) the aggregate annual reporting burden. The Commission estimates that the effect of final §§ 40.2, 40.3, 40.5, 40.6, 40.10, and 40.12 will be to increase the information collection burden by approximately 202 hours per year per registered entity, resulting mostly from the preparation of the concise explanation and analysis to be filed with the Commission in connection with the listing of products or the certification or approval of rules. The Commission estimates that 70 registered entities will be required to file their new product and rule submissions.

The Commission previously estimated the aggregate number of hours that it expected registered entities to spend complying with part 40. Upon further consideration, the Commission has determined to revise the hours attributable to the new provisions of part 40. The newly-revised and final regulations require each registered entity to spend an estimated and additional 202 hours per year complying with part 40. Due to a calculation error in the proposed rulemaking, the estimated information collection burden in the proposed part 40 rulemaking was quoted as 8,300 hours; the estimated information collection burden should have been 22,664. Based on the 22,664 estimate, the estimated average hours per registered entity would have been 323.771 hours. Thus, under the Commission's current analysis and in light of the regulatory changes below, each registered entity may expect to spend approximately 121 fewer hours per year complying with part 40 than would have been required under the Commission's proposal. The substantial reduction in the estimated annual time that each registered entity may spend complying with part 40 results from revisions to the documentation requirements in §§ 40.2 and 40.3, the elimination of the documentation requirements in §§ 40.5 and 40.6, the elimination of the price certification requirements in §§ 40.2, 40.3, 40.5, and 40.6, and the addition of the class certification provisions for certain swaps in § 40.2(d).

Final §§ 40.2, 40.3, 40.5 and 40.6 require each registered entity to comply with new certification and approval requirements when seeking to implement new products, rules, and rule amendments, including changes to product terms or conditions. However, in consideration of comments concerning proposed §§ 40.2, 40.3, 40.5 and 40.6, the Commission has determined to amend its proposal to reduce the information collection burden on the registered entities. Specifically, the Commission's final § 40.2(d) streamlines the product certification process for a significant percentage of swap contracts by permitting a DCM or SEF to class certify, within a single submission, one

[42] 5 U.S.C. 601 *et seq.*

[43] *See* 17 CFR part 40 Provisions Common to Registered Entities, 75 FR 67282 (November 2, 2010); *see also* 47 FR 18618, 18619 (April 30, 1982) and 66 FR 45604, 45609 (August 29, 2001).

[44] *See, e.g.,* Core Principle 2 applicable to SEFs under Section 733 of the Dodd-Frank Act and Core Principles 1–3 applicable to SDRs under Section 728 of the Dodd-Frank Act.

[45] 44 U.S.C. 3501 *et seq.*

or more swaps with similar, specified characteristics.

In addition, the Commission has determined to amend its proposal to do the following: (1) Substantially revise § 40.2 and § 40.3 to reduce the document collection burden for newly-submitted products, and (2) eliminate the previously proposed documentation provisions in § 40.5 and § 40.6. The Commission has determined to maintain §§ 40.2(a)(3)(vii), 40.3(a)(10), 40.5(a)(6), and 40.6(a)(2) requiring registered entities to state that they posted a copy of the certification or request for approval on the registered entity's Web site at the time of the filing with the Commission.

In light of the amendments to the Commission's final regulations, noted above, the Commission revises its previous estimates as follows:

Estimated number of respondents: 70.

Annual responses by each respondent: 100.

Estimated average hours per response: 2.00.

Aggregate annual reporting burden hours (for all respondents): 14,000.

The Commission originally estimated that 45 registered entities would be subject to the information collection requirements in §§ 40.2, 40.3, 40.5 and 40.6. The Commission based this estimate upon the number of registered and exempt entities at the time of proposal. The Commission has determined to increase its previous estimate to account for an increased number of anticipated registered entities, a few of which do not currently operate a registered or exempt entity. The 70 registered entity figure, above, only minimally alters the per registered entity estimate of time that will be required to comply with part 40.

In addition, the Commission initially estimated 120 responses per year from registered entities. In light of the revisions to the documentation requirements and the ability of registered entities to certify certain swap contracts as a class under § 40.2(d), the number of estimated submissions has been reduced. The Commission also reduced the estimated hourly burden in light of revisions to the documentation requirements in §§ 40.2 and 40.3 and the elimination of the documentation requirements in §§ 40.5 and 40.6.

§ 40.10 requires SIDCOs to provide to the Commission 60 days advance notice of proposed changes to rules, procedures or operations that could materially affect the nature or level of risks presented by the SIDCO.

Estimated number of respondents: 4.

Annual responses by each respondent: 2.

Estimated average hours per response: 5.

Aggregate annual reporting burden hours (for all respondents): 40.

Finally, § 40.12 permits registered entities to provide notice to the Commission and the Securities and Exchange Commission when certifying, submitting for approval, or otherwise filing a proposal to list a product (other than a product subject to the forthcoming provisions of § 1.8 of this chapter) having elements of both a security and a contract for the sale of a commodity for future delivery (or an option on such contract or an option on a commodity). The Commission has determined to promulgate rules governing jurisdictional disputes over novel swap products in a separate and forthcoming rulemaking. Accordingly, it is adjusting its estimates to reflect that fact that jurisdictional determinations concerning certain novel product submissions will not be subject to the provisions of § 40.12.

Estimated number of respondents: 8.

Annual responses by each respondent: 4.

Estimated average hours per response: 2.52.

Aggregate annual reporting burden hours (for all respondents): 80.64.

List of Subjects in 17 CFR Part 40

Commodity futures, Contract markets, Designation application, Reporting and recordkeeping requirements, Swap execution facility, Swap data repository, Systemically important derivatives clearing organization, Rule approval, Rule certification, Review of certain event contracts.

In light of the foregoing, and pursuant to authority in the Act, and, in particular, Sections 3, 5, 5c(c) and 8a(5) of the Act, the Commission hereby revises part 40 of Title 17 of the Code of Federal Regulations to read as follows:

PART 40—PROVISIONS COMMON TO REGISTERED ENTITIES

Sec.

40.1 Definitions.
40.2 Listing products for trading by certification.
40.3 Voluntary submission of new products for Commission review and approval.
40.4 Amendments to terms or conditions of enumerated agricultural products.
40.5 Voluntary submission of rules for Commission review and approval.
40.6 Self-certification of rules.
40.7 Delegations.
40.8 Availability of public information.
40.9 [Reserved]
40.10 Special certification procedures for submission of rules by systemically important derivatives clearing organizations.
40.11 Review of event contracts based upon certain excluded commodities.
40.12 Staying of certification and tolling of review period pending jurisdictional determination.

Appendix A to Part 40—Schedule of Fees

Appendix B to Part 40—[Reserved]

Appendix C to Part 40—[Reserved]

Appendix D to Part 40—Submission Cover Sheet and Instructions

Authority: 7 U.S.C. 1a, 2, 5, 6, 7, 7a, 8 and 12, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 40.1 Definitions.

As used in this part:

(a) *Business day* means the intraday period of time starting at the business hour of 8:15 a.m. and ending at the business hour of 4:45 p.m.; *business hour* means any hour between 8:15 a.m. and 4:45 p.m. Business day and business hour are Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, DC, on all days except Saturdays, Sundays, and Federal holidays in Washington, DC.

(b) *Dormant contract or dormant product* means:

(1) Any agreement, contract, transaction, instrument, swap or any such commodity futures or option contract with respect to all future or option expiries, listed on a designated contract market, a swap execution facility or cleared by a registered derivatives clearing organization, that has no open interest and in which no trading has occurred for a period of twelve complete calendar months following a certification to, or approval by, the Commission; *provided, however,* that no contract or instrument under this paragraph (b)(1) initially and originally certified to, or approved by, the Commission within the preceding 36 complete calendar months shall be considered to be dormant; or

(2) Any commodity futures or option contract, swap or other agreement, contract, transaction or instrument of a dormant designated contract market, dormant swap execution facility or a dormant derivatives clearing organization; or

(3) Any commodity futures or option contract or other agreement, contract, swap, transaction or instrument not otherwise dormant that a designated contract market, a swap execution facility or a derivatives clearing

organization self-declares through certification to be dormant.

(c) *Dormant designated contract market* means any designated contract market on which no trading has occurred during the period of twelve consecutive calendar months, preceding the first day of the most recent calendar month; *provided, however,* no designated contract market shall be considered to be dormant if its initial and original Commission order of designation was issued within the preceding 36 consecutive calendar months.

(d) *Dormant derivatives clearing organization* means any derivatives clearing organization registered pursuant to Section 5b of the Act that has not accepted for clearing any agreement, contract or transaction that is required or permitted to be cleared by a derivatives clearing organization under Sections 5b(a) and 5b(b) of the Act, respectively, for a period of twelve complete calendar months; *provided, however,* no derivatives clearing organization shall be considered to be dormant if its initial and original Commission order of registration was issued within the preceding 36 complete calendar months.

(e) *Dormant swap data repository* means any registered swap data repository on which no data has resided for a period of twelve consecutive calendar months, preceding the most recent calendar month.

(f) *Dormant swap execution facility* means any swap execution facility on which no trading has occurred for a period of twelve consecutive calendar months, preceding the first day of the most recent calendar month; provided, however, no swap execution facility shall be considered to be dormant if its initial and original Commission order of registration was issued within the preceding 36 consecutive calendar months.

(g) *Dormant rule* means:

(1) Any registered entity rule which remains unimplemented for twelve consecutive calendar months following a certification with, or an approval by, the Commission; or

(2) Any rule or rule amendment of a dormant designated contract market, dormant swap execution facility, dormant swap data repository or dormant derivatives clearing organization.

(h) *Emergency* means any occurrence or circumstance that, in the opinion of the governing board of a registered entity, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of a registered entity under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts, swaps or transactions or the timely collection and payment of funds in connection with clearing and settlement by a derivatives clearing organization, including:

(1) Any manipulative or attempted manipulative activity;

(2) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(3) Any circumstances which may materially affect the performance of agreements, contracts, swaps or transactions, including failure of the payment system or the bankruptcy or insolvency of any participant;

(4) Any action taken by any governmental body, or any other registered entity, board of trade, market or facility which may have a direct impact on trading or clearing and settlement; and

(5) Any other circumstance which may have a severe, adverse effect upon the functioning of a registered entity.

(i) *Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, trading protocol, agreement or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a registered entity or by the governing board thereof or any committee thereof, in whatever form adopted.

(j) *Terms and conditions* means any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, description of the payments to be exchanged under a swap, specification of cash settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the swap or contract. Terms and conditions include provisions relating to the following:

(1) For a contract for the purchase or sale of a commodity for future delivery or an option on such a contract or an option on a commodity (other than a swap):

(i) Quality and other standards that define the commodity or instrument underlying the contract;

(ii) Quantity standards or other provisions related to contract size;

(iii) Any applicable premiums or discounts for delivery of nonpar products;

(iv) Trading hours, trading months and the listing of contracts;

(v) The pricing basis, minimum price fluctuations, and maximum price fluctuations;

(vi) Any price limits, no cancellation ranges, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(vii) Position limits, position accountability standards, and position reporting requirements;

(viii) Delivery points and locational price differentials;

(ix) Delivery standards and procedures, including fees related to delivery or the delivery process; alternatives to delivery and applicable penalties or sanctions for failure to perform;

(x) If cash settled; the definition, composition, calculation and revision of the cash settlement price or index;

(xi) Payment or collection of commodity option premiums or margins;

(xii) Option exercise price, if it is constant, and method for calculating the exercise price, if it is variable;

(xiii) Threshold prices for an option contract, the existence of which is contingent upon those prices; and

(xiv) Any restrictions or requirements for exercising an option; and

(2) For a swap:

(i) Identification of the major group, category, type or class in which the swap falls (such as an interest rate, commodity, credit or equity swap) and of any further sub-group, category, type or class that further describes the swap;

(ii) Notional amounts, quantity standards, or other unit size characteristics;

(iii) Any applicable premiums or discounts for delivery of nonpar products;

(iv) Trading hours and the listing of swaps;

(v) Pricing basis for establishing the payment obligations under, and mark-to-market value of, the swap including, as applicable, the accrual start dates, termination or maturity dates, and, for each leg of the swap, the initial cash flow components, spreads, and points, and the relevant indexes, prices, rates, coupons, or other price reference measures;

(vi) Any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(vii) Position limits, position accountability standards, and position reporting requirements;

(viii) Payment and reset frequency, day count conventions, business calendars, and accrual features;

(ix) If physical delivery applies, delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery and applicable penalties or sanctions for failure to perform;

(x) If cash settled, the definition, composition, calculation and revision of the cash settlement price, and the settlement currency;

(xi) Payment or collection of option premiums or margins;

(xii) Option exercise price, if it is constant, and method for calculating the exercise price, if it is variable;

(xiii) Threshold prices for an option, the existence of which is contingent upon those prices;

(xiv) Any restrictions or requirements for exercising an option; and

(xv) Life cycle events.

§ 40.2 Listing products for trading by certification.

(a) A designated contract market or a swap execution facility must comply with the submission requirements of this section prior to listing a product for trading that has not been approved under § 40.3 of this part or that remains dormant subsequent to being submitted under this section or approved under § 40.3 of this part. A submission shall comply with the following conditions:

(1) The designated contract market or the swap execution facility has filed its submission electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission;

(2) The Commission has received the submission by the open of business on the business day preceding the product's listing; and

(3) The submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(ii) A copy of the product's rules, including all rules related to its terms and conditions;

(iii) The intended listing date;

(iv) A certification by the designated contract market or the swap execution facility that the product to be listed complies with the Act and Commission regulations thereunder;

(v) A concise explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(vi) A certification that the registered entity posted a notice of pending product certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information that the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(vii) A request for confidential treatment, if appropriate, as permitted under § 40.8.

(b) *Additional information.* If requested by Commission staff, a registered entity shall provide any additional evidence, information or data that demonstrates that the contract meets, initially or on a continuing basis, the requirements of the Act or the Commission's regulations or policies thereunder.

(c) *Stay.* The Commission may stay the listing of a contract pursuant to paragraph (a) of this section during the pendency of Commission proceedings for filing a false certification or during the pendency of a petition to alter or amend the contract terms and conditions pursuant to Section 8a(7) of the Act. The decision to stay the listing of a contract in such circumstances shall not be delegable to any employee of the Commission.

(d) *Class certification of swaps.* (1) A designated contract market or swap execution facility may list or facilitate trading in any swap or number of swaps based upon an ''excluded commodity,'' as defined in Section 1a(19)(i) of the Act, not including any security, security index, and currency other than the United States Dollar and a ''major foreign currency,'' as defined in § 15.03(a), or an ''excluded commodity,'' as defined in Section 1a(19)(ii)–(iv) of the Act, provided the designated contract market or swap execution facility certifies, under § 40.2(a)(1)–(2), § 40.2(a)(3)(i), § 40.2(a)(3)(iv), and § 40.2(a)(3)(vi), each of the following:

(i) That each particular swap within the certified class of swaps is based upon an excluded commodity specified in § 40.2(d)(1); and

(ii) That each particular swap within the certified class of swaps is based upon an excluded commodity with an identical pricing source, formula, procedure, and methodology for calculating reference prices and payment obligations; and

(iii) That the pricing source, formula, procedure, and methodology for calculating reference prices and payment obligations in each particular swap within the certified class of swaps is identical to a pricing source, formula, procedure, and methodology for calculating reference prices and payment obligations in a product previously submitted to the Commission and certified or approved pursuant to § 40.2 or § 40.3;

(iv) That each particular swap within the certified class of swaps is based upon an excluded commodity involving an identical currency or identical currencies.

(2) The Commission may in its discretion require a registered entity to withdraw its certification under § 40.2(d)(1) and to submit each individual swap or certain individual swaps within the submission for Commission review pursuant to § 40.2 or § 40.3

§ 40.3 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* Pursuant to Section 5c(c) of the Act, a designated contract market, a swap execution facility, or a derivatives clearing organization may request that the Commission approve a new or dormant product prior to listing the product for trading or accepting the product for clearing, or if a product was initially submitted under § 40.2 of this part or § 39.5 of this chapter, subsequent to listing the product for trading or accepting the product for clearing. A submission requesting approval shall:

(1) Be filed electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Include a copy of the rules that set forth the contract's terms and conditions;

(4) Include an explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with the applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(5) Describe any agreements or contracts entered into with other parties that enable the registered entity to carry out its responsibilities;

(6) Include the certifications required in § 41.22 for product approval of a commodity that is a security future or a security futures product as defined in Sections 1a(44) or 1a(45) of the Act, respectively;

(7) Include, if appropriate, a request for confidential treatment as permitted under § 40.8;

(8) Include the filing fee required under Appendix A to this part;

(9) Certify that the registered entity posted a notice of its request for Commission approval of the new product and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information that the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(10) Include, if requested by Commission staff, additional evidence, information or data demonstrating that the contract meets, initially or on a continuing basis, the requirements of the Act, or other requirement for designation or registration under the Act, or the Commission's regulations or policies thereunder. The registered entity shall submit the requested information by the open of business on the date that is two business days from the date of request by Commission staff, or at the conclusion of such extended period agreed to by Commission staff after timely receipt of a written request from the registered entity.

(b) *Standard for review and approval.* The Commission shall approve a new product unless the terms and conditions of the product violate the Act or the Commission's regulations.

(c) *Forty-five day review.* All products submitted for Commission approval under this paragraph shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of an extended period as provided under paragraph (d) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The submitting entity does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering or other non-substantive revisions, during that period. Any voluntary, substantive amendment by the submitting entity will be treated as a new submission under this section.

(d) *Extension of time.* The Commission may extend the 45 day review period in paragraph (c) of this section for:

(1) An additional 45 days, if the product raises novel or complex issues that require additional time to analyze, in which case the Commission shall notify the registered entity within the initial 45 day review period and shall briefly describe the nature of the specific issues for which additional time for review is required; or

(2) Any extended review period to which the registered entity agrees in writing.

(e) *Notice of non-approval.* The Commission at any time during its review under this section may notify the registered entity that it will not, or is unable to, approve the product. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's regulations, including the form or content requirements of paragraph (a) of this section, that the product violates, appears to violate or potentially violates but which cannot be ascertained from the submission.

(f) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (e) of this section of the Commission's determination not to approve a product does not prejudice the entity from subsequently submitting a revised version of the product for Commission approval or from submitting the product as initially proposed pursuant to a supplemented submission.

(2) Notification to a registered entity under paragraph (e) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the entity may not truthfully certify under § 40.2 that the same, or substantially the same, product does not violate the Act or the Commission's regulations thereunder.

§ 40.4 Amendments to terms or conditions of enumerated agricultural products.

(a) Notwithstanding the provisions of this part, a designated contract market must submit for Commission approval under the procedures of § 40.5, prior to its implementation, any rule or dormant rule that, for a delivery month having open interest, would materially change a term or condition, as defined in § 40.1(j), of a contract for future delivery in an agricultural commodity enumerated in Section 1a(9) of the Act, or of an option on such a contract or commodity.

(b) The following rules or rule amendments are not material and should not be submitted under this section:

(1) Changes that are enumerated in § 40.6(d)(2) may be implemented without prior approval or certification if implemented pursuant to the notification procedures of § 40.6(d);

(2) Changes that are enumerated in § 40.6(d)(3)(ii) may be implemented without prior approval or certification or notification as permitted pursuant to § 40.6(d)(3);

(3) Changes in no cancellation ranges and trading hours may be implemented without prior approval if implemented pursuant to the procedures of § 40.6(a);

(4) Changes required to comply with a binding order of a court of competent jurisdiction, or a rule, regulation or order of the Commission or of another Federal regulatory authority, may be implemented without prior approval if implemented pursuant to the procedures of § 40.6(a);or

(5) Any other rule:

(i) The text of which has been submitted for review at least ten business days prior to its implementation and that has been labeled ''Non-Material Agricultural Rule Change;''

(ii) For which the designated contract market has provided an explanation as to why it considers the rule ''non-material,'' and any other information that may be beneficial to the Commission in analyzing the merits of the entity's claim of non-materiality; and

(iii) With respect to which the Commission has not notified the contract market during the review period that the rule appears to require or does require prior approval under this section, may be implemented without prior approval if implemented under the procedures of § 40.6(a).

§ 40.5 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* Pursuant to Section 5c(c) of the Act, a registered entity may request that the Commission approve a new rule, rule amendment or dormant rule prior to implementation of the rule, or if the request was initially submitted under §§ 40.2 or 40.6 of this part, subsequent to implementation of the rule. A request for approval shall:

(1) Be filed electronically in a format and manner specified by the Secretary of the Commission with the Secretary of the Commission;

(2) Include a copy of the submission cover sheet in accordance with the instructions in Appendix D to this part;

(3) Set forth the text of the rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(4) Describe the proposed effective date of the rule or rule amendment and any action taken or anticipated to be taken to adopt the proposed rule by the registered entity or by its governing board or by any committee thereof, and cite the rules of the entity that authorize the adoption of the proposed rule;

(5) Provide an explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder, including, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the registered entity's framework of self-regulation;

(6) Certify that the registered entity posted a notice of pending rule with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information which the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but must be republished consistent with any determination made pursuant to § 40.8(c)(4);

(7) Provide additional information which may be beneficial to the Commission in analyzing the new rule or rule amendment. If a proposed rule affects, directly or indirectly, the application of any other rule of the registered entity, the pertinent text of any such rule must be set forth and the anticipated effect described;

(8) Provide a brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants that were not incorporated into the rule, or a statement that no such opposing views were expressed;

(9) Identify any Commission regulation that the Commission may need to amend, or sections of the Act or the Commission's regulations that the Commission may need to interpret, in order to approve the new rule or rule amendment. To the extent that such an amendment or interpretation is necessary to accommodate a new rule or rule amendment, the submission should include a reasoned analysis supporting the amendment to the Commission's regulation or the interpretation;

(10) As appropriate, include a request for confidential treatment as permitted under the procedures of § 40.8.

(b) *Standard for review and approval.* The Commission shall approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the Act or the Commission's regulations.

(c) *Forty-five day review.* (1) All rules submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission under section 5c(c) of the Act 45 days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (d) of this section, unless the registered entity is notified otherwise within the applicable period, if:

(i) The submission complies with the requirements of paragraph (a) of this section;

(ii) The registered entity does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period other than for correction of typographical errors, renumbering or other non-substantive revisions. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(2) The Commission shall commence the review period in paragraph (c) of this section for a compliant submission under § 40.4(b)(5) ten business days after its receipt.

(d) *Commencement and extension of time for review.* The Commission may further extend the review period in paragraph (c) of this section for any approval request for:

(1) An additional 45 days, if the proposed rule raises novel or complex issues that require additional time for review or is of major economic significance, the submission is incomplete or the requestor does not respond completely to Commission questions in a timely manner, in which case the Commission shall notify the submitting registered entity within the initial forty-five day review period and shall briefly describe the nature of the specific issues for which additional time for review shall be required; or

(2) Any period, beyond the additional 45 days provided in § 40.5(d)(1), to which the registered entity agrees in writing.

(e) *Notice of non-approval.* Any time during its review under this section, the Commission may notify the registered entity that it will not, or is unable to, approve the new rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's regulations, including the form or content requirements of this section, with which the new rule or rule amendment is inconsistent or appears to be inconsistent with the Act or the Commission's regulations.

(f) *Effect of non-approval.* (1) Notification to a registered entity under paragraph (e) of this section does not prevent the registered entity from subsequently submitting a revised version of the proposed rule or rule amendment for Commission review and approval or from submitting the new rule or rule amendment as initially proposed in a supplemented submission; the revised submission will be reviewed without prejudice.

(2) Notification to a registered entity under paragraph (e) of this section of the Commission's determination not to approve a proposed rule or rule amendment of a registered entity shall be presumptive evidence that the entity may not truthfully certify that the same, or substantially the same, proposed rule or rule amendment under § 40.6(a) of this section.

(g) *Expedited approval.* Notwithstanding the provisions of paragraph (c) of this section, changes to a proposed rule or a rule amendment, including changes to terms and conditions of a product that are consistent with the Act and Commission regulations and with standards approved or established by the Commission may be approved by the Commission at such time and under such conditions as the Commission shall specify in the written notification, provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product or rule amendment.

§ 40.6 Self-certification of rules.

(a) *Required certification.* A registered entity shall comply with the following conditions prior to implementing any rule, other than a rule delisting or withdrawing the certification of a product, that has not obtained Commission approval under § 40.5 of this part, that remains dormant subsequent to being submitted under this section or approved under § 40.5 of this part, or that is submitted under § 40.10 of this part, except as otherwise provided by § 40.10(a):

(1) The registered entity has filed its submission electronically in a format and manner specified by the Secretary

of the Commission with the Secretary of the Commission.

(2) The registered entity has provided a certification that the registered entity posted a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the registered entity's Web site. Information that the registered entity seeks to keep confidential may be redacted from the documents published on the registered entity's Web site but it must be republished consistent with any determination made pursuant to § 40.8(c)(4).

(3) The Commission has received the submission not later than the open of business on the business day that is 10 business days prior to the registered entity's implementation of the rule or rule amendment.

(4) The Commission has not stayed the submission pursuant to § 40.6(c).

(5) The rule or rule amendment is not a rule or rule amendment of a designated contract market that materially changes a term or condition of a contract for future delivery of an agricultural commodity enumerated in section 1a(4) of the Act or an option on such a contract or commodity in a delivery month having open interest.

(6) *Emergency rule certifications.* (i) New rules or rule amendments that establish standards for responding to an emergency must be submitted pursuant to § 40.6(a);

(ii) Rules or rule amendments implemented under procedures of the governing board to respond to an emergency as defined in § 40.1, shall, if practicable, be filed with the Commission prior to the implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than twenty-four hours after implementation. Such rules shall be subject to the certification and stay provisions of paragraphs (b) and (c) of this section.

(7). The rule submission shall include:

(i) A copy of the submission cover sheet in accordance with the instructions in Appendix D to this part (in the case of a rule or rule amendment that responds to an emergency, ''Emergency Rule Certification'' should be noted in the Description section of the submission coversheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of intended implementation;

(iv) A certification by the registered entity that the rule complies with the Act and the Commission's regulations thereunder;

(v) A concise explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission's regulations thereunder;

(vi) A brief explanation of any substantive opposing views expressed to the registered entity by governing board or committee members, members of the entity or market participants, that were not incorporated into the rule, or a statement that no such opposing views were expressed;

(vii) As appropriate, a request for confidential treatment pursuant to the procedures provided in § 40.8; and

(8) The registered entity shall provide, if requested by Commission staff, additional evidence, information or data that may be beneficial to the Commission in conducting a due diligence assessment of the filing and the registered entity's compliance with any of the requirements of the Act or the Commission's regulations or policies thereunder.

(b) *Review by the Commission.* The Commission shall have 10 business days to review the new rule or rule amendment before the new rule or rule amendment is deemed certified and can be made effective, unless the Commission notifies the registered entity during the 10-business day review period that it intends to issue a stay of the certification under paragraph (c) of this section.

(c) *Stay* (1) *Stay of certification of new rule or rule amendment.* The Commission may stay the certification of a new rule or rule amendment submitted pursuant to paragraph (a) of this section by issuing a notification informing the registered entity that the Commission is staying the certification of the rule or rule amendment on the grounds that the rule or rule amendment presents novel or complex issues that require additional time to analyze, the rule or rule amendment is accompanied by an inadequate explanation or the rule or rule amendment is potentially inconsistent with the Act or the Commission's regulations thereunder. The Commission will have an additional 90 days from the date of the notification to conduct the review. The decision to stay the certification of a rule in such circumstances shall be delegable pursuant to § 40.7 of this part.

(2) *Public comment.* The Commission shall provide a 30-day comment period within the 90-day period in which the stay is in effect as described in paragraph (c)(1) of this section. The Commission shall publish a notice of the 30-day comment period on the Commission Web site. Comments from the public shall be submitted as specified in that notice.

(3*) Expiration of a stay of certification of new rule or rule amendment.* A new rule or rule amendment subject to a stay pursuant to this paragraph shall become effective, pursuant to the certification, at the expiration of the 90-day review period described in paragraph (c)(1) of this section unless the Commission withdraws the stay prior to that time, or the Commission notifies the registered entity during the 90-day time period that it objects to the proposed certification on the grounds that the proposed rule or rule amendment is inconsistent with the Act or the Commission's regulations.

(4) *Stay of effectiveness of rules or rule amendments already implemented.* The Commission may stay the effectiveness of an implemented rule during the pendency of Commission proceedings for filing a false certification or during the pendency of a petition to alter or amend the rule pursuant to section 8a(7) of the Act. The decision to stay the effectiveness of a rule in such circumstances shall not be delegable to any employee of the Commission.

(d) *Notification of rule amendments.* Notwithstanding the rule certification requirement of Section 5c(c)(1) of the Act and paragraph (a) of this section, a registered entity may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The registered entity provides to the Commission at least weekly a summary notice of all rule amendments made effective pursuant to this paragraph during the preceding week. Such notice must be labeled ''Weekly Notification of Rule Amendments'' and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically in a format and manner specified by the Secretary of the Commission; and

(2) The rule governs:

(i) *Non-substantive revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about registered entities and other such non-substantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(ii) *Delivery standards set by third parties.* Changes to grades or standards of commodities deliverable on a product

that are established by an independent third party and that are incorporated by reference as product terms, provided that the grade or standard is not established, selected or calculated solely for use in connection with futures or option trading and such changes do not affect deliverable supplies or the pricing basis for the product;

(iii) *Index products.* Routine changes in the composition, computation, or method of selection of component entities of an index (other than routine changes to securities indexes to the extent that such changes are not described in paragraph (d)(3)(ii)(F) of this section) referenced and defined in the product's terms, that do not affect the pricing basis of the index, which are made by an independent third party whose business relates to the collection or dissemination of price information and which was not formed solely for the purpose of compiling an index for use in connection with a futures or option product;

(iv) *Option contract terms.* Changes to option contract rules, which may qualify for implementation without notice pursuant to paragraph (d)(3)(ii)(G) of this section, relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis;

(v) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(A) Total $1.00 or more per contract, and

(B) Are established by an independent third party or are unrelated to delivery, trading, clearing or dispute resolution.

(vi) *Survey lists.* Changes to lists of banks, brokers, dealers, or other entities that provide price or cash market information to an independent third party and that are incorporated by reference as product terms;

(vii) *Approved brands.* Changes in lists of approved brands or markings pursuant to previously certified or Commission approved standards or criteria;

(viii) *Delivery facilities and delivery service providers.* Changes in lists of approved delivery facilities and delivery service providers (including weigh masters, assayers, and inspectors) at a delivery location, pursuant to previously certified or Commission approved standards or criteria;

(ix) *Trading months.* The initial listing of trading months, which may qualify for implementation without notice pursuant to (d)(3)(ii)(H) of this section, within the currently established cycle of trading months; or

(x) *Minimum tick.* Reductions in the minimum price fluctuation (or ''tick'').

(3) *Notification of rule amendments not required.* Notwithstanding the rule certification requirements of section 5c(c)(1) of the Act and paragraph (a) of this section, a registered entity may place the following rules or rule amendments into effect without certification or notice to the Commission if the following conditions are met:

(i) The registered entity maintains documentation regarding all changes to rules; and

(ii) The rule governs:

(A) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership or dues or assessments;

(B) *Administrative procedures.* The organization and administrative procedures of a registered entity governing bodies such as a Board of Directors, Officers and Committees, but not voting requirements, Board of Directors or Committee composition requirements or procedures, decision making procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C*) Administration.* The routine, daily administration, direction and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays, and changes to facilities housing the market, trading floor or trading area;

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules; and

(E) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(*1*) Are less than $1.00; or

(*2*) Relate to matters such as dues, badges, telecommunication services, booth space, real time quotations, historical information, publications, software licenses or other matters that are administrative in nature.

(F) *Securities indexes.* Routine changes to the composition, computation or method of security selection of an index that is referenced and defined in the product's rules, and which is made by an independent third party.

(G) *Option contract terms.* For registered entities that are in compliance with the daily reporting requirements of § 16.01 of this chapter, changes to option contract rules relating to the strike price listing procedures, strike price intervals, and the listing of strike prices on a discretionary basis.

(H) *Trading months.* For registered entities that are in compliance with the daily reporting requirements of § 16.01 of this chapter, the initial listing of trading months which are within the currently established cycle of trading months.

§ 40.7 Delegations.

(a) *Procedural matters.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, the following authorities, with the concurrence of the General Counsel or the General Counsel's delegate:

(i) To request, pursuant to § 40.3(c)(2) or § 40.5(c)(1)(ii) of this part, that the registered entity requesting approval amend the proposed product, rule or rule amendment, or supplement the submission to the Commission;

(ii) To notify the registered entity, pursuant to § 40.3(e) or § 40.5(e) of this part, that the Commission is not approving, or is unable to approve, the proposed product, rule or rule amendment;

(iii) To make all determinations reserved to the Commission in § 40.10.

(2) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, the following authorities, after consultation with the Office of General Counsel or the General Counsel's delegate to notify a registered entity:

(i) Pursuant to § 40.3(d) of this part, that the time for review of the submission has been extended because the product raises novel or complex issues that require additional time for review;

(ii) Pursuant to § 40.5(d) of this part, that the time for review of the submission has been extended because the proposed rule or rule amendment raises novel or complex issues that

require additional time for review or is of major economic significance;

(iii) Pursuant to § 40.6(c) of this part, that the proposed rule or rule amendment has been stayed because there exist novel or complex issues that require additional time to analyze, or there is potential inconsistency with the Act or the Commission's regulations.

(3) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, the authority to notify a registered entity, pursuant to § 40.3(d) or § 40.5(d) of this part, that the time for review of the submission has been extended, or that a rule certified pursuant to § 40.6(c) has been stayed, because the submission is incomplete or provides an inadequate explanation.

(4) *Emergency rules.* The Commission hereby delegates to the Director of the Division of Market Oversight and, separately, to the Director of the Division of Clearing and Intermediary Oversight, to be exercised by either Director, as appropriate, or by such other employee or employees of the Commission that either Director may designate from time to time, authority to receive notification of emergency rules under § 40.6(a)(6)(ii) of this part.

(5) The Commission hereby delegates to the Director of the Division of Market Oversight, to be exercised by the Director or by such employees of the Commission that the Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, the authority to determine whether a rule change submitted by a designated contract market for a materiality determination under § 40.4(b)(5) of this part is not material (in which case it may be reported pursuant to the provisions of § 40.6(d) of this part), or is material, in which case he or she shall notify the registered entity that the rule change must be submitted for the Commission's prior approval.

(b) *Approval authority.* The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Clearing and Intermediary Oversight and, separately, to the Director of the Division of Market Oversight, to be exercised by either Director, as appropriate, or by such employees of the Commission that either Director may designate from time to time, with the concurrence of the General Counsel or the General Counsel's delegate, the authority to approve, pursuant to section 5c(c)(3) of the Act and § 40.5 of this part, rules or rule amendments of a registered entity that:

(1) Relate to, but do not substantially change, the quantity, quality, or other delivery specifications, procedures, or obligations for delivery, cash settlement, or exercise under an agreement, contract or transaction approved for trading by the Commission; daily settlement prices; clearing position limits; requirements or procedures for governance of a registered entity; procedures for transfer trades; trading hours; minimum price fluctuations; and maximum price limit and trading suspension provisions;

(2) Reflect routine modifications that are required or anticipated by the terms of the rule of a registered entity;

(3) Establish or amend speculative limits or position accountability provisions that are in compliance with the requirements of the Act and the Commission's regulations;

(4) Are in substance the same as a rule of the same or another registered entity which has been approved previously by the Commission pursuant to section 5c(c)(3) of the Act;

(5) Are consistent with a specific, stated policy or interpretation of the Commission; or

(6) Relate to the listing of additional trading months of approved contracts.

(c) Notwithstanding the provisions of this section, the Director of the Division of Clearing and Intermediary Oversight and, separately, the Director of the Division of Market Oversight may submit to the Commission for its consideration any matter that has been delegated pursuant to this section.

(d) Nothing in this section shall be deemed to prohibit the Commission, at its election, from exercising any of the authority delegated pursuant to this section.

§ 40.8 Availability of public information.

(a) The following sections of all applications to become a designated contract market, swap execution facility, derivatives clearing organization, or swap data repository shall be made publicly available: Transmittal letter and first page of the application cover sheet, proposed rules, narrative summary of the applicant's proposed activities and regulatory compliance chart, documents establishing the applicant's legal status, documents setting forth the applicant's corporate and governance structure and any other part of the application not covered by a request for confidential treatment.

(b) The following submissions provided by an electronic trading facility on which significant price discovery contracts are traded or executed will be public: rulebook, the facility's regulatory compliance chart, documents establishing the facility's legal status, documents setting forth the facility's governance structure, and any other parts of the submissions not covered by a request for confidential treatment (§ 40.8(b) will be removed on July 20, 2012).

(c) A registered entity's filing of new products pursuant to the self-certification procedures of § 40.2 of this part, new products for Commission review and approval pursuant to § 40.3 of this part, new rules and rule amendments for Commission review and approval pursuant to § 40.4 or § 40.5 of this part, and new rules and rule amendments pursuant to the self-certification procedures of § 40.6 and § 40.10 of this part shall be treated as public information unless accompanied by a request for confidential treatment. If a registered entity files a request for confidential treatment, the following procedures shall apply:

(1) A detailed written justification of the confidential treatment request must be filed simultaneously with the request for confidential treatment. The form and content of the detailed written justification shall be governed by § 145.9 of this chapter;

(2) All material for which confidential treatment is requested must be segregated in an Appendix to the submission;

(3) The submission itself must indicate that material has been segregated and, as appropriate, an additional redacted version provided;

(4) Commission staff may make an initial determination with respect to the request for confidential treatment without regard to whether a request for the information has been sought under the Freedom of Information Act;

(5) All requests for confidential treatment shall be subject to the process provided by § 145.9 of this chapter.

(6) A submitter of information under this part may appeal an adverse decision by staff to the Commission's Office of General Counsel. The form and content of such appeal shall be governed by § 145.9(g) of this chapter.

(7) The grant of any part of a request for confidential treatment under this section may be reconsidered if a subsequent request under the Freedom of Information Act is made for the information.

(d) Commission staff will not consider confidential treatment requests for information that is required to be made

public under the Act. The terms and conditions of a product submitted to the Commission pursuant to § 40.2, § 40.3, § 40.5 and § 40.6 of this part shall be made publicly available at the time of submission.

§ 40.9 [Reserved]

§ 40.10 Special certification procedures for submission of rules by systemically important derivatives clearing organizations.

(a) *Advance notice.* A registered derivatives clearing organization that has been designated by the Financial Stability Oversight Council as a systemically important derivatives clearing organization shall provide notice to the Commission not less than 60 days in advance of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the systemically important derivatives clearing organization. A notice submitted under this section shall be subject to the filing requirements of § 40.6(a)(1) and the Web site publication requirements of § 40.6(a)(2).

(1) The notice of a proposed change shall provide the information required to be submitted under § 40.6(a)(7) and shall specifically describe:

(i) The nature of the change and expected effects on risks to the systemically important derivatives clearing organization, its clearing members, or the market; and

(ii) How the systemically important derivatives clearing organization plans to manage any identified risks.

(2) Concurrent with providing the Commission with the advance notice or any request or other information related to the advance notice, the systemically important derivatives clearing organization shall provide the Board of Governors of the Federal Reserve System with a copy of such notice, request or other information in the same format and manner as required by the Board of Governors for those designated financial market utilities for which it is the Supervisory Agency pursuant to section 803(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

(3) The systemically important derivatives clearing organization may request that the Commission expedite the review on the grounds that the change would materially decrease risk. The Commission, in its discretion, may expedite the review and, pursuant to paragraph (g) of this section, notify the systemically important derivatives clearing organization in less than 60 days from the date the Commission receives the notice of proposed change in writing that it does not object to the proposed change and authorizes implementation of the change on an earlier date.

(b) *Materiality.* The term ''materially affect the nature or level of risks presented,'' when used to qualify determinations on a change to rules, procedures, or operations of a systemically important derivatives clearing organization, means matters as to which there is a reasonable possibility that the change could affect the performance of essential clearing and settlement functions or the overall nature or level of risk presented by the systemically important derivatives clearing organization. Such changes may include, but are not limited to, changes that materially affect financial resources, participant and product eligibility, risk management (including matters relating to margin and stress testing), daily or intraday settlement procedures, default procedures, system safeguards (business continuity and disaster recovery), and governance. If a systemically important derivatives clearing organization determines that a proposed change is not material and therefore does not file an advance notice under this § 40.10, but the Commission determines that the change is material, the Commission may require the systemically important derivatives clearing organization to withdraw the proposed change and provide notice pursuant to this section.

(c) *Further information.* The Commission may require the systemically important derivatives clearing organization to provide any further information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the systemically important derivatives clearing organization's payment, clearing, or settlement activities and the sufficiency of any proposed risk management techniques.

(d) *Notice of objection.* A systemically important derivatives clearing organization shall not implement a change to which the Commission has an objection on the grounds that the proposed change is not consistent with the Act or the Commission's regulations, or the purposes of the Dodd-Frank Act or any applicable rules, orders, or standards prescribed under Section 805(a) of the Dodd-Frank Act. The Commission will notify the systemically important derivatives clearing organization in writing of any objection regarding the proposed change within 60 days from the later of:

(1) The date that the notice of the proposed change was received; or

(2) The date the Commission received any further information it had requested for consideration of the notice.

(e) *Implementation of change absent Commission objection.* A systemically important derivatives clearing organization may implement a change if it has not received an objection to the proposed change within 60 days from the later of:

(1) The date that the Commission received the notice of proposed change; or

(2) The date the Commission received any further information it had requested for consideration of the notice.

(f) *Extended review.* The Commission may, during the 60-day review period, extend the review period if the proposed change raises novel or complex issues. A notification by the Commission pursuant to this paragraph will extend the review for an additional 60 days. Any extension under this paragraph will extend the time periods under paragraphs (d) and (e) of this section for an additional 60 days.

(g) *Change allowed earlier if notified of no objection.* A systemically important derivatives clearing organization may implement a change in less than 60 days from the date the Commission receives the notice of proposed change or the date the Commission receives any further information it has requested, if the Commission notifies the systemically important derivatives clearing organization in writing that it does not object to the proposed change and authorizes implementation of the change on an earlier date, subject to any conditions imposed by the Commission.

(h) *Emergency changes.* A systemically important derivatives clearing organization may implement a change that would otherwise require advance notice under this section if it determines that an emergency exists and immediate implementation of the change is necessary for the systemically important derivatives clearing organization to continue to provide its services in a safe and sound manner.

(1) The systemically important derivatives clearing organization shall provide notice of any such emergency change to the Commission as soon as practicable, which shall be no later than 24 hours after implementation of the change.

(2) The notice of an emergency change shall:

(i) Provide the information required for advance notice as set forth in paragraph (a) of this section;

(ii) Describe the nature of the emergency; and

(iii) Describe the reason the change was necessary for the systemically important derivatives clearing organization to continue to provide its services in a safe and sound manner.

(3) The Commission may require modification or rescission of the emergency change if it finds that the change is not consistent with the Act or the Commission's regulations, or the purposes of the Dodd-Frank Act or any applicable rules, orders, or standards prescribed under Section 805(a) of the Dodd-Frank Act.

§ 40.11 Review of event contracts based upon certain excluded commodities.

(a) *Prohibition.* A registered entity shall not list for trading or accept for clearing on or through the registered entity any of the following:

(1) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, that involves, relates to, or references terrorism, assassination, war, gaming, or an activity that is unlawful under any State or Federal law; or

(2) An agreement, contract, transaction, or swap based upon an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which involves, relates to, or references an activity that is similar to an activity enumerated in § 40.11(a)(1) of this part, and that the Commission determines, by rule or regulation, to be contrary to the public interest.

(b) [Reserved.]

(c) *90-day review and approval of certain event contracts.* The Commission may determine, based upon a review of the terms or conditions of a submission under § 40.2 or § 40.3, that an agreement, contract, transaction, or swap based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which may involve, relate to, or reference an activity enumerated in § 40.11(a)(1) or § 40.11(a)(2), be subject to a 90-day review. The 90-day review shall commence from the date the Commission notifies the registered entity of a potential violation of § 40.11(a).

(1) The Commission shall request that a registered entity suspend the listing or trading of any agreement, contract, transaction, or swap based on an excluded commodity, as defined in Section 1a(19)(iv) of the Act, which may involve, relate to, or reference an activity enumerated in § 40.11(a)(1) or § 40.11(a)(2), during the Commission's 90-day review period. The Commission shall post on the Web site a notification of the intent to carry out a 90-day review.

(2) *Final determination.* The Commission shall issue an order approving or disapproving an agreement, contract, transaction, or swap that is subject to a 90-day review under § 40.11(c) not later than 90 days subsequent to the date that the Commission commences review, or if applicable, at the conclusion of such extended period agreed to or requested by the registered entity.

§ 40.12 Staying of certification and tolling of review period pending jurisdictional determination.

(a) *Notice of novel derivative products.* (1) A registered entity certifying, submitting for approval, or otherwise filing a proposal to list, trade, or clear a novel derivative product (other than a product subject to the provisions of § 1.8 of this chapter) having elements of both a security and a contract for the sale of a commodity for future delivery (or an option on such contract or an option on a commodity) may provide notice of its proposal to the Commission and the Securities and Exchange Commission with a statement that written notice has been provided to both agencies through an appropriate means provided in each Commission's regulations.

(2) If concurrent notice is not provided pursuant to § 40.12(a)(1), the Commission shall notify the Securities and Exchange Commission of the registered entity's submission of a novel derivative product described in § 40.12(a)(1) and accompany such notice with a copy of the submission. The Commission shall determine whether a particular submission is a novel derivative product requiring notice to the Securities and Exchange Commission not later than five business days subsequent to the date that the registered entity submits the product for Commission review.

(b) *Tolling of review period.* Upon receipt of a request for a jurisdictional determination, pursuant to Section 718(a)(2) of the Dodd-Frank Act, by the Commission or the Securities and Exchange Commission, the product certification shall be stayed or the approval review period shall be tolled until a final determination order is issued.

(1) The Commission will provide the registered entity with a written notice of stay pending issuance of a final determination order by the Commission or the Securities and Exchange Commission.

(2) The stay shall be withdrawn or the approval review period shall resume upon the Commission's or the Securities and Exchange Commission's issuance of a final determination order finding that the Commission has jurisdiction over the submission.

(3) *Determination order.* A final determination, for purposes of § 40.12(b) of this part, shall be a determination order issued by the Commission or the Securities and Exchange Commission pursuant to Section 718(a)(3) of the Dodd-Frank Act.

(c) *Judicial review of determination order.* The filing of a petition by a complaining Commission, pursuant to Section 718(b) of the Dodd-Frank Act, shall operate as a stay of the agency order.

(1) The stay shall remain in effect until the date on which the United States Court of Appeals for the District of Columbia Circuit issues a final determination pursuant to Section 718(b)(4) of the Dodd-Frank Act, or until such date that there is a final disposition of an appeal of that determination.

(2) The submission review period shall resume upon issuance of a final determination, as described in § 40.12(c)(1), that the Commission has jurisdiction over the submission.

Appendix A to Part 40—Schedule of Fees

(a) *Applications for product approval.* Each application for product approval under § 40.3 must be accompanied by a check or money order made payable to the Commodity Futures Trading Commission in an amount to be determined annually by the Commission and published in the **Federal Register**.

(b) Checks and applications should be sent to the attention of the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. No checks or money orders may be accepted by personnel other than those in the Office of the Secretariat.

(c) Failure to submit the fee with an application for product approval will result in return of the application. Fees will not be returned after receipt.

Appendix B to Part 40—[Reserved]

Appendix C to Part 40—[Reserved]

Appendix D to Part 40—Submission Cover Sheet and Instructions

(a) A properly completed submission cover sheet shall accompany all rule and product submissions submitted electronically by a registered entity in a format and manner specified by the Secretary of the Commission to the Secretary of the Commission. A properly completed submission cover sheet shall include all of the following:

1. *Identifier Code (optional)*—A registered entity Identifier Code at the top of the cover sheet, if applicable. Such codes are commonly generated by registered entities to

provide an identifier that is unique to each filing (*e.g.,* NYMEX Submission 03–116).

2. *Date*—The date of the filing.

3. *Organization*—The name of the organization filing the submission (*e.g.,* CBOT).

4. *Filing as a*—Check in the appropriate box indicating that the rule or product is being submitted by a designated contract market (DCM), derivatives clearing organization (DCO), swap execution facility (SEF), or swap data repository (SDR), electronic trading facility with a significant price discovery contract (the term will be removed on July 20, 2012).[1]

5. *Type of Filing*—An indication as to whether the filing is a new rule, rule amendment or new product. The registered entity should check the appropriate box to indicate the applicable category under that heading.

6. *Rule Numbers*—For rule filings, the rule number(s) being adopted or modified in the case of rule amendment filings.

7. *Description*—For rule or rule amendment filings, a description of the new rule or rule amendment, including a discussion of its expected impact on the registered entity, market participants, and the overall market. The narrative should describe the substance of the submission with enough specificity to characterize all material aspects of the filing.

(b) *Other Requirements*—A submission shall comply with all applicable filing requirements for proposed rules, rule amendments, or products. The filing of the submission cover sheet does not obviate the registered entity's responsibility to comply with applicable filing requirements (*e.g.,* rules submitted for Commission approval under § 40.5 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views).

(c) Checking the box marked ''confidential treatment requested'' on the Submission Cover Sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in § 40.8 and, where appropriate, § 145.9 of this chapter, and will not substitute for notice or full compliance with such requirements.

Issued in Washington, DC, on July 19, 2011, by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Provisions Common to Registered Entities—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

[1] Even though ECM–SPDC was eliminated by the Dodd-Frank Act, the Commission will retain references to this entity in the cover sheet since ECMs may be allowed to operate until July 20, 2012, pursuant to grandfather relief issued by the Commission. *See* 75 FR 56513 (Sept. 16, 2010).

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, Chilton and O'Malia voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to establish a process for the certification and approval of new rules and rule amendments for designated contract markets, derivatives clearing organizations, as well as new registrants, swap execution facilities and swap data repositories. The Dodd-Frank Wall Street Reform and Consumer Protection Act establishes enhanced CFTC review and certification of new rules and amendments. Today's final regulations provide important procedural guidance to registered entities on how to comply with Congress's mandate for the Commission's review of new rules and rule amendments.

[FR Doc. 2011–18661 Filed 7–26–11; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9539]

RIN 1545–BI09

Election of Reduced Research Credit Under Section 280C(c)(3)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that amend the regulations concerning the election to claim the reduced research credit. The final regulations simplify how taxpayers make the election and affect taxpayers that claim the reduced research credit.

DATES: *Effective Date:* These regulations are effective on July 27, 2011.

Applicability Date: For dates of applicability, see § 1.280C–4(c).

FOR FURTHER INFORMATION CONTACT: David Selig, (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) relating to the election for claiming the reduced research credit under section 280C(c)(3). On July 16, 2009, a notice of proposed rulemaking (REG–130200–08) was published in the **Federal Register** (74 FR 34523). No public hearing was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. After considering the comments received the proposed regulations are adopted as revised by this Treasury decision.

Section 280C(c)(1) provides that no deduction shall be allowed for that portion of the qualified research expenses (as defined in section 41(b)) or basic research expenses (as defined in section 41(e)(2)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit determined for such taxable year under section 41(a).

Similarly, section 280C(c)(2) provides that if the amount of the credit determined for the taxable year under section 41(a)(1) exceeds the amount allowable as a deduction for such taxable year for qualified research expenses or basic research expenses (determined without regard to section 280C(c)(1)), the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

Section 280C(c)(3)(A) provides, in general, that in the case of any taxable year for which an election is made under section 280C(c)(3), sections 280C(c)(1) and (c)(2) shall not apply, and the amount of the credit under section 41(a) shall be the amount determined under section 280C(c)(3)(B). Under section 280C(c)(3)(B), the amount of credit for any taxable year shall be the amount equal to the excess of the amount of credit determined under section 41(a) without regard to section 280C(c)(3), over the product of the amount of credit determined under section 280C(c)(3)(B)(i), and the maximum rate of tax under section 11(b)(1).

Section 280C(c)(3)(C) provides that an election under section 280C(c)(3) for any taxable year shall be made not later than the time for filing the return of tax for such year (including extensions), shall be made on such return, and shall be made in such manner as the Secretary may prescribe. Section 1.280C–4(a) provides that the section 280C(c)(3) election to have the provisions of section 280C(c)(1) and (c)(2) not apply shall be made by claiming the reduced credit under section 41(a) determined by the method provided in section 280C(c)(3)(B) on an original return for the taxable year, filed at any time on or before the due date (including extensions) for filing the income tax return for such year. Such an election, once made, shall be irrevocable for that taxable year.

Section 280C(c)(4) provides that section 280C(b)(3) shall apply for

purposes of section 280C(c). Under section 280C(b)(3), in the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 41(f)(5)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), section 280C(b) shall be applied under rules prescribed by the Secretary similar to the rules applicable under section 41(f)(1)(A) and (f)(1)(B).

Section 1.41–6(a)(1) provides that to determine the amount of research credit (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group, a taxpayer must: (i) Compute the group credit in the manner described in § 1.41–6(b), and (ii) allocate the group credit among the members of the group in the manner described under § 1.41–6(c). All members of the controlled group are required to use the same computation method, that is, the section 41(a)(1) method or the section 41(c)(5) alternative simplified research credit method, in computing the group credit for the credit year.

Explanation and Summary of Comments

These final regulations simplify the section 280C(c)(3) election to have the provisions of section 280C(c)(1) and (c)(2) not apply by requiring the election to be made on Form 6765, ''Credit for Increasing Research Activities.'' The form must be filed with an original return for the taxable year filed on or before the due date (including extensions) for filing the income tax return for such year. An election, once made for any taxable year, is irrevocable for that taxable year.

These final regulations also provide that each member of a controlled group may make the election under section 280C(c)(3) after the group credit is computed and allocated under §§ 1.41–6(b)(1) and 1.41–6(c).

One commentator was concerned that the controlled group rules in the proposed regulations might cause administrative complexity for some members of a controlled group filing a consolidated return because each member would be required to file a separate Form 6765 to make the election under section 280C(c)(3). Generally, the proposed regulations provided that each member of a controlled group of corporations (within the meaning of section 41(f)(5)), or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), could make the election under section 280C(c)(3). In order to clarify and simplify the election procedure for members of consolidated groups, however, the final regulations add that only a common parent (within the meaning of § 1.1502–77(a)(1)(i)) of a consolidated group may make the election under section 280C(c)(3) on behalf of the members of the consolidated group. An attachment to a Form 6765 filed by a common parent of a consolidated group adequately identifying the members for which an election under section 280C(c)(3) is made is generally sufficient to clearly indicate the intent of the common parent to make the election for those members.

Another commentator believed that some members of a controlled group may fail to make a timely election under section 280C(c)(3) because, at the time of filing the Form 6765 with the original return, no credit was reported by such members. The election under section 280C(c)(3) may be made whether or not a taxpayer claims any amount of credit on its original return. An example has been added to the final regulations showing that a taxpayer may make an election under section 280C(c)(3) on its original return without reporting any credit.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. 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.

When an agency promulgates a final rule, the Regulatory Flexibility Act (5 U.S.C. chapter 6) requires the agency to ''prepare a final regulatory flexibility analysis'' with ''a description of and an estimate of the number of small entities to which the rule will apply.'' See 5 U.S.C. 604(a). Section 605 of the Regulatory Flexibility Act provides an exception to this requirement if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

The final rule affects individuals and small businesses engaged in research activities under section 41. The IRS has determined that the final rule will have an impact on a substantial number of small entities. However, the IRS also has determined that the impact on entities affected by the final rule will not be significant. This determination is based on the fact that the regulations would simplify the procedure for making the election for the reduced research credit under section 280C(c)(3)(C). Instead of requiring such an election to be made by claiming the reduced credit ''on an original return,'' the regulations specify that the election is made by clearly indicating an intent to make the election on Form 6765, ''Credit for Increasing Research Activities,'' which is attached to the return. This form requires only a minimal amount of time to complete and places no greater burden on the taxpayer than the current procedure. Accordingly, a final regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue 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 business.

Drafting Information

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

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.280C–4 is revised to read as follows:

§ 1.280C–4 Credit for increasing research activities.

(a) *In general.* An election under section 280C(c)(3) to have the provisions of section 280C(c)(1) and (c)(2) not apply and elect the reduced research credit under section 280C(c)(3)(B) shall be made on Form 6765, ''Credit for Increasing Research Activities'' (or any successor form). In order for the election to be effective, the Form 6765 must clearly indicate the taxpayer's intent to make the section 280C(c)(3) election, and must be filed with an original return for the taxable year filed on or before the due date (including extensions) for filing the income tax return for such year, regardless of whether any research

credits are claimed on the original return. An election, once made for any taxable year, is irrevocable for that taxable year.

(b) *Controlled groups of corporations; trades or businesses under common control*—(1) *In general.* A member of a controlled group of corporations (within the meaning of section 41(f)(5)), or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 41(f)(1)(B)), may make the election under section 280C(c)(3). However, only the common parent (within the meaning of § 1.1502–77(a)(1)(i)) of a consolidated group may make the election on behalf of the members of a consolidated group. A member or trade or business shall make the election on Form 6765 and by the time prescribed in paragraph (a) of this section.

(2) *Example.* The following example illustrates an application of paragraph (b) of this section:

Example. A, B, and C, all of which are calendar year taxpayers, are members of a controlled group of corporations (within the meaning of section 41(f)(5)). A, B, and C each attach a statement to the 2009 Form 6765, ''Credit for Increasing Research Activities,'' showing A and C had stand-alone entity credits (within the meaning of § 1.41–6(c)(2)) that exceeded the group credit (within the meaning of § 1.41–6(a)(3)(iv)). A and C report their allocated portions of the group credit (as determined under § 1.41–6(c)) on the 2009 Form 6765 and B reports no research credit on the 2009 Form 6765. A and B, but not C, each make an election for the reduced credit on the 2009 Form 6765. In December 2010, A determines that it understated its qualified research expenses in 2009 resulting in the group credit exceeding the sum of the stand-alone credits. On an amended 2009 Form 6765, A, B, and C each report their allocated portions of the group credit (including the excess group credit). B reports its credit as a regular credit under section 41(a) and reduces the credit under section 280C(c)(3)(B). C may not reduce its credit under section 280C(c)(3)(B) because C did not make an election for the reduced credit with its original return.

(c) *Effective/applicability date.* This section applies to taxable years ending on or after July 27, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: July 19, 2011.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–18993 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

RIN 1505–AC27

Privacy Act of 1974; Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, the Department of the Treasury gives notice of an amendment to update its Privacy Act regulations, and to add an exemption from certain provisions of the Privacy Act for a system of records related to the Office of Financial Stability (OFS).

DATES: *Effective Date:* July 27, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Bressman, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 927–0419 (fax) or via electronic mail at *Brian.Bressman@Treasury.gov.*

SUPPLEMENTARY INFORMATION: The Departmental Offices published a system of records notice on February 9, 2011, at 76 FR 7239, establishing a new system of records entitled ''Treasury/DO.225—TARP Fraud Investigation Information System.''

On February 9, 2011, the Department also published, at 75 FR 7121, a proposed rule amending 31 CFR 1.36(g)(1)(i). The proposed rule exempted the system of records from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2).

The proposed rule requested that public comments be submitted to OFS, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. The Department did not receive comments on the proposed rule. Accordingly the Department is hereby giving notice that the system of records entitled ''Treasury/DO.225—TARP Fraud Investigation Information System'' is exempt from provisions of the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2) as set forth in the proposed rule.

This final rule is not a ''significant regulatory action'' under Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, it is hereby certified that this rule will not have significant economic impact on a substantial number of small entities. This certification is based on the fact that the final rule affects individuals and not small entities. The term ''small entity'' is defined to have the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction,'' as defined in the RFA.

As authorized by 5 U.S.C. 553(d)(3), the Department finds that good cause exists for dispensing with the 30-day delay in the effective date of this rule. These regulations exempt certain investigative records maintained by the Department from notification, access, and amendment of a record. Accordingly, to protect the integrity of the records system, the Department finds that it is in the public interest to make these regulations effective upon publication.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, Subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

■ 2. Section 1.36 paragraph (g)(1)(i) is amended by adding the following text to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

* * * * *

(g) * * *

(1) * * *

(i) * * *

Number	System name
* * * * *	
DO.225	TARP Fraud Investigation Information System.
* * * * *	

* * * * *

Dated: May 9, 2011.

Melissa Hartman,

Deputy Assistant Secretary for Privacy, Transparency and Records.

[FR Doc. 2011–18959 Filed 7–26–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100, 117, 147, and 165

[USCG–2011–0732]

Quarterly Listings; Safety Zones, Security Zones, Special Local Regulations, Drawbridge Operation Regulations and Regulated Navigation Areas

AGENCY: Coast Guard, DHS.

ACTION: Notice of expired temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between December 2008 and July 2010, that expired before they could be published in the **Federal Register**. This notice lists temporary safety zones, security zones, special local regulations, drawbridge operation regulations and regulated navigation areas, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules between December 7, 2008 and July 25, 2010 that became effective and were terminated before they could be published in the **Federal Register**.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building ground floor, room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact Yeoman First Class Denise Johnson, Office of Regulations and Administrative Law, telephone (202) 372–3862. For questions on viewing, or on submitting material to the docket, contact Ms. Angie Ames, Docket Operations, telephone 202–366–5115.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. *Safety zones* may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. *Security zones* limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. *Special local regulations* are issued to enhance the safety of participants and spectators at regattas and other marine events. *Drawbridge operation regulations* authorize changes to drawbridge schedules to accommodate bridge repairs, seasonal vessel traffic, and local public events.

Regulated Navigation Areas are water areas within a defined boundary for which regulations for vessels navigating within the area have been established by the regional Coast Guard District Commander. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these safety zones, security zones, special local regulations, regulated navigation areas or drawbridge operation regulations by Coast Guard officials' on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary safety zones, security zones, special local regulations, regulated navigation areas and drawbridge operation regulations. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register.**

Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The temporary rules listed in this notice have been exempted from review under Executive Order 12666, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following unpublished rules were placed in effect temporarily during the period between December 2008 and July 2010 unless otherwise indicated.

Dated: July 21, 2011.

K.A. Sinniger,

Chief, Office of Regulations and Administrative Law.

1ST–4TH QUARTER 2010 LISTING

Docket No.	Location	Type	Effective date
CGD13–04–019	Puget Sound, WA	Security Zone (Part 165)	3/14/2010
CGD13–04–019	Commencement Bay, WA	Security Zone (Part 165)	9/16/2010
USCG–2008–0994	Aucilla River, FL	Safety Zone (Part 165)	11/9/2009
USCG–2008–1096	Port Portland Zone	Safety Zone (Part 165)	7/3/2010
USCG–2009–0040	La Push, WA	Safety Zone (Part 165)	7/7/2010
USCG–2009–0174	North Landing River, NC	Safety Zone (Part 165)	3/26/2010
USCG–2009–0292	Niagara Falls, NY	Safety Zone (Part 165)	4/17/2010
USCG–2009–0416	Oahu, HI	Security Zone (Part 165)	12/21/2010
USCG–2009–0416	Oahu, HI	Security Zone (Part 165)	1/3/2011
USCG–2009–0647	Fort Walton Beach, FL	Safety Zone (Part 165)	11/9/2009
USCG–2009–0653	Marion Co., TN	Safety Zone (Part 165)	8/2/2010
USCG–2009–0721	Harriman, TN	Safety zone (Part 165)	5/15/2010
USCG–2009–0943	Ocean Side, CA	Special Local Regulation (Part 100)	3/27/2010
USCG–2009–0950	Madisonville, LA	Safety Zone (Part 165)	12/31/2009
USCG–2009–0951	Lower Mississippi River	Safety Zone (Part 165)	10/17/2010
USCG–2009–0978	Destin, FL	Safety Zone (Part 165)	11/7/2009
USCG–2009–1005	Willamette Rivers	Security Zone (Part 165)	7/7/2010
USCG–2009–1006	Port Townsend, WA	Safety Zone (Part 165)	1/9/2010

1ST–4TH QUARTER 2010 LISTING—Continued

Docket No.	Location	Type	Effective date
USCG–2009–1030	Parker, AZ	Safety Zone (Part 165)	9/24/2010
USCG–2009–1035	Seattle, WA	Safety Zone (Part 165)	9/9/2010
USCG–2009–1036	Seattle, WA	Safety Zone (Part 165)	9/16/2010
USCG–2009–1037	Seattle, WA	Safety Zone (Part 165)	9/23/2010
USCG–2009–1081	New Orleans, LA	Safety Zone (Part 165)	12/23/2009
USCG–2009–1084	Rio Vista, CA	Safety Zone (Part 165)	10/10/2009
USCG–2009–1094	Crown Point, NY	Safety Zone (Part 165)	12/23/2009
USCG–2009–1108	Parker, AZ	Safety Zone (Part 165)	11/26/2010
USCG–2009–1109	Parker, AZ	Safety Zone (Part 165)	10/29/2010
USCG–2009–1112	Parker, AZ	Special Local Regulation (Part 100)	3/13/2010
USCG–2009–1113	Parker, AZ	Safety Zone (Part 165)	3/27/2010
USCG–2009–1119	Valdez, AK	Safety Zone (Part 165)	12/26/2009
USCG–2009–1133	San Francisco, CA	Drawbridge Operations Regulation (Part 117)	1/30/2010
USCG–2010–0001	Ship Channel, LA	Security Zone (Part 165)	1/10/2010
USCG–2010–0016	Guam	Safety zone (Part 165)	3/1/2010
USCG–2010–0017	Guam	Safety Zone (Part 165)	3/4/2010
USCG–2010–0018	Waterway, TX	Security Zone (Part 165)	1/10/2010
USCG–2010–0019	Laughlin, NV	Safety Zone (Part 165)	7/4/2010
USCG–2010–0022	Morehead City, NC	Safety Zone (Part 165)	1/14/2010
USCG–2010–0024	Cameron, LA	Safety Zone (Part 165)	1/13/2010
USCG–2010–0026	San Diego, CA	Safety Zone (Part 165)	2/14/2010
USCG–2010–0027	Miami, FL	Security Zone (Part 165)	1/15/2010
USCG–2010–0034	East Boston, MA	Drawbridge Operations Regulation (Part 117)	2/26/2010
USCG–2010–0045	Fairfax County, VA	Security Zone (Part 165)	1/26/2010
USCG–2010–0046	Baltimore, MD	Security Zone (Part 165)	1/28/2010
USCG–2010–0049	Port Arthur, TX	Safety Zone (Part 165)	1/23/2010
USCG–2010–0058	Chesapeake, VA	Safety Zone (Part 165)	1/28/2010
USCG–2010–0067	San Diego, CA	Special Local Regulation (Part 100)	3/27/2010
USCG–2010–0079	Port Arthur, TX	Safety Zone (Part 165)	2/2/2010
USCG–2010–0080	Sabine, TX	Security Zone (Part 165)	12/7/2008
USCG–2010–0086	Port Huron, MI	Safety Zone (Part 165)	4/21/2010
USCG–2010–0092	Lower Hudson River, NJ & NY	Regulated Navigation Area (Part 165)	6/17/2010
USCG–2010–0095	San Francisco, CA	Safety Zone (Part 165)	4/10/2010
USCG–2010–0099	Knoxville, TN	Safety Zone (Part 165)	5/9/2010
USCG–2010–0103	Lake Ponchartrain Beach	Safety Zone (Part 165)	4/18/2010
USCG–2010–0107	Sabine, TX	Security Zone (Part 165)	2/11/2010
USCG–2010–0108	Charleston, WV	Safety Zone (Part 165)	4/24/2010
USCG–2010–0109	San Diego, CA	Safety Zone (Part 165)	7/4/2010
USCG–2010–0111	Vicksburg, MS	Safety Zone (Part 165)	4/17/2010
USCG–2010–0130	Chicago, IL	Safety Zone (Part 165)	3/1/2010
USCG–2010–0131	San Diego, CA	Safety Zone (Part 165)	3/15/2010
USCG–2010–0140	Sacramento, CA	Drawbridge Operations Regulation (Part 117)	3/14/2010
USCG–2010–0140	Discovery Bay, CA	Drawbridge Operations Regulation (Part 117)	4/5/2010
USCG–2010–0147	Seattle, WA	Safety Zone (Part 165)	8/24/2010
USCG–2010–0148	Seattle, WA	Safety Zone (Part 165)	9/29/2010
USCG–2010–0149	Seattle, WA	Security Zone (Part 165)	10/25/2010
USCG–2010–0153	Ocean City, MD	Safety Zone (Part 165)	6/4/2010
USCG–2010–0157	Allegheny River, PA	Special Local Regulation (Part 100)	6/5/2010
USCG–2010–0165	Romeoville, IL	Safety Zone (Part 165)	3/10/2010
USCG–2010–0166	Chicago, IL	Safety Zone (Part 165)	5/20/2010
USCG–2010–0170	San Francisco, CA	Special Local Regulation (Part 100)	4/25/2010
USCG–2010–0174	North Landing River, NC	Safety Zone (Part 165)	3/26/2010
USCG–2010–0191	Memphis, TN	Safety Zone (Part 165)	4/17/2010
USCG–2010–0197	Sacramento, CA	Drawbridge Operations Regulation (Part 117)	3/27/2010
USCG–2010–0201	San Francisco, CA	Special Local Regulation (Part 100)	4/25/2010
USCG–2010–0211	Monroe, LA	Safety Zone (Part 165)	7/3/2010
USCG–2010–0213	Mission Bay, CA	Safety Zone (Part 165)	12/3/2010
USCG–2010–0216	Pittsburgh, PA	Special Local Regulation (Part 100)	7/11/2010
USCG–2010–0218	Sabine, TX	Security Zone (Part 165)	4/1/2010
USCG–2010–0219	Waterway, TX	Security Zone (Part 165)	3/29/2010
USCG–2010–0222	Parish, LA	Security Zone (Part 165)	3/25/2010
USCG–2010–0224	Lake Washington, WA	Safety Zone (Part 165)	4/15/2010
USCG–2010–0233	Hickory, TN	Safety Zone (Part 165)	4/17/2010
USCG–2010–0236	Calcasieu River, LA	Security Zone (Part 165)	3/31/2010
USCG–2010–0237	Cameron Parish, LA	Security Zone (Part 165)	4/1/2010
USCG–2010–0242	Boston, MA	Safety Zone (Part 165)	5/8/2010
USCG–2010–0243	Lower Mississippi River	Safety Zone (Part 165)	3/29/2010
USCG–2010–0244	Miami, FL	Security Zone (Part 165)	4/1/2010
USCG–2010–0252	Chicago, IL	Safety Zone (Part 165)	4/12/2010
USCG–2010–0253	Charleston, SC	Special Local Regulation (Part 100)	4/17/2010
USCG–2010–0258	Calcasieu River, LA	Security Zone (Part 165)	4/7/2010
USCG–2010–0263	Sabine, TX	Security Zone (Part 165)	4/7/2010

1ST–4TH QUARTER 2010 LISTING—Continued

Docket No.	Location	Type	Effective date
USCG–2010–0264	Cameron Parish, LA	Security Zone (Part 165)	4/7/2010
USCG–2010–0267	Philadelphia, PA	Security Zone (Part 165)	4/6/2010
USCG–2010–0270	Boston, MA	Safety Zone (Part 165)	4/26/2010
USCG–2010–0273	Charleston, WV	Safety Zone (Part 165)	6/4/2010
USCG–2010–0278	Arlington County, VA	Security Zone (Part 165)	4/10/2010
USCG–2010–0280	Port Clarence, AK	Safety Zone (Part 165)	4/25/2010
USCG–2010–0282	Louisiana	Security Zone (Part 165)	4/11/2010
USCG–2010–0284	Miami Beach, FL	Security Zone (Part 165)	4/15/2010
USCG–2010–0286	New Orleans, LA	Safety Zone (Part 165)	4/10/2010
USCG–2010–0291	Buffalo, NY	Safety Zone (Part 165)	4/17/2010
USCG–2010–0296	Augusta, GA	Safety Zone (Part 165)	5/15/2010
USCG–2010–0297	Pittsburgh, PA	Safety Zone (Part 165)	5/7/2010
USCG–2010–0298	Detroit, MI	Safety Zone (Part 165)	4/15/2010
USCG–2010–0300	Louisiana	Security Zone (Part 165)	4/23/2010
USCG–2010–0301	Waterway, TX	Security Zone (Part 165)	4/28/2010
USCG–2010–0304	Wilmington, DE	Security Zone (Part 165)	4/21/2010
USCG–2010–0306	Secaucus, NJ	Drawbridge Operations Regulation (Part 117)	5/18/2010
USCG–2010–0308	Memphis, TN	Special Local Regulation (Part 100)	7/30/2010
USCG–2010–0310	Winfield, WV	Safety Zone (Part 165)	4/20/2010
USCG–2010–0318	Pittsburg, PA	Safety Zone (Part 165)	5/28/2010
USCG–2010–0323	Gulf of Mexico	Safety Zone (Part 165)	4/21/2010
USCG–2010–0326	Tiptonville, TN	Safety Zone (Part 165)	10/9/2010
USCG–2010–0328	Detroit, MI	Safety Zone (Part 165)	4/25/2010
USCG–2010–0335	New London, CT	Security Zone (Part 165)	5/19/2010
USCG–2010–0336	Wheeling, WV	Safety Zone (Part 165)	7/24/2010
USCG–2010–0345	Seattle	Special Local Regulation (Part 100)	8/6/2010
USCG–2010–0353	Memphis, TN	Safety Zone (Part 165)	5/28/2010
USCG–2010–0357	Sacramento, CA	Drawbridge Operations Regulation (Part 117)	5/30/2010
USCG–2010–0358	Catawba Island, OH	Safety Zone (Part 165)	8/13/2010
USCG–2010–0359	Philadelphia, PA	Security Zone (Part 165)	5/4/2010
USCG–2010–0360	San Diego, CA	Safety Zone (Part 165)	5/18/2010
USCG–2010–0372	Cordell Hull, TN	Safety Zone (Part 165)	5/3/2010
USCG–2010–0379	Detroit, MI	Safety Zone (Part 165)	5/5/2010
USCG–2010–0381	Pickwick, TN	Safety Zone (Part 165)	5/4/2010
USCG–2010–0382	Uniontown, KY	Safety Zone (Part 165)	7/5/2010
USCG–2010–0384	North Palm Beach, FL	Safety Zone (Part 165)	5/18/2010
USCG–2010–0385	Morgantown, WV	Special Local Regulation (Part 100)	8/8/2010
USCG–2010–0390	Hampton, VA	Security Zone (Part 165)	5/9/2010
USCG–2010–0411	Baltimore, MD	Safety Zone (Part 165)	5/13/2010
USCG–2010–0413	San Francisco, CA	Drawbridge Operations Regulation (Part 117)	6/12/2010
USCG–2010–0416	San Diego, CA	Safety Zone (Part 165)	7/3/2010
USCG–2010–0416	San Diego, CA	Safety Zone (Part 165)	7/4/2010
USCG–2010–0417	San Diego, CA	Safety Zone (Part 165)	7/4/2010
USCG–2010–0420	San Diego, CA	Security Zone (Part 165)	5/29/2010
USCG–2010–0421	San Diego, CA	Safety Zone (Part 165)	7/4/2010
USCG–2010–0426	Portland International	Safety Zone (Part 165)	6/5/2010
USCG–2010–0428	Point Pleasant, NJ	Safety Zone (Part 165)	5/17/2010
USCG–2010–0433	Wellsburg, WV	Safety Zone (Part 165)	7/4/2010
USCG–2010–0438	Waterway, TX	Security Zone (Part 165)	5/23/2010
USCG–2010–0450	Waterway, TX	Security Zone (Part 165)	6/3/2010
USCG–2010–0451	Sabine, TX	Security Zone (Part 165)	6/18/2010
USCG–2010–0460	Pittsburgh, PA	Safety Zone (Part 165)	7/3/2010
USCG–2010–0465	Lake Michigan	Security Zone (Part 165)	5/27/2010
USCG–2010–0468	Lake Michigan	Security Zone (Part 165)	5/28/2010
USCG–2010–0474	Cape May, NJ	Security Zone (Part 165)	5/29/2010
USCG–2010–0481	Pittsburgh, PA	Safety Zone (Part 165)	8/25/2010
USCG–2010–0490	Pittsburgh, PA	Security Zone (Part 165)	6/2/2010
USCG–2010–0493	Pacific Ocean, CA	Safety Zone (Part 165)	8/11/2010
USCG–2010–0495	Budd Inlet, WA	Safety Zone (Part 165)	9/2/2010
USCG–2010–0499	New York, NY	Safety Zone (Parts 147 and 165)	6/15/2010
USCG–2010–0500	National Harbor, MD	Safety Zone (Part 165)	6/4/2010
USCG–2010–0503	Glenbrook, NV	Safety Zone (Part 165)	7/4/2010
USCG–2010–0510	Lapointe, WI	Safety Zone (Part 165)	7/4/2010
USCG–2010–0514	Harrison Township, MI	Safety Zone (Part 165)	6/2/2010
USCG–2010–0515	Fort Smith, AR	Safety Zone (Part 165)	7/31/2010
USCG–2010–0516	Oakmont, PA	Safety Zone (Part 165)	7/24/2010
USCG–2010–0526	Sector New York	Safety Zone (Part 165)	7/3/2010
USCG–2010–0527	Liverpool, NY	Safety Zone (Part 165)	6/18/2010
USCG–2010–0528	Lake Sammamish, WA	Safety Zone (Part 165)	6/12/2010
USCG–2010–0531	Surf City, NC	Safety Zone (Part 165)	6/20/2010
USCG–2010–0532	Greenville, MS	Safety Zone (Part 165)	7/4/2010
USCG–2010–0537	Vicksburg, MS	Safety Zone (Part 165)	7/4/2010

1ST–4TH QUARTER 2010 LISTING—Continued

Docket No.	Location	Type	Effective date
USCG–2010–0538	Charleston, WV	Safety Zone (Part 165)	10/2/2010
USCG–2010–0539	Augusta, GA	Safety Zone (Part 165)	7/4/2010
USCG–2010–0540	Biloxi, MS	Safety Zone (Part 165)	7/3/2010
USCG–2010–0545	Charleston, WV	Safety Zone (Part 165)	10/9/2010
USCG–2010–0557	San Diego, CA	Safety Zone (Part 165)	7/15/2010
USCG–2010–0558	Paulsboro, NJ	Security Zone (Part 165)	6/16/2010
USCG–2010–0559	Allegheny River, PA	Safety Zone (Part 165)	7/14/2010
USCG–2010–0562	Chesapeake, VA	Safety Zone (Part 165)	7/6/2010
USCG–2010–0568	Frankfort, MI	Safety Zone (Part 165)	7/4/2010
USCG–2010–0569	Menasha, WI	Safety Zone (Part 165)	7/4/2010
USCG–2010–0570	Muskegon, MI	Safety Zone (Part 165)	7/4/2010
USCG–2010–0574	Port Detroit Zone	Safety Zone (Part 165)	6/18/2010
USCG–2010–0575	Cameron Parish, LA	Security Zone (Part 165)	6/18/2010
USCG–2010–0576	Mississippi River	Safety Zone (Part 165)	7/10/2010
USCG–2010–0581	New Orleans	Safety Zone (Part 165)	7/28/2010
USCG–2010–0582	Natchez, MS	Safety Zone (Part 165)	7/4/2010
USCG–2010–0583	Guam	Safety Zone (Part 165)	6/19/2009
USCG–2010–0584	Bullhead City, AZ	Safety Zone (Part 165)	7/4/2010
USCG–2010–0587	Duluth, MN	Safety Zone (Part 165)	7/4/2010
USCG–2010–0593	Pittsburgh, PA	Special Local Regulation (Part 100)	10/9/2010
USCG–2010–0594	Pittsburgh, PA	Safety Zone (Part 165)	8/7/2010
USCG–2010–0599	FT Chaffee, AR	Safety Zone (Part 165)	7/20/2010
USCG–2010–0603	Kendall, NY	Safety Zone (Part 165)	7/3/2010
USCG–2010–0604	Olcott, NY	Safety Zone (Part 165)	7/3/2010
USCG–2010–0608	Baldwinsville, NY	Safety Zone (Part 165)	7/3/2010
USCG–2010–0609	Pittsburgh, PA	Special Local Regulation (Part 100)	8/1/2010
USCG–2010–0611	Oahu, HI	Safety Zone (Part 165)	7/8/2010
USCG–2010–0614	Monongahela, PA	Safety Zone (Part 165)	7/4/2010
USCG–2010–0615	Milwaukie, WI	Safety Zone (Part 165)	7/3/2010
USCG–2010–0624	Morgan City	Safety Zone (Part 165)	7/27/2010
USCG–2010–0631	Tampa, FL	Safety Zone (Part 165)	7/10/2010
USCG–2010–0632	Racine, WI	Security Zone (Part 165)	6/30/2010
USCG–2010–0635	Waterway, TX	Security Zone (Part 165)	6/26/2010
USCG–2010–0639	Mobile COTP Zone	Safety Zone (Part 165)	7/29/2010
USCG–2010–0640	Cleveland, OH	Security Zone (Part 165)	6/30/2010
USCG–2010–0641	Atlantic City, NJ	Safety Zone (Part 165)	7/2/2010
USCG–2010–0642	Charleston, WV	Security Zone (Part 165)	7/2/2010
USCG–2010–0644	Oswego, NY	Safety Zone (Part 165)	7/4/2010
USCG–2010–0645	Sackets Harbor, NY	Safety Zone (Part 165)	7/4/2010
USCG–2010–0650	Portland, OR	Safety Zone (Part 165)	7/5/2010
USCG–2010–0651	Buffalo, NY	Safety Zone (Part 165)	7/4/2010
USCG–2010–0654	North Hammond, NY	Safety Zone (Part 165)	7/6/2010
USCG–2010–0655	Hawaii	Security Zone (Part 165)	7/13/2010
USCG–2010–0657	GUAM	Safety Zone (Part 165)	8/9/2010
USCG–2010–0665	Norfolk, VA	Safety Zone (Part 165)	10/2/2010
USCG–2010–0667	San Diego, CA	Safety Zone (Part 165)	10/3/2010
USCG–2010–0668	San Diego, CA	Safety Zone (Part 165)	9/12/2010
USCG–2010–0669	Philadelphia, PA	Security Zone (Part 165)	7/7/2010
USCG–2010–0671	Bar Harbor, ME	Security Zone (Part 165)	7/16/2010
USCG–2010–0674	Willamette Rivers	Security Zone (Part 165)	7/14/2010
USCG–2010–0676	Lake Erie, OH	Safety Zone (Part 165)	7/16/2010
USCG–2010–0677	Lake of Ozarks	Safety Zone (Part 165)	8/27/2010
USCG–2010–0678	San Diego, CA	Safety Zone (Part 165)	9/2/2010
USCG–2010–0681	Charles County, MD	Safety Zone (Part 165)	7/17/2010
USCG–2010–0682	Sabine, TX	Security Zone (Part 165)	7/12/2010
USCG–2010–0683	Cameron Parish, LA	Security Zone (Part 165)	7/12/2010
USCG–2010–0683	Pacific Ocean, CA	Safety Zone (Part 165)	7/17/2010
USCG–2010–0689	San Francisco, CA	Drawbridge Operations Regulation (Part 117)	7/25/2010
USCG–2010–0691	Baltimore, MD	Security Zone (Part 165)	7/20/2010
USCG–2010–0695	Pascagoula, MS	Security Zone (Part 165)	7/23/2010
USCG–2010–0696	Theodore, AL	Security Zone (Part 165)	7/22/2010
USCG–2010–0697	Panama City, FL	Security Zone (Part 165)	8/14/2010
USCG–2010–0698	Panama City, FL	Security Zone (Part 165)	8/14/2010
USCG–2010–0699	Theodore, AL	Safety Zone (Part 165)	8/23/2010
USCG–2010–0701	Port Huron, MI	Safety Zone (Part 165)	8/15/2010
USCG–2010–0704	M/V SYLVIE	Security Zone (Part 165)	7/25/2010
USCG–2010–0707	Waterway, TX	Security Zone (Part 165)	7/22/2010
USCG–2010–0714	Allegheny County, PA	Safety Zone (Part 165)	7/30/2010
USCG–2010–0715	Lake Charles, LA	Safety Zone (Part 165)	7/23/2010
USCG–2010–0720	Waterway, TX	Security Zone (Part 165)	7/27/2010
USCG–2010–0726	Portsmouth, VA	Safety Zone (Part 165)	7/29/2010
USCG–2010–0727	Mud Lake	Safety Zone (Part 165)	7/27/2010

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Docket No.	Location	Type	Effective date
USCG–2010–0729	Blynman Canal, MA	Drawbridge Operations Regulation (Part 117)	8/8/2010
USCG–2010–0734	Lower Mississippi River	Safety Zone (Part 165)	7/26/2010
USCG–2010–0736	Sturgeon Bay, WI	Safety Zone (Part 165)	8/12/2010
USCG–2010–0738	Burnham Park Harbor	Security Zone (Part 165)	8/4/2010
USCG–2010–0739	Chicago, IL	Security Zone (Part 165)	8/5/2010
USCG–2010–0740	Uniontown, KY	Safety Zone (Part 165)	8/9/2010
USCG–2010–0741	Cheboygan, MI	Safety Zone (Part 165)	8/3/2010
USCG–2010–0742	Pacific Ocean, CA	Safety Zone (Part 165)	8/21/2010
USCG–2010–0744	Cleveland, OH	Safety Zone (Part 165)	8/8/2010
USCG–2010–0747	Buffalo, NY	Safety Zone (Part 165)	8/15/2010
USCG–2010–0748	Labor Day on the Lake	Safety Zone (Part 165)	9/5/2010
USCG–2010–0750	Rio Vista, CA	Drawbridge Operations Regulation (Part 117)	8/24/2010
USCG–2010–0751	East Isleton, CA	Drawbridge Operations Regulation (Part 117)	8/24/2010
USCG–2010–0754	Alaska Maritime Highway	Safety Zone (Part 165)	9/8/2010
USCG–2010–0760	Cleveland, OH	Safety Zone (Part 165)	8/8/2010
USCG–2010–0762	Bridgewater, PA	Special Local Regulation (Part 100)	8/21/2010
USCG–2010–0763	St Clair, MI	Safety Zone (Part 165)	8/8/2010
USCG–2010–0764	Bridgewater, PA	Safety Zone (Part 165)	8/21/2010
USCG–2010–0765	Memphis, TN	Special Local Regulation (Part 100)	9/18/2010
USCG–2010–0768	Waterway, TX	Security Zone (Part 165)	8/11/2010
USCG–2010–0770	San Diego, CA	Safety Zone (Part 165)	9/2/2010
USCG–2010–0773	San Diego, CA	Safety Zone (Part 165)	10/23/2010
USCG–2010–0780	Pacific Ocean, CA	Security Zone (Part 165)	8/23/2010
USCG–2010–0781	Miami Beach, FL	Security Zone (Part 165)	8/18/2010
USCG–2010–0784	Orange, TX	Safety Zone (Part 165)	8/12/2010
USCG–2010–0792	Portsmouth, VA	Safety Zone (Part 165)	8/24/2010
USCG–2010–0793	Boston, MA	Safety Zone (Part 165)	8/28/2010
USCG–2010–0796	San Diego, CA	Security Zone (Part 165)	8/23/2010
USCG–2010–0801	Plymouth, MA	Special Local Regulation (Part 100)	9/5/2010
USCG–2010–0802	Chesapeake, VA	Drawbridge Operations Regulation (Part 117)	8/19/2010
USCG–2010–0804	Waterway, TX	Security Zone (Part 165)	9/9/2010
USCG–2010–0805	Presque Isle Bay	Safety Zone (Part 165)	9/9/2010
USCG–2010–0807	Superior, WI	Safety Zone (Part 165)	8/27/2010
USCG–2010–0810	Commencement Bay, WA	Safety Zone (Part 165)	8/28/2010
USCG–2010–0811	San Diego, CA	Safety Zone (Part 165)	10/9/2010
USCG–2010–0812	Lower Mississippi River	Safety Zone (Part 165)	8/18/2010
USCG–2010–0816	Nashville, TN	Safety Zone (Part 165)	9/18/2010
USCG–2010–0822	Orange, TX	Safety Zone (Part 165)	8/28/2010
USCG–2010–0826	Mobile, AL	Safety Zone (Part 165)	12/31/2010
USCG–2010–0827	Mobile, AL	Safety Zone (Part 165)	1/5/2011
USCG–2010–0830	Cleveland, OH	Safety Zone (Part 165)	9/2/2010
USCG–2010–0831	Waterway, TX	Security Zone (Part 165)	8/31/2010
USCG–2010–0834	Lower Mississippi River	Special Local Regulation (Part 100)	10/9/2010
USCG–2010–0835	Muskegon, MI	Safety Zone (Part 165)	9/5/2010
USCG–2010–0836	Chicago, IL	Safety Zone (Part 165)	9/18/2010
USCG–2010–0844	Kendall, NY	Safety Zone (Part 165)	9/4/2010
USCG–2010–0845	Mississippi River	Safety Zone (Part 165)	9/10/2010
USCG–2010–0848	Washington, DC	Safety Zone (Part 165)	9/11/2010
USCG–2010–0854	Milwaukee, WI	Security Zone (Part 165)	9/6/2010
USCG–2010–0856	Lower Chesapeake Bay, VA	Safety Zone (Part 165)	9/2/2010
USCG–2010–0862	Washington, DC	Security Zone (Part 165)	9/11/2010
USCG–2010–0863	Waterway, TX	Security Zone (Part 165)	9/9/2010
USCG–2010–0868	Virginia Beach, VA	Safety Zone (Part 165)	9/16/2010
USCG–2010–0869	Biscayne Bay, FL	Regulated Navigation Area & Safety Zone (Part 165)	10/9/2010
USCG–2010–0870	Bronx, NY	Drawbridge Operations Regulation (Part 117)	10/1/2010
USCG–2010–0871	Toledo, OH	Safety Zone (Part 165)	9/13/2010
USCG–2010–0874	GUAM	Safety Zone (Part 165)	10/5/2010
USCG–2010–0875	Stamford Harbor, CT	Security Zone (Part 165)	9/16/2010
USCG–2010–0876	Waterway, TX	Security Zone (Part 165)	9/12/2010
USCG–2010–0880	Atlantic City, NJ	Safety Zone (Part 165)	9/19/2010
USCG–2010–0881	Pittsburgh, PA	Safety Zone (Part 165)	9/28/2010
USCG–2010–0882	Cleveland, OH	Safety Zone (Part 165)	9/16/2010
USCG–2010–0883	Key Largo, FL	Safety Zone (Part 165)	9/2/2010
USCG–2010–0884	Duxbury, MA	Special Local Regulation (Part 100)	9/18/2010
USCG–2010–0885	Waterway, TX	Security Zone (Part 165)	9/17/2010
USCG–2010–0889	Ocean City, NJ	Safety Zone (Part 165)	9/22/2010
USCG–2010–0893	Cleveland, OH	Safety Zone (Part 165)	9/17/2010
USCG–2010–0894	Philadelphia, PA	Security Zone (Part 165)	9/20/2010
USCG–2010–0898	Ederle Swim	Safety Zone (Part 165)	10/23/2010
USCG–2010–0904	San Francisco, CA	Safety Zone (Part 165)	10/9/2010
USCG–2010–0905	Rio Vista, CA	Safety Zone (Part 165)	10/9/2010
USCG–2010–0906	Baltimore, MD	Safety Zone (Part 165)	10/2/2010

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Docket No.	Location	Type	Effective date
USCG–2010–0908	Alaska	Safety Zone (Part 165)	9/18/2010
USCG–2010–0909	Chattanooga, TN	Special Local Regulation (Part 100)	10/9/2010
USCG–2010–0910	Seattle, WA	Safety Zone (Part 165)	10/2/2010
USCG–2010–0911	GUAM	Safety Zone (Part 165)	9/22/2010
USCG–2010–0914	Miami, FL	Security Zone (Part 165)	9/24/2010
USCG–2010–0915	Hollywood, FL	Security Zone (Part 165)	9/24/2010
USCG–2010–0916	Barataroa Waterway	Safety Zone (Part 165)	9/28/2010
USCG–2010–0919	Los Angeles, CA	Drawbridge Operations Regulation (Part 117)	10/14/2010
USCG–2010–0920	Miami, FL	Safety Zone (Part 165)	10/30/2010
USCG–2010–0921	Wellesley Island, New York	Safety Zone (Part 165)	9/25/2010
USCG–2010–0923	Pittsburgh, PA	Safety Zone (Part 165)	10/2/2010
USCG–2010–0930	Waterway, TX	Security Zone (Part 165)	9/30/2010
USCG–2010–0931	Lake Michigan	Security Zone (Part 165)	10/8/2010
USCG–2010–0933	Ocean City, NJ	Safety Zone (Part 165)	10/9/2010
USCG–2010–0934	Orange, TX	Safety Zone (Part 165)	9/30/2010
USCG–2010–0936	San Diego, CA	Safety Zone (Part 165)	10/9/2010
USCG–2010–0938	Nashville, TN	Safety Zone (Part 165)	10/7/2010
USCG–2010–0944	South Amboy, NJ	Drawbridge Operations Regulation (Part 117)	10/18/2010
USCG–2010–0945	Pittsburgh, PA	Safety Zone (Part 165)	11/19/2010
USCG–2010–0946	Pittsburgh, PA	Safety Zone (Part 165)	11/19/2010
USCG–2010–0948	Sacramento, CA	Drawbridge Operations Regulation (Part 117)	10/10/2010
USCG–2010–0953	Waterway, TX	Security Zone (Part 165)	10/5/2010
USCG–2010–0956	Cheboygan, MI	Safety Zone (Part 165)	10/6/2010
USCG–2010–0959	Pacific Ocean, CA	Safety Zone (Part 165)	10/16/2010
USCG–2010–0960	Pittsburgh, PA	Security Zone (Part 165)	10/11/2010
USCG–2010–0961	Waterway, TX	Security Zone (Part 165)	10/18/2010
USCG–2010–0962	Waterway, TX	Security Zone (Part 165)	10/2/2010
USCG–2010–0969	Lake Havasu City, Arizona	Safety Zone (Part 165)	10/23/2010
USCG–2010–0975	Sabine, TX	Security Zone (Part 165)	10/15/2010
USCG–2010–0976	Cameron Parish, LA	Security Zone (Part 165)	10/15/2010
USCG–2010–0980	Waterway, TX	Security Zone (Part 165)	10/17/2010
USCG–2010–0982	Sabine, TX	Security Zone (Part 165)	10/20/2010
USCG–2010–0983	Parish, LA	Security Zone (Part 165)	10/20/2010
USCG–2010–0984	Sabine, TX	Security Zone (Part 165)	10/21/2010
USCG–2010–0985	Port Arthur, TX	Security Zone (Part 165)	10/21/2010
USCG–2010–0986	GUAM	Safety Zone (Part 165)	9/18/2010
USCG–2010–0987	GUAM	Safety Zone (Part 165)	9/19/2010
USCG–2010–0987	St. Petersburg, FL	Safety Zone (Part 165)	11/20/2010
USCG–2010–0996	Lake Havasu City, Arizona	Safety Zone (Part 165)	11/5/2010
USCG–2010–1002	Monroe, LA	Safety Zone (Part 165)	12/4/2010
USCG–2010–1009	Portsmouth, New Hampshire	Safety Zone (Part 165)	11/1/2010
USCG–2010–1010	Sabine, TX	Safety Zone (Part 165)	10/28/2010
USCG–2010–1017	Jekyll Island, GA	Safety Zone (Part 165)	12/15/2010
USCG–2010–1019	Wellesley Island, New York	Safety Zone (Part 165)	11/8/2010
USCG–2010–1022	Citrus County, FL	Safety Zone (Part 165)	11/30/2010
USCG–2010–1025	Kodiak Island, AK	Safety Zone (Part 165)	11/19/2010
USCG–2010–1032	Jersey City, NJ	Drawbridge Operations Regulation (Part 117)	11/28/2010
USCG–2010–1040	Pittsburgh, PA	Safety Zone (Part 165)	11/14/2010
USCG–2010–1041	Seattle, WA	Safety Zone (Part 165)	11/26/2010
USCG–2010–1046	San Francisco, CA	Safety Zone (Part 165)	12/11/2010
USCG–2010–1051	Lower Mississippi River	Safety Zone (Part 165)	11/21/2010
USCG–2010–1061	San Diego, CA	Safety Zone (Part 165)	12/4/2010
USCG–2010–1067	Seneca, Illinois	Safety Zone (Part 165)	11/19/2010
USCG–2010–1078	New Orleans, LA	Safety Zone (Part 165)	11/24/2010
USCG–2010–1081	San Diego, CA	Safety Zone (Part 165)	12/12/2010
USCG–2010–1099	M/V SANKO INNOVATOR	Security Zone (Part 165)	12/12/2010
USCG–2010–1144	Key West, FL	Security Zone (Part 165)	12/28/2010

[FR Doc. 2011–18933 Filed 7–26–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0461; FRL–9439–1]

Revisions to the California State Implementation Plan, Placer County Air Pollution Control District and Feather River Air Quality Management District

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of permitting rules submitted for the Placer County Air Pollution Control District (PCAPCD) and Feather River Air Quality Management District (FRAQMD) portions of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on May 19, 2011 and concern New Source Review (NSR) permit programs for new and modified major stationary sources of air pollution. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on August 26, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0461 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be 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: Laura Yannayon, EPA Region IX, (415) 972–3534, *yannayon.laura@epa.gov.*

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

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I. Proposed Action
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I. Proposed Action

On May 19, 2011 (76 FR 28944), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the California SIP.

Local agency	Rule No.	Rule title	Amended	Submitted
PCAPCD	502	New Source Review	[1] 2/11/10	7/20/10
FRAQMD	10.1	New Source Review	10/5/09	7/20/10

[1] The proposed notice incorrectly stated that the amended date was October 28, 2010.

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the applicable CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions do not satisfy the requirements of section 110 and part D of the Act. Specifically:

- Both rules are missing definitions for the terms ''begin actual construction,'' ''commence'' and ''necessary preconstruction approvals or permits.''
- Both rules are missing provisions meeting the requirements of 40 CFR 51.165(a)(5)(ii).
- Placer Rule 502 is missing a definition for the term ''Federally enforceable.''

Our proposed rule and related Technical Support Document (TSD) contain more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

III. EPA Action

No comments were submitted that change our basis for proposing a limited approval and limited disapproval of the submitted rules. Therefore, under CAA sections 110(k)(3) and 301(a) and for the reasons set forth in our May 19, 2011 proposed rule, we are finalizing a limited approval and limited disapproval of PCAPCD Rule 502 and FRAQMD Rule 10.1. We are finalizing a limited approval of the submitted rules because we continue to believe that the rules improve the SIP and are largely consistent with applicable CAA requirements. This action incorporates the submitted rules into the District portion of the California SIP, including those provisions identified as deficient. As authorized under sections 110(k)(3) and 301(a), EPA is simultaneously finalizing a limited disapproval of PCAPCD Rule 502 and FRAQMD Rule 10.1. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act according to 40 CFR 52.31. In addition, EPA must promulgate a Federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rules have been adopted by the PCAPCD and the FRAQMD, and EPA's final limited disapproval does not prevent the local agency from enforcing it. The limited disapproval also does not prevent any portion of the rule from being incorporated by reference into the Federally enforceable SIP, as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

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).

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.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals and limited approvals/limited disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because this limited approval/limited disapproval action does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or Tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action promulgated 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 Federal action approves 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

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This 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, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have Tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

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 rule is not subject to Executive Order 13045, because it approves a State rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

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 rulemaking.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2). This rule will be effective on August 26, 2011.

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: June 30, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(381)(i)(E) and (F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(381) * * *

(i) * * *

(E) Placer County Air Pollution Control District.

(*1*) Rule 502, ''New Source Review,'' as adopted on February 11, 2010.

(F) Feather River Air Quality Management District.

(*1*) Rule 10.1, ''New Source Review,'' as amended on October 5, 2009, except section C, as adopted on February 8, 1993.

* * * * *

[FR Doc. 2011–18834 Filed 7–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0531; FRL–8880–5]

Carboxymethyl Guar Gum Sodium Salt and Carboxymethyl-Hydroxypropyl Guar; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of carboxymethyl guar gum sodium salt (CAS Reg. No. 39346–76–4) and carboxymethyl-hydroxypropyl guar (CAS Reg. No. 68130–15–4); when used as an inert ingredient (thicker/drift reduction agent) in pesticide formulations applied to growing crops. SciReg Inc., on behalf of Rhodia Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of carboxymethyl guar gum sodium salt and carboxymethyl-hydroxypropyl guar.

DATES: This regulation is effective July 27, 2011. Objections and requests for hearings must be received on or before September 26, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0531 All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0531 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 26, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0531, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Petition for Exemption

In the **Federal Register** of February 4, 2011 (76 FR 6467) (FRL–8858–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petitions (PP 0E7784) under docket ID number EPA–HQ–OPP–2010–0878 and (PP 0E7803) under docket ID number EPA–HQ–OPP–2010–1019 by SciReg Inc., on behalf of Rhodia Inc., 12733 Director's Loop, Woodbridge VA 22192. The petitions requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of carboxymethyl guar gum sodium salt (CAS Reg. No. 39346–76–4) and carboxymethyl-hydroxypropyl guar (CAS Reg. No. 68130–15–4); when used as an inert ingredients (thicker/drift reduction agent) in pesticide formulations applied to growing crops. Those notices referenced a summary of the petitions prepared by SciReg Inc., on behalf of Rhodia Inc., the petitioner, which is available in the docket, *http://www.regulations.gov.* Comments were received on both notices of filing. EPA's response to these comments is discussed in Unit V.C.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(c)(2)(A) of FFDCA, and the factors specified in FFDCA section 408(c)(2)(B), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure of carboxymethyl guar gum sodium and carboxymethyl-hydroxypropyl guar including exposure resulting from the exemption established by this action. EPA's assessment of exposures and risks associated with carboxymethyl guar gum sodium and carboxymethyl-hydroxypropyl guar follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by carboxymethyl guar gum sodium and

carboxymethyl-hydroxypropyl guar as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

The following provides a brief summary for the risk assessment and conclusions for the Agency's review for the guar gums, which include carboxymethyl guar gum sodium and carboxymethyl-hydroxypropyl guar. The Agency's full decision document for this action is available in the Agency's electronic docket (regulations.gov) under the docket number EPA–HQ–OPP–2011–0531. Based upon the structural similarities between carboxymethyl guar gum, carboxymethyl-hydroxypropyl guar, guar gum, and hydroxypropyl guar, the risk assessment for carboxymethyl guar and carboxymethyl-hydroxypropyl guar relies upon available data on all four substances.

Acute oral toxicity studies conducted with guar, hydroxypropyl guar, and carboxymethyl guar resulted in oral LD_{50} values ranging from 7,060 milligrams per kilogram of body weight (mg/kg bw) to 17,800 mg/kg bw. Dermal irritation studies conducted with guar, hydroxypropyl guar, and carboxymethyl guar resulted in no irritation to slight irritation. Eye irritation studies conducted with guar, hydroxypropyl guar, and carboxymethyl-hydroxypropyl guar demonstrated a range of results from non-irritation to severe irritation. Results of skin sensitization and mutagenicity studies performed with guar gum, hydroxypropyl guar, and carboxymethyl-hydroxypropyl guar were all negative. There are three 90-day toxicity studies available for guar gums. In one study, the LOAEL of guar gum in a diet was 1% (equivalent to 580 mg/kg/day) based on effects on body weight gains, and dose related decrease in kidney weights. The NOAEL was not established in this study. In the second study, no effects were observed in male rats at doses up to 6% (equivalent to 3,000 mg/kg/day). In the third study in rats, decreased in body weight gains, decreased in food efficiency, increased in blood urea nitrogen and thyroid toxicity (males only) were observed at a dietary concentration of 2 and 5%. The NOAEL in this study was 1% (equivalent to 500 mg/kg/day). No adverse effects were reported in dogs that were fed 0, 1, 5, or 10% (approximately 0, 250, 1,250, or 2,500 mg/kg/day) of a precooked mixture of guar and carob bean for 30 weeks. No effects were observed in monkeys that were fed 1 gram (equal to 10 mg/kg/day) of guar flour for 2 months.

Teratogenicity studies with guar gum in mice, rats, and hamsters did not indicate that guar gum is a teratogen; in mice at doses up to 800 mg/kg/day, in rats up to 900 mg/kg/day and in hamsters up to 600 mg/kg/day. Male and female Osborne-Mendel rats were fed guar gum at 0, 1, 2, 4, 7. 5, or 15% (approximately 0, 500, 1,000, 2,000, 3,750 or 7,500 mg/kg/day) in the diet for 13 weeks before mating, during mating, and throughout gestation. No effects on parental fertility, fetal development, sex distribution, and no malformations of the pups were observed. The NOAEL for parental, developmental and reproductive toxicity is 7,500 mg/kg/day. No evidence of carcinogenicity was found in male and female F344 rats and B6C3F1 mice administered diets containing 25,000 or 50,000 ppm (approximately 3,570 or 7,140 mg/kg/day) guar gum for 103 weeks. A reduction in the mean body weight of the higher dose females and of the feed consumption was observed, as compared with the controls. No compound-related clinical signs of adverse effects on survival were observed. There was no increase in the incidence of tumors that could be related to the test substance.

Subchronic, reproductive and developmental, and carcinogenicity studies with guar gum showed no long term, reproductive/developmental, or carcinogenic effects. Overall, a low toxicity profile is expected with both carboxymethyl guar and carboxymethyl-hydroxypropyl guar because of likelihood of low absorption via any route of exposure due to their high molecular weights.

B. Toxicological Points of Departure/Levels of Concern

Majority of the available studies suggest that high levels of guars were well tolerated by laboratory animals. In the two 90-day toxicity studies, the body weight gains appears to be depressed at 500 mg/kg/day dose levels and above, however, generally the food consumption was not affected, indicating low food conversion efficiency. In a third 90-day toxicity study in rats, no effect on body weight was observed at doses up to 3,000 mg/kg/day. No effect on the body weights were observed in the reproduction study in rats at doses up to 7,500 mg/kg/day. In the carcinogenicity studies in mice and rats by National Toxicology Program (NTP) (1982), no adverse effects were observed at doses up to 3,570 mg/kg/day. Based on their large molecular weights, these two chemicals are not expected to be significantly absorbed via oral, dermal and inhalation routes of exposure. This is further supported by the animal toxicity studies where no significant effects were observed in a carcinogenicity studies in mice and rats and reproduction study in rats at doses up to and including 3,500 mg/kg/day. Based on the above weight of evidence, no endpoint of concern was identified, therefore, the Agency has determined that a qualitative assessment for all pathways of human exposure to both carboxymethyl guar and carboxymethyl-hydroxypropyl guar (food, drinking water, and residential) is appropriate.

C. Aggregate Exposure

In examining aggregate exposure, the Federal Food, Drug, And Cosmetic Act (FFDCA) section 408 directs EPA to consider available information concerning exposures from the pesticide residues in food and all other nonoccupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and outdoor uses). There are no residential uses proposed at this time. No quantification of aggregate exposure was performed because no end point of concern was identified in the available toxicity studies.

1. *Dietary and non-dietary exposure.* Carboxymethyl guar and carboxymethyl-hydroxypropyl guar are slightly modified forms of guar gum, a natural polymer which is an affirmed GRAS substance of low toxicity. Carboxymethyl guar and carboxymethyl-hydroxypropyl guar are also structurally similar to hydroxypropyl guar, another slightly modified form of guar gum. EPA reassessed the tolerance exemption for hydroxypropyl guar in 2005 and concluded that there is a reasonable certainty of no harm to any population subgroup that will result from aggregate exposure to hydroxypropyl guar when considering dietary exposure and all other nonoccupational sources of pesticide exposure for which there is reliable information. Based on their close structural relationship to guar gum and hydroxypropyl guar, as well as their high molecular weights and likelihood of low absorption via any route of exposure, both carboxymethyl guar and carboxymethyl-hydroxypropyl guar can also be considered to be low toxicity substances with a reasonable certainty of no harm from dietary exposure and all other nonoccupational sources of exposure.

2. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA

requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Carboxymethyl guar and carboxymethyl-hydroxypropyl guar are slightly modified form of guar gum, a natural polymer that has been affirmed as generally recognized as safe (GRAS) substance of low toxicity. Carboxymethyl guar and carboxymethyl-hydroxypropyl guar are also structurally similar to hydroxypropyl guar, another slightly modified form of guar gum. They all have same toxicity pattern but the exact mode of action is not known. Therefore, cumulative risk assessment was not conducted. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

In general. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

Carboxymethyl guar and carboxymethyl-hydroxypropyl guar are slight modified forms of guar gum, a natural polymer which is an affirmed GRAS substance of low toxicity. Carboxymethyl guar and carboxymethyl-hydroxypropyl guar gum are also structurally similar to hydroxypopyl guar, another slightly modified form guar gum. According to EPA's 2005 tolerance exemption reassessment document for hydroxypropyl guar, it was concluded that hydroxypropyl guar is a high molecular weight polymer that is devoid of reactive functional groups and which is not absorbed by any route of human exposure. Also teratogenicity studies with guar gum in mice, rats, and hamsters did not indicate that guar gum is a teratogen; in mice at doses up to 800 mg/kg/day, in rat up to 900 mg/kg/day and in hamsters up to 600 mg/kg/day. In addition, no effects on parental fertility, fetal development, sex distribution, and no malformations of the pups were observed at doses up to 7,500 mg/kg/day in the one generation reproduction study in rats. Based on the structural similarities to guar gum and hydroxyporpyl guar, as well as their high molecular weights and low likelihood of absorption via any route of exposure, carboxymethyl guar and carboxymethyl-hydroxypropyl guar are unlikely to elicit a toxic response in infants and children when used as an inert ingredient in pesticide products. Available toxicity studies confirm this belief and indicate low toxicity; therefore, the Agency did not use a safety factor analysis for assessing risk and no additional safety factor is needed for assessing risk to infants and children.

E. Aggregate Risks and Determination of Safety

EPA expects aggregate exposure to carboxymethyl guar gum sodium salt and carboxymethyl-hydroxypropyl guar residues to pose no appreciable risk to human health given that they both are a polymer with high molecular weight that are devoid of reactive functional groups and which are not absorbed by any route of human exposure. Taking into consideration all available information on carboxymethyl guar gum sodium salt and carboxymethyl-hydroxypropyl guar, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to carboxymethyl guar gum sodium salt and carboxymethyl-hydroxypropyl guar under reasonably foreseeable circumstances. Therefore, the establishment of an exemption from a tolerance under 40 CFR 180. 920 for residues of carboxymethyl guar gum sodium salt and carboxymethyl-hydroxypropyl guar when used as inert ingredients in pesticide formulations applied to growing crops under 40 CFR 180.920 is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residue of carboxymethyl guar gum sodium salt and carboxymethyl-hydroxypropyl guar in or on any food commodities.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for carboxymethyl guar gum sodium salt and carboxymethyl-hydroxypropyl guar.

C. Response to Comments

Two comments, one for each notice of filing were received from private citizens who opposed the authorization to sell any pesticide that leaves a residue on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that no residue of pesticides should be allowed. However, under the existing legal framework provided by section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) EPA is authorized to establish pesticide tolerances or exemptions where persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by the statute.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for carboxymethyl guar gum sodium salt (CAS Reg. No. 39346–76–4) and carboxymethyl-hydroxypropyl guar (CAS Reg. No. 68130–15–4); when used as an inert ingredient (thicker/drift reduction agent) in pesticide formulations applied to growing crops under 40 CFR 180.920.

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and

Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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).

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 12, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.920, the table is amended by adding alphabetically the following inert ingredients to read as follows:

§ 180.920. Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* * * *	*	* *
Carboxymethyl guar gum sodium salt (CAS Reg. No. 39346–76–4)	Without limitation	Thicker/drift reduction agent.
* * * *	*	* *
Carboxymethyl-hydroxypropyl guar (CAS Reg. No. 68130–15–4)	Without limitation	Thicker/drift reduction agent.
* * * *	*	* *

[FR Doc. 2011–18588 Filed 7–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2010–0888; FRL–8875–5]

Chlorantraniliprole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of chlorantraniliprole in or on multiple commodities which are identified and discussed later in this document. This regulation additionally amends previously established tolerances in or on multiple commodities and deletes tolerances in or on several commodities that will be superceded by inclusion in crop group tolerances. E. I. du Pont de Nemours and Company, DuPont Crop Protection, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective July 27, 2011. Objections and requests for hearings must be received on or before September 26, 2011, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2010–0888. All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available,

e.g., Confidential Business Information (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 in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: *kumar.rita@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2010–0888 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before September 26, 2011. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit a copy of your non-CBI objection or hearing request, identified by docket ID number EPA–HQ–OPP–2010–0888, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 25, 2011 (76 FR 10584) (FRL–8863–3), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F7763) by, E. I. du Pont de Nemours and Company, DuPont Crop Protection, 1700 Market St., Wilmington, DE 19898. The petition requested that 40 CFR 180.628 be amended by establishing tolerances for residues of the insecticide chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1H-pyrazole-5-carboxamide, in or on bushberry, subgroup 13–07B at 2.5 parts per million (ppm); large shrub/tree berry, subgroup 13–07C at 2.5 ppm; low growing berry, subgroup 13–07G at 2.5 ppm; ti palm, roots at 0.35 ppm; ti palm, leaves at 13 ppm; root and tuber vegetables, group 1 at 0.35 ppm; leaves of root and tuber vegetables, group 2 at 40 ppm; sugar beet molasses at 11 ppm; onion, bulb, subgroup 3–07A at 0.35 ppm; peanut, nutmeat at 0.35 ppm; peanut, hay at 90 ppm; tea, dried leaves at 50 ppm; and to increase tolerances in or on fruiting vegetables (except cucurbits), group 8 from 0.7 ppm to 0.90 ppm; cucurbit vegetables, group 9 from 0.25 ppm to 0.30 ppm; and okra from 0.70 ppm to 0.90 ppm. That notice referenced a summary of the petition prepared by E. I. du Pont de Nemours and Company, DuPont Crop Protection, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

Based upon review of the data supporting the petition, EPA has revised the tolerances for some of the petitioned commodities. Additionally, the Agency is revising tolerances for several proposed individual and group commodities and is revoking multiple established tolerances. The reason for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will

result to infants and children from aggregate exposure to the pesticide chemical residue. * * *''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for chlorantraniliprole including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with chlorantraniliprole follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Sufficient toxicology information exists for chlorantraniliprole for selecting doses and endpoints needed for assessing its risk to humans when used as an insecticide. Chlorantraniliprole is not genotoxic, neurotoxic, immunotoxic, carcinogenic, or developmentally toxic. Chlorantraniliprole is not acutely toxic via oral, dermal or inhalation routes of exposure. Neither is chlorantraniliprole an eye or skin irritant nor a dermal sensitizer. There was only one animal toxicity study (18-month carcinogenicity study in mice) in the toxicology database which evidenced any adverse effect of chlorantraniliprole exposure. This study was used to establish a point of departure (POD), based on hepatocellular effects, for the chronic dietary exposure scenario.

Specific information on the studies received and the nature of the adverse effects caused by chlorantraniliprole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document ''Human Health Risk Assessment for Proposed Label Amendments to Remove Adjuvant Restrictions with Concomitant Increase in Tolerance for Fruiting and Leafy Vegetables and to Add Oilseed Rotational Crops,'' at page 22 in docket ID number EPA–HQ–OPP–2010–0888.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for chlorantraniliprole used for human risk assessment is shown in the following Table.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CHLORANTRANILIPROLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/Safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations)	Not Applicable (N/A)	N/A	No acute hazard attributable to a single dose was identified; therefore, an acute dietary endpoint was not selected for quantitative risk assessment.
Chronic dietary (All populations)	NOAEL = 158 milligrams/kilogram/day (mg/kg/day). UF_A = 10x UF_H = 10 x FQPA SF = 1x	Chronic RfD = 1.58 mg/kg/day cPAD = 1.58 mg/kg/day	18-Month Oral (feeding)/mouse LOAEL = 935 mg/kg/day based on eosinophilic foci accompanied by hepatocellular hypertrophy and increased liver weight (males only).
Incidental oral short/intermediate-term (1 to 30 days).	N/A	N/A	There was no hazard identified via the oral route over the short- and intermediate-term and therefore, no endpoint was selected for quantitative risk assessment.
Dermal short/intermediate-term	N/A	N/A	There was no hazard identified via the dermal route (and no concerns for developmental, reproductive or neurotoxic effects) and therefore, no dermal endpoint was selected for quantitative risk assessment.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR CHLORANTRANILIPROLE FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of departure and uncertainty/Safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Inhalation short/intermediate-term	N/A	N/A	Based on the lack of hazard identified in the acute inhalation study, lack of acute irritation, and extremely low oral toxicity—no inhalation endpoint was selected for quantitative risk assessment.
Cancer (Oral, dermal, inhalation) ..	Classification: ''Not likely to be Carcinogenic to Humans'' based on weight of evidence of data: no treatment-related tumors reported in the submitted chronic and oncogenicity studies in rats and mice, subchronic studies in mice, dogs and rats and that no mutagenic concern was reported in the genotoxicity studies.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term risk assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population-adjusted dose (a= acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of corcern.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to chlorantraniliprole, EPA considered exposure under the petitioned-for tolerances as well as all existing chlorantraniliprole tolerances in 40 CFR 180.628. EPA assessed dietary exposures from chlorantraniliprole in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure.

No such effects were identified in the toxicological studies for chlorantraniliprole; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Survey of Food Intake by Individual (CSFII). As to residue levels in food, EPA assumed recommended and/or established tolerance level residues and 100 percent crop treated (PCT). DEEM default processing factors were used.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that chlorantraniliprole does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for chlorantraniliprole. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for chlorantraniliprole in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of chlorantraniliprole. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST), Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Ground Water (SCI–GROW) models, the acute and chronic estimated drinking water concentrations (EDWCs) of chlorantraniliprole were 55.30 parts per billion (ppb) and 39.87 ppb, respectively.

The surface water concentration of 39.87 ppb was used for chronic exposure for the chronic, non-cancer dietary risk assessment.

No acute dietary risk assessment was performed because no acute hazard was identified.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Chlorantraniliprole is currently registered for the following uses that could result in residential exposures: Turfgrass and ornamental plants. Residential exposure could occur for short-term and intermediate-term exposures however, due to the lack of toxicity identified for short- and intermediate-term durations via relevant routes of exposure, no risk is expected from these exposures. Additional information on residential exposure assumptions can be found at *http//www.regulations.gov* (Docket ID EPA–HQ–OPP–2010—0888, ''Human Health Risk Assessment for Proposed Label Amendments to Remove Adjuvant Restrictions with Concomitant Increase in Tolerance for Fruiting and Leafy Vegetables and to Add Oilseed Rotational crops '', page 37).

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found chlorantraniliprole to share a common mechanism of toxicity with any other substances, and chlorantraniliprole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that chlorantraniliprole does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such

chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There were no effects on fetal growth or postnatal development up to the limit dose of 1,000 mg/kg/day in rats or rabbits in the developmental or 2-generation reproduction studies. Additionally, there were no treatment related effects on the numbers of litters, fetuses (live or dead), resorptions, sex ratio, or post-implantation loss and no effects on fetal body weights, skeletal ossification, and external, visceral, or skeletal malformations or variations.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for chlorantraniliprole is complete, and considered adequate for this risk assessment (including 40 CFR 158.500 requirements for dermal toxicity, immunotoxicity, and acute/subchronic neurotoxicity effective December 26, 2007).

ii. There is no indication that chlorantraniliprole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that chlorantraniliprole results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to chlorantraniliprole in drinking water. Due to the lack of toxicity via the dermal route, as well as the lack of toxicity over the acute-, short- and intermediate-term via the oral route—no risk is expected from postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by chlorantraniliprole.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, chlorantraniliprole is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to chlorantraniliprole from food and water will utilize 6% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of chlorantraniliprole is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Although short-term residential exposure could occur with the use of chlorantraniliprole, no toxicological effects resulting from short-term dosing were observed. Therefore, the aggregate risk is the sum of the risk from food and water and will not be greater than the chronic aggregate risk.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Although intermediate-term residential exposure could result from the use of chlorantraniliprole, no toxicological effects resulting from intermediate-term dosing were observed. Therefore, the aggregate risk is the sum of the risk from food and water and will not be greater than the chronic aggregate risk.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two rodent carcinogenicity studies, chlorantraniliprole is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to chlorantraniliprole residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (liquid chromatography mass spectrometry (LC/MS/MS)) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex and Canada have established maximum residue levels (MRLs) for chlorantraniliprole in or on a number of crops and animal commodities. These MRLs are different than the tolerances established for chlorantraniliprole in the United States. There are no Mexican MRLs for chlorantraniliprole as Mexico adopts

Codex or US standards for its export purposes. Refer to the International Residue Limit Status appended at the end of the document ''Human Health Risk Assessment for Proposed Label Amendments to Remove Adjuvant Restrictions with Concomitant Increase in Tolerance for Fruiting and Leafy Vegetables and to Add Oilseed Rotational Crops,'' pages 52–53, and an addendum to this risk assessment, at *http://www.regulations.gov* (Docket ID EPA–HQ–OPP–2010–0888).

Although the tolerance expression achieved harmonization, harmonized MRLs were only achieved for a few commodities. This is the result of differences in crop grouping and removing the adjuvant restriction in the United States. To allow for the use of adjuvant in the United States it was necessary to adjust the tolerances by a factor of two for some crop groups after reviewing bridging residue data. This causes disharmony with Codex MRLs for berries, curcubits, fruiting vegetable, root and tuber vegetables, and leaves of root and tuber vegetables; and with Canada MRLs for curcubit vegetables and fruiting vegetables.

C. Response to Comments

There were no comments received in response to the notice of filing.

D. Revisions to Petitioned-For Tolerances

Based on residue data submitted with this petition, several petitioned-for tolerances were revised. The revisions include: increases for fruiting vegetables except cucurbits from 0.9 to 1.4 ppm, and cucurbits from 0.3 to 0.5 ppm; decreases in low growing berries from 2.5 to 1.0 ppm, onions, bulb from 0.35 to 0.30 ppm, beet, sugar, molasses from 11 to 9 ppm, Ti, root from 0.35 to 0.30 ppm, and root and tuber vegetables from 0.35 to 0.30 ppm.

Tolerances for okra, strawberry, and vegetables, tuberous and corm, subgroup 1C were deleted as these commodities are now covered by fruiting vegetables crop group 8–10, berry, low-growing subgroup 13–07G, and vegetable, root and tuber, group 1, respectively.

The proposed tolerances for peanut hay and peanut nutmeat are not being established at this time. More residue data are needed.

In § 180.628(d), the tolerance for vegetables, leaves of root and tuber, group 2 was replaced by the tolerance for this crop group in § 180.628(a). The tolerance for shallot, fresh leaves was added to § 180.628(d).

V. Conclusion

Therefore, tolerances are established for residues of chlorantraniliprole, including its metabolites and degradates, in or on the commodities listed in § 180.368. Compliance with the tolerance levels specified below is to be determined by measuring only chlorantraniliprole, 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide. 3-bromo-*N*-[4-chloro-2-methyl-6-[(methylamino)carbonyl]phenyl]-1-(3-chloro-2-pyridinyl)-1*H*-pyrazole-5-carboxamide. Tolerances are established in or on the following commodities: Bushberry, subgroup 13–07B at 2.5 ppm; Vegetable, cucurbit, group 9 at 0.5 ppm; vegetable fruiting, group 8–10 at 1.4 ppm; Berry, large shrub/tree, subgroup 13–07C at 2.5 ppm; Vegetable, leaves of root and tuber, group 2 at 40 ppm; Berry, low growing subgroup 13–07G at 1.0 ppm; Onion, bulb, subgroup 3–07A at 0.30 ppm; Vegetable, root and tuber, group 1 at 0.30 ppm; Beet, sugar, molasses at 9 ppm; Tea, dried at 50 ppm; Ti, leaves, at 13 ppm; and Ti, root, at 0.30 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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).

VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 12, 2011.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180. 628 is amended as follows:

■ i. Add alphabetically tolerances for beet, sugar, molasses; berry large shrub/tree, subgroup 13–07C; berry, low growing, subgroup at 13–07G; onion, bulb, subgroup 3–07A; tea, dried; Ti, leaves; Ti, root; vegetable, leaves of root and tuber, group 2; vegetable, root and tuber, group 1; to the table in paragraph (a);

■ ii. Revise the tolerances for vegetable, cucurbit, group 9; and vegetable, fruiting, group 8–10 in the table to paragraph (a);

■ iii. Remove the entries for okra, strawberry, and vegetable, tuberous and corm, subgroup 1C from the table in paragraph (a);

■ iv. Remove the entries for shallot and vegetables, leaves of root and tuber, group 2 from paragraph (d); and

■ v. Add alphabetically an entry for shallot, green leaves to the table in paragraph (d).

The added and revised text read as follows:

§ 180.628 Chlorantraniliprole; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Beet, sugar, molasses	9.0
Berry, large shrub/tree, subgroup 13–07C	2.5
Berry, low growing, subgroup 13–07G	1.0
* * * * *	
Onion, bulb, subgroup 3–07A	0.30
* * * * *	
Tea, dried	50.0
* * * * *	
Ti, leaves	13.0
Ti, root	0.3
* * * * *	
Vegetable, cucurbit, group 9	0.5
* * * * *	
Vegetable, fruiting, group 8–10	1.4
* * * * *	
Vegetable, leaves of root and tuber, group 2	40.0
* * * * *	
Vegetable, root and tuber, group 1	0.30
* * * * *	

* * * * *

(d) * * *

Commodity	Parts per million	Expiration/ revocation date
* * * * *		
Shallots, fresh leaves	0.20	04/10/14
* * * * *		

[FR Doc. 2011–18708 Filed 7–26–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket No. 03–185; FCC 11–110]

Digital Low Power Television, Television Translator, and Television Booster Stations and To Amend Rules for Digital Class A Television Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the *Second Report and Order*, the Commission takes steps to resolve the remaining issues in this proceeding in order to allow a timely and successful completion of the low power television digital transition. Although Congress established a hard deadline of June 12, 2009 for full power stations to cease analog operations and begin operating only in digital, the statutory deadline did not apply to low power television stations. Therefore, while all full power television stations have ceased over-the-air analog broadcasting, many low power television stations are continuing to transmit analog signals.

DATES: Effective August 26, 2011, except for the amendment to 47 CFR 73.624(g), which contains information collection requirements that have not been approved by the Office of Management and Budget (''OMB''). The Federal Communications Commission will publish a separate document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, *Shan.Maher@fcc.gov* of the Media Bureau, Video Division, (202) 418–1600. For additional information concerning the information collection requirement contained in this *Second Report and Order*, contact the Office of Managing Director (''OMD''), Performance Evaluation & Records Management (''PERM''), Cathy Williams, *Cathy.Williams@fcc.gov*, at 202–418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order*, FCC 11–110, adopted on July 15, 2011, and released on July 15, 2011. The full text of the *Second Report and Order* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC 20554, and may also be purchased from the Commission's copy contractor, BCPI, Inc., Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via their Web site, *http://www.bcpi.com*, or call 1–800–378–3160. This document is available in alternative formats (computer diskette, large print, audio record, and Braille). Persons with disabilities who need documents in these formats may contact the FCC by *e-mail: FCC504@fcc.gov* or *phone*: 202–418–0530 or *TTY:* 202–418–0432.

Executive Summary

In the *Second Report and Order*, the Commission takes steps to resolve the remaining issues in this proceeding in order to allow a timely and successful completion of the low power television digital transition. Specifically, in order to ensure a timely and successful completion to the low power television digital transition, the Commission takes the following steps: (1) Adopts a hard deadline of September 1, 2015 for the termination of all analog low power television facilities; (2) establishes rules permitting those stations needing additional time to complete their digital transition to obtain a ''last minute'' extension; (3) requires existing analog and digital low power television stations in the 700 MHz band (channels 52–69) to submit displacement applications by September 1, 2011, and to cease operations in the 700 MHz band by December 31, 2011; (4) increases the power limits for VHF low power television channels to 3 kilowatts (the current analog power limit); (5) delegates to the Media Bureau the

authority to establish timeframes and procedures for stations that have not already converted to notify the Commission of their conversion plans; (6) widens the class of low power television broadcasters subject to the Commission's ancillary and supplementary fee rules; (7) modifies the Commission's minor change rule so that it covers a proposed change in a low power television station's transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station's transmitting antenna; (8) revises the vertical antenna patterns used in the prediction methodology for the low power television services; and (9) allow low power television stations to use the emission mask used by full power television stations.

Paperwork Reduction Act of 1995 Analysis

The *Second Report and Order* adopts revised information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13 (44 U.S.C. 3501 through 3520) pertaining to DTV transition related issues. Specifically, the *Second Report and Order* will: (1) Require all low power television stations with facilities on channels 52–59 to submit a digital displacement application proposing an in-core channel (channels 2–51 excluding channel 37) not later than September 1, 2011; [1] (2) require all low power television stations to provide notice of their upcoming digital transition to their viewers; [2] (3) require low power television stations that have not taken steps to convert to digital by a date certain to submit a notification of their conversion plan; [3] (4) require Class A TV station licensees to file a license application (FCC Form 302–CA) for either the ''flash cut'' channel on which they are now operating in analog or the digital companion channel they choose to retain for post-transition operations and certify therein that their proposed facilities meet all Class A interference protection requirements; [4] (5) require permittees of low power television stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report; [5] and (6) permit applicants and permittees in the low power television service to submit actual vertical pattern relative field values as part of their applications (FCC Form 346 and 301–CA) on a voluntary basis.[6]

In addition, the Commission notes 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.''

Synopsis

The *Second Report and Order* adopts a hard deadline of September 1, 2015 for the termination of all analog low power television facilities. In adopting this deadline, the Commission took into account all of the factors outlined in the *Further Notice of Proposed Rulemaking (FNPRM),*[7] as well as the wide variety of comments provided in this proceeding. In summary, the principal obstacle to establishing a hard deadline for the low power television digital transition—the need to wait for passage of the full power transition deadline in order to increase the number of viewers ready to receive a digital signal—has now been eliminated. Completion of the full power television digital transition on June 12, 2009,[8] created an incentive for television viewers to transition to digital service (either through a digital receiver or analog converter) in order to be able to continue viewing full power television stations over the air. Furthermore, adoption of the September 1, 2015 date allows low power stations to avoid having to transition to a digital channel and then transition a second time as a result of the spectrum innovation proposals set forth the National Broadband Plan.[9] The September 15, 2015 deadline will also be farther removed from the prolonged economic downturn, which began in late 2007, and will provide more time for operators to secure the necessary funding. Additionally, a deadline four years in the future will give these low power television stations time to determine the best location for their digital operation, prepare and file an application, obtain a grant of their construction permit, order equipment, hire an installation crew, complete installation, conduct testing, and carry out other necessary steps toward the transition. Finally, adopting a transition date of September 1, 2015 will allow low power television stations to have a better understanding of the overall spectrum landscape when determining their final transition plans, while also ensuring a date by which analog spectrum must be put to a more efficient digital use.

The *Second Report and Order* also extends all outstanding low power television digital construction permits to September 1, 2015, while dismissing as moot all pending extension applications. Those stations that diligently pursue completion of their digital facilities, but nevertheless face unexpected delays in the months leading up to the September 1, 2015 deadline, will be permitted to submit a ''last minute'' extension application no later than May 1, 2015 pursuant to 47 CFR 74.788(c) and receive one last six-month extension of their digital construction permit to March 1, 2016. After May 1, 2015, stations will no longer be permitted to seek extensions of their digital construction permits pursuant to 47 CFR 74.788, but will be subject to the stricter tolling provisions in 47 CFR 73.3598. Although the extension provisions of 47 CFR 74.788 provide greater flexibility, the public interest in bringing the low power television transition to a timely conclusion outweighs the need to accommodate permittees who are unable to secure extensions under the tolling provisions in 47 CFR 73.3598.

The *Second Report and Order* provides that the Commission will endeavor to continue its efforts to educate consumers and notify the public of the September 1, 2015 low power television digital transition. However, given the amount of lead time,

[1] The Commission received preapproval from OMB for this requirement. *See* OMB Control No. 3060–0016.

[2] The Commission received preapproval from OMB for this requirement. *See* OMB Control No. 3060–1086.

[3] The Commission will seek approval for OMB for this requirement and will publish a separate document in the **Federal Register** announcing the effective date.

[4] The Commission has approval from OMB for FCC Form 302–CA. *See* OMB Control No. 3060–0928. The Commission also received preapproval for this requirement as it pertains to 47 CFR 73.3572(h). *See* OMB Control Number 3060–0932.

[5] The Commission will seek OMB approval for this requirement and will publish a separate document in the **Federal Register** announcing the effective date.

[6] The Commission received preapproval from OMB for this collection. *See* OMB Control Numbers 3060–0016 and 3060–0932.

[7] Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *FNPRM*, 25 FCC Rcd 13833, 13837 (2010) (''*FNPRM*'').

[8] *See DTV Delay Act.* Pub. L. 111–4, 123 Stat. 112 (2009) (''*DTV Delay Act*''); Digital Television and Public Safety Act of 2005 (''*DTV Act*''), which is Title III of the Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat. 4 (2006) (*codified at* 47 U.S.C. 309(j)(14) and 337(e)). *DTV Act* Section 3002(a) amended Section 309(j)(14) of the Communications Act to establish February 17, 2009 as the original hard deadline for the end of analog transmissions by full power stations. 47 U.S.C. 309(j)(14)(A). The *DTV Delay Act* extended the DTV transition date from February 17, 2009 to June 12, 2009.

[9] *See Connecting America: The National Broadband Plan* at 94 (March 2010); *available at http://broadband.gov/plan/.*

the Commission concludes that it is not necessary to specify the form and extent of our consumer education at this time. However, the Commission shall continue its education and efforts guided by our experience from the full power DTV transition, completed on June 12, 2009, as a guide as to how best to educate consumers about the forthcoming low power change to digital.

The *Second Report and Order* requires low power stations on the ''out-of-core'' channels (channels 52–69) to transition to an in-core digital channel at an earlier date—December 31, 2011. The *Second Report and Order* finds that low power television stations have had sufficient notice that they would be required to clear the 700 MHz band and that the continued successful development of new commercial wireless and public safety facilities in the 700 MHz band will be greatly facilitated by requiring that all remaining analog and digital low power television stations be cleared from these channels by this date.

The *Second Report and Order* also requires all low power stations with facilities on channels 52–69 to submit a digital displacement application proposing an in-core channel (channels 2–51 excluding channel 37) not later than September 1, 2011. The Commission believes that September 1, 2011 provides time for those remaining low power television stations to identify a feasible in-core channel for permanent use, and to prepare and file a displacement application, considering the prior notice they have received. Those remaining low power television stations that are unable to identify a workable in-core channel and submit a digital displacement application by September 1, 2011 will be required to cease operations altogether by December 31, 2011. In addition, any outstanding construction permit (analog or digital) for an out-of-core channel will be rescinded on December 31, 2011, and any pending application (analog or digital) for an out-of-core channel will be dismissed on December 31, 2011 if the permittee has not submitted a digital displacement application by the September 1, 2011 deadline.

In order to facilitate clearance of the 700 MHz band, the *Second Report and Order* extends the notification and termination provisions contained in 47 CFR 74.703(g) to analog LPTV and TV translator facilities in the 700 MHz band. These provisions provide procedures for a primary wireless licensee in the 700 MHz band to notify affected digital LPTV and TV translator stations of its intent to initiate or change operations and for the digital LPTV or TV translator station to vacate the band. Upon receipt of such notice, the digital low power television station must cease operation of any interference-causing facility within 120 days, unless it obtains the agreement of the primary licensee to continue operations. This adoption will enable 700 MHz licensees to obtain rapid access to their licensed spectrum.

The *Second Report and Order* modifies the Commission's rules to permit low power stations operating on VHF channels 2–13 to operate with up to 3 kilowatts of power, which is the maximum power such stations are permitted to operate within analog. Currently the power limit for low power VHF channels is 300 watts, whereas for UHF channels it is 15 kilowatts.[10] As a result of the full power digital television transition, some full power stations on VHF channels have experienced reception problems and such problems have not been alleviated even by allowing these stations to operate with the maximum power permitted under the full power television rules. We expect that the same or even worse problems may arise when low power television stations operating on VHF channels convert to digital given the fact that low power stations operate with considerably less power than full power stations. At 3 kilowatts of power, low power television stations on UHF channels should be able to continue to provide coverage to their community of license without problems.

The *Second Report and Order* dismisses all applications for new analog low power television facilities that remain pending after the May 24, 2010 deadline to amend to specify digital facilities. The staff notified all pending applicants for new analog low power facilities that they must amend their pending applications to specify digital operations by May 24, 2010, and that the staff would not process those analog applications that were not amended by the deadline.

The *Second Report and Order* adopts procedures for the surrender of channels. Stations that have not already taken steps to convert will be required to notify the Commission not later than 30 days before the September 1, 2015 transition date of their decision to either: (1) ''Flash cut'' their existing analog facilities to digital (at which time their analog license will be replaced by a new digital license) or (2) surrender their analog station license and continue operating their digital companion channel. Stations that have already completed their digital conversion are not required to submit a notification. The Media Bureau is delegated authority to determine the timetable and procedures for these notifications.

The *Second Report and Order* adopts a policy whereby, if an entity holds a construction permit for an unbuilt analog and unbuilt digital companion channel, and the analog permit expires and is forfeited, the digital construction permit also shall be forfeited notwithstanding the later expiration date on the digital construction permit. The Commission believes that adoption of this policy is necessary to ensure that low power television stations complete construction of their proposed facilities in a timely fashion and to ensure the efficient use of valuable television spectrum. Otherwise, an entity that obtained an analog construction permit with a three-year construction period could effectively extend the duration of that permit by obtaining a corresponding digital construction permit with a deadline beyond the one on its underlying analog permit. Furthermore, the Commission continues to believe that this approach is consistent with our established policy that analog and digital authorizations are part of single, unified authorization.

The *Second Report and Order* requires all stations in the low power television services to notify their viewers of their transition to digital operations. LPTV stations with the technical capability to locally originate programming must provide on-air notification to their viewers at a time when the highest number of viewers is watching, while all others may choose another means of notification such as local publication in a newspaper. In all cases, the actual format and time-frame of viewer notifications is left to the discretion of the stations.

The *Second Report and Order* adopts procedures to enable Class A stations to choose to either ''flash cut'' to digital on their analog channel or to operate on their digital companion channel, while allowing Class A stations to preserve their primary, protected status for the channel they choose to retain for digital operations. The Commission concludes that it is in the public interest to provide Class A stations a method to select their digital channels because it will give them the opportunity to evaluate the market situation and make a determination as to which channel number, their analog channel or their digital companion channel, will provide the best, interference-free digital service to the public. Class A stations choosing to pursue a flash-cut conversion and Class A stations choosing to transfer

[10] 47 CFR 74.735.

their primary status from their analog channel to their digital companion channel will be required to file FCC Form 302–CA (Application for Class A Television Broadcast Station Construction Permit or License) and certify that their digital companion channel facilities meet all Class A interference protection and eligibility requirements.

The *Second Report and Order* expands the requirements of the Commission's ancillary and supplementary rules to low power television permittees operating pursuant to STA. To ensure compliance with the mandate of Section 336(e) of the Communications Act,[11] that the public recover a portion of the value of the public spectrum resource made available for commercial use, as well as to avoid unjust enrichment of broadcasters that use that resource, we conclude that low power television permittees operating pursuant to an STA also should be subject to this rule. Therefore, low power television permittees operating pursuant to an STA will be required to file the annual Ancillary and Supplementary Services Report (FCC Form 317) beginning December 1, 2011, and will be required to pay a fee of five percent of the gross revenues of any ancillary and supplementary services they provide.

The *Second Report and Order* expands the so-called ''30-mile'' rule to modification applications filed in the low power television services. This change means that any digital low power television modification application that proposes a change in transmitter site of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's community of license, as provided in 47 CFR 76.53, will be considered a ''major change'' proposal. Outside of the digital low power television displacement application context, low power television stations can currently file any modification application (both analog and digital) as a ''minor change'' as long as there is contour overlap between the proposal and the station's existing facilities. There is no limitation as to how far a station may relocate its transmitter site, as long as some contour overlap is demonstrated. Therefore, a station is able to frustrate the intent of the minor change rule by proposing a modified facility that is a substantial distance from the station's existing location while showing only a very slight amount of contour overlap. Viewers of such a station, who have come to rely on its service, may be left behind. Furthermore, because low power television minor change applications are not subject to a filing fee, stations are able to avoid paying an application filing fee when they seek consent to make these changes. Therefore, the Commission believes that expansion of the 30-mile rule to all modification applications (not just displacement applications) is necessary to enforce the original intent of the minor change rule.

The *Second Report and Order* revises the Commission's rules to allow the acceptance of actual vertical pattern relative field values from applicants and permittees in the low power television service on a voluntary basis. The Commission concludes that by incorporating the actual vertical antenna patterns into its interference analysis, the Commission will achieve a more realistic determination of the service areas of these stations and their potential for interfering with other stations, as well as more accurate determinations of application mutual exclusivity. For applicants and permittees that choose not to submit their actual vertical patterns, the Commission will instead use the assumed vertical patterns set forth in 47 CFR 74.793(d).

Finally, the *Second Report and Order* adopts rules allowing use of full-power DTV emission masks by low power television stations in order to provide more flexibility for low power television stations to secure channels. The Commission concludes that its current approach, using the two different emission masks that are part of the low power television rules, needlessly limits these stations from identifying a workable channel, and that use of the full power television DTV emission mask may be the preferable approach for some low power television stations.

Final Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'')[12] an Initial Regulatory Flexibility Analysis (''IRFA'') was included in the *Further Notice of Proposed Rulemaking (FNPRM)* in this proceeding.[13] Written public comments were requested on the IRFA. This present Final Regulatory Flexibility Analysis.[14]

A. Need for and Objectives of the Proposed Rules

In the *Second Report and Order,* the Commission adopts rules to facilitate the low power television digital transition. The Commission takes the following steps as more fully described below: Adopted a September 1, 2015 analog shutoff date for low power television stations; adopted a December 31, 2011 transition date for low power television stations on TV channels 52–69 (the so-called ''out-of-core'' channels); adopted procedures for stations that have not already completed their transition to notify the Commission of their final digital channel; made low power television permittees subject to the Commission's ancillary and supplementary fee rules; modified the Commission's minor change rule so that it covers a proposed change in a low power television station's transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station's transmitting antenna; revised the vertical antenna patterns used in the prediction methodology for the low power television services; and allowed low power television stations to use the emission mask used by full power television stations.

The *Second Report and Order* establishes an analog shutoff date of September 1, 2015 for low power TV, TV translator and Class A TV stations, giving these stations the flexibility of four additional years to convert to digital, *i.e.,* analog station licenses would terminate at that time and analog construction permits would have to be modified for digital operations.

The *Second Report and Order* established a date of December 31, 2011, by which all existing analog and digital low power television stations on channels 52–69 (the so-called ''out of core'' channels) must terminate operations on their out-of-core channel and requires that those stations that have not already done so must file an application for an in-core channel 2–51 by September 1, 2011.

The *Second Report and Order* increases to 3 kilowatts the maximum amount of power that low power stations operating on VHF channels may specify.

The *Second Report and Order* delegates to the Media Bureau the authority to establish timeframes and procedures for stations that have not already transitioned to notify the Commission as to their final digital channel selection.

The *Second Report and Order* mandates that stations with the

[11] 47 U.S.C. 336(e).

[12] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.,* has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''), Public Law 104–121, Title II, 110 Stat. 847 (1996).

[13] *See FNPRM,* 25 FCC Rcd 13833.

[14] *See* 5 U.S.C. 604.

technical ability to locally-originate programming provide some type of notification to their viewers prior to ceasing analog operations and transitioning to digital while leaving the format and timeframe for such notification to the station's discretion.

The *Second Report and Order* makes low power television station permittees subject to the Commission's ancillary and supplementary fee rules.

The *Second Report and Order* changes the Commission's minor change rule to limit transmitter site changes in minor change applications to no more than 30 miles (48 kilometers) from the reference coordinates of the existing station's transmitting antenna.

The *Second Report and Order* changes the Commission's rules to allow low power television stations to use the emission mask used by full power television stations.

Finally, the *Second Report and Order* revises the vertical patterns used in the temporary interference prediction methodology for the low power television services that the FCC adopted in its 2004 *Digital LPTV Order.*

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments received in response to the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

Television Broadcasting The SBA defines a television broadcasting station as a small business if such station has no more than $14.0 million in annual receipts.[15] Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' [16] The Commission has estimated the number of licensed commercial television stations to be 1,390.[17] According to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) as of January 31, 2011, 1,006 (or about 78 percent) of an estimated 1,298 commercial television stations [18] in the United States have revenues of $14 million or less and, thus, qualify as small entities under the SBA definition. The Commission has estimated the number of licensed noncommercial educational (NCE) television stations to be 391.[19] We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [20] must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also, as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Class A TV, LPTV, and TV translator stations. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $14 million in annual receipts.[21]

Currently, there are approximately 522 licensed Class A stations, 2,191 licensed LPTV stations, 4,527 licensed TV translators, and 11 TV booster stations.[22] Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $14 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and

[15] *See* 13 CFR 121.201, NAICS Code 515120 (2007).

[16] *Id.* This category description continues, ''These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.'' Separate census categories pertain to businesses primarily engaged in producing programming. *See* Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

[17] *See* News Release, ''Broadcast Station Totals as of December 31, 2010,'' 2011 WL 484756 (F.C.C.) (dated Feb. 11, 2011) (''*Broadcast Station Totals*''); also available at *http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0211/DOC–304594A1.pdf.*

[18] We recognize that this total differs slightly from that contained in *Broadcast Station Totals, supra,* note 15; however, we are using BIA's estimate for purposes of this revenue comparison.

[19] *See Broadcast Station Totals, supra,* note 15.

[20] ''[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[21] *See* 13 CFR 121.201, NAICS Code 515120.

[22] *See* ''Broadcast Station Totals as of December 31, 2010,'' *News Release,* February 11, 2011.

broadcasting equipment.'' [23] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 784 had less than 500 employees and 155 had more than 100 employees.[24] Thus, under this size standard, the majority of firms can be considered small.

Audio and Video Equipment Manufacturing. The SBA has classified the manufacturing of audio and video equipment under in NAICS Codes classification scheme as an industry in which a manufacturer is small if it has less than 750 employees.[25] Data contained in the 2007 U.S. Census indicate that 492 establishments operated in that industry for part or all of that year. In that year 374 establishments had between 1 and 19 employees; 82 had between 20 and 99 employees; and 36 had more than 100 employees. Thus, under the applicable size standard, a majority of manufacturers of audio and visual equipment may be considered small.

D. Description of Projected Reporting, Recordkeeping and other Compliance

Requirements

The *Second Report and Order* adopts the following new reporting requirements: (1) To require, where technically feasible, low power television services to provide notice of their upcoming digital transition to their viewers; (2) require low power television stations that have not taken steps to convert to digital by a date certain to submit a notification of their conversion plan; and (3) require permittees of low power television stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report. These new reporting requirements will not differently affect small entities.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed 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.[26]

The Commission's adoption of an analog shutoff date of September 1, 2015 will minimize impact on small entities by allowing them four additional years from the full power television transition that occurred on June 12, 2009, to complete their transition to digital. Adoption of an earlier low power transition date was rejected as it was felt that many small entities would not be ready to transition any sooner and would be forced off the air.

With respect to the adoption of extending all outstanding low power television station digital construction permits to September 1, 2015, this adoption will minimize the impact on small entities as it will provide them with additional time to complete construction of their digital facilities. Requiring that these outstanding construction permits expire pursuant to their original construction deadlines, prior to the September 1, 2015 low power digital transition deadline, was rejected as digital operations is not required until September 1, 2015. The Commission felt that many small entities may be forced to abandon digital construction and subsequently forced off the air should they unnecessarily be forced to complete construction prior to September 1, 2015, pursuant to their original digital construction permits.

The Commission's dismissal as moot of all pending low power television station digital construction permit extension applications will minimize the impact on small entitles as these stations will no longer have to use resources to pursue these applications. Small entities will still receive the benefit of an extension as all outstanding low power television station digital construction permits have been extended until September 1, 2015. The Commission rejected maintaining these extension applications as these applications are moot and would unnecessarily force small entities to expend resources to continue to pursue them.

With regards to the adoption of the ''last minute'' extensions for low power stations who demonstrate that they meet the criteria pursuant to 47 CFR 74.788(c), this adoption will minimize the impact on qualified small entities as these small entities will be given one last six-month extension to complete construction of their digital facilities. The Commission rejected disallowing a ''last minute'' extension for qualified low power stations because without the ''last minute'' extension, small entities may be forced to abandon construction and to go off the air due to unexpected delays in the months leading up to the September 1, 2015 transition date.

Concerning the Commission's adoption of the hard deadline of May 1, 2015, after which low power stations must meet the stricter tolling criteria established in 47 CFR 73.3598 of the rules, to apply for a ''last minute'' extension pursuant to the criteria set forth in § 74.788(c) of the rules,[27] the Commission found that the burden on small entities is justified. The Commission determined that the burden of requiring small entities to meet the stricter tolling criteria established in 47 CFR 73.3598 after May 1, 2015 is outweighed by the public interest in bringing the low power digital transition to a successful and timely conclusion and by the ample time low power stations will have had to complete their transition to digital.

With respect to requiring stations on out-of-core channels to transition at an earlier date—on December 31, 2011, the Commission found that the burden on small entities of adopting this earlier deadline is more than outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. The Commission determined that adoption of a later transition date for low power television stations on these channels would delay progress on clearing these channels.

With regards to requiring all out-of-core low power television stations to file a displacement application for an in-core channel by September 1, 2011, the Commission found that this deadline is necessary to meet the December 31, 2011 out-of-core digital transition deadline. Furthermore, as with the December 31, 2011 transition deadline,

[23] The NAICS Code for this service 334220. *See* 13 CFR 121/201. *See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

[24] *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

[25] 13 CFR 121.201, NAICS Code 334310.

[26] 5 U.S.C. 603(c)(1) through (c)(4).

[27] 47 CFR 74.788(c).

the burden on small entities to meet the September 1, 2011 out-of-core displacement application deadline is outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. Additionally, the Commission determined that adoption of a later out-of-core displacement application deadline would delay progress on clearing these channels.

The Commission adopted streamlined procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called ''flash cut'') or if they intend to continue to operate their second digital channel and terminate operations on their analog channel help to prevent a significant impact on small entities. As a result of the streamlined procedures, low power stations will not be burdened with having to complete and file a lengthy progress report, as was required of full power television stations, but rather will only have to file a simple informal notification to make their final digital choice known to the Commission.

With respect to requiring all stations in the low power television service, which terminate their analog service after the effective date of the rule provisions in this proceeding, to notify their viewers of their transition to digital operations, the Commission determined that the burden on small entities is outweighed by the public's need to be informed of individual stations' digital transitions. The Commission, however, eased the impact on small entities by giving those low power stations that locally originate programming and would be required to notify their viewers with on-air announcements, the option to notify their viewers by some other reasonable means should compliance cause financial hardship.

The Commission's adoption of streamlined procedures for Class A stations to choose to either ''flash cut'' to digital on their analog channel or to operate on their digital companion channel, while preserving their primary, protected status on the channel they chose to retain, will aid to prevent a significant impact on small entities. As a result of these streamlined procedures, Class A stations will not be burdened with filing a minor change application with the Commission to transfer their primary protected status from their analog channel to their desired digital channel.

With respect to subjecting low power television station permittees to the Commission's ancillary and supplementary fee rules, the Commission found that the burden on small entities of having to comply with these rules is outweighed by the need to eliminate ambiguity in the rules and to provide efficient use and administration of spectrum.

The Commission did not find that there would be a significant impact on small entities by its proposed change to its Commission's low power television minor change rule. The change would have little impact and any impact would affect all entities equally.

The Commission did not find that there would a significant impact on small entities by its decision to permit stations to use the emission mask used by full power television stations. Use would be voluntary and any impact would affect all entities equally.

The Commission's decision to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services would not have a significant impact on small entities. Use of the actual vertical patterns of proposed low power television facilities will simplify the engineering filings on FCC Form 346, making it easier for all applicants to complete the form, and thus saving applicants time and money. Any burden from this requirement would impact all entities equally.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

None.

G. Report to Congress

The Commission will send a copy of the *Second Report and Order,* including the FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[28] In addition, the Commission will send a copy the *Second Report and Order,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Second Report and Order* and FRFA (or summaries thereof) will be published in the **Federal Register.**[29]

List of Subjects

47 CFR Part 73

Radio broadcast services.

47 CFR Part 74

Auxiliary, Experimental radio, Special broadcast and other program distributional services.

[28] *See* 5 U.S.C. 801(a)(1)(A). The Congressional Review Act is contained in Title II, section 251, of the CWAAA, *see* Public Law 104–121, Title II, section 251, 110 Stat. 868.

[29] *See* 5 U.S.C. 604(b).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.624 is amended by revising paragraph (g) introductory text to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(g) Commercial and noncommercial DTV licensees and permittees, and low power television, TV translator and Class A television stations DTV licensees and permittees, must annually remit a fee of five percent of the gross revenues derived from all ancillary and supplementary services, as defined by paragraph (b) of this section, which are *feeable,* as defined in paragraphs (g)(2)(i) and through (ii) of this section.

* * * * *

■ 3. Section 73.3572 is amended by adding paragraph (h) to read as follows:

§ 73.3572 Processing of TV broadcast, Class A TV broadcast, low power TV, TV translators, and TV booster applications.

* * * * *

(h) Class A TV station licensees shall file a license application for either the flash cut channel or the digital companion channel they choose to retain for post-transition digital operations. Class A TV stations will retain primary, protected regulatory status on their desired post-transition digital channel. Class A TV applicants must certify that their proposed post-transition digital facilities meet all Class A TV interference protection requirements.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 4. The authority citation for Part 74 is revised to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554.

■ 5. Section 74.731 is amended by adding paragraph (l) to read as follows:

§ 74.731 Purpose and permissible service.

* * * * *

(l) After 11:59 pm local time on September 1, 2015, low power television, TV translators and Class A television stations may no longer operate any facility in analog (NTSC) mode.

■ 6. Section 74.735 is amended by revising paragraph (b)(1) to read as follows:

§ 74.735 Power limitations.

* * * * *

(b) * * *

(1) 3 kW for VHF channels 2–13; and

* * * * *

■ 7. Section 74.786 is amended by adding paragraph (g) to read as follows:

§ 74.786 Digital channel assignments.

* * * * *

(g) After 11:59 pm local time on December 31, 2011, low power television and TV translator stations may no longer operate any analog (NTSC) or digital facilities above Channel 51.

■ 8. Section 74.787 is amended by revising paragraph (b)(1) and adding paragraph (c) to read as follows:

§ 74.787 Digital licensing.

* * * * *

(b) * * *

(1) Applications for major changes in digital low power television and television translator stations include:

(i) Any change in the frequency (output channel) not related to displacement relief;

(ii) Any change in transmitting antenna location where the protected contour resulting from the change does not overlap some portion of the protected contour of the authorized facilities of the existing station; or

(iii) Any change in transmitting antenna location of greater than 30 miles (48 kilometers) from the reference coordinates of the existing station's antenna location.

* * * * *

(c) Not later than 11:59 pm local time on September 1, 2011, low power television or TV translator stations operating analog (NTSC) or digital facilities above Channel 51, that have not already done so, must file a digital displacement application for a channel below Channel 52 pursuant to the procedures in subsection (a)(4) of this rule. Low power television and TV translator stations operating analog (NTSC) or digital facilities above Channel 51 that have not submitted a digital displacement application by 11:59 pm local time on September 1, 2011 will be required to cease operations altogether by December 31, 2011. These stations' authorization for facilities above Channel 51 shall be cancelled. Any digital displacement application submitted by a low power television or TV translator station operating analog (NTSC) or digital facilities above Channel 51 that is submitted after 11:59 pm local time on September 1, 2011 will be dismissed. In addition, any outstanding construction permit (analog or digital) for an channel above Channel 51 will be rescinded on December 31, 2011, and any pending application (analog or digital) for a channel above Channel 51 will be dismissed on December 31, 2011, if the permittee has not submitted a digital displacement application by 11:59 pm local on September 1, 2011.

■ 9. Section 74.788 is amended by revising paragraphs (c)(1) and (c)(3) and removing paragraph (c)(4); and adding paragraphs (d), (e) and (f) to read as follows:

§ 74.788 Digital construction period.

* * * * *

(c) * * *

(1) For the September 1, 2015 digital construction deadline, authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond September 1, 2015 upon demonstration by the digital licensee or permittee that failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has take all reasonable steps to resolve the problem expeditiously.

* * * * *

(3) Applications for extension of time shall be filed not later than May 1, 2015, absent a showing of sufficient reasons for late filing.

(d) For construction deadlines occurring after September 1, 2015, the tolling provisions of § 73.3598 of this chapter shall apply.

(e) A low power television, TV translator or Class A television station that holds a construction permit for an unbuilt analog and corresponding unbuilt digital station and fails to complete construction of the analog station by the expiration date on the analog construction permit shall forfeit both the analog and digital construction permits notwithstanding a later expiration date on the digital construction permit.

(f) A low power television, TV translator or Class A television station that holds a construction permit for an unbuilt analog and corresponding unbuilt digital station and completes construction of the digital station by the expiration date on the analog construction permit, begins operating and files a license application for the digital station may forego construction of the unbuilt analog station.

■ 10. Section 74.793 is amended by revising paragraphs (c) and (d) to read as follows:

§ 74.793 Digital low power TV and TV translator station protection of broadcast stations.

* * * * *

(c) The following D/U signal strength ratio (db) shall apply to the protection of stations on the first adjacent channel. The D/U ratios for ''Digital TV-into-analog TV'' shall apply to the protection of Class A TV, LPTV and TV translator stations. The D/U ratios for ''Digital TV-into-digital TV'' shall apply to the protection of DTV, digital Class A TV, digital LPTV and digital TV translator stations. The D/U ratios correspond to the digital LPTV or TV translator station's specified out-of-channel emission mask.

	Simple mask	Stringent mask	Full service mask
Digital TV-into-analog TV	10	0	Lower (−14)/Upper (−17)
Digital TV-into-digital TV	−7	−12	Lower (−28)/Upper (−26)

(d) For analysis of predicted interference from digital low power TV and TV translator stations, the relative field strength values of the antenna vertical radiation pattern if provided by the applicant will be used instead of the doubled values in Table 8 in OET Bulletin 69 up to a value of 1.0.

* * * * *

■ 11. Section 74.794 is amended by revising paragraph (a)(1) and by adding paragraph (a)(2)(iii) to read as follows:

§ 74.794 Digital emissions.

(a) (1) An applicant for a digital LPTV or TV translator station construction permit shall specify that the station will be constructed to confine out-of-channel emissions within one of the following emission masks: Simple, stringent or full service.

(2) * * *

(iii) *Full service mask:* (A) The power level of emissions on frequencies outside the authorized channel of operation must be attenuated no less than the following amounts below the average transmitted power within the authorized channel. In the first 500 kHz from the channel edge the emissions must be attenuated no less than 47 dB. More than 6 MHz from the channel edge, emissions must be attenuated no less than 110 dB. At any frequency between 0.5 and 6 MHz from the channel edge, emissions must be attenuated no less than the value determined by the following formula:

Attenuation in dB = $-11.5([Delta]f + 3.6)$;

Where:

[Delta] f = frequency difference in MHz from the edge of the channel.

(B) This attenuation is based on a measurement bandwidth of 500 kHz. Other measurement bandwidths may be used as long as appropriate correction factors are applied. Measurements need not be made any closer to the band edge than one half of the resolution bandwidth of the measuring instrument. Emissions include sidebands, spurious emissions and radio frequency harmonics. Attenuation is to be measured at the output terminals of the transmitter (including any filters that may be employed). In the event of interference caused to any service, greater attenuation may be required.

* * * * *

■ 12. Section 74.798 is added to subpart G to read as follows:

§ 74.798 Digital television transition notices by broadcasters.

(a) Each low power television, TV translator and Class A television station licensee or permittee must air an educational campaign about the transition from analog broadcasting to digital television (DTV).

(b) Stations that have already terminated analog service and begun operating in digital prior to effective date of this rule shall not be subject to this requirement.

(c) Stations with the technical ability to locally-originate programming must air viewer notifications at a time when the highest number of viewers is watching. Stations have the discretion as to the form of these notifications.

(d) Stations that lack the technical ability to locally-originate programming, or find that airing of viewer notifications would pose some sort of a hardship, may notify their viewers by some other reasonable means, e.g. publication of a notification in a local newspaper. Stations have discretion as to the format and time-frame of such local notification.

[FR Doc. 2011–18742 Filed 7–26–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0175]

RIN 2127–AK84

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: On July 27, 2009, NHTSA published a final rule that amended the Federal motor vehicle safety standard for air brake systems by requiring substantial improvements in stopping distance performance on new truck tractors. In response, the agency received eight petitions for reconsideration. The agency has already responded to most of the issues raised in the petitions. This document responds to the one outstanding issue raised in the petitions, stopping distance performance requirements at lower initial speeds. Based on testing results and our concern that the current requirements might not be practicable, NHTSA is slightly relaxing the stopping distance requirement for typical loaded tractors tested from an initial speed of 20 mph by increasing the distance from 30 feet to 32 feet and for unloaded tractors tested from an initial speed of 20 mph by increasing the distance from 28 feet to 30 feet. We believe no other changes are necessary.

DATES: This final rule is effective August 1, 2011.

Petitions for reconsideration must be received not later than September 12, 2011.

ADDRESSES: Petitions for reconsideration should refer to the docket number and must be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Jeffrey Woods, Office of Crash Avoidance Standards, by telephone at (202) 366–6206, and by fax at (202) 366–7002.

For legal issues, you may contact David Jasinski, Office of the Chief Counsel, by telephone at (202) 366–2992, and by fax at (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background of the Stopping Distance Requirement

On July 27, 2009, NHTSA published a final rule in the **Federal Register** amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems,* to require improved stopping distance performance for heavy truck tractors.[1] This rule reduced the maximum allowable stopping distance, from 60 mph, from 355 feet to 250 feet for the vast majority of loaded heavy truck tractors. For a small minority of loaded very heavy tractors, the maximum allowable stopping distance was reduced from 355 feet to 310 feet. Having come to the conclusion that modifications needed for ''typical three-axle tractors,'' to meet the improved requirements were relatively straightforward, NHTSA provided two years lead time for those vehicles to comply with the new requirements. These typical three-axle tractors comprise approximately 82 percent of the total fleet of heavy tractors. The agency concluded that other tractors, which are produced in far fewer numbers and may need additional work to ensure stability and control while braking, would need more lead time to meet the requirements. Due to extra time needed to design, test, and validate these vehicles, which included two-axle tractors and severe service tractors, the agency allowed four years lead time for

[1] 74 FR 37122; Docket No. NHTSA–2009–0083–0001.

these tractors to meet the improved stopping distance requirements.

Requirements in FMVSS No. 121 provide that if the speed attainable by a vehicle in two miles is less than 60 mph, the speed at which the vehicle shall meet the specified stopping distances is four to eight mph less than the speed attainable in two miles. In the July 2009 final rule, the agency used an equation to derive the required stopping distances for vehicles with initial speeds of less than 60 mph.[2]

$S_t = (½\ V_o\ t_r) + ((½)\ V_o^2/a_f) — ((¼)\ a_f\ t_r^2)$

Where:

S_t = Total stopping distance in feet
V_o = Initial Speed in ft/sec
t_r = Air pressure rise time in seconds
a_f = Steady-state deceleration in ft/sec^2

For the final rule, the agency selected an air pressure rise time of 0.45 seconds, which is equal to the brake actuation timing requirement in FMVSS No. 121. The steady-state deceleration was based on an theoretical deceleration curve in which vehicle deceleration would increase linearly during the rise time portion of the stopping event, followed by constant steady-state deceleration, followed by an instantaneous decrease in acceleration back to zero at the completion of the stop. Table II in FMVSS No. 121 sets forth the stopping distance requirements for speeds from 60 mph down to 20 mph (in increments of 5 mph) for both typical and severe service tractors in the loaded conditions and all tractors in the unloaded condition derived using that formula.

II. Petitions for Reconsideration

NHTSA received eight timely petitions for reconsideration in response to the final rule. Separate petitions were received from the Truck Manufacturers Association (TMA); the Heavy Duty Brake Manufacturers Council of the Heavy Duty Manufacturers Association (HDBMC); Bendix Spicer Foundation Brake LLC (Bendix), a joint venture between Bendix Commercial Vehicle Systems and Dana Corporation; and ArvinMeritor. The agency received four additional petitions supporting and incorporating the TMA petition by reference from Daimler Trucks North America (Daimler), Kenworth Truck Company (Kenworth), Peterbilt Motors Company (Peterbilt), and Navistar Truck Group (Navistar).

The petitions focused on four main issues. The main issues included the stopping distance requirements for reduced speeds, the omission of four-axle tractors under 59,600 pounds gross vehicle weight rating (GVWR) from the listed requirements and the date at which the improved stopping distance requirements should apply to those tractors, the manner in which NHTSA characterized the typical three-axle tractor, and the fuel tank fill level testing specification. Additionally, the petitioners requested that NHTSA correct some typographical errors in the regulatory text.

In a final rule published in the **Federal Register** on November 13, 2009, the agency addressed all of the issues raised in the petition, except those related to stopping distance requirements at reduced speeds.[3] We addressed the other issues first because the agency omitted lead time requirements for tractors with four or more axles and a GVWR of 59,600 pounds or less, which would have inadvertently required those vehicles to comply with the upgraded stopping distance requirements on November 24, 2009. The November 2009 final rule responded to issues raised in the petition with these amendments: (1) The agency accepted the recommendation of petitioners TMA, HDBMC, and Bendix and required compliance with the improved stopping distance requirements for tractors with four or more axles and a GVWR of 59,600 pounds or less by August 1, 2013, thereby giving four years of lead time; (2) the agency revised the definition of a ''typical three-axle tractor'' in the regulatory text in response to concerns raised by TMA and ArvinMeritor to include three-axle tractors having a steer axle gross axle weight rating (GAWR) of 14,600 pounds or less and a combined drive axle GAWR of 45,000 pounds or less; (3) the agency removed the fuel tank loading specification from the test procedure in response to TMA's petition; (4) the agency made two typographical corrections identified by all petitioners.[4]

TMA, HDBMC, and Bendix each raised issues in their petitions regarding stopping distance requirements at reduced test speeds. TMA, HDBMC, and Bendix each stated that the new stopping distance requirements from speeds lower than 60 mph have not been validated through actual vehicle test data. In addition, the agency received a comment on the November 2009 final rule from Crystal Vangorder, which supported this assertion. TMA and Ms. Vangorder requested that the agency withdraw the reduced stopping distance requirements from speeds lower than 60 mph until test data has been obtained.

Although HDBMC reviewed NHTSA's calculations and assumptions set forth in the preamble to the final rule and agreed with the technical approach taken, HDBMC nevertheless stated that the brake timing may be too fast for some vehicle configurations. HDBMC made reference to its own prior comments on the agency's reduced stopping distance rulemaking in which it provided tables showing how brake timing affects stopping distance.[5] HDBMC noted that high braking torques can occur prior to load transfer, which may cause deep cycling of the antilock brake system (ABS) resulting in slightly longer stopping distance. Bendix also stated that differing opinions on axle response time and average deceleration left the results of the calculations open to speculation. HDBMC noted that limited initial testing data by its members showed that vehicle are close to meeting or are not meeting the stopping distance from 20 mph of 30 feet within a 10 percent margin.

TMA and HDBMC both stated that their members were conducting testing and would provide the agency with data to supplement any agency testing. However, no test data has been provided to the agency.

III. Testing Program

In response to the petitions, NHTSA conducted testing to evaluate the stopping distance performance of a truck tractor from initial test speeds between 20 and 60 mph. The purpose of the testing was to acquire test data that, as stated in the petitions for reconsideration to the July 2009 final rule, had not been available to confirm that the new stopping distance requirements from speeds less than 60 mph could be achieved. The test program and results are described in the technical report, ''Experimental Measurement of the Stopping Performance of a Tractor-Semitrailer from Multiple Speeds.'' [6]

The test plan was to evaluate a tractor that, when tested while traveling at a speed of 60 mph, met the reduced tractor stopping distance requirement of 250 feet for vehicles loaded to GWVR without any margin. That same tractor was then tested at lower initial speeds to compare actual test results with the new requirements in Table II of FMVSS

[2] The complete derivation for this equation was included in the docket. See Docket No. NHTSA–2005–21462–0039, at 18–22.

[3] 74 FR 58562; Docket No. NHTSA–2009–0175–0001.

[4] The agency made further correcting amendments to correct an omission in the November 2009 final rule. See 75 FR 15620 (Mar. 30, 2010); Docket No. 2009–0175–0004.

[5] See Docket No. NHTSA–2005–21462–0020.

[6] DOT HS 811 488, available at *http://www.nhtsa.gov/DOT/NHTSA/NVS/Vehicle Research & Test Center (VRTC)/ca/811488.pdf,* Docket No. NHTSA–2009–0175–0005.

No. 121. The test was also conducted in a lightly loaded vehicle weight condition with no trailer attached.

The agency used a 1991 Volvo 6x4 tractor with a 190-inch wheelbase, equipped with a hybrid disc brake configuration. The vehicle was used in the agency's research to support the reduced stopping distance rulemaking, and was chosen because it was expected to have close to a 250-foot stopping distance when tested from 60 mph in the loaded condition. During actual testing, the vehicle was found to have a minimum stopping distance of 249 feet when loaded to GVWR (*i.e.,* the shortest stop in a series of six stops).[7] However, the vehicle had not been operated for several years and when the vehicle was recommissioned for this test program, the agency found it necessary to adjust the amount of the ballast load of the vehicle by lowering it to a modified GVWR in order to achieve consistent stopping distance of 250 feet from 60 mph.[8] This modified GVWR was used for the rest of the testing program.

The agency considered using a newer vehicle and adding ballast to increase the stopping distance of the vehicle to 250 feet. However, the agency decided not to follow this approach because it could have resulted in unusually high brake temperatures and brake fade effects or changes in the brake lining friction characteristics. The agency believed it would be better to remove weight from a worse-performing tractor rather than adding weight to a better-performing tractor.

A series of six stops was then conducted for the loaded tractor at initial speeds ranging from 60 mph down to 20 mph in five-mph increments. The average of each six-stop series was compared to the new requirements in column (3) of Table II of FMVSS No. 121. The results indicated that from initial speeds below 60 mph, the vehicle could achieve slightly better stopping distances than those in Table II, except at the lowest test speed of 20 mph. From an initial speed of 20 mph, the tractor loaded to the modified GVWR achieved an average stopping distance of 31.2 feet, compared to the FMVSS No. 121 stopping distance requirement of 30 feet.

The test series was then repeated in the unloaded (bobtail) condition. For this test series, the agency was unable to devise a practical way of adjusting the tractor's braking performance to provide a zero percent margin of compliance at 60 mph. These results were compared to the new requirements in column (6) of Table II of FMVSS No. 121. The results indicated that the tractor performed with a 20 to 25 percent margin of compliance at initial test speeds between 30 and 60 mph. However, at the two lowest test speeds, the margin of compliance was less—16 percent at 25 mph and eight percent at 20 mph.

When compared to the theoretical deceleration curve discussed in the July 2009 final rule, there were differences. The theoretical deceleration curve has a linear increase in deceleration during the rise time, followed by a constant steady-state deceleration, and then an instantaneous decrease in deceleration to zero at the completion of the stop. In comparison, the test data generally followed this shape with some differences. There was substantial signal noise in the measured deceleration, which has been observed in other heavy vehicle braking tests. Because of this signal noise, the data analyst had to use judgment in determining the completion of the rise time. The steady-state deceleration also was not constant. It appeared to be higher toward the end of the stop as the vehicle speed decreased during the stop. At the end of the stop, the test data indicated a steep ramp down in deceleration to zero, but it was not the instantaneous drop shown in the theoretical curve.

For the new stopping distance requirements, the rise time used in the stopping distance equation was 0.45 seconds, and the preamble of the July 2009 final rule provided the required steady-state decelerations for the various initial test speeds that would be required to achieve the new stopping distances. For example, for a typical tractor from an initial speed of 60 mph with a rise time of 0.45 seconds and a stopping distance of 250 feet, the required steady-state deceleration in the equation was 16.80 ft/sec^2.

When compared to the actual test data in the loaded condition from 60 mph, the average stopping distance was 251 feet, the rise time was 0.40 seconds, and the steady-state deceleration was 17.3 ft/sec^2. Although the rise time was slightly faster and the stopping distance very slightly worse, the measured steady-state deceleration was higher than predicted. Deriving the steady-state deceleration from the equation using the observed stopping distance and rise time would result in a predicted steady-state deceleration of 16.6 ft/sec^2, which is four percent lower than what was observed. Although the difference is small, the divergence became greater at lower initial test speeds. At the lowest test speed of 20 mph, the measured steady-state deceleration of the vehicle was 20 ft/sec^2, which is 2.9 ft/sec^2 or 17 percent higher than the predicted value of 17.1 ft/sec^2 from the equation. Similar differences, though not as great were observed from tests in the unloaded condition.

The test results also revealed that the agency was correct in assuming that higher steady-state deceleration would be achieved at lower initial test speeds due to increasing tire adhesion as the vehicle speed decreases when considering speeds between 60 and 35 mph. However, for the loaded tractor tests conducted at the lowest initial speeds, the measured steady-state deceleration actually decreased from 21.4 ft/sec^2 at an initial test speed of 25 mph to 20.0 ft/sec^2 at an initial test speed of 20 mph. For the unloaded tests, the steady-state deceleration decreased from 24.7 ft/sec^2 at an initial test speed of 35 mph to 21.7 ft/sec^2 at an initial test speed of 20 mph. The reduced steady-state deceleration at these lower test speeds appears to be an influential factor in the loaded tractor's not meeting the new 20 mph stopping distance of 30 feet and in the reduced margin of compliance for the unloaded tractor tests at the lowest test speeds of 25 and 20 mph.

The testing also provided data on the rise times that were achieved for the two loading conditions at the various test speeds, although they had to be determined based on engineering judgment due to the signal noise. For the tests in the loaded condition, the average rise time based on the six stops at each test speed ranged between 0.39 and 0.56 seconds. The longest average rise times of 0.50 and 0.56 seconds occurred at the initial test speeds of 30 and 25 mph, respectively. From an initial test speed of 20 mph, the average rise time decreased to 0.42 seconds. Otherwise, there was no clear trend for the rise times when compared to initial test speed. Within each set of six stops for each test speed, some showed considerable variability between the six stops and some did not, with standard deviations ranging between 0.11 seconds from an initial speed of 30 mph (minimum 0.37 seconds, maximum 0.60 seconds) to 0.02 seconds from an initial speed of 40 mph (minimum 0.36 seconds, maximum 0.41 seconds).

The rise times for the unloaded tractor tests were substantially lower than those for the loaded tests. There was also much less variability in the unloaded tests compared to the loaded tests, with

[7] Repairs were necessary to this vehicle in order to meet the 0.45 second brake application timing requirement.

[8] The tractor's GVWR was 50,000 pounds. The load necessary to meet the 250-foot stopping requirement with the control trailer attached was 42,840 pounds.

average rise times for each six-stop series ranging between 0.27 and 0.32 seconds. The standard deviation for each six-stop series ranged between 0.01 seconds and 0.03 seconds.

The agency did not specifically evaluate ABS cycling during stops. However, based on a review of the wheel speed data, we are able to make some observations. The ABS had the most activity when the tractor was tested in the unloaded condition, in which there were continuous brake pressure modulations for the drive axles throughout all of the stops from all initial test speeds. The intermediate drive axle was equipped with ABS wheel speed sensors and the brake pressures for both drive axles were modulated based upon the wheel slip occurring on this drive axle. For tests in the loaded condition, the wheel speed data for the drive axles did not show any indications of substantial wheel slip on the intermediate drive axle, although brake pressure modulation was observed in about half of the stops, mostly at the beginning of the stop, indicating that ABS did activate in those stops. ABS activity on the steer axle was mixed. Some tests in the loaded condition showed steer axle brake pressure modulations of up to 30 psi followed by stair-stepping pressure increases. As with the drive axle, there was much more ABS activity on the steer axle during the unloaded stops. However, none of the ABS activity on the steer or drive axles was considered to be deep cycling in which the pressure is modulated to near zero or held at low pressures for a substantial amount to time in response to rapid wheel lockup, and there were no observed lapses in deceleration resulting from ABS activity.

IV. Response to Petition

Because of the lack of test data on the stopping distance for tractors from reduced stopping distance, the agency conducted the testing program to determine the accuracy of the equation from which the agency derived the stopping distances and to determine whether a test tractor could readily achieve the new reduced stopping distances from each of the initial test speeds. Because the agency has conducted testing that verified the stopping distance requirements at reduced test speeds, the agency has decided not to set aside or withdraw the stopping distance requirements at reduced initial test speeds, as requested by TMA and supported by Ms. Vangorder.

Regarding the validity of the stopping distance equation in the final rule that was used to derive the stopping distances from reduced speeds, the agency concludes that the theoretical deceleration profile that formed the basis of the equation had some inaccuracies.[9] Although the testing demonstrated some slight inaccuracies in the equation, we have decided not to pursue refinements to the equation at this time to improve its accuracy in order to address the petitions for reconsideration. The results lead us to believe that further testing likely would not suggest a need for any significant changes to other stopping distance requirements nor would it lead to improvements in the robustness of the equation.

Regarding HDBMC's comments that the rise times used in the final rule would make very fast brake timings necessary and that could result in high braking torques occurring prior to load transfer and deep cycling of the ABS, and as a result those timings would contribute to longer stopping distances, we presume that HDMBC was referring primarily to the tractor's steer axle that experiences the greatest increase in load transfer during a maximum effort stop. In response to this concern, we note three observations from the agency's testing. First, the fastest rise times observed in the testing were in the unloaded condition and were approximately 0.30 seconds, which closely matched the average brake application timing of 0.31 seconds that was measured on the steer axle. Second, the brake application timing was not particularly fast on the drive axles (0.41 and 0.42 seconds for the rear and intermediate drive axles respectively), and the rise times for the tractors tested in the loaded condition were similar to the drive axle application timing (average of 0.43 seconds). Third, deep cycling of the ABS system was not observed during any stops in the unloaded and loaded conditions. The test tractor was able to meet nearly all of the stopping distance requirements without particularly fast brake application timing. Further, HDBMC never provided its own test data in support of its assertion that fast brake timings would be required to meet the stopping distance requirements at lower initial test speeds.

Based on the foregoing, the agency has decided to increase the stopping distances set forth in Table II of FMVSS No. 121 for typical tractors in the loaded condition (column (3)) and for unloaded tractors (column (6)) from an initial speed of 20 mph. For typical tractors in the loaded condition, the agency is increasing the stopping distance from an initial speed of 20 mph from 30 feet to 32 feet. The basis for this change is that the agency's testing program showed decreased steady-state deceleration performance at this initial test speed compared to what was predicted. The agency based the 30-foot stopping distance on the assumption that lower initial test speeds would always have a higher steady-state deceleration when compared to higher initial test speeds. The tractor tests showed that this was the case between initial test speeds of 60 and 35 mph. However, variations occurred below 25 mph. We believe that braking tests with initial speeds below 35 mph are of such short duration that there is insufficient time to attain and maintain the level of steady-state deceleration performance that is seen from higher initial braking speeds.

The agency is also increasing the stopping distance for tractors in the unloaded condition from an initial speed of 20 mph from 28 feet to 30 feet. In the agency's testing, the test tractor exceeded the new stopping distances in the unloaded condition from initial test speeds between 60 mph and 30 mph by a margin of greater than 20 percent. At 25 mph, the compliance margin narrowed to 16 percent, and at 20 mph, the compliance margin further narrowed to eight percent. Increasing the unloaded stopping distance from 28 feet to 30 feet would improve the margin of compliance to 14 percent. The eight percent margin of compliance stands out when considering that a tractor that would not have as good of braking performance as the tractor tested, such that it would have lower margins of compliance at higher initial test speeds. As we stated above, we were not able to test an unloaded tractor with a zero margin of compliance from an initial test speed of 60 mph. We are making this change in anticipation that some atypical tractors with lower margins of compliance in the unloaded condition would have difficulty achieving the 28 foot stopping distance.

The agency notes that these changes are being made based on the testing of a tractor that was adjusted to just meet the stopping distance requirements for the stops from 60 mph in the loaded condition. We anticipate that tractors with improved braking performance will be designed to have a greater-than-zero margin of compliance to the new stopping distance requirements so that minor variations in the vehicle manufacturing process and brake components can be tolerated. Thus, we

[9] We believed that including the stopping distance equation in preamble to the final rule was useful to provide the agency's view on how tractors are anticipated to meet the stopping distance requirements at reduced speeds.

expect that the stopping distance performance of vehicles at all initial test speeds would be slightly better as well. The agency has received no additional test data after the petitions for reconsideration were filed. We are therefore amending the stopping distances for reduced initial speeds based solely upon the agency's own test data.

We also wish to clarify that tractors, trucks, and buses must only meet the stopping distance requirements at the initial test speed corresponding to the highest speed attainable by the vehicle. As stated in S5.3.1.1 of FMVSS No. 121, vehicle stops are generally conducted from 60 mph in both the loaded and unloaded conditions. However, if the speed attainable by a vehicle in two miles is less than 60 mph, the vehicle is required to stop from a speed in Table II that is four to eight mph less than the speed attainable in two miles. Thus, FMVSS No. 121 does not require that stops be conducted from all initial test speeds listed in Table II; rather, stopping distance tests are conducted from either 60 mph or from the speed that is four to eight mph less than the highest speed attainable within two miles.

V. Technical Correction

In the notes portion of Table II of FMVSS No. 121, the label for column (6) is ''Unloaded Tractors (Bobtail),'' which is the stopping distance requirements for unloaded tractors using the service brakes, whereas the label for column (8) is ''Unloaded Tractors,'' which is the stopping distance requirements for unloaded tractors using the emergency brake. The vehicle loading conditions tested in columns (6) and (8) are identical. The term ''Bobtail'' is included as a parenthetical to the label for column (6) to make clear that the stopping distance requirements in that column are to be met without a trailer attached. So there is no confusion that the loading condition for column (8) is identical to the loading condition for column (6), we are adding the term ''Bobtail'' in parenthesis in the label for column (8).

VI. Effective Date

Section 30111(d) of title 49, United States Code, provides that a Federal motor vehicle safety standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed except when a different effective date is, for good cause shown, in the public interest. This rule makes amendments to regulatory provisions that are subject to phase-in that were set forth in the July 2009 final rule. These amendments would not impose new requirements; rather, these amendments simply adjust the required maximum stopping distances at very low speeds by slightly relaxing them to be consistent with what the agency intended in the April 2007 final rule. Therefore, good cause exists for these amendments to be made effective in the timeframe already in place concerning the effective dates of implementation of the reduced stopping distance requirements in FMVSS No. 121.

VII. Rulemaking Analyses and Notices

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 and the DOT's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under Executive Order 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not ''significant'' under them.

This action completes the agency's response to petitions for reconsideration regarding the July 2009 final rule amending FMVSS No. 121. This final rule revises the stopping distance table for vehicles from very low speeds to reflect agency's intent in the July 2009 final rule regarding braking performance level from very low test speeds. Today's action will not cause any additional expenses for vehicle manufacturers. This action will not have any significant safety impacts.

B. Privacy Act

Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://docketsinfo.dot.gov/.*

C. Other Rulemaking Analyses and Notices

In the July 2009 final rule, the agency discussed relevant requirements related to the Regulatory Flexibility Act, the National Environmental Policy Act, Executive Order 13132 (Federalism), the Unfunded Mandates Reform Act, Civil Justice Reform, the National Technology Transfer and Advancement Act, the Paperwork Reduction Act, and Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks). As today's rule merely makes minor changes in the stopping distance at lower speeds to reflect agency's intent in the July 2009 final rule regarding braking performance level from very low test speeds, it will not have any effect on the agency's analyses in those areas.

VIII. Regulatory Text

List of Subjects in 49 CFR Parts 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. In § 571.121, revise Table II to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

TABLE II—STOPPING DISTANCE IN FEET

Vehicle speed in miles per hour	Service brake						Emergency brake	
	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
20	32	35	32	35	38	30	83	85

TABLE II—STOPPING DISTANCE IN FEET—Continued

Vehicle speed in miles per hour	Service brake						Emergency brake	
	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9	PFC 0.9
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
25	49	54	45	54	59	43	123	131
30	70	78	65	78	84	61	170	186
35	96	106	89	106	114	84	225	250
40	125	138	114	138	149	108	288	325
45	158	175	144	175	189	136	358	409
50	195	216	176	216	233	166	435	504
55	236	261	212	261	281	199	520	608
60	280	310	250	310	335	235	613	720

(1) Loaded and Unloaded Buses.
(2) Loaded Single-Unit Trucks.
(3) Loaded Tractors with Two Axles; or with Three Axles and a GVWR of 70,000 lbs. or less; or with Four or More Axles and a GVWR of 85,000 lbs. or less. Tested with an Unbraked Control Trailer.
(4) Loaded Tractors with Three Axles and a GVWR greater than 70,000 lbs.; or with Four or More Axles and a GVWR greater than 85,000 lbs. Tested with an Unbraked Control Trailer.
(5) Unloaded Single-Unit Trucks.
(6) Unloaded Tractors (Bobtail).
(7) All Vehicles except Tractors, Loaded and Unloaded.
(8) Unloaded Tractors (Bobtail).

* * * * *

Issued on: July 21, 2011.

Ronald L. Medford,

Deputy Administrator.

[FR Doc. 2011–18929 Filed 7–26–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132–1275–02]

RIN 0648–XA550

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Northern Area Trophy Fishery

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

ACTION: Closure.

SUMMARY: NMFS closes the northern area Angling category fishery for large medium and giant (''trophy'') Atlantic bluefin tuna (BFT) for the remainder of 2011. This action is being taken to prevent overharvest of the 2011 Angling category northern area subquota for large medium and giant BFT.

DATES: Effective 11:30 p.m., local time, July 29, 2011 through December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, consistent with the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and subsequent rulemaking.

NMFS is required, under § 635.28(a)(1), to file a closure notice with the Office of the Federal Register for publication when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

The 2011 BFT quota specifications established a quota of 1.4 mt of large medium and giant BFT (measuring 73 inches curved fork length or greater) to be harvested in the northern area, i.e., north of 39°18′ N. lat. (off Great Egg Inlet, NJ) by vessels permitted in the HMS Angling or Charter/Headboat category (while fishing recreationally) (76 FR 39019, July 5, 2011). Earlier this year, NMFS announced two Angling category BFT fishery inseason actions, effective April 2, 2011: a change to the daily retention limit and closure of the southern area trophy fishery (76 FR 18416, April 4, 2011). Based on the best available BFT landings information for the trophy BFT fishery, NMFS has determined that the northern area trophy BFT subquota will be reached by July 29, 2011. Therefore, through December 31, 2011, fishing for, retaining, possessing, or landing large medium or giant BFT north of 39°18′ N. lat. by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (while fishing recreationally) must cease at 11:30 p.m. local time on July 29, 2011. Limited catch and release is permissible as specified under § 635.26(a) and described below. This action is taken consistent with the regulations at § 635.28(a)(1). The intent of this closure is to prevent overharvest of the Angling category northern area trophy BFT subquota.

Anglers are reminded that all non-tournament BFT landed under the Angling category quota must be reported within 24 hours of landing either online at *http://www.hmspermits.gov* or by calling (888) 872–8862. In Maryland and North Carolina, vessel owners must report their recreational tuna landings at state-operated reporting stations. For additional information on these programs, including reporting station locations, please call (410) 213–1351

(Maryland) or (800) 338–7804 (North Carolina).

Anglers may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survivability, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the Careful Catch and Release brochure available at *http://www.nmfs.noaa.gov/sfa/hms/.*

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *http://www.hmspermits.gov,* for updates.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. The closure of the northern area Angling category trophy fishery is necessary to prevent overharvest of the Angling category northern area trophy BFT subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, e-mailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *http://www.hmspermits.gov.*

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive BFT landings that may result in future potential quota reductions for the Angling category. NMFS must close the northern area trophy BFT fishery before additional landings of the size BFT accumulate. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.28(a)(1), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: July 22, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–19010 Filed 7–26–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 144
Wednesday, July 27, 2011

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

Commodity Credit Corporation

7 CFR Part 1493

RIN 0551–AA74

CCC Export Credit Guarantee (GSM–102) Program

AGENCY: Foreign Agricultural Service and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and amend the regulations that administer the Export Credit Guarantee (GSM–102) Program. Changes in this proposed rule incorporate program operational changes and information from press releases and notices to participants that have been implemented since the publication of the current rule, and include other administrative revisions to enhance clarity and program integrity. These changes should increase program availability to all participants and enhance access and encourage sales for smaller U.S. exporters. The proposed rule would eliminate provisions for the Intermediate Export Credit Guarantee (GSM–103) Program, consistent with the repeal of authority to operate this program in the Food, Conservation, and Energy Act of 2008 (2008 Act).

DATES: Comments concerning this proposed rule must be received by September 26, 2011 to be assured consideration.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions to submit comments.
- *E-Mail: GSMregs@fas.usda.gov.*
- *Fax:* (202) 720–2495, Attention: ''GSM102 Proposed Rule Comments''.
- *Hand Delivery, Courier, or U.S. Postal delivery:* Amy Slusher, Deputy Director, Credit Programs Division, c/o Public Affairs Division, Foreign Agricultural Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1004, Room 5076, Washington, DC 20250–1004.

Comments may be inspected at 1400 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this proposed rule is available through the Foreign Agricultural Service (FAS) homepage at: *http://www.fas.usda.gov/excredits/exp-cred-guar-new.asp.*

FOR FURTHER INFORMATION CONTACT: Amy Slusher, Deputy Director, Credit Programs Division; by phone at (202) 720–6211; or by e-mail at: *Amy.Slusher@fas.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Commodity Credit Corporation's (CCC) Export Credit Guarantee (GSM–102) Program is administered by the Foreign Agricultural Service (FAS) of the U.S. Department of Agriculture (USDA) on behalf of CCC, pursuant to program regulations codified at 7 CFR Part 1493 and through the issuance of ''Program Announcements'' and ''Notices to Participants'' that are consistent with this program regulation. The current regulations became effective on November 18, 1994. Since that time, CCC has implemented numerous operational changes to improve the efficiency of the program, including an automated, Internet-based system for participants and revised program controls to improve program quality, reduce costs, and protect against waste and fraud. Also since that time, agricultural trade and finance practices have evolved. This proposed rule is intended to reflect these changes and to enhance the overall clarity and integrity of the program. In addition, the 2008 Act repealed the authority to operate the GSM–103 Program, and this change is reflected in the proposed rule.

On December 17, 2008, CCC published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** (73 FR 76568). This notice was intended to solicit comments on improvements and changes to be made in the implementation and operation of the GSM–102 program, with the intent of improving the GSM–102 program's effectiveness and efficiency. In addition to incorporating some of the comments received in response to the ANPR, this proposed rule incorporates several previous operational requirements announced by FAS through notices to participants. Other supplemental notices to participants were issued as reminders of various program requirements or contained informational requirements for specific commodities. These notices are not appropriate for inclusion in the regulations for the GSM–102 program but nevertheless remain in effect.

Section-by-Section Analysis

The numbering system of this proposed rule differs from that in the current regulation. Several sections have been added, some sections have been deleted and others have been reordered. For the purposes of this discussion, the numbering of the proposed rule will be used, except where otherwise indicated.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

In accordance with section 202 of the Agricultural Trade Act of 1978 (7 U.S.C. 5622), as amended by section 3101 of the 2008 Act, this proposed rule would eliminate provisions for intermediate-term credit guarantees, also known as the GSM–103 program. Reference has been added to the Facility Guarantee Program (FGP), authorized by section 1542 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5622 note) (as amended), to reflect the fact that the restrictions and criteria in subpart A apply to the FGP. The regulations for the FGP are found at subpart C of 7 CFR Part 1493.

In section 1493.4, ''Criteria for country and regional allocations,'' CCC proposes to include regional allocations. CCC currently announces allocations by both country and region. The addition of the regional program concept to the proposed rule is therefore reflective of current program operations and appears throughout the proposed rule.

Subpart B—CCC Export Credit Guarantee (GSM–102) Program Operations

Section 1493.20 Definition of Terms

Numerous definitions are proposed to be added to this section. Certain definitions would be added to provide greater clarity to program participants, and other definitions appearing in this section have been moved from other parts of the regulation.

In section 1493.20(j), a definition of ''Director'' has been added. In certain sections throughout the proposed rule, ''CCC'' has been changed to ''Director.'' This change was made to provide participants transparency regarding the specific official authorized to make certain program decisions.

Section 1493.20(l) would modify the definition of ''eligible interest'' contained in the current rule to be consistent with the interest coverage currently specified on the payment guarantee. CCC's coverage of interest will always be limited to the lesser of the amount calculated using the interest rate specified between the exporter or exporter's assignee and the foreign financial institution or the amount calculated using the Treasury bill investment rate specified on the face of the payment guarantee. In addition, to clarify the various types of interest associated with CCC's coverage, definitions have been added for ''CCC late interest'' (e), ''ordinary interest'' (dd), and ''post-default interest'' (gg).

A definition of the ''FAS Web site'' would be added in section 1493.20(p). This Web site will contain all program-related information and details on where and by what means participants must submit information required by this subpart. CCC proposes no longer to announce these details through a Notice to Participants. The ''Contacts P/R'' found in section 1493.20(c) of the current rule would be deleted.

Section 1493.20(r) would add a definition of a ''firm export sales contract.'' The current rule, at section 1493.40, requires that ''a firm export sale must exist before an exporter may submit an application for a payment guarantee.'' CCC proposes to add this definition to clarify to participants both what constitutes a ''firm export sale'' and the specific information needed to meet this requirement.

A new definition of ''foreign financial institution'' would be added in section 1493.20(s). A foreign financial institution is not defined in the current rule, but is referenced throughout the current rule as a ''foreign bank'' that is able to issue an irrevocable letter of credit. The new definition would clarify the basic requirements for foreign institutions to be eligible to apply for participation in the program, and also would permit non-bank foreign institutions to apply.

The definition of ''importer'' would be revised in section 1493.20(y) to require that the importer be physically located in the country or region of destination. Although not specified in the current rule, CCC now permits an importer to have a ''presence of business'' in the country or region to meet the requirement that the ''agricultural commodities * * * be shipped from the United States to the foreign buyer.'' Under this ''presence of business'' concept, the importer need not be located in the country or region but may contract with another party (such as an agent) in the country or region of destination to receive and sell the goods. Due to the difficulty in confirming whether an importer has a legitimate ''presence of business'' to act on its behalf, CCC proposes to eliminate this practice and would now require the importer to be physically located in the country or region of destination.

CCC proposes to add a definition for ''letter of credit account party'' in section 1493.20(aa). CCC currently permits an entity other than the importer to request the foreign financial institution letter of credit be opened, but in such cases the exporter is required to notify CCC on the application for payment guarantee. The ''letter of credit account party'' would now be added as a required field on the application for payment guarantee (section 1493.70(a)(3)), if this entity is other than the importer.

Section 1493.30 Information Required for Exporter Participation

An exporter seeking to participate in the GSM–102 program would be required to submit with its application for program participation, pursuant to section 1493.30(a)(ii) and (iii), its Dun and Bradstreet (DUNS) number and its Employer Identification Number (EIN) issued by the Internal Revenue Service. The DUNS number would be utilized by CCC to report on entities that are awarded federal grants, loans, contracts, and other forms of assistance as required by the Federal Funding Accountability and Transparency Act (FFATA). CCC would utilize the EIN to confirm that the exporter, as a recipient of Federal financial assistance, does not owe an outstanding Federal nontax debt that is in delinquent status, consistent with the Debt Collection Improvement Act of 1996 and the associated requirements found in 31 CFR 285.13.

Pursuant to section 1493.30(a)(4), each exporter would be required to provide a description of the exporter's business. The exporter would also be required to advise CCC whether or not it meets the definition of a small or medium enterprise (SME), as defined on the FAS Web site. Although this information will not be utilized to determine an exporter's eligibility for program participation, CCC will utilize it to help target specific countries, regions and commodities under the program, and to track new-to-export businesses and the number of SMEs assisted by the program. This information will assist in justifying budgetary requests and targeting outreach efforts.

Pursuant to section 1493.30(c), exporters that have previously qualified to participate but have not submitted an application for a payment guarantee for two consecutive fiscal years would be required to resubmit all information required for participation. This requirement will assist CCC in maintaining accurate exporter records.

Section 1493.40 Information Required for U.S. Financial Institution Participation and Section 1493.50 Information Required for Foreign Financial Institution Participation

Under the proposed rule, these sections would be new provisions. Currently, requirements for U.S. and foreign financial institutions are specified on the FAS Web site; however, CCC has determined that these requirements are more appropriately addressed in the rulemaking process. Similar to the requirements for exporter participation, both U.S. and foreign financial institutions would be required to re-apply if they do not utilize the program for two consecutive fiscal years. U.S. financial institutions, like exporters, would be required to provide their DUNS and EIN numbers for purposes of compliance with FFATA and the Debt Collection Improvement Act of 1996.

Section 1493.60 Certifications Required for Program Participation

This section would revise the certifications required of all exporters and U.S. and foreign financial institution program participants, to make them consistent with U.S. Government requirements. OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement) (2 CFR 180.335) require all participants in the primary tier of a covered transaction to provide certain information to a Federal agency before entering into a transaction with that agency. Such required information would now be reflected in the certifications set forth in section 1493.60(a)(1) through (4). Proposed new certifications in section 1493.60(a)(5) through (7) would assist in meeting the requirements of 31 CFR 285.13 (''Barring delinquent debtors from obtaining Federal loans or loan insurance or guarantees''). Exporters and U.S. and foreign financial institutions would certify that they do not have any outstanding nontax debt to

the United States that is in delinquent status, nor do any persons controlling or controlled by the applicant.

Under the proposed rule, U.S. and foreign financial institutions would be required to make two additional certifications (section 1493.60(b)) asserting their compliance with all regulatory requirements and U.S. anti-money laundering and terrorist financing statutes. The purpose of these certifications is to ensure that CCC is dealing only with responsible entities that are in compliance with all relevant U.S. laws and regulations.

Exporters and U.S. and foreign financial institution program participants would also be required to re-assert these certifications when submitting documentation to CCC under this subpart.

Section 1493.80 Certification Requirements for Obtaining the Payment Guarantee

The proposed rule sets forth a new certification at section 1493.80(d) to require the exporter to confirm that the importer (and intervening purchaser, if applicable) in the transaction is not excluded or disqualified from participation in U.S. government programs through either the Excluded Parties List System (EPLS) or the Specially Designated Nationals list of the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. These lists are defined (including Web site addresses) at sections 1493.20(m) and (cc), respectively, and contain individuals and entities that are not eligible to participate in U.S. government procurement and non-procurement programs or are otherwise excluded based on applicable federal laws. Pursuant to 2 CFR 417.222(a), concerning U.S. Department of Agriculture nonprocurement debarment and suspension, ''the U.S. exporter or U.S. financial institution would be prohibited from entering into, at the first lower tier, an agreement with an importer (or intervening purchaser) or foreign bank * * * with an entity that appears on the EPLS as excluded or disqualified.'' To meet this requirement, and to ensure that the exporter or U.S. financial institution does not enter into a transaction with a prohibited entity on the OFAC list, the exporter must certify at the time of application that neither the importer nor intervening purchaser is excluded by either list. This will necessarily require the exporter to check both the EPLS and OFAC lists to ensure these entities are not listed.

Section 1493.90 Terms and Requirements of the Foreign Financial Institution Letter of Credit and Related Obligation

Under the proposed rule, this section would be a new provision. In section 1493.90(a), CCC describes requirements applicable to the foreign financial institution letter of credit. In recent foreign financial institution defaults, CCC's ability to recover has, on occasion, been adversely affected because GSM–102 guaranteed debt was determined, in foreign jurisdictions of certain defaulting obligors, not to be ''trade finance'' and therefore subject to less favorable restructuring terms. In an attempt to bolster CCC's position in future restructurings, section 1493.90(a)(1) would now require the letter of credit to contain a specific statement describing the obligation as trade finance debt. Similar language has been adopted by export credit agencies in other countries that have faced similar treatment in recent foreign bank debt restructurings.

Additionally, it has been necessary for CCC to accelerate claims payment to U.S. financial institutions and exporters so that CCC could negotiate restructuring terms for all GSM–102 debt directly with the foreign obligors. To ensure that there is no future issue affecting CCC's ability to accelerate claims payments, the letter of credit or related obligation would now be required to include an acceleration clause, as provided in section 1493.90(a)(2).

CCC has determined that the documents submitted for payment under the foreign financial institution letter of credit and/or related obligation should be consistent with the requirements of such foreign financial institution letter of credit and/or related obligation, to ensure that the default was not based on failure to comply with the underlying terms of the sale. CCC has added this requirement in section 1493.90(a)(3).

Section 1493.100 Terms and Requirements of the Payment Guarantee

Several modifications have been made to this section in the proposed rule. The reference to ''final date to export'' has been converted to a definition and now appears in section 1493.20(q). CCC proposes to eliminate the ''grace period'' that currently extends this date one month past the contractual shipping deadline. Over the past several years, CCC has reduced the maximum shipping period allowed in an attempt to reduce the problem of exporters over-registering immediately after allocations are announced. By reducing the shipping period CCC hopes to maintain availability of allocations throughout the fiscal year, thus increasing program availability to all participants. In this context, CCC believes the one month grace period is unnecessary, and it would be eliminated.

In section 1493.100(d), CCC proposes to limit reserve coverage to a maximum of five (5) percent of the transaction's port value to accommodate the upward loading tolerance. Exporters have increasingly been reserving coverage for larger amounts, which encumbers the allocation and reduces the amount available to other participants. Further, the delay in determining whether reserve coverage will be utilized or released back to the allocations creates delays in determining CCC's exact liability under a guarantee. Therefore, in addition to capping the amount of reserve coverage that will be granted, CCC proposes to require exporters to file an amendment to the payment guarantee to utilize such coverage within 15 calendar days of the last export under the payment guarantee. If such amendment is not filed within this timeframe, CCC would automatically cancel the reserve coverage.

The proposed rule would add new section 1493.100(e) on ''Prohibited transactions.'' In general, these prohibitions follow the certification requirements found in section 1493.80. The purpose of this new section is to give additional legal recourse to CCC if an exporter violates any of the required certifications. CCC would specifically prohibit coverage of transactions that have already been guaranteed by CCC under another payment guarantee (section 1493.100(e)(6)). Although this prohibition is implicit in the current rule, CCC has determined to make such prohibition explicit. If a default were to occur under this scenario, CCC could receive identical claims for payment from multiple exporters or assignees. Section 1493.100(e)(6) is specifically intended to avoid this result.

Section 1493.100(f) would institute a new requirement that the foreign financial institution letter of credit be issued within 30 calendar days following the date of export under a payment guarantee. It has become an increasingly common practice under the GSM–102 Program for exporters to obtain a payment guarantee without a foreign financial institution letter of credit in place in connection with the sale for an extended period of time after exports have occurred. This is often an indication that an exporter has not confirmed that the foreign financial institution is willing to issue the letter

of credit underlying the transaction, and is instead submitting the registration to garner a portion of the allocation. CCC expects that prior to registering an export sale the exporter has worked with the importer and foreign financial institution on the details of the financing, even though the letter of credit may not be in place at that time. CCC has surveyed financial institutions on this issue and has determined that 30 calendar days from the date of export is a reasonable timeframe for issuance of the letter of credit. CCC would annul coverage for any exports where this requirement is not met.

In response to the large number of amendment requests routinely submitted to CCC, section 1493.100(h) has been modified to permit CCC to charge a fee for amendments over and above the normal guarantee fee to offset the administrative costs of processing amendments. CCC also may, at its discretion, request documentation from the exporter to justify the amendment, with a view to reducing what CCC considers unwarranted amendment requests. Additionally, consistent with the new certification requirements related to the EPLS and OFAC lists, exporters (or their assignees) will be required to resubmit these certifications any time the payment guarantee is amended to change the foreign financial institution.

Section 1493.110 Guarantee Fees

In response to the problems associated with high demand for certain GSM–102 country and region allocations, several participants have suggested that CCC implement a competitive process, akin to an auction, whereby exporters would be required to bid on coverage. CCC agrees that such a process may be an economically efficient way to allocate coverage when demand for coverage exceeds supply. Therefore, proposed section 1493.110(a)(2) would include this option for determining fees. If operational, details of this process would be made available on the FAS Web site. CCC could implement this option at its discretion and would notify participants via the FAS Web site if it chose to apply this optional method.

CCC also proposes to modify its policy on fee refunds. Currently, once CCC advises an exporter of acceptance of its application(s) (prior to processing the applications and providing the exporter a GSM number), the exporter can determine not to utilize the coverage and CCC will refund the exporter's fees. It has become increasingly common for exporters to apply for coverage and then subsequently cancel large portions of their submitted applications. In such instances this coverage could have been utilized by other exporters, and CCC loses the opportunity to support additional export sales. In an attempt to curtail this practice, once CCC has notified an exporter that its application has been accepted, CCC will not refund the fees on such application if the exporter elects to withdraw it.

Section 1493.120 Assignment of the Payment Guarantee

Under section 1493.120(c), assignees would now be required to make two certifications when submitting the notice of assignment: (1) The foreign financial institution is not excluded or otherwise disqualified from program participation, and (2) the information provided to CCC at the time of qualification as an assignee has not changed. The certification on the foreign financial institution found in section 1493.120(c)(1) is consistent with the requirement of the exporter to make a similar certification related to the importer (see discussion of section 1493.80). Further, as is the case with the requirement for exporters, CCC believes it is appropriate that the U.S. financial institution certify with each assignment that the information and certifications provided to CCC at time of approval for participation are accurate.

CCC proposes to modify some of the bases for a determination that a U.S. financial institution may be ineligible to receive assignment of a payment guarantee. The proposed rule would delete the current provision of section 1493.140(b)(1) that requires the financial institution to be in sound financial condition. The underlying statutory requirement imposing such ineligibility was repealed in the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127). CCC proposes to make a U.S. financial institution ineligible to receive an assignment if it does not meet the qualification requirements found in section 1493.40(a) and certified in 1493.120(c)(2) at the time of the assignment.

At the request of U.S. financial institution participants, CCC proposes to add a provision to allow the assignee (or exporter, if the payment guarantee is unassigned) to include obligations guaranteed by CCC in a repurchase agreement (section 1493.120(f) and as defined in section 1493.20(kk)). Permitting the sale of these obligations as part of a repurchase agreement would allow the assignee to temporarily improve its liquidity position and thus increase the amount of credit available for the assignee to support additional U.S. exports. Although CCC will not approve repurchase agreements, the assignee (or exporter) must notify CCC when CCC-guaranteed obligations are included in a repurchase agreement by supplying the information specified in section 1493.120(f)(2). Failure of the assignee (or exporter) to comply with the requirements in section 1493.120(f) will result in CCC annulling coverage under the payment guarantee.

Section 1493.130 Evidence of Export

CCC proposes to make several modifications to the requirements for evidence of export (EOE) reports. Several items that are currently contained in notices to participants have been incorporated into section 1493.130(a). CCC also proposes to add ''destination country'' as required information in the EOE. Collection of this information will provide CCC data on the specific countries to which GSM–102 commodities are shipped under regional programs, thus assisting in targeting of programming and prioritizing of CCC activities.

The time limit for submission of EOE reports would be modified, and CCC proposes to add new rules regarding failure to submit EOEs on time. It has become increasingly important for CCC to receive EOEs in a timely manner for both budgetary and policy purposes. However, it has also become increasingly common for exporters to fail to submit EOEs within the timeframe specified in the current regulations. Therefore, CCC would now require that all EOEs be submitted to CCC within 10 calendar days of the date of export (section 1493.130(b)(1)). CCC also proposes to add a requirement that the exporter must notify CCC no later than the final date to export if the exporter determines not to make any shipments under the payment guarantee (section 1493.130(b)(2)). Because there are sometimes legitimate circumstances that prevent an exporter from meeting these filing deadlines, CCC proposes in section 1493.130(b)(3) to allow the exporter to request an extension of the filing deadline. Any extension must be requested prior to the filing deadline and must be accompanied by an explanation as to why the extension is needed.

Given the importance of CCC receiving EOEs in a timely manner, CCC proposes to impose new consequences for failure to submit EOEs within the required timeframe. Under section 1493.130(c), exporters who do not submit EOE reports as required would be prohibited from receiving any new payment guarantees until they are fully

in compliance with the requirements of section 1493.130(b).

Section 1493.140 Certification Requirements for the Evidence of Export

CCC proposes several changes to the certifications required with submission of the evidence of export report (EOE). The certification found in section 1493.90(b) of the current regulation, to attest that ''agricultural commodities of the grade, quality and quantity called for in the exporter's contract with the importer have been exported to the country specified on the payment guarantee'' would be removed, and as noted in the explanation of section 1493.90, a requirement added that the commodity grade and quality specified in the foreign financial institution letter of credit be consistent with the commodity grade and quality specified in the firm export sales contract. CCC would also eliminate the certification currently in section 1493.90(c) specifying that ''a letter of credit has been opened in favor of the exporter by the foreign bank shown in the payment guarantee to cover the port value of the commodity exported.'' This certification often keeps exporters from submitting EOEs on time, if the letter of credit has not been opened and therefore the exporter cannot make this certification. CCC has removed this certification to avoid delays in submitting EOE reports. As explained previously, CCC proposes no longer to provide coverage of any exports where the foreign financial institution letter of credit is issued more than 30 calendar days after the date of export (section 1493.100(f)(3)). Given this new requirement, the certification related to the letter of credit would no longer be necessary.

CCC proposes to add a new certification in section 1493.140(c): if the payment guarantee has not been assigned to an approved U.S. financial institution by the time of submission of the EOE, the exporter would be required to certify that the foreign financial institution issuing the letter of credit is not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists. There is no requirement for an exporter to assign the payment guarantee. Because this certification is required of the U.S. financial institution when submitting the notice of assignment, including it with the EOE certifications will ensure that this certification is made even when the exporter determines not to assign the payment guarantee.

Section 1493.160 Notice of Default

CCC proposes to change the timeframe for the exporter or exporter's assignee to submit a notice of default (NOD) to CCC, reducing it from the current ten (10) calendar days to five (5) business days. By reducing this timeframe CCC hopes to mitigate the impact of any defaults, as the primary purpose of the NOD is to allow CCC to immediately prohibit additional transactions with the foreign financial institution in default. CCC also proposes to require two additional pieces of information with the notice of default: (1) A copy of the foreign financial institution's repayment schedule (section 1493.160(a)(5)) and (2) any correspondence with the foreign financial institution regarding the default (section 1493.160(a)(7)). The repayment schedule will give CCC an accurate accounting of when future payments are coming due (and hence, when additional defaults may be expected), and the correspondence may provide CCC additional information that is helpful in restructuring the debt with the defaulting institution.

Under the proposed rule, CCC would add new section 1493.160(c), ''Impact of a default on other existing payment guarantees.'' The existing regulation is silent on potential CCC actions related to outstanding payment guarantees once a foreign financial institution defaults. As a result, exporters may obtain a letter of credit or continue to export under an existing guarantee even after the foreign financial institution issuing the letter of credit has defaulted, thus potentially increasing CCC's exposure. The proposed rule therefore would prescribe a specific policy that CCC will notify the impacted exporters and withdraw coverage of any shipments that occur after the exporter receives this notification where the letter of credit has been or will be issued by the defaulting foreign financial institution. The exporter will be given the option to find another foreign financial institution to issue a letter of credit for the balance of the guarantee, or CCC would cancel that portion of the guarantee allocable to unshipped amounts and refund that portion of the guarantee fee to the exporter.

Section 1493.170 Claims for Default

As would similarly be required in conjunction with a notice of default, CCC also proposes to require, under section 1493.170(a)(3), a copy of the foreign financial institution's repayment schedule as a claims document. Under section 1493.170(a)(4), CCC would also require the claimant to provide a description of any payments received prior to claim and any insurance proceeds, securities or collateral arrangements that may be realized upon that are in any way associated with the debt with respect to which the claim is filed. Because any such payments or instruments are deemed recoveries and must be remitted to CCC for pro-rata sharing, CCC proposes to require them to be declared concurrently with submission of any claim.

Proof of entry, as defined in section 1493.150, would be added as a required claims document. Although CCC already has the authority to request proof of entry documentation from the exporter, the proliferation of regional programs under GSM–102 has raised concerns as to the entry point of the commodities covered by the payment guarantee. Rather than request this documentation from exporters on an ad hoc basis, CCC proposes to require it with all submitted claims. Failure to demonstrate proof of entry into the country or region specified on the payment guarantee would result in denial of the claim by CCC.

CCC also proposes to add new section 1493.170(b), ''Additional documents.'' At times, the required claims documents may not provide sufficient information for CCC to determine that a claim is in ''good order,'' and the claim may therefore be denied. This provision would give the exporter or the exporter's assignee the right to submit additional documentation to CCC to support a claim if the claim has been denied.

Section 1493.180 Payment for Default

In section 1493.180(b), CCC would clarify that its liability with respect to any defaulted payments will be reduced by any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the exporter or the exporter's assignee. Although this is inherent under the current terms of the guarantee, it is not specifically stated in the current regulation.

In section 1493.180(c), CCC proposes to modify the time requirement for making claims payments. The proposed rule would allow CCC 15 business days (from the date of receiving a claim in good order) to make a claim payment before late interest would begin to accrue in favor of the exporter or the exporter's assignee. Upon receipt of a claim, CCC must review all of the claims documents to ensure they are compliant with the program regulations; enter the claims data into CCC's GSM System; provide final claims documents to a CCC Certifying Officer for review and

certification; and disburse the payment to the claimant. It is not possible for CCC to complete all of these tasks within the one day currently required in the regulations—resulting in payment of late interest by CCC on every claim. The U.S. Office of Management and Budget's final rule on, and codification of, Prompt Payment Act regulations (5 CFR Part 1315), only requires, unless otherwise specified, Federal agencies to pay their bills within 30 days of the date of receipt of a proper invoice.

CCC proposes to modify the provision on accelerated payments in section 1493.180(d). In order for CCC to accelerate a claim payment to the exporter or assignee, the exporter or assignee must accelerate the payments due from the foreign financial institution and file all claims documents required in section 1493.170(a). Although this is currently understood and practiced by claimants, CCC believes it is appropriate to specify these requirements as part of the regulation.

Section 1493.190 Recovery of Defaulted Payments

In section 1493.190(b), CCC proposes to exclude from the meaning of the term ''recoveries'' the transfer of funds between CCC, the exporter and the exporter's assignee. Under certain circumstances, the U.S. financial institution taking assignment of the GSM–102 payment guarantee may be unwilling to take risk on the uncovered portion of the transaction. As a result, under such circumstances, the exporter may retain this risk. The current regulation, by use of the phrase ''or any source whatsoever,'' dictates that the flow of funds between the exporter and the assignee under such an arrangement must occur prior to a default, because any transfer of funds after a default is considered a ''recovery.''

CCC's primary interest is in maintaining a risk-share partner in the GSM–102 transaction such that either the exporter or exporter's assignee carries the risk for the uncovered portion of the export sale. It is irrelevant to CCC when any proceeds are shared between these parties. Therefore, CCC proposes to add a clarification that payments between CCC, the exporter, or the exporter's assignee are not considered recoveries and therefore need not be paid to CCC. This change would allow the exporter and the assignee greater flexibility in structuring the transaction between themselves in instances where the assignee does not wish to take risk on the uncovered portion of the transaction.

Consistent with the proposed new section 1493.170(a)(4), which would require the claimant to provide a description of any payments received prior to claim or any insurance, securities or collateral arrangements that may be realized upon that are in any way associated with the debt with respect to which the claim is filed. CCC proposes to clarify in section 1493.190(b)(1) that any monies derived through payments of insurance or the liquidation of any securities or collateral are also considered recoveries and must be paid to CCC.

CCC has added examples of what actions by the exporter or the exporter's assignee constitute ''cooperation'' in recoveries in section 1493.190(f). Although these actions are not precluded under the current regulation, they have been added in the proposed rule to provide exporters and assignees an illustration of possible cooperative efforts that may be required of participants in the course of recoveries.

Section 1493.200 Dispute Resolution and Appeals

CCC proposes to add this new section. As previously noted, the proposed rule would clarify instances throughout the regulation in which the Director of the Credit Programs Division, FAS, is authorized to make determinations with respect to the GSM–102 program. In conjunction with this change, CCC proposes to add specific procedures pursuant to which program participants may appeal decisions made by the Director. In addition to affording specific appeal rights to participants, this section also specifies certain responsibilities of participants during and after the appeal process. The addition of these procedures will provide clarity to participants regarding their rights to appeal adverse decisions.

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been determined to be not significant for the purposes of Executive Order 12866 and was not reviewed by OMB. A cost-benefit assessment of this rule was not completed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule would not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought concerning the provisions of this rule, the appeal provisions of 7 CFR 1493.200 would need to be exhausted. This rule would not be retroactive.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR Part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this proposed rule do not have any substantial direct effect on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, nor does this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

The United States has a unique relationship with Indian Tribes as provided in the Constitution of the United States, treaties, and Federal statutes. On November 5, 2009, President Obama signed a Memorandum emphasizing his commitment to ''regular and meaningful consultation and collaboration with tribal officials in policy decisions that have tribal implications including, as an initial step, through complete and consistent implementation of Executive Order 13175.'' This proposed rule has been reviewed for compliance with E.O. 13175 and CCC worked directly with the Office of Tribal Relations in the rule's development. The policies contained in this proposed rule do not have tribal implications that preempt tribal law.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Assessment

CCC has determined that this proposed rule does not constitute a major State or Federal action that would significantly affect the human or natural environment. Consistent with the National Environmental Policy Act (NEPA), 40 CFR 1502.4, ''Major Federal Actions Requiring the Preparation of Environmental Impact Statements'' and

the regulations of the Council on Environmental Quality, 40 CFR Parts 1500–1508, no environmental assessment or environmental impact statement will be prepared.

Unfunded Mandates

This proposed rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA). Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, CCC is requesting comments from all interested individuals and organizations on a proposed revision to the currently approved information collection for this program. This revision includes the proposed change in information collection activities related to the regulatory changes in this proposed rule.

Title: CCC Export Credit Guarantee Program (GSM–102).

OMB Control Number: 0551–0004.

Type of Request: Revision of a currently approved information collection.

Abstract: This information collection is required to support the existing regulations and proposed changes to 7 CFR Part 1493, subpart B, ''CCC Export Credit Guarantee (GSM–102) Program Operations,'' which establishes the requirements for participation in CCC's GSM-102 program. This revised collection incorporates the additional estimated burden to program participants as a result of certain new requirements in this proposed rule for (1) Exporter, U.S. and foreign financial institution qualification; (2) applications for payment guarantees; (3) notices of assignment; (4) repurchase agreements; (5) evidence of export reports; (6) submission of claims for default; and (7) appeals. This revision also reflects an increase in program activity since the last approval. This information collection is necessary for CCC to manage, plan and evaluate the program and to ensure the proper and judicious use of government resources.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.47 hours per response.

Respondents: U.S. exporters, U.S. financial institutions, and foreign financial institutions.

Estimated Number of Respondents: 180 per year.

Estimated Number of Responses per Respondent: 40 per year.

Estimated Total Annual Burden on Respondents: 3,377 hours.

Comments on this information collection may be submitted to CCC in accordance with the instructions for submitting comments to this proposed rule. All comments received in response to this notice will be a matter of public record.

E-Government Act Compliance

CCC 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. The forms, regulations, and other information collection activities required to be utilized by a person subject to this rule are available at: *http://www.fas.usda.gov*.

Title 7—Agriculture

List of Subjects in 7 CFR Part 1493

Agricultural commodities, Exports.

For the reasons stated in the preamble, CCC proposes to amend 7 CFR Part 1493 as follows:

PART 1493—CCC EXPORT CREDIT GUARANTEE PROGRAMS

1. The authority citation for 7 CFR Part 1493 continues to read as follows:

Authority: 7 U.S.C. 5602, 5622, 5661–5664, 5676; 15 U.S.C. 714b(d), 714c(f).

2. Subpart A is revised to read as follows:

Subpart A—Restrictions and Criteria for Export Credit Guarantee Program

Sec.

1493.1 General statement.
1493.2 Purposes of programs.
1493.3 Restrictions on programs and cargo preference statement.
1493.4 Criteria for country and regional allocations.
1493.5 Criteria for agricultural commodity allocations.

Subpart A—Restrictions and Criteria for Export Credit Guarantee Programs

§ 1493.1 General statement.

This subpart sets forth the restrictions that apply to the issuance and use of payment guarantees under the Commodity Credit Corporation (CCC) Export Credit Guarantee (GSM–102) Program and Facility Guarantee Program (FGP), the criteria considered by CCC in determining the annual allocations of payment guarantees to be made available with respect to each participating country and region, and the criteria considered by CCC in the review and approval of proposed allocation levels for specific U.S. agricultural commodities to these countries and regions.

§ 1493.2 Purposes of programs.

CCC may use payment guarantees:

(a) To increase exports of U.S. agricultural commodities and expand access to trade finance;

(b) To compete against foreign agricultural exports;

(c) To assist countries, particularly developing countries and emerging markets, in meeting their food and fiber needs;

(d) To establish or improve facilities and infrastructure in emerging markets to expand exports of U.S. agricultural commodities; and

(e) For such other purposes as the Secretary of Agriculture determines appropriate.

§ 1493.3 Restrictions on programs and cargo preference statement.

(a) *Restrictions on use of payment guarantees.* (1) Payment guarantees authorized under these regulations shall not be used for foreign aid, foreign policy, or debt rescheduling purposes.

(2) CCC shall not make payment guarantees available in connection with sales of agricultural commodities to any country that the Secretary determines cannot adequately service the debt associated with such sales.

(b) *Cargo preference laws.* The provisions of the cargo preference laws do not apply to export sales with respect to which payment guarantees are issued under this program.

§ 1493.4 Criteria for country and regional allocations.

The criteria considered by CCC in reviewing proposals for country and regional allocations will include, but not be limited to, the following:

(a) Potential benefits that the extension of payment guarantees would provide for the development, expansion, or maintenance of the market for particular U.S. agricultural commodities in the importing country;

(b) Financial and economic ability and/or willingness of the country whose financial institution obligation is guaranteed by CCC (''country of obligation'') to adequately service CCC guaranteed debt;

(c) Financial status of participating financial institutions in the country of obligation as it would affect their ability to adequately service CCC guaranteed debt;

(d) Political stability of the country of obligation as it would affect its ability

and/or willingness to adequately service CCC guaranteed debt; and

(e) Current status of debt either owed by the country of obligation or by the participating foreign financial institutions to CCC or to lenders protected by CCC's guarantees.

§ 1493.5 Criteria for agricultural commodity allocations.

The criteria considered by CCC in determining U.S. commodity allocations within a specific country or regional allocation will include, but not be limited to, the following:

(a) Potential benefits that the extension of payment guarantees would provide for the development, expansion or maintenance of the market in the importing country for the particular U.S. agricultural commodity under consideration;

(b) The best use to be made of the payment guarantees in assisting the importing country in meeting its particular needs for food and fiber, as may be determined through consultations with private buyers and/or representatives of the government of the importing country;

(c) Evaluation, in terms of program purposes, of the relative benefits of providing payment guarantee coverage for sales of the U.S. agricultural commodity under consideration compared to providing coverage for sales of other U.S. agricultural commodities.

3. Subpart B is revised to read as follows:

Subpart B—CCC Export Credit Guarantee (GSM–102) Program Operations

Sec.

1493.10 General statement.
1493.20 Definition of terms.
1493.30 Information required for exporter participation.
1493.40 Information required for U.S. financial institution participation.
1493.50 Information required for foreign financial institution participation.
1493.60 Certification requirements for program participation.
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1493.90 Terms and requirements of the foreign financial institution letter of credit and related obligation.
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1493.195 Miscellaneous provisions.

Subpart B—CCC Export Credit Guarantee Program (GSM–102) Operations

§ 1493.10 General statement.

(a) *Overview.* This subpart contains the regulations governing the operations of the Export Credit Guarantee (GSM–102) Program. The GSM–102 program of the Commodity Credit Corporation (CCC) was developed to expand U.S. agricultural exports by making available payment guarantees to encourage U.S. private sector financing of foreign purchases of U.S. agricultural commodities on credit terms. The payment guarantee issued under GSM–102 is an agreement by CCC to pay the exporter, or the U.S. financial institution that may take assignment of the payment guarantee, specified amounts of principal and interest in case of default by the foreign financial institution that issued the letter of credit for the export sale covered by the payment guarantee. Under GSM–102, payment guarantees are issued for terms of up to three years. The program operates in a manner intended not to interfere with markets for cash sales and is targeted toward those countries that have sufficient financial strength so that foreign exchange will be available for scheduled payments. In providing this program, CCC seeks to expand and/or maintain market opportunities for U.S. agricultural exporters and assist long-term market development for U.S. agricultural commodities.

(b) *Program administration.* The GSM–102 program will be administered under the direction of the General Sales Manager and Vice President, CCC, pursuant to this part and any Program Announcements issued by CCC pursuant to, and not inconsistent with, this part. From time to time, CCC may issue a Notice to Participants on the FAS Web site reminding participants of the requirements of this subpart, or clarifying provisions of this subpart. Information regarding specific points of contact for the public, including names, addresses, and telephone and facsimile numbers of particular USDA or CCC offices, will be available on the Foreign Agricultural Service (FAS) Web site.

(c) *Country and regional program announcements.* From time to time, CCC will issue a Program Announcement on the FAS Web site to announce a GSM–102 program for a specific country or region. The Program Announcement for a country or region will designate specific U.S. agricultural commodities or products thereof, or designate that all eligible commodities are available under the announcement. The Program Announcement will contain any requirements applicable to that country or region as determined by CCC.

§ 1493.20 Definition of terms.

Terms set forth in this part, on the FAS Web site (including in Program Announcements and Notices to Participants), and in any CCC-originated documents pertaining to the GSM–102 program will have the following meanings:

(a) *Affiliate.* Entities or persons are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. Control may include, but is not limited to: interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; or a business entity which has been organized following the exclusion of a person from eligibility to enter into certain procurement or non-procurement transactions with the U.S. Government that has the same or similar management, ownership, or principal employees as the excluded person.

(b) *Assignee.* A U.S. financial institution that has obtained the legal right to make claim and receive the payment of proceeds under the payment guarantee.

(c) *Business day.* Days during which employees of the U.S. Department of Agriculture in the Washington, DC., metropolitan area are on official duty during normal business hours.

(d) *CCC.* The Commodity Credit Corporation, an agency and instrumentality of the United States within the Department of Agriculture, authorized pursuant to the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), further specifically authorized to carry out the GSM–102 Program pursuant to section 202 of the Agricultural Trade Act of 1978, as amended, and subject to the general supervision and direction of the Secretary of Agriculture.

(e) *CCC late interest.* Interest payable by CCC pursuant to § 1493.180(c).

(f) *Cost and Freight (CFR).* A customary trade term, as defined by the International Chamber of Commerce, Incoterms (current revision), indicating that the seller delivers when the goods pass the ship's rail in the port of shipment, and the seller pays the cost and freight necessary to bring the goods to the named port of destination.

(g) *Cost Insurance and Freight (CIF).* A customary trade term, as defined by the International Chamber of Commerce, Incoterms (current revision), indicating that the seller delivers when the goods pass the ship's rail in the port of shipment, and the seller pays the cost and freight necessary to bring the goods to the named port of destination, as well as the marine insurance.

(h) *Date of export.* One of the following dates, depending upon the method of shipment: the on-board date of an ocean bill of lading or the on-board ocean carrier date of an intermodal bill of lading; the on-board date of an airway bill; or, if exported by rail or truck, the date of entry shown on an entry certificate or similar document issued and signed by an official of the Government of the importing country.

(i) *Date of sale.* The earliest date on which a firm export sales contract exists between the exporter, or an intervening purchaser, if applicable, and the importer.

(j) *Director.* The Director, Credit Programs Division, Office of Trade Programs, Foreign Agricultural Service, or designee.

(k) *Discounts and allowances.* Any consideration provided directly or indirectly, by or on behalf of the exporter or an intervening purchaser, to the importer in connection with a sale of an agricultural commodity, above and beyond the commodity's value, stated on the appropriate FOB, FAS, CFR or CIF basis. Discounts and allowances include, but are not limited to, the provision of additional goods, services or benefits; the promise to provide additional goods, services or benefits in the future; financial rebates; the assumption of any financial or contractual obligations; commissions where the buyer requires the exporter to employ and compensate a specified agent as a condition of concluding the export sale; the whole or partial release of the importer from any financial or contractual obligations; or settlements made in favor of the importer for quality or weight.

(l) *Eligible interest.* The amount of interest that CCC agrees to pay the exporter or the exporter's assignee in the event that CCC pays a claim for default of ordinary interest. Such amount of interest that CCC agrees to pay equals the lesser of:

(1) The amount calculated using the interest rate specified between the exporter or exporter's assignee and the foreign financial institution; or

(2) The amount calculated using the specified percentage of the Treasury bill investment rate set forth on the face of the payment guarantee.

(m) *EPLS (Excluded Parties List System).* The electronic version of the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs, which identifies those parties excluded throughout the U.S. Government (unless otherwise noted) from receiving Federal contracts or certain subcontracts and excluded from certain types of Federal financial and nonfinancial assistance and benefits. The EPLS can be found at *www.epls.gov.*

(n) *Exported value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, the value, FAS or FOB basis, U.S. point of export, of the export sale, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, is measured by the CFR or CIF value of the agricultural commodity less the cost of ocean freight, as determined at the time of application and, in the case of CIF sales, less the cost of marine and war risk insurance, as determined at the time of application, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis, and where the commodity is sold on a CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (*e.g.,* services such as bagging bulk cargo) which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the exported value.

(o) *Exporter.* A seller of U.S. agricultural commodities or products thereof that is both qualified in accordance with the provisions of § 1493.30 and the applicant for the payment guarantee.

(p) *FAS Web site.* Location of information related to the GSM–102 program, including program announcements, press releases, notices to participants, program contact information, eligible U.S. and foreign financial institutions, eligible commodities, etc. The Web site also provides details on where and by what method participants may submit documentation required by this subpart. The current Web site is *http://www.fas.usda.gov/excredits/exp-cred-guar-new.asp.*

(q) *Final date to export.* The final allowable date to export as shown on the payment guarantee.

(r) *Firm export sales contract.* The written sales contract entered into between the exporter and the importer (or, if applicable, the written sales contracts between the exporter and the intervening purchaser and the intervening purchaser and the importer) which sets forth the terms and conditions of a sale of the eligible commodity from the exporter to the importer (or, if applicable, the sale of the eligible commodity from the exporter to the intervening purchaser and the intervening purchaser and the importer). Written evidence of a sale may be in the form of a signed sales contract, a written offer and acceptance between parties, or other documentary evidence of sale. The written evidence of sale for the purposes of the GSM–102 program must, at a minimum, document the following information: The eligible commodity, quantity, quality specifications, delivery terms (FOB, C&F, etc.) to the eligible country or region, delivery period, unit price, payment terms, date of sale, and evidence of agreement between buyer and seller. The sales contract between the exporter and the importer (or, if applicable, between the exporter and the intervening purchaser and between the intervening purchaser and the importer) may be conditioned upon CCC's approval of the exporter's payment guarantee application.

(s) *Foreign financial institution.* A financial institution:

(1) Organized under the laws of a jurisdiction outside the United States;

(2) Not domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority of a foreign jurisdiction.

(t) *Foreign financial institution letter of credit.* An irrevocable documentary letter of credit, subject to the current revision of the Uniform Customs and Practices for Documentary Credits (International Chamber of Commerce Publication No. 600, or latest revision), providing for payment in U.S. dollars against stipulated documents and issued in favor of the exporter by a CCC-approved foreign financial institution. For the purpose of the GSM–102 program, CCC will consider applications for payment guarantees to finance

export sales of U.S. agricultural commodities where the payment for the agricultural commodities will be made in one of the two following ways:

(1) An irrevocable documentary letter of credit issued by a foreign financial institution specifically stating the deferred payment terms under which the foreign financial institution is obligated to make payments to the exporter, or the exporter's assignee, in U.S. dollars as such payments become due; or

(2) An irrevocable documentary letter of credit issued by a foreign financial institution that is supported by a related obligation specifically stating the deferred payment terms under which the foreign financial institution is obligated to make payment to the exporter, or the exporter's assignee, in U.S. dollars as such payments become due.

(u) *Free Alongside Ship (FAS).* A customary trade term, as defined by the International Chamber of Commerce, Incoterms (current revision), indicating that the seller delivers when the goods are placed alongside the vessel at the named port of shipment, and the buyer bears all costs and risks of loss of or damage to the goods from that moment.

(v) *Free on Board (FOB).* A customary trade term, as defined by the International Chamber of Commerce, Incoterms (current revision), indicating that the seller delivers when the goods pass the ship's rail at the named port of shipment, and the buyer bears all costs and risks of loss of or damage to the goods from that moment.

(w) *GSM.* The General Sales Manager, Foreign Agricultural Service (FAS), USDA, acting in his or her capacity as Vice President, CCC, or designee.

(x) *Guaranteed value.* The maximum amount, exclusive of interest, that CCC agrees to pay the exporter or assignee under CCC's payment guarantee, as indicated on the face of the payment guarantee.

(y) *Importer.* A foreign buyer, physically located in the country or region of destination specified in the payment guarantee that enters into a firm export sales contract with an exporter or with an intervening purchaser for an export sale of agricultural commodities to be shipped from the United States to the foreign buyer. A foreign buyer that is not physically located in the country or region of destination but has an agent or other entity in the country or region of destination to act on the foreign buyer's behalf does not satisfy the criteria of this definition.

(z) *Intervening purchaser.* A party that is not located in the country or region of destination specified in the payment guarantee and that enters into a firm export sales contract to purchase U.S. agricultural commodities from an exporter and sell the same agricultural commodities to an importer.

(aa) *Letter of credit account party.* An entity on whose behalf a foreign financial institution letter of credit is opened in favor of the exporter.

(bb) *Notice to participants.* A notice issued by CCC on the FAS Web site to remind participants of the requirements of the program or to clarify the program requirements contained in these regulations in a manner not inconsistent with this subpart.

(cc) *OFAC.* The Office of Foreign Assets Control of the U.S. Department of Treasury, which administers and enforces economic sanctions programs primarily against countries and groups of individuals such as terrorists and narcotics traffickers. OFAC's Specially Designated National's list can be found at *http://www.ustreas.gov/offices/enforcement/ofac/sdn/index.shtml.*

(dd) *Ordinary interest.* Interest charged on the principal amount identified in the foreign financial institution's letter of credit or related obligation, other than post default interest.

(ee) *Payment guarantee.* An agreement under which CCC, in consideration of a fee paid, and in reliance upon the statements and declarations of the exporter, subject to the terms set forth in the written guarantee, this subpart, and any applicable Program Announcements, agrees to pay the exporter or the exporter's assignee in the event of a default by a foreign financial institution on its payment obligation under the foreign financial institution letter of credit issued in connection with a guaranteed sale or under the foreign financial institution's related obligation.

(ff) *Port value.* (1) Where CCC announces coverage on a FAS or FOB basis and:

(i) Where the commodity is sold on a FAS or FOB basis, U.S. point of export, the value, FAS or FOB basis, U.S. point of export, of the export sale, including the upward loading tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with such sale; or

(ii) Where the commodity was sold on a CFR or CIF basis, point of entry, the value of the export sale, FAS or FOB, point of export, including the upward loading tolerance, if any, as provided by the export sales contract, is measured by the CFR or CIF value of the agricultural commodity less the value of ocean freight and, in the case of CIF sales, less the value of marine and war risk insurance, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity; or

(2) Where CCC announces coverage on a CFR or CIF basis and where the commodity was sold on CFR or CIF basis, point of entry, the total value of the export sale, CFR or CIF basis, point of entry, including the upward loading tolerance, if any, as provided by the export sales contract, reduced by the value of any discounts or allowances granted to the importer in connection with the sale of the commodity.

(3) When a CFR or CIF commodity export sale involves the performance of non-freight services to be performed outside the United States (*e.g.,* services such as bagging bulk cargo), which are not normally included in ocean freight contracts, the value of such services and any related materials not exported from the U.S. with the commodity must also be deducted from the CFR or CIF sales price in determining the port value.

(gg) *Post default interest.* Interest charged on amounts in default, as specified in the foreign financial institution letter of credit or related obligation that begins to accrue upon default of payment.

(hh) *Principal.* An officer, director, owner of five percent or more of stock, partner, or person having primary management or supervisory responsibility within a business entity (*e.g.,* general manager, plant manager, head of a subsidiary division, or business segment).

(ii) *Program announcement.* An announcement issued by CCC on the FAS Web site that provides information on specific country and regional programs and may identify eligible agricultural commodities and countries, length of credit periods which may be covered, and other information.

(jj) *Related obligation.* A contractual commitment by the foreign financial institution issuing the letter of credit in connection with an export sale to make payment(s) on principal amount(s), plus any ordinary and post-default interest, in U.S. dollars, to an exporter or U.S. financial institution on deferred payment terms consistent with those permitted under CCC's payment guarantee. The U.S. financial institution (or exporter) is entitled to such payments because it has financed the obligation arising under such letter of credit.

(kk) *Repurchase agreement.* A written agreement under which the holder of CCC's payment guarantee, either the exporter or exporter's assignee,

whichever is applicable, may from time to time enter into transactions in which the exporter or exporter's assignee agrees to sell to another party foreign financial institution letter(s) of credit and/or related obligation(s) secured by CCC's payment guarantee, and repurchase the same foreign financial institution letter(s) of credit and/or related obligation(s) secured by CCC's payment guarantee, on demand or date certain at an agreed upon price.

(ll) *United States or U.S.* Each of the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(mm) *U.S. agricultural commodity.* (1)(i) An agricultural commodity or product entirely produced in the United States; or

(ii) A product of an agricultural commodity—

(A) 90 percent or more of the agricultural components of which by weight, excluding packaging and added water, is entirely produced in the United States; and

(B) That the Secretary determines to be a high value agricultural product.

(2) For purposes of this definition, fish entirely produced in the United States include fish harvested by a documented fishing vessel as defined in title 46, United States Code, in waters that are not waters (including the territorial sea) of a foreign country.

(nn) *USDA.* United States Department of Agriculture.

(oo) *U.S. financial institution.* A financial institution:

(1) Organized under the laws of a jurisdiction within the United States;

(2) Domiciled in the United States; and

(3) Subject to the banking or other financial regulatory authority jurisdiction within the United States.

§ 1493.30 Information required for exporter participation.

Before CCC will accept an application for a payment guarantee under the GSM–102 program, the applicant must qualify for participation in this program.

(a) *Qualification requirements.* To qualify for participation in the GSM–102 program, an applicant must submit the following information to CCC in the manner specified on the FAS Web site:

(1) For the applicant:

(i) The name and full U.S. address (including the full 9-digit zip code) of the applicant's office, along with an indication of whether the address is a business or private residence. A post office box is not an acceptable address. If the applicant has multiple offices, the address included in the information should be that which is pertinent to the GSM–102 export sales contemplated by the applicant;

(ii) Dun and Bradstreet (DUNS) number;

(iii) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(iv) Telephone and fax numbers;

(v) E-mail address (if applicable);

(vi) Business Web site (if applicable);

(vii) Contact name;

(viii) Statement indicating whether the applicant is a U.S. domestic entity or a foreign entity domiciled in the United States; and

(ix) The legal form of doing business of the applicant, *e.g.,* sole proprietorship, partnership, corporation, etc. and the place of incorporation or State where legally registered or, if not registered, the address of legal residence. Upon request by CCC, the applicant must provide documentation showing its registration or licensing in the State where incorporated or established as a business entity.

(2) For the applicant's headquarters office:

(i) The name and full address of the applicant's headquarters office. A post office box is not an acceptable address;

(ii) Telephone and fax numbers.

(3) For the applicant's agent for the service of process:

(i) The name and full U.S. address of the applicant's agent's office, along with an indication of whether the address is a business or private residence;

(ii) Telephone and fax numbers;

(iii) E-mail address (if applicable); and

(iv) Contact name.

(4) A description of the applicant's business. Applicants must provide the following information:

(i) Nature of the applicant's business (*i.e.,* agricultural producer, commodity trader, consulting firm, etc.);

(ii) Explanation of the applicant's experience/history with agricultural commodities or products for the preceding three years, including description of commodities;

(iii) Explanation of the applicant's experience/history exporting U.S. agricultural commodities, including number of years involved in exporting, types of products exported, and destination of exports for the preceding three years;

(iv) Whether or not the applicant is a ''small or medium enterprise'' (SME) as defined on the FAS Web site;

(5) A listing of any related companies (*e.g.,* affiliates, subsidiaries, or companies otherwise related through common ownership) currently qualified to participate in CCC export programs;

(6) A statement describing the applicant's participation, if any, during the past three years in U.S. Government programs, contracts or agreements; and

(7) A statement that: ''All section 1493.60(a) certifications are being made in this application'' which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60(a). The applicant will be required to provide further explanation or documentation if not in compliance with these requirements or if the application does not include this statement.

(b) *Qualification notification.* CCC will promptly notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any exporter not submitting an application for a GSM–102 payment guarantee for two consecutive fiscal years must resubmit a qualification application to CCC. If at any time the information required by paragraph (a) of this section changes, the exporter must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) has not changed.

(d) *Ineligibility for program participation.* An applicant may be ineligible to participate in the GSM–102 program at time of application or any time thereafter if such applicant cannot provide all of the information and certifications required in § 1493.30(a).

§ 1493.40 Information required for U.S. financial institution participation.

Before CCC will permit a U.S. financial institution to participate under the GSM–102 program, the U.S. financial institution must qualify for participation in this program.

(a) *Qualification requirements.* In order to qualify for participation in the GSM–102 program, a U.S. financial institution must submit the following information to CCC in the manner specified on the FAS Web site:

(1) Legal name and address of the applicant;

(2) Dun and Bradstreet (DUNS) number;

(3) Employer Identification Number (EIN—also known as a Federal Tax Identification Number);

(4) Year end audited financial statements for the applicant's most recent fiscal year; and

(5) Breakdown of the U.S. financial institution's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(6) Organizational structure (independent, or a subsidiary, affiliate, or branch of another financial institution);

(7) Documentation from the applicable United States Federal or State agency demonstrating that the applicant is either licensed or chartered to do business in the United States;

(8) Name of the agency that regulates the applicant and the name and telephone number of the primary contact for such regulator; and

(9) A statement that: ''All § 1493.60 certifications are being made in this application'' which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60. The U.S. financial institution will be required to provide further explanation or documentation with regard to applications that do not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Previous qualification.* Any U.S. financial institution not participating in the GSM–102 program for two consecutive fiscal years must resubmit the information and certifications requested by paragraph (a) of this section to CCC. If at any time the information required by paragraph (a) of this section changes, the U.S. financial institution must promptly notify CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) has not changed.

(d) *Ineligibility for program participation.* A U.S. financial institution may be ineligible to participate in the GSM–102 program at time of application or any time thereafter if such applicant cannot provide all of the information and certifications required in 1493.40(a).

§ 1493.50 Information required for foreign financial institution participation.

Before CCC will permit a foreign financial institution to participate under the GSM–102 program, the foreign financial institution must qualify for participation in this program.

(a) *Qualification requirements.* In order to qualify for participation in the GSM–102 program, a foreign financial institution must submit the following information to CCC in the manner specified on the FAS Web site:

(1) Legal name and address of the applicant;

(2) Year end, audited financial statements for the applicant's three most recent fiscal years;

(3) Breakdown of applicant's ownership as follows:

(i) Ten largest individual shareholders and ownership percentages;

(ii) Percentage of government ownership, if any; and

(iii) Identity of the legal entity or person with ultimate control or decision making authority, if other than the majority shareholder.

(4) Organizational structure (independent, or a subsidiary, affiliate, or branch of another legal entity);

(5) Name of foreign government agency that regulates the applicant; and

(6) A statement that: ''All § 1493.60 certifications are being made in this application'' which, when included in the application, will constitute a certification that the applicant is in compliance with all of the requirements set forth in § 1493.60. The foreign financial institution will be required to provide further explanation or documentation with regard to applications that do not include this statement.

(b) *Qualification notification.* CCC will notify applicants that have submitted information required by this section whether they have qualified to participate in the program or whether further information is required by CCC. Any applicant failing to qualify will be given an opportunity to provide additional information for consideration by the Director.

(c) *Participation limit.* If, after review of the information submitted and other publicly available information, CCC determines that the foreign financial institution is eligible for participation, CCC will establish a dollar participation limit for the institution. This limit will be the maximum amount of exposure CCC agrees to undertake with respect to this foreign financial institution at any point in time. CCC may change or cancel this dollar participation limit at any time based on any information submitted or any publicly available information.

(d) *Previous qualification and submission of annual financial statements.* Each qualified foreign financial institution shall submit annually to CCC its audited fiscal year-end financial statements so that CCC may determine the continued ability of the foreign financial institution to adequately service CCC guaranteed debt. Failure to submit this information annually may cause CCC to decrease or cancel the foreign financial institution's dollar participation limit. Additionally, if at any time the information required by paragraph (a) of this section changes, the foreign financial institution must promptly contact CCC to update this information and certify that the remainder of the information previously provided under paragraph (a) has not changed.

(e) *Ineligibility for program participation.* A foreign financial institution may be ineligible to participate in the GSM–102 program at time of application or any time thereafter if:

(1) Such applicant cannot provide all of the information and certifications required in § 1493.50(a); or

(2) Based upon information submitted by the applicant or other publicly available sources, CCC determines that the applicant cannot adequately service the debt associated with the payment guarantees issued by CCC.

§ 1493.60 Certifications required for program participation.

(a) When making the statement required by §§ 1493.30(a)(7), 1493.40(a)(9), or 1493.50(a)(6), each exporter, U.S. financial institution and foreign financial institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and any of its principals or affiliates are not presently debarred, suspended, proposed for debarment, declared ineligible, or excluded from covered transactions by any U.S. Federal department or agency;

(2) The applicant and any of its principals or affiliates have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records,

making false statements, or receiving stolen property;

(3) The applicant and any of its principals or affiliates are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this section;

(4) The applicant and any of its principals or affiliates have not within a three-year period preceding this application had one or more public transactions (Federal, State or local) terminated for cause or default;

(5) The applicant does not have any outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13;

(6) The applicant is not controlled by a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (*e.g.,* a corporation is not controlled by an officer, director, or shareholder who owes a debt); and

(7) The applicant does not control a person owing an outstanding nontax debt to the United States that is in delinquent status as provided in 31 CFR 285.13 (*e.g.,* a corporation does not control a wholly-owned or partially-owned subsidiary which owes a debt).

(b) *Additional certifications for U.S. and foreign financial institution applicants.* When making the statement required by § 1493.40(a)(9) or § 1493.50(a)(6), each U.S. and foreign financial institution applicant for program participation is certifying that, to the best of its knowledge and belief:

(1) The applicant and any of its principals are in compliance with all requirements, restrictions and guidelines as established by the applicant's regulators; and

(2) All U.S. operations of the applicant and any of its U.S. principals are in compliance with U.S. anti-money laundering and terrorist financing statutes including, but not limited to, the USA Patriot Act of 2001.

§ 1493.70 Application for payment guarantee.

(a) A firm export sales contract must exist before an exporter may submit an application for a payment guarantee. Upon request by CCC, the exporter must provide evidence of a firm export sales contract. An application for a payment guarantee must be submitted in writing to CCC in the manner specified on the FAS Web site. An application must identify the name and address of the exporter and include the following information:

(1) Name of the destination country or region.

(2) Name and address of the importer.

(3) Name and address of the letter of credit account party, if other than the importer.

(4) Name and address of the intervening purchaser, if any, and a statement that the commodity will be shipped directly to the importer in the destination country or region.

(5) Date of sale.

(6) Exporter's sale number.

(7) Delivery period as agreed between the exporter and the importer.

(8) A full description of the commodity (including packaging, if any).

(9) Mean quantity, contract loading tolerance and, if necessary, a request for CCC to reserve coverage up to the maximum quantity permitted.

(10) Unit sales price of the commodity, or a mechanism to establish the price, as agreed between the exporter and the importer. If the commodity was sold on the basis of CFR or CIF, the actual (if known at the time of application) or estimated value of freight and, in the case of sales made on a CIF basis, the actual (if known at the time of application) or estimated value of marine and war risk insurance, must be specified.

(11) Description and value of discounts and allowances, if any.

(12) Port value (includes upward loading tolerance, if any).

(13) Guaranteed value.

(14) Guarantee fee, either as announced on the Web site per § 1493.110(a)(1), or the competitive fee bid per § 1493.110(a)(2), depending on the type of fee charged by CCC for the country or region.

(15) Name and location of the foreign financial institution issuing the letter of credit and, upon request by CCC, written evidence that the foreign financial institution has agreed to issue the letter of credit.

(16) The term length for the credit being extended and the intervals between principal payments for each shipment to be made under the export sale.

(17) A statement indicating whether any portion of the export sale for which the exporter is applying for a payment guarantee is also being used as the basis for an application for participation in USDA's Dairy Export Incentive Program (DEIP). The number of the Agreement assigned by USDA under the DEIP should be included, as applicable.

(18) The exporter's statement, ''ALL § 1493.80 CERTIFICATIONS ARE BEING MADE IN THIS APPLICATION'' which, when included in the application by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.80.

(b) An application for a payment guarantee may be approved as submitted, approved with modifications agreed to by the exporter, or rejected by the Director. In the event that the application is approved, the Director will cause a payment guarantee to be issued in favor of the exporter. Such payment guarantee will become effective at the time specified in § 1493.100(b). If, based upon a price review, the unit sales price of the commodity does not fall within the prevailing commercial market level ranges, as determined by CCC, the application will not be approved.

§ 1493.80 Certification requirements for obtaining payment guarantee.

By providing the statement in § 1493.70(a)(18), the exporter is certifying that the information provided in the application is true and correct and, further, that all requirements set forth in this section have been met. The exporter will be required to provide further explanation or documentation with regard to applications that do not include this statement. If the exporter makes false certifications with respect to a GSM–102 payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to revoke guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting an application for a payment guarantee and providing the statement set forth in § 1493.70(a)(18), certifies that:

(a) The agricultural commodity or product covered by the payment guarantee is a U.S. agricultural commodity;

(b) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(c) If the agricultural commodity is vegetable oil or a vegetable oil product, that none of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product;

(d) At the time of submission of the application for payment guarantee, the importer and the intervening purchaser, if applicable, are not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists; and

(e) The information provided pursuant to § 1493.30 has not changed and the exporter still meets all of the qualification requirements of § 1493.30.

§ 1493.90 Terms and requirements of the foreign financial institution letter of credit and related obligation.

(a) *Foreign financial institution letter of credit.* (1) The foreign financial institution letter of credit must contain the following language: ''Issuer acknowledges that issuer has arranged funding for the purpose of financing the trade transaction covered by this Letter of Credit. Issuer confirms the underlying transaction is a bona fide trade transaction and, consequently, this Letter of Credit will be booked by issuer as trade finance debt.''

(2) The foreign financial institution letter of credit or related obligation must also contain a provision permitting the exporter and the exporter's assignee, if any, to declare all or any part of the debt, including accrued interest, immediately due and payable, in the event a payment default occurs under the obligation to which the payment guarantee(s) applies.

(3) The commodity grade and quality specified in the foreign financial institution letter of credit must be consistent with the commodity grade and quality specified in the firm export sales contract.

(b) *Related obligation.* The related obligation must be demonstrated in one of the following ways:

(1) The related obligation, including a specific promise to pay on deferred payment terms, may be contained in the letter of credit as a special instruction from the issuing financial institution directly to the U.S. financial institution to refinance the amounts paid by the U.S. financial institution for obligations financed according to the tenor of the letter of credit; or

(2) The related obligation may be memorialized in a separate document(s) specifically identified and referred to in the letter of credit as the agreement under which the foreign financial institution is obliged to repay the exporter or U.S. financial institution on deferred payment terms; or

(3) The foreign financial institution letter of credit payment obligations may be specifically identified in a separate document(s) setting forth the related obligation, or in a duly executed amendment thereto, as having been financed by the U.S. financial institution pursuant to, and subject to repayment in accordance with the terms of, such related obligation; or

(4) The related obligation may be memorialized in the form of a promissory note executed by the foreign financial institution issuing the foreign financial institution letter of credit in favor of the U.S. financial institution.

§ 1493.100 Terms and requirements of the payment guarantee.

(a) *CCC's obligation.* The payment guarantee will provide that CCC agrees to pay the exporter or the exporter's assignee an amount not to exceed the guaranteed value, plus eligible interest, in the event that the foreign financial institution fails to pay under the foreign financial institution letter of credit or the related obligation. Payment by CCC will be in U.S. dollars.

(b) *Period of guarantee coverage.* The payment guarantee becomes effective on the date(s) of export(s) of the agricultural commodities or products thereof specified in the exporter's application for a payment guarantee. The payment guarantee will apply to the period beginning with the date(s) of export(s) and will continue during the credit term specified in the payment guarantee or amendments thereto.

(c) *Terms of the CCC payment guarantee.* The terms of CCC's coverage will be set forth in the payment guarantee, as approved by CCC, and will include the provisions of this subpart, which may be supplemented by any Program Announcements and Notices to Participants in effect at the time the payment guarantee is approved by CCC.

(d) *Reserve coverage for loading tolerances.* The exporter may apply for a payment guarantee and, if coverage is available, pay the guarantee fee, based at least on, the amount of the lower loading tolerance of the export sales contract; however, the exporter may also request that CCC reserve additional guarantee coverage to accommodate up to the amount of the upward loading tolerance specified in the export sales contract. The amount of coverage that can be reserved to accommodate the upward loading tolerance is limited to five (5) percent of the port value of the sale. If such additional guarantee coverage is available at the time of application and the Director determines to make such reservation, CCC will so indicate to the exporter. In the event that the exporter ships a quantity greater than the amount on which the guarantee fee was paid (*i.e.,* lower loading tolerance), it may obtain the additional coverage from CCC, up to the amount of the upward loading tolerance, by filing for an application for amendment to the payment guarantee, and by paying the additional amount of fee applicable. If such application for an amendment to the payment guarantee is not filed with CCC by the exporter or the additional fee not received by CCC within 15 calendar days after the date of the last export against the sales contract, CCC will cancel the reserve coverage originally set aside for the exporter.

(e) *Prohibited transactions.* An export transaction is ineligible for GSM–102 coverage if at any time it is determined that:

(1) The commodity is not a U.S. agricultural commodity; or

(2) The export sale includes corrupt payments or extra sales or services or other items extraneous to the transactions provided, financed, or guaranteed in connection with the transaction; or

(3) The export sale does not comply with applicable U.S. law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures; or

(4) If the agricultural commodity is vegetable oil or a vegetable oil product, any of the agricultural commodity or product has been or will be used as a basis for a claim of a refund, as drawback, pursuant to section 313 of the Tariff Act of 1930, 19 U.S.C. 1313, of any duty, tax or fee imposed under Federal law on an imported commodity or product; or

(5) Either the importer or the intervening purchaser, if applicable, is excluded or disqualified from participation in U.S. government programs; or

(6) The export transaction has been guaranteed by CCC under another payment guarantee.

(f) *Ineligible exports.* The following exports are ineligible for GSM–102 guarantee coverage except where it is determined by the Director to be in the best interest of CCC to provide guarantee coverage on such commodities:

(1) Commodities with a date of export prior to the date of receipt by CCC of the exporter's written application for a payment guarantee;

(2) Commodities with a date of export made after the final date to export shown on the payment guarantee or any amendments thereof; or

(3) Commodities where the date of issuance of a foreign financial institution letter of credit is more than 30 calendar days after the date of export.

(g) *Additional requirements.* The payment guarantee may contain such additional terms, conditions, and

limitations as deemed necessary or desirable by the Director. Such additional terms, conditions or qualifications as stated in the payment guarantee are binding on the exporter or the exporter's assignee.

(h) *Amendments.* A request for an amendment of a payment guarantee may be submitted only by the exporter, with the written concurrence of the assignee, if any. The Director will consider such a request only if the amendment sought is consistent with this subpart and any applicable Program Announcements and sufficient budget authority exists. Any amendment to the payment guarantee, particularly those that result in an increase in CCC's liability under the payment guarantee, may result in an increase in the guarantee fee. CCC reserves the right to request additional information from the exporter to justify the request and to charge a fee for amendment requests. Such fees will be announced and available on the FAS Web site. Any amendment to the foreign financial institution will require that the exporter or the exporter's assignee, if applicable, resubmit to CCC the certifications in § 1493.120(c)(1) or § 1493.140(c).

§ 1493.110 Guarantee fees.

(a) *Guarantee fee rates.* Payment guarantee fee rates charged may be one of the following two types:

(1) Those that are announced on the FAS Web site and are based upon the length of the payment terms provided for in the export sale contract, the degree of risk that CCC assumes, as determined by CCC, and any other factors which CCC determines appropriate for consideration.

(2) Those where exporters are invited to submit a competitive bid for coverage. If CCC determines to offer coverage on a competitive fee bid basis, instructions for bidding, and minimum fee rates, if applicable, will be made available on the FAS Web site. Under a competitive bidding process, the final guarantee fee rate will be determined by CCC and will be advised to the exporter.

(b) *Calculation of fee.* The guarantee fee will be computed by multiplying the guaranteed value by the guarantee fee rate.

(c) *Payment of fee.* The exporter shall remit, with his application, the full amount of the guarantee fee. Applications will not be accepted until the guarantee fee has been received by CCC. The exporter's wire transfer or check for the guarantee fee shall be made payable to CCC and be submitted in the manner specified on the FAS Web site.

(d) *Refunds of fee.* Guarantee fees paid in connection with applications that are accepted by CCC will ordinarily not be refundable. Once CCC notifies an exporter of acceptance of an application, the fee for that application will not be refunded unless the Director determines that such refund will be in the best interest of CCC, even if the exporter withdraws the application prior to CCC's issuance of the payment guarantee. If CCC does not accept an application for a payment guarantee or accepts only part of the guarantee coverage requested, a full or pro rata refund of the fee will be made.

§ 1493.120 Assignment of the payment guarantee.

(a) *Requirements for assignment.* The exporter may assign the payment guarantee only to a U.S. financial institution approved for participation by CCC. The assignment must cover all amounts payable under the payment guarantee not already paid, may not be made to more than one party, and may not, unless approved in advance by CCC, be:

(1) Made to one party acting for two or more parties, or

(2) Subject to further assignment to another U.S. financial institution approved by CCC.

(b) *Submission of assignment.* A notice of assignment signed by the parties thereto must be filed by the assignee with CCC in the manner specified on the FAS Web site. The name and address of the assignee must be included on the written notice of assignment.

(c) *Required certifications.* (1) The U.S. financial institution must include the following certification on the notice of assignment: ''I certify, to the best of my knowledge and belief, that:

(i) [Name of assignee] has verified that the foreign financial institution, at the time of submission of the notice of assignment, is not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists; and

(ii) The information provided pursuant to § 1493.40 has not changed and [name of assignee] still meets all of the qualification requirements of § 1493.40.''

(2) If the assignee makes false certifications with respect to a GSM–102 payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to revoke the assignment and/or to proceed against the assignee.

(d) *Notice of eligibility to receive assignment.* In cases where a U.S. financial institution is determined to be ineligible to receive an assignment, in accordance with paragraph (e) of this section, CCC will provide notice thereof to the U.S. financial institution and to the exporter issued the payment guarantee.

(e) *Ineligibility of U.S. financial institutions to receive an assignment and proceeds.* A U.S. financial institution will be ineligible to receive an assignment of a payment guarantee or the proceeds payable under a payment guarantee approved by CCC if such U.S. financial institution:

(1) At the time of assignment of a payment guarantee, is not in compliance with all requirements of 1493.40(a); or

(2) Is the branch, agency, or subsidiary of the foreign financial institution issuing the letter of credit; or

(3) Is owned or controlled by an entity that owns or controls the foreign financial institution issuing the letter of credit; or

(4) Is the U.S. parent of the foreign financial institution issuing the letter of credit; or

(5) Is owned or controlled by the government of a foreign country and the payment guarantee has been issued in connection with export sales of agricultural commodities to importers located in such foreign country.

(f) *Repurchase agreements.* An exporter who holds a CCC payment guarantee or an assignee may enter into a repurchase agreement.

(1) The exporter or exporter's assignee in the repurchase agreement must comply with the following:

(i) Any repurchase under a repurchase agreement by the exporter or exporter's assignee must be for the entirety of outstanding balance under the GSM–102 related foreign financial institution letter of credit and/or related obligation;

(ii) In the event of default with respect to the obligation subject to a repurchase agreement, the exporter or exporter's assignee, as applicable, must immediately effect such repurchase;

(iii) The exporter or exporter's assignee must maintain full servicing of the foreign financial institution letter of credit and/or related obligation covered by the CCC payment guarantee at all times; and

(iv) The exporter or exporter's assignee must file all documentation required by § 1493.160 and 1493.170 in case of default by the foreign financial institution under the payment guarantee; and

(v) The exporter or exporter's assignee must include the following clause in the repurchase agreement: ''If during the

tenor of this repurchase agreement the foreign financial institution issuing the underlying letter of credit in the GSM–102 transaction fails to make payment pursuant to the terms of such letter of credit and/or related obligation, [Name of exporter or exporter's assignee, whichever is applicable] shall repurchase the same letter of credit and/or related obligation transferred to [name of other party to the repurchase agreement] under this repurchase agreement prior to filing a notice of default to the Commodity Credit Corporation, pursuant to 7 CFR part 1493.160.''

(2) An exporter who holds a CCC payment guarantee or an assignee shall, within five business days of execution of the repurchase agreement, notify CCC of the repurchase agreement in writing in the manner specified on the FAS Web site. Such notification must include the following information:

(i) Name and address of the other party to the repurchase agreement; and

(ii) A statement indicating whether the repurchase agreement is for a fixed tenor or if it is terminable upon demand. If fixed, provide the purchase date and repurchase date agreed to in the repurchase agreement. If terminable on demand, provide the purchase date only; and

(iii) The following written certification: ''[Name of exporter or assignee] has entered into a repurchase agreement that meets the provisions of 7 CFR 1493.120(f)(1) and, prior to entering into this agreement, verified that [name of other party to the repurchase agreement] is not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists.''

(3) Failure of the exporter or assignee to comply with any of the provisions of § 1493.120(f) will result in CCC annulling coverage on the foreign financial institution letter of credit and/or related obligation covered by the payment guarantee.

§ 1493.130 Evidence of export.

(a) *Report of export.* The exporter is required to provide CCC an evidence of export report for each shipment made under the payment guarantee. This report must include the following information:

(1) Payment guarantee number;

(2) Evidence of export report number (*e.g.,* Report 1, Report 2) reflecting the report's chronological order of submission under the particular payment guarantee;

(3) Date of export;

(4) Destination country. If the sale was registered under a regional program, indicate the specific country within the region to which the goods were shipped;

(5) Exporter's sale number;

(6) Exported value;

(7) Quantity;

(8) A full description of the commodity exported;

(9) Unit sales price received for the commodity exported and the basis (*e.g.,* FOB, CFR, CIF). Where the unit sales price at export differs from the unit sales price indicated in the exporter's application for a payment guarantee, the exporter is also required to submit a statement explaining the reason for the difference.

(10) Description and value of discounts and allowances, if any;

(11) Number of the Agreement assigned by USDA under the Dairy Export Incentive Program (DEIP) if any portion of the export sale was also approved for participation in the DEIP;

(12) The exporter's statement, ''ALL § 1493.140 CERTIFICATIONS ARE BEING MADE IN THIS EVIDENCE OF EXPORT'' which, when included in the evidence of export by the exporter, will constitute a certification that it is in compliance with all the requirements set forth in § 1493.140; and

(13) In addition to all of the above information, the final evidence of export report for the payment guarantee must include the following:

(i) The statement ''Exports under the payment guarantee have been completed.''

(ii) A statement summarizing the total quantity and value of the commodity exported under the payment guarantee (*i.e.,* the cumulative totals on all numbered evidence of export reports).

(b) *Time limit for submission of evidence of export.* (1) The exporter must provide a written report to the CCC in the manner specified on the FAS Web site within 10 calendar days from the date of export.

(2) If at any time the exporter determines that no shipments are to be made under a payment guarantee, the exporter is required to notify CCC in writing no later than the final date to export specified on the payment guarantee by furnishing the payment guarantee number and stating ''no exports will be made under the payment guarantee.''

(3) Requests for an extension of the time limit for submitting an evidence of export report must be submitted in writing by the exporter to the Director and must include an explanation of why the extension is needed. An extension of the time limit may be granted only if such extension is requested prior to the expiration of the time limit for filing and is determined by the Director to be in the best interests of CCC.

(c) *Failure to comply with time limits for submission.* CCC will not accept any new applications for payment guarantees from an exporter under § 1493.70 until the exporter is fully in compliance with the requirements of § 1493.130(b) for all existing payment guarantees issued to that exporter or has requested and been granted an extension per § 1493.130(b)(3).

(d) *Export sales reporting.* Exporters may have a mandatory reporting responsibility under Section 602 of the Agricultural Trade Act of 1978 (7 U.S.C. 5712), for exports of wheat and wheat flour, feed grains, oil seeds, cotton, beef, beef products and other agricultural commodities and products thereof.

§ 1493.140 Certification requirements for the evidence of export.

By providing the statement contained in § 1493.130(a)(12), the exporter is certifying that the information provided in the evidence of export report is true and correct and, further, that all requirements set forth in this section have been met. The exporter will be required to provide further explanation or documentation with regard to reports that do not include this statement. If the exporter makes false certifications with respect to a GSM–102 payment guarantee, CCC will have the right, in addition to any other rights provided under this subpart or otherwise as a matter of law, to annul guarantee coverage for any commodities not yet exported and/or to proceed against the exporter. The exporter, in submitting the evidence of export and providing the statement set forth in § 1493.130(a)(12), certifies that:

(a) The agricultural commodity or product exported under the payment guarantee is a U.S. agricultural commodity;

(b) There have not been any corrupt payments or extra sales services or other items extraneous to the transaction provided, financed, or guaranteed in connection with the transaction, and that the transaction complies with applicable United States law, including the Foreign Corrupt Practices Act of 1977 and other anti-bribery measures;

(c) If the exporter has not assigned the payment guarantee to a U.S. financial institution, the exporter has verified that the foreign financial institution, at the time of submission of the evidence of export report, is not excluded or disqualified from participation in U.S. government programs through either the EPLS or OFAC Specially Designated Nationals (SDN) lists; and

(d) The information provided pursuant to § 1493.30 and § 1493.70 has not changed (except as agreed to and amended by CCC) and the exporter still meets all of the qualification requirements of § 1493.30.

§ 1493.150 Proof of entry.

(a) *Diversion.* The diversion of commodities covered by a GSM–102 payment guarantee to a country or region other than that shown on the payment guarantee is prohibited, unless expressly authorized by the Director.

(b) *Records of proof of entry.* (1) Exporters must obtain and maintain records of an official or customary commercial nature that demonstrate the arrival of the agricultural commodities exported in connection with the GSM–102 program in the country or region that was the intended country or region of destination of such commodities. Records demonstrating proof of entry must be in English or be accompanied by a certified or other translation acceptable to CCC. Records acceptable to meet this requirement include an original certification of entry signed by a duly authorized customs or port official of the importing country, by an agent or representative of the vessel or shipline that delivered the agricultural commodity to the importing country, or by a private surveyor in the importing country, or other documentation deemed acceptable by the Director showing:

(i) That the agricultural commodity entered the importing country or region;

(ii) The identification of the export carrier;

(iii) The quantity of the agricultural commodity;

(iv) The kind, type, grade and/or class of the agricultural commodity; and

(v) The date(s) and place(s) of unloading of the agricultural commodity in the importing country or region.

(2) Where shipping documents (*e.g.,* bills of lading) clearly demonstrate that the agricultural commodities were shipped to the destination country or region, proof of entry verification may be provided by the importer.

§ 1493.160 Notice of default.

(a) *Notice of default.* If the foreign financial institution issuing the letter of credit fails to make payment pursuant to the terms of the foreign financial institution letter of credit or related obligation, the exporter or the exporter's assignee must submit a notice of default to CCC as soon as possible, but not later than 5 business days after the date that payment was due from the foreign financial institution (the due date). A notice of default must be submitted in writing to CCC in the manner specified on the FAS Web site and must include the following information:

(1) Payment guarantee number;

(2) Name of the country or region as shown on the payment guarantee;

(3) Name of the defaulting foreign financial institution;

(4) Payment due date;

(5) Total amount of the defaulted payment due, indicating separately the amounts for principal and ordinary interest, and including a copy of the repayment schedule with due dates, principal amounts and ordinary interest rates for each installment;

(6) Date of foreign financial institution's refusal to pay, if applicable;

(7) Reason for foreign financial institution's refusal to pay, if known, and copies of any correspondence with the foreign financial institution regarding the default.

(b) *Failure to comply with time limit for submission.* If the exporter or the exporter's assignee fails to notify CCC of a default within 5 business days, CCC may deny the claim for that default.

(c) *Impact of a default on other existing payment guarantees.* (1) If a foreign financial institution defaults under a CCC payment guarantee, upon receipt of notice by the exporter from CCC, CCC will immediately withdraw coverage of any shipments where:

(i) The foreign financial institution letter of credit has been or will be issued by the foreign financial institution in default, and

(ii) The date of export is to be later than the date of receipt of CCC's notification to the exporter.

(2) If CCC withdraws coverage for any such shipments, CCC will permit the exporter (with concurrence of the assignee, if any) to utilize another approved foreign financial institution for the balance of the transaction covered by the payment guarantee. If no alternate foreign financial institution can be found, CCC will cancel the portion of the payment guarantee corresponding to any unshipped amounts plus any shipped amounts with a date of export later than the date of the first default by the foreign financial institution and refund the guarantee fees corresponding to these amounts.

§ 1493.170 Claims for default.

(a*) Filing a claim.* A claim by the exporter or the exporter's assignee for a defaulted payment will not be paid if it is made later than 180 calendar days from the due date of the defaulted payment. A claim must be submitted in writing to CCC in the manner specified on the FAS Web site. The claim must include the following information and documents:

(1) Payment guarantee number;

(2) A certification that the scheduled payment has not been received;

(3) A certification of the total amount of the defaulted payment due, indicating separately the amounts for principal and ordinary interest, and including a copy of the repayment schedule with due dates, principal amounts and ordinary interest rates for each installment;

(4) A description of:

(i) Any payments from or on behalf of the defaulting party or otherwise related to the defaulted payment that were received by the exporter or the exporter's assignee prior to submission of the claim (excluding scheduled payments received under the letter of credit and/or related obligation prior to the initial default); and

(ii) Any security, insurance, or collateral arrangements, whether or not any payment has been realized from such security, insurance, or collateral arrangement as of the time of claim, from or on behalf of the defaulting party or otherwise related to the defaulted payment.

(5) A copy of each of the following documents, with a cover document containing a signed certification by the exporter or the exporter's assignee that all documents are true and correct copies:

(i)(A) the foreign financial institution letter of credit securing the export sale; and

(B) If applicable, the document(s) evidencing the related obligation owed by the foreign financial institution to the exporter or the exporter's assignee.

(ii) Depending upon the method of shipment, the negotiable ocean carrier or intermodal bill(s) of lading signed by the shipping company with the onboard ocean carrier date for each shipment, the airway bill, or, if shipped by rail or truck, the bill of lading and the entry certificate or similar document signed by an official of the importing country;

(iii) Proof of entry documentation as required by § 1493.150;

(iv)(A) the exporter's invoice showing, as applicable, the FAS, FOB, CFR or CIF values; or

(B) If there was an intervening purchaser, both the exporter's invoice to the intervening purchaser and the intervening purchaser's invoice to the importer;

(v) An instrument, in form and substance satisfactory to CCC, subrogating to CCC the respective rights of the exporter and the exporter's assignee, if applicable, to the amount of payment in default under the applicable

export sale. The instrument must reference the applicable foreign financial institution letter of credit and the related obligation, if applicable; and

(vi) A copy of the evidence of export report(s) previously submitted by the exporter to CCC pursuant to § 1493.130(a), or evidence that the report was submitted to CCC electronically.

(b) *Additional documents.* If a claim is denied by CCC, the exporter or exporter's assignee may provide further documentation to CCC to establish that the claim is in good order.

(c) *Subsequent claims for defaults on installments.* If the initial claim is found in good order, the exporter or an exporter's assignee need only provide all of the required claims documents with the initial claim relating to a covered transaction. For subsequent claims relating to failure of the foreign financial institution to make scheduled installments on the same export shipment, the exporter or the exporter's assignee need only submit to CCC a notice of such failure containing the information stated in paragraph (a)(1), (2), and (3) of this section; an instrument of subrogation as per paragraph (a)(5)(v) of this section, and including the date the original claim was filed with CCC.

(d) *Alternative satisfaction of payment guarantees.* CCC may establish procedures, terms and/or conditions for the satisfaction of CCC's obligations under a payment guarantee other than those provided for in this subpart if CCC determines that those alternative procedures, terms, and/or conditions are appropriate in rescheduling the debts arising out of any transaction covered by the payment guarantee and would not result in CCC paying more than the amount of CCC's obligation.

§ 1493.180 Payment for default.

(a) *Determination of CCC's liability.* Upon receipt in good order of the information and documents required under § 1493.170, CCC will determine whether or not a default has occurred for which CCC is liable under the applicable payment guarantee. Such determination shall include, but not be limited to, CCC's determination that all documentation conforms to the specific requirements contained in this subpart, and that all documents submitted for payment conform to the requirements of the letter of credit and/or related obligation. If CCC determines that it is liable to the exporter and/or the exporter's assignee, CCC will pay the exporter or the exporter's assignee in accordance with paragraphs (b) and (c) of this section.

(b) *Amount of CCC's liability.* CCC's maximum liability for any claims submitted with respect to any payment guarantee, not including any CCC late interest payments due in accordance with paragraph (c) of this section, will be limited to the lesser of:

(1) The guaranteed value as stated in the payment guarantee, plus eligible interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the exporter or the exporter's assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the exporter or the exporter's assignee); or

(2) The guaranteed percentage (as indicated in the payment guarantee) of the exported value indicated in the evidence of export, plus eligible interest, less any payments received or funds realized from insurance, security or collateral arrangements prior to claim by the exporter or the exporter's assignee from or on behalf of the defaulting party or otherwise related to the obligation in default (other than payments between CCC, the exporter or the exporter's assignee).

(c) *CCC late interest.* If CCC does not pay a claim within 15 business days of receiving the claim in good order, late interest will accrue in favor of the exporter or the exporter's assignee beginning with the sixteenth business day after the day of receipt of a complete and valid claim found by CCC to be in good order and continuing until and including the date that payment is made by CCC. CCC late interest will be paid on the guaranteed amount, as determined by paragraphs (b)(1) and (2) of this section, and will be calculated at a rate equal to the average investment rate of the most recent Treasury 91-day bill auction as announced by the Department of Treasury as of the due date. If there has been no 91-day auction within 90 calendar days of the date CCC late interest begins to accrue, CCC will apply an alternative rate in a manner to be described on the FAS Web site.

(d) *Accelerated payments.* CCC will pay claims only on amounts not paid as scheduled. CCC will not pay claims for amounts due under an accelerated payment clause in the export sales contract, the foreign financial institution's letter of credit, or any obligation owed by the foreign financial institution to the exporter and/or the exporter's assignee which is related to the foreign financial institution's letter of credit issued in favor of the exporter, unless it is determined to be in the best interests of CCC. Notwithstanding the foregoing, CCC at its option may declare up to the entire amount of the unpaid balance, plus accrued ordinary interest, in default, require the U.S. financial institution (or exporter) to invoke the acceleration provision in the foreign financial institution letter of credit, require submission of all claims documents specified in § 1493.170, and make payment to the exporter or the exporter's assignee in addition to such other claimed amount as may be due from CCC.

(e) *Action against the assignee.* Notwithstanding any other provision in this subpart to the contrary, with regard to commodities covered by a payment guarantee, CCC will not hold the assignee responsible or take any action or raise any defense against the assignee for any action, omission, or statement by the exporter of which the assignee has no knowledge, provided that:

(1) The exporter complies with the reporting requirements under § 1493.130 and § 1493.140, excluding post-export adjustments (*i.e.,* corrections to evidence of export reports); and

(2) The exporter or the exporter's assignee furnishes the statements and documents specified in § 1493.160 and § 1493.170.

§ 1493.190 Recovery of defaulted payments.

(a) *Notification.* Upon claim payment to the exporter or the exporter's assignee, CCC will notify the foreign financial institution of CCC's rights under the subrogation agreement to recover all monies in default.

(b) *Receipt of monies.* (1) In the event that monies related to the obligation in default are recovered by the exporter or the exporter's assignee from or on behalf of the defaulting party, the importer, or any source whatsoever (excluding payments between CCC, the exporter and the exporter's assignee), such monies shall be immediately paid to CCC. Any monies derived from insurance or through the liquidation of any security or collateral after the claim is filed with CCC shall be deemed recoveries that must be paid to CCC. If such monies are not received by CCC within 15 business days from the date of recovery by the exporter or the exporter's assignee, the exporter or the exporter's assignee will owe to CCC interest from the date of recovery to the date of receipt by CCC. This interest will be calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and will accrue from such date to the date of payment by the exporter

or the exporter's assignee to CCC. Such interest will be charged only on CCC's share of the recovery. If there has been no 91-day auction within 90 calendar days of the date interest begins to accrue, will apply an alternative rate in a manner to be described on the FAS Web site.

(2) If CCC recovers monies that should be applied to a payment guarantee for which a claim has been paid by CCC, CCC will pay the holder of the payment guarantee its pro rata share immediately, provided that the required information necessary for determining pro rata distribution has been furnished. If payment is not made by CCC within 15 business days from the date of recovery or 15 business days from receiving the required information for determining pro rata distribution, whichever is later, CCC will pay interest calculated at a rate equal to the latest average investment rate of the most recent Treasury 91-day bill auction, as announced by the Department of Treasury, in effect on the date of recovery and such interest will accrue from such date to the date of payment by CCC. The interest will apply only to the portion of the recovery payable to the holder of the payment guarantee.

(c) *Allocation of recoveries.* Recoveries made by CCC from the importer or the foreign financial institution, and recoveries received by CCC from the exporter, the exporter's assignee, or any source whatsoever that are related to the obligation in default will be allocated by CCC to the exporter or the exporter's assignee and to CCC on a pro rata basis determined by their respective interests in such recoveries. The respective interest of each party will be determined on a pro rata basis, based on the combined amount of principal and interest in default. Once CCC has paid out a particular claim under a GSM–102 payment guarantee, CCC pro rates any collections it receives and shares these collections proportionately with the holder of the guarantee until both CCC and the holder of the guarantee have been reimbursed in full.

(d) *Liabilities to CCC.* Notwithstanding any other terms of the payment guarantee, under the following circumstances the exporter or the exporter's assignee will be liable to CCC for any amounts paid by CCC under the payment guarantee:

(1) The exporter will be liable to CCC when and if it is determined by CCC that the exporter has engaged in fraud, or has been or is in material breach of any contractual obligation, certification or warranty made by the exporter for the purpose of obtaining the payment guarantee or for fulfilling obligations under GSM–102;

(2) The exporter's assignee will be liable to CCC when and if it is determined by CCC that the exporter's assignee has engaged in fraud or otherwise violated program requirements.

(e) *Good faith.* The willful violation by an exporter of the certifications in § 1493.80(b) and § 1493.140(b) or the failure of an exporter to comply with the provisions of § 1493.150 or § 1493.210(a) will not affect the validity of any payment guarantee with respect to an assignee which had no knowledge of such violation or failure to comply at the time such exporter applied for the payment guarantee or at the time of assignment of the payment guarantee.

(f) *Cooperation in recoveries.* Upon payment by CCC of a claim to the exporter or the exporter's assignee, the exporter or the exporter's assignee will cooperate with CCC to affect recoveries from the foreign financial institution and/or the importer. Cooperation may include, but is not limited to, submission of documents to the foreign financial institution (or its representative) to establish a claim; participation in discussions with CCC regarding the appropriate course of action with respect to a default; actions related to accelerated payments as specified in § 1493.180(d); and other actions that do not increase the obligation of the exporter or exporter's assignee under the payment guarantee.

§ 1493.192 Dispute resolution and appeals.

(a) *Dispute resolution.* (1) The Director and the exporter or the exporter's assignee will attempt to resolve any disputes, including any adverse determinations made by CCC, arising under the GSM–102 program, this subpart, the applicable Program Announcements and Notices to Participants, or the payment guarantee.

(2) The exporter or the exporter's assignee may seek reconsideration of a determination by the Director by submitting a letter requesting reconsideration to the Director within 30 calendar days of the date of the determination. For the purposes of this section, the date of a determination will be the date of the letter or other means of notification to the exporter or the exporter's assignee of the determination. The exporter or the exporter's assignee may include with the letter requesting reconsideration any additional information that it wishes the Director to consider in reviewing its request. The Director will respond to the request for reconsideration within 30 calendar days of the date on which the request or the final documentary evidence submitted by the exporter or the exporter's assignee is received by him or her, whichever is later, unless the Director extends the time permitted for response. If the exporter or the exporter's assignee fails to request reconsideration of a determination by the Director, then the determination of the Director is final.

(3) If the exporter or the exporter's assignee requested reconsideration of a determination by the Director pursuant to subparagraph (a)(2) of this section, and the Director upheld the original determination, then the exporter or the exporter's assignee may appeal the Director's final determination to the GSM in accordance with the procedures set forth in paragraph (b) of this section. If the exporter or the exporter's assignee fails to appeal the Director's final determination within 30 calendar days, as provided in section 1493.200(b)(1), then the Director's decision becomes the final determination of CCC.

(b) *Appeal procedures.* (1) An exporter or exporter's assignee that has exhausted the procedures set forth in paragraph (a) of this section may appeal to the GSM a determination of the Director. An appeal to the GSM must be in writing and filed with the office of the GSM no later than 30 calendar days following the date of the final determination by the Director. If the exporter or the exporter's assignee requests an administrative hearing in its appeal letter, it shall be entitled to a hearing before the GSM or the GSM's designee.

(2) If the exporter or the exporter's assignee does not request an administrative hearing, the exporter or the exporter's assignee must indicate in its appeal letter whether or not it will submit any additional written information or documentation for the GSM to consider in acting upon its appeal. This information or documentation must be submitted to the GSM within 30 calendar days of the date of the appeal letter to the GSM. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will endeavor to issue his or her written decision within 60 calendar days of the date on which the GSM receives the appeal or the date that final documentary evidence is submitted by the exporter or the exporter's assignee to the GSM, whichever is later.

(3) If the exporter or the exporter's assignee has requested an administrative hearing, the GSM will set a date and time for the hearing that is mutually convenient for the GSM and the exporter or the exporter's assignee. This date will ordinarily be within 60

calendar days of the date on which the GSM receives the request for a hearing. The hearing will be an informal procedure. The exporter or the exporter's assignee and/or its counsel may present any relevant testimony or documentary evidence to the GSM. A transcript of the hearing will not ordinarily be prepared unless the exporter or the exporter's assignee bears the costs involved in preparing the transcript, although the GSM may decide to have a transcript prepared at the expense of the Government. The GSM will make a decision regarding the appeal based upon the information contained in the administrative record. The GSM will endeavor to issue his or her written decision within 60 calendar days of the date of the hearing or the date of receipt of the transcript, if one is to be prepared, whichever is later.

(4) The decision of the GSM will be the final determination of CCC. The exporter or the exporter's assignee will be entitled to no further administrative appellate rights.

(c) *Failure to comply with determination.* If the exporter or the exporter's assignee has violated the terms of this subpart or the payment guarantee by failing to comply with a determination made under this section, and the exporter or the exporter's assignee has exhausted its rights under this section or has failed to exercise such rights, then CCC will have the right to take any measures available to CCC under applicable law.

(d) *Exporter's obligation to perform.* The exporter will continue to have an obligation to perform pursuant to the provisions of these regulations and the terms of the payment guarantee pending the conclusion of all procedures under this section.

§ 1493.195 Miscellaneous provisions.

(a) *Maintenance of records and access to premises.* For a period of five years after the date of expiration of the coverage of a payment guarantee, the exporter or the exporter's assignee, as applicable, must maintain and make available all records pertaining to sales and deliveries of and extension of credit for agricultural commodities exported in connection with a GSM–102 payment guarantee, including those records generated and maintained by agents, intervening purchasers, and related companies involved in special arrangements with the exporter. The Secretary of Agriculture and the Comptroller General of the United States, through their authorized representatives, must be given full and complete access to the premises of the exporter or the exporter's assignee, as applicable, during regular business hours from the effective date of the payment guarantee until the expiration of such five-year period to inspect, examine, audit, and make copies of the exporter's, exporter's assignee's, agent's, intervening purchaser's or related company's books, records and accounts concerning transactions relating to the payment guarantee, including, but not limited to, financial records and accounts pertaining to sales, inventory, processing, and administrative and incidental costs, both normal and unforeseen. During such period, the exporter or the exporter's assignee may be required to make available to the Secretary of Agriculture or the Comptroller General of the United States, through their authorized representatives, records that pertain to transactions conducted outside the program, if, in the opinion of the Director, such records would pertain directly to the review of transactions undertaken by the exporter in connection with the payment guarantee.

(b) *Responsibility of program participants.* It is the responsibility of all exporters, U.S. and foreign financial institutions to review, and fully acquaint themselves with, all regulations, Program Announcements, and Notices to Participants relating to the GSM–102 program, as applicable. All exporters, U.S. and foreign financial institutions participating in this program are hereby on notice that they will be bound by this subpart and any terms contained in the payment guarantee and in applicable Program Announcements.

(c) *Submission of documents by principal officers.* All required submissions, including certifications, applications, reports, or requests (*i.e.,* requests for amendments), by exporters or exporters' assignees under this subpart must be signed by a principal of the exporter or exporter's assignee or their authorized designee(s). In cases where the designee is acting on behalf of the principal, the signature must be accompanied by: wording indicating the delegation of authority or, in the alternative, by a certified copy of the delegation of authority; and the name and title of the authorized person or officer. Further, the exporter or exporter's assignee must ensure that all information/reports required under these regulations are submitted within the required time limits.

(d) *Officials not to benefit.* No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of the payment guarantee or to any benefit that may arise there from, but this provision shall not be construed to extend to the payment guarantee if made with a corporation for its general benefit.

(e) *OMB control number assigned pursuant to the Paperwork Reduction Act.* The information collection requirements contained in this part (7 CFR Part 1493) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0551–0004.

Dated: June 24, 2011.

Suzanne E. Heinen,

Acting Executive Vice President, Commodity Credit Corporation and Acting Administrator, Foreign Agricultural Service.

[FR Doc. 2011–18403 Filed 7–26–11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 319 and 381

[Docket No. FSIS–2010–0012]

RIN 0583–AD41

Common or Usual Name for Raw Meat and Poultry Products Containing Added Solutions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its regulations to establish a common or usual name for raw meat and poultry products that do not meet standard of identity regulations and to which solutions have been added. Products with added solutions are sometimes referred to as ''enhanced products.'' The Agency is proposing that the common or usual name for such products include an accurate description of the raw meat or poultry component, the percentage of added solution incorporated into the raw meat or poultry product, and the individual ingredients or multi-ingredient components in the solution listed in the descending order of predominance by weight. FSIS is also proposing that the print for all words in the common or usual name appear in a single font size, color, and style of print and that the name appear on a single-color contrasting background. In addition, the Agency is proposing to remove the standard of identity regulation for ''ready-to-cook poultry products to which solutions are added.''

DATES: Submit comments by September 26, 2011.

ADDRESSES: FSIS invites interested persons to submit relevant comments on the implementation of this proposed rule. Comments may be submitted by either of the following methods:

- Federal eRulemaking Portal: This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the online instructions at that site for submitting comments.
- Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705–5273.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0012. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Division, Office of Policy and Program Development, FSIS, USDA, (301) 504–0879.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601–695) and Poultry Products Inspection Act (PPIA) (21 U.S.C. 451–470) (''the Acts'') provide that the labels of meat and poultry products must be approved by the Secretary of Agriculture, who has delegated this authority to FSIS, before these products can enter commerce. The Acts also prohibit the distribution in commerce of meat or poultry products that are adulterated or misbranded.

Under the Acts, a meat or poultry product is misbranded, among other circumstances, if its labeling is false or misleading in any particular or it is offered for sale under the name of another food (21 U.S.C. 601(n)(1), 453(h)(1), 601(n)(2), and 453(h)(2)). A meat or poultry product that is not subject to a standard of identity (9 CFR Part 319 and Part 381 Subpart P) is also misbranded ''* * * unless its label bears the common or usual name of the food, if any there be * * *'' (21 U.S.C. 601(n)(9)(A) and 453(n)(9)(A)). The FMIA and PPIA give FSIS broad authority to promulgate such rules and regulations as are necessary to carry out the provisions of the Acts (21 U.S.C. 621 and 463(b)).

To prevent meat and poultry products from being misbranded, the meat and poultry products inspection regulations require that the labels of meat and poultry products contain specific information and that such information be displayed as prescribed in the regulations (9 CFR part 317 and 381 subpart N). Under the regulations, the principal display panel on the label of a meat product and the label of a poultry product must, among other information, show the name of the product. For products that purport to be or are represented by a regulatory standard of identity, the name of the product on the label must be the name of the food specified in the standard. For any other product, the name on the label must be ''the common or usual name of the food, if any there be.'' If there is no common or usual name, the name on the label must be a ''truthful, descriptive designation'' (9 CFR 317.2(c)(1) and 381.117).

FSIS poultry products regulations (9 CFR 381.169) provide that solutions may be added to ready-to-cook, bone-in poultry carcasses and parts, increasing the weight by approximately 3 percent over the weight of the raw product after chilling and washing. Poultry products with solutions that have been added in accordance with this regulation must be labeled with a conspicuous, legible, and descriptive name, including terms that concisely describe the method of addition and function of the added material. The regulation requires that all major terms in the product name be printed with the same prominence, except that the words that describe the function of the added materials (such as ''injected for Flavored Basting'') may be more prominent. A qualifying statement that identifies the percentage of added solution must be printed at least one-fourth the size of the most prominent letter in the product name. The ingredients in the solution must be identified in the qualifying statement and must be displayed with a minimum size requirement of one-eighth the size of the most prominent letter in the product name. In addition, 9 CFR 381.169 contains labeling compliance quality control criteria that must be approved by the Administrator.

Since 9 CFR 381.169 was codified on May 16, 1972 (37 FR 9706), and subsequently amended on October 7, 1974 (39 FR 36000), several changes have taken place that have diminished the relevance of 9 CFR 381.169 in preventing the labels of poultry that contain added solutions from being false or misleading. Poultry processors have developed technologies, such as using injectors to inject solutions deep into the muscle tissue, that incorporate more than 3 percent solution into products. While the practice of adding liquid solution was initially used to flavor the raw poultry product without significantly increasing the product's net weight, the addition of the increased levels of solution has resulted in increasing the total weight of the finished product. Also, with the May 30, 2000, publication of the Elimination of Requirements for Partial Quality Control Programs Final Rule (65 FR 34381), the quality control criteria used to monitor the percent added solution per 9 CFR 381.169(c) are no longer in effect.

To provide labeling guidance for ready-to-cook, bone-in poultry products with solutions above 3 percent and for boneless poultry products with any amount of added solution, neither of which are covered under 9 CFR 381.169, the Agency issued Policy Memo 042, Raw Bone-In Poultry Products Containing Solutions (February 1982) and Policy Memo 044A, Raw Boneless Poultry Containing Solutions (September 1986). FSIS also issued Policy Memo 066C, Uncooked Red Meat Products Containing Added Substances (November 2004) to provide similar guidance for the labeling of ''enhanced'' uncured meat products. The Policy Memos are available on the FSIS Web site at *http://www.fsis.usda.gov/OPPDE/larc/Policies/Policy_Memos_082005.pdf.*

The intent of labeling guidance provided in the policy memoranda was to provide guidance to industry to develop truthful, easy-to-read labeling information concerning the solutions added to products so that consumers could make informed purchasing decisions. However, it has come to the Agency's attention, through the petitions discussed below, comments submitted by the public, and FSIS review of labels, that some product labels may not clearly and conspicuously identify that the raw meat or poultry products contain added solution.

Under FSIS's current regulatory approach, raw products that contain added solution and products that do not contain added solution may have the same product name. For example, the name for a single-ingredient chicken breast and a chicken breast with added solution is ''chicken breast,'' even though one is 100 percent chicken

breast and one may be 60 percent chicken breast and 40 percent solution. Although the labeling of the product must include a qualifying statement that reflects the fact that the product contains added solution, this may not be readily apparent to consumers because the statement is not part of the product name. For example, through label review, FSIS has found that it is common for product labels to contain product names in bold fonts with strong contrasting backgrounds, with the qualifying statement on added solution printed in tall, narrow, or slanted fonts at the smallest height permitted, and on background of poor color contrast. While such labeling may be consistent with existing Agency guidance, it may not clearly identify to consumers that the products contain added solutions.

Petitions and Public Comments Related to Products That Contain Added Solution

Since 2007, FSIS has received two petitions related to products that contain added solution. In July 2007, the Truthful Labeling Coalition (TLC) submitted a petition to the Agency requesting that it ''prevent the ongoing marketing of so-called 'enhanced' (added solution) fresh poultry products in all situations where ingredients added to such products are not being adequately labeled to prevent the consuming public from being misled.''

Included in the TLC petition were two consumer research studies.[1] [2] Though these studies are not generalizable, they provide anecdotal evidence that consumers read and use labels, and that users of ''enhanced'' chicken are not aware that it contains additives until specifically directed to look at the label. According to the Sorenson study, even after looking at the label of an ''enhanced'' chicken product, about 20% participants in the study that purchase the chicken failed to realize that the chicken contains additives.'' In addition, almost one-third of these participants indicated that they ''care a lot that their chicken contains additives,'' and after being informed about the additives, these participants said they probably or definitely would not buy it again. Participants in the study were also presented with the following label descriptions that communicated additive ingredients in chicken: ''Contains up to 15% water, salt, and sodium phosphate,'' ''Enhanced with up to 15% solution of water, salt, and sodium phosphates,'' ''Contains up to 15% chicken broth,'' and ''Enhanced with up to fifteen percent chicken broth.'' Respondents considered the wording ''Contains up to 15% water, salt, and sodium phosphates'' as most accurately communicating additive ingredients in chickens.

The TLC petition also pointed out health concerns associated with the addition of salt to these products. TLC submitted a comparison of the sodium content in 4 ounces of a single ingredient, raw poultry product (45 mg sodium) to 4 ounces of a poultry product with added solution (370 mg sodium), more than an eightfold increase in the amount of sodium. TLC argued that many consumers do not realize that there may be a significant difference in sodium content between a single-ingredient, raw product and a similar-looking product with added solution.

In March 2009, the California Agricultural Commissioners and Sealers Association submitted a petition to revoke FSIS's September 9, 2008, Final Rule, ''Determining Net Weight Compliance for Meat and Poultry Products'' (73 FR 52189), which eliminated wet tare provisions for determining the net weight of packaged meat and poultry products. The petition suggested that meat and poultry products with added solution were misleading to the consumer because added liquids represent a high percentage of product weight. The petition stated that in 2006, California Weights and Measures officials conducted a study that indicated that, in California alone, consumers spent an estimated $246 million on solutions added to ready-to-cook poultry. The petition further stated that, assuming California has approximately 12% of the U.S. market share, the nationwide impact is projected at a cost of $2 billion annually for just the added solution.

In addition, after FSIS held a public meeting on December 12, 2006, to solicit public input on ''natural'' claims, the Agency received more than 12,000 comments from a write-in campaign sponsored by TLC that objected to the use of ''natural'' claims in the labeling of poultry product with added solutions (71 FR 70503). The Agency received similar comments in response to its September 14, 2009, Advance Notice of Proposed Rulemaking, ''Product Labeling: Use of the Voluntary Claim 'Natural' in the Labeling of Meat and Poultry Products'' (74 FR 46951). Although the current proposed rule does not address ''natural'' claims in product labeling, we note that almost all of the comments submitted as part of the TLC write-in campaign also requested that FSIS require poultry products with added solution to bear a prominent label that clearly reflects the products' true composition. This proposed rule addresses the labeling of products that contain added solution and does not affect FSIS's ''natural'' claims policy. The Agency intends to pursue separate rulemaking to address issues associated with ''natural'' claims.

Proposed Amendments

After considering the comments submitted in response to the 2006 public meeting and the 2009 advanced notice of proposed rulemaking, and the information presented in the petitions described above, along with the Agency's experience in reviewing labels of meat and poultry products with added solution, the Agency has tentatively concluded that without specific, clear, and conspicuous information about the percentage of added solution incorporated into the product, the labeling of these raw meat or poultry products that do not meet a standard of identity is likely to be misleading to consumers.

As noted above, raw products that have added solution and single-ingredient raw products currently have the same product name, and the qualifying statement required for products with added solution may not be readily apparent to consumers. Thus, the labeling of meat and poultry products with added solution that do not meet a regulatory standard of identity often does not adequately reveal a significant material fact about the nature of the product.

FSIS agrees with the petitions discussed above, the comments submitted in response to the 2006 public meeting on ''natural'' claims, and the 2009 Advance Notice of Proposed Rulemaking on ''natural'' claims that without adequate information, consumers likely cannot distinguish between single-ingredient raw meat and poultry products versus similar raw meat and poultry products containing added solution that do not meet a standard of identity. The added solution in a raw meat and poultry product is a characterizing component of the product, and, as suggested by the consumer research discussed above, is likely to affect consumers' purchasing decisions. Furthermore, as noted in the TLC petition, the presence of added solutions affects the product's nutrition profile because there may be a significant difference in sodium content between a single-ingredient raw product

[1] Russell Research, Fresh Chicken Study Final Report, June 2006.

[2] ''Enhanced'' Chicken, Consumer Research, November 2004, SAI Project #04177, Sorensen Associates, Minneapolis, Minnesota (888–616–0123), Portland, Oregon (800–542–4321).

and a similar-looking product containing added solution. The effect of excess sodium may be compounded if consumers unknowingly purchase a product with added solution, believe it to be a single-ingredient product, and add salt during preparation or prior to consumption.

Therefore, to ensure that labels adequately inform consumers that raw products that do not meet a standard of identity in 9 CFR part 319 or 9 CFR part 381, subpart P, contain added solutions, the Agency is proposing to establish a common or usual name for such raw products. FSIS is proposing that the common or usual name of such product consist of the following: an accurate description of the raw meat or poultry component; the percentage of any added solution incorporated into the raw meat or poultry product (total weight of solution ingredients divided by the weight of the raw meat or poultry without solution or any other added ingredients, multiplied by 100) using numerical representation and the percent symbol ''%;'' and the common or usual name of all individual ingredients or multi-ingredient components in the solution listed in descending order of predominance by weight. For example, an applicable product could be labeled as ''chicken breast—40% added solution of water, salt and sodium phosphate'' or ''chicken breast—40% added solution of water, teriyaki sauce, and salt.'' If the poultry component of a poultry product is represented by a standard cut for raw poultry prescribed in 9 CFR 381.170, the common or usual name of the product would include the name of the standard poultry cut, the percentage of added solution, and the common or usual names of the ingredients in the solution.

Under this proposal all of the letters in the name would be required to appear in a single font size, color, and style of print and appear on a single-color contrasting background, as opposed to the smaller type and differing style that is currently permitted for the qualifying statement. This approach will clearly disclose that the product has been formulated with added solution, and it will clearly distinguish raw meat and poultry products that have added solution from single-ingredient raw meat and poultry products.

The Agency would like to receive any consumer research information that evaluates whether the proposed product name requirements described above would better inform consumers and affect their purchasing habits.

Under the current regulations, as noted above, the product label is required to show the product name, which, for a non-standardized product with a common or usual name, would be the common or usual name of the food (9 CFR 317.2(c)(1) and 381.117). Thus, if finalized, the common or usual name for raw meat and poultry products containing added solution subject to this proposed rule would be different from the name for similar raw products without added solution. If this proposal is finalized, raw products containing added solution subject to the rule that are not labeled with the prescribed common or usual name would be considered misbranded because their labeling would be false or misleading and they would be offered for sale under the name of another food (21 U.S.C. 601(n)(1), 453(h)(1), 601(n)(2), and 453(h)(2)).

The Agency seeks to ensure that the common or usual name consistently conveys to consumers that these products contain added solutions. Various methods are used to add solutions to meat and poultry products (e.g., injecting, marinating, or tumbling). The term ''enhanced'' is commonly used to describe products with added solutions, regardless of the method used to incorporate solution into the product, and was the term used in the petitions submitted to the Agency. However, FSIS recognizes that the term ''enhanced'' could imply a judgment about the value of the product. As such, the Agency did not propose to include the term ''enhanced'' in the common or usual name for products containing added solutions.

In addition, FSIS is proposing that the common or usual name of such products that contain added solution include the common or usual name of individual ingredients or multi-ingredient components in the solution listed in descending order of predominance. FSIS is proposing to require this information in the product name to ensure that consumers are aware of the ingredients in the solution. FSIS is proposing that the common or usual names of applicable multi-ingredient components, rather than the components' individual ingredients, may be listed in the common or usual name to simplify the product name for raw products that may contain numerous ingredients. FSIS requests comment on whether the common or usual name of a multi-ingredient component in the product name sufficiently alerts consumers concerning the content of the added solution. FSIS acknowledges that many solutions include salt and requests comment on whether consumers are aware of that. Under this proposal, when the common or usual name includes the individual ingredients in the solution, those ingredients would not need to be listed in a separate ingredients statement on the label. However, when the common or usual name includes multi-ingredient components, all ingredients in the product would be required to be declared in a separate ingredients statement on the label. Regulations currently require that ingredients in the ingredients statement on the label be listed in descending order of predominance (9 CFR 317.2(c)(2),(f) and 381.118(a)(1)).

Raw products are products that have not received any type of heat treatment or full lethality treatment to destroy harmful bacteria. FSIS agrees with the petitions and comments that without adequate information, consumers have difficulty distinguishing between single-ingredient raw meat and poultry products and raw meat and poultry products containing added solution.

FSIS has not received information indicating that consumers lack adequate ingredient information for fully cooked or partially heat-treated products containing added solution. An example of a partially heat-treated product containing added solution is a raw chicken strip with an added solution that is breaded, and then immersed in hot oil to set the breading. This product and other similar products would not be subject to the common or usual name requirements proposed in this rulemaking because FSIS has tentatively concluded that consumers are unlikely to be misled into thinking that these are single-ingredient products based on the product appearance. For example, breaded products are obviously not single-ingredient. Furthermore, the petitions and comments submitted on products containing added solution expressed concern that without adequate labeling consumers would have difficulty distinguishing raw products with solutions from single-ingredient raw products. They did not express the same concern regarding partially heat-treated or cooked products. FSIS requests comments on whether it should establish a common or usual name for non-standardized fully cooked or partially-heated treated products that contain added solutions.

Under this proposed rule, meat and poultry products that comply with a standard of identity in the regulations will continue to be labeled as the named food specified in the standard. For example, ''corned beef,'' which includes curing solution, is allowed up to a 10 percent gain from the fresh weight of the uncured beef in accordance with the 9 CFR 319.100 standard of identity for

corned beef. Products that comply with this standard would be named and labeled as ''corned beef.'' However, if a product similar to ''corned beef'' includes a solution amount that is greater than the standard allows, the product is no longer a standardized product and, under this proposed rule, it must be labeled with the common or usual name, ''corned beef containing up to 15% of a solution.'' The name would follow the labeling requirements for font size, color, and style and background color as proposed.

This proposed rule is only applicable to raw meat and poultry products that, after post-evisceration processing, have solutions added. Raw, single-ingredient meat and poultry products that retain water as the result of post-evisceration processing are subject to the retained water regulations (9 CFR 441.10). The regulations at 9 CFR 441.10 also address retained water as a result of the use of anti-microbial solutions (66 FR 1766). This proposal addresses most other added solutions.

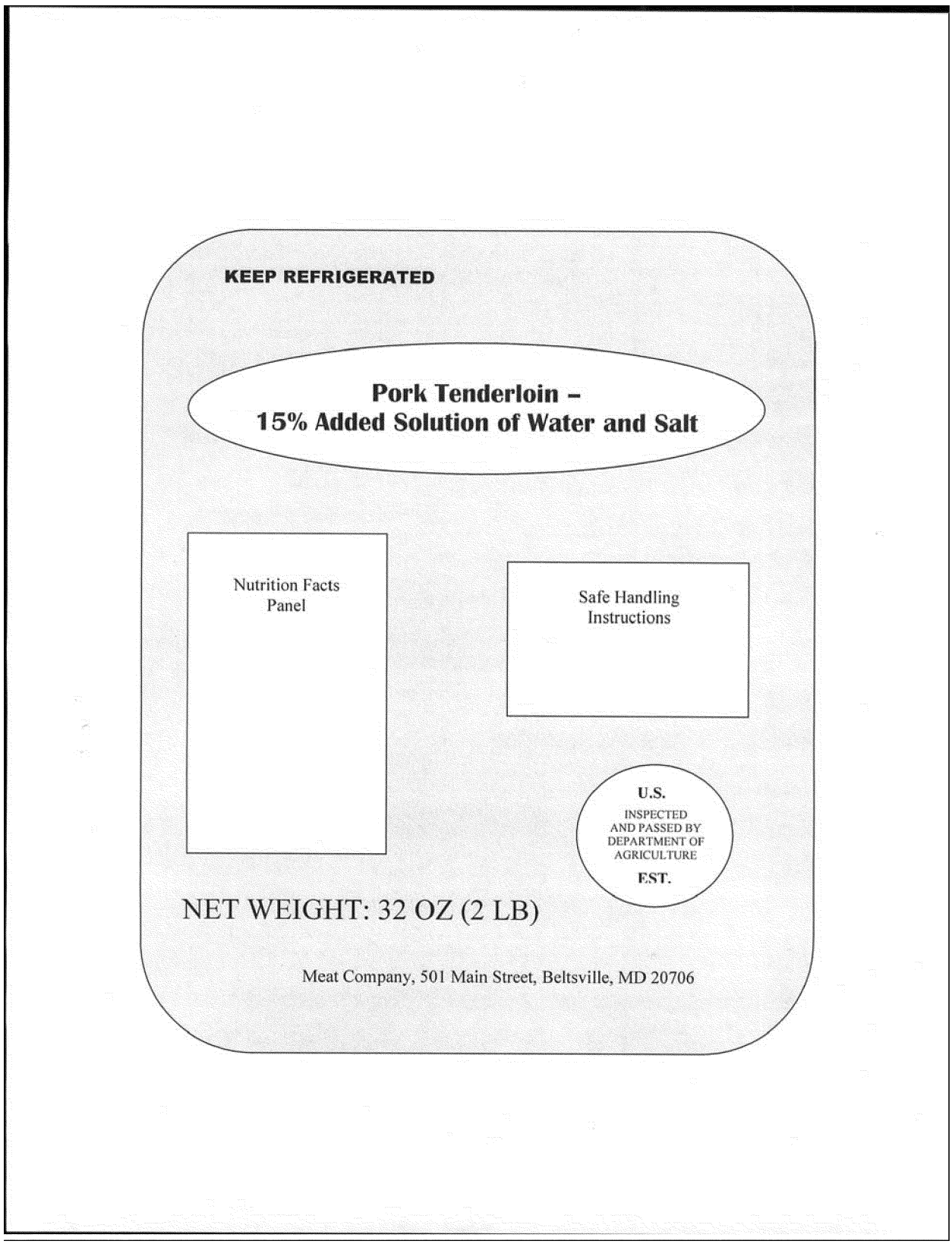
FSIS Directive 7620.3, ''Processing Inspectors' Calculations Handbook,'' provides instructions to inspection personnel concerning the method to use in determining the percent pickup of solutions added to raw poultry and meat products. The National Institute of Standards and Technology (NIST) Handbook 133 provides instructions to personnel concerning the method to use in determining the net weight of enhanced products. Should this rule become final, FSIS personnel will continue to follow Directive 7620.3 when enforcing these labeling requirements and the NIST Handbook 133 in order to determine the net weight of these products.

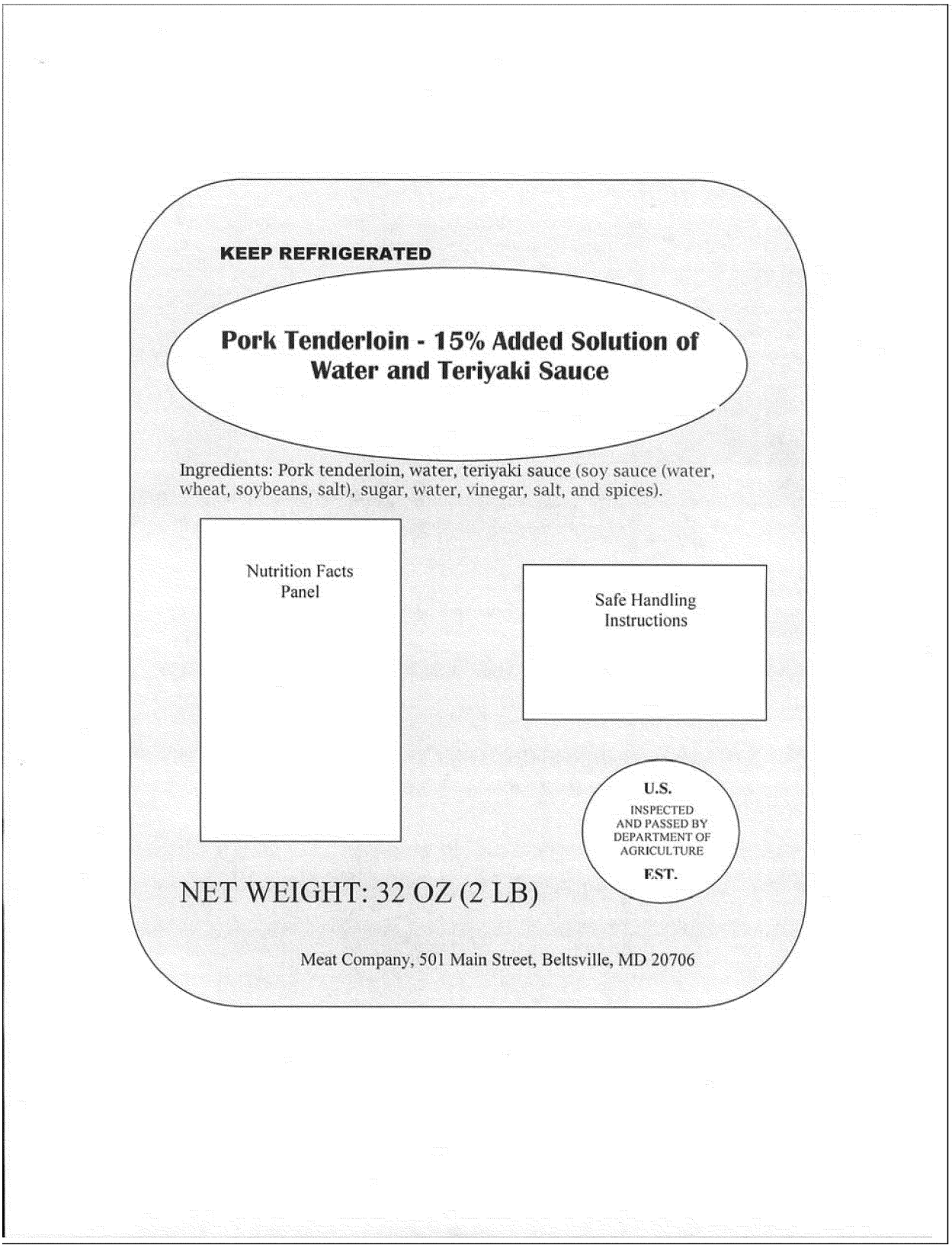
In addition to proposing a common or usual name for raw meat and poultry products containing added solution, FSIS is proposing to remove 9 CFR 381.169, the standard for ''ready-to-cook poultry products to which solutions are added.'' The Agency has evaluated the provisions in 9 CFR 381.169 and has determined that the provisions are not necessary. If this proposal is finalized, 9 CFR 381.169 will not be necessary because the labeling of all poultry and meat products containing added solution will be required to comply with the common or usual name requirements. Likewise, when these proposed amendments are finalized, Policy Memos 042,044A, and 066C will be rescinded and references to these policy memoranda will be deleted from the FSIS Food Standards and Labeling Policy Book. FSIS is requesting comments on removing all of the regulatory requirements in 9 CFR 381.169.

The misbranding provisions of the Acts apply to all meat and poultry products, including products that are not subject to the inspection provisions of the Acts (21 U.S.C. 623(d) and 464(e)). Thus, if finalized, these proposed regulations will apply to raw meat and poultry products containing added solutions that do not meet a regulatory standard of identity and that are sold for retail sale, institutional use, or further processing. If retail facilities, such as grocery stores, produce such products, the proposed labeling requirements would apply to those products. The proposed regulations would also apply to raw meat and poultry products containing added solutions that have been sliced or cut up and re-packaged at retail or another official establishment.

These proposed amendments, if finalized, will become effective on January 1, 2014, the compliance date provided by the Uniform Compliance Date for Food Labeling Regulations (75 FR 71344).

BILLING CODE 3410–DM–P


KEEP REFRIGERATED
Pork Tenderloin –
15% Added Solution of Water and Salt
Nutrition Facts
Panel
Safe Handling
Instructions
U.S.
INSPECTED
AND PASSED BY
DEPARTMENT OF
AGRICULTURE
EST.
NET WEIGHT: 32 OZ (2 LB)
Meat Company, 501 Main Street, Beltsville, MD 20706



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Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this proposed rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Executive Orders 12866 and 13563 and the Regulatory Flexibility Act

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 (E.O.) 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 4 of E.O. 13563 emphasizes flexible approaches, including ''provision of information to the public in a form that is clear and intelligible.'' This proposed rule has been reviewed under Executive Order (E.O.) 12866. OMB has determined that it is a significant regulatory action under section 3(f) of E.O. 12866 and, therefore, it has been reviewed by the Office of Management and Budget.

FSIS estimated that the proportion of products containing added solutions is about 39 percent of all raw meat and poultry products sold. Based on FSIS's label review process estimates, 30 percent of the 49.2 billion pounds of poultry [3] consumed by households (14.8 billion pounds), 15 percent of the 27.3 billion pounds of beef [4] consumed by households (4.1 billion pounds), and 90 percent of the 21 billion pounds of pork [5] consumed by household (18.9 billion pounds) contain added solutions. As a result, approximately 37.8 billion pounds, or about 39 percent of the 97.5 billion pounds of meat and poultry products consumed by households in the U.S. contain added solutions.[6] FSIS requests comments on these estimates.

This rule will affect foreign establishments that manufacture and export products containing added solutions to the United States, because foreign establishments that manufacture and export products containing added solutions to the United States will be required to follow these same labeling requirements. FSIS requests information on the number of foreign establishments that may be affected by this proposed rule.

If finalized, the proposed regulations will apply to all raw meat and poultry products containing added solution that do not meet a standard of identity that are produced at federal establishments. The proposed labeling requirements also apply to such products that are produced at retail facilities, such as grocery stores. FSIS requests comment on the number of retail facilities that produce product containing added solution and the volume of such product that would be subject to these regulations.

Alternatives considered:

1. No Action.

FSIS considered taking no action but did not select this alternative because of evidence (Sorenson, November 2004) [7] that consumers view information about these additives as important factors in their purchasing decision.

2. Propose to require the word ''enhanced'' in the product's common or usual name, or propose the use of the term ''enhanced'' in the containing statement, e.g., ''enhanced with a 15% solution * * *''.

FSIS did not select the alternative of proposing to require the word ''enhanced'' in the product's common or usual name because the word implies that the product is improved by the addition of the solution. The intent of this proposal is to increase transparency to consumers, not to suggest that the product is either better or worse than a raw product without the added solution.

In addition, consumer research (Sorenson, November 2004) [8] showed that the containing statement, ''enhanced with up to 15% solution of water, salt, and sodium phosphates'' was preferred by fewer study participants (about 10% fewer) [9] than the use of the description ''contains up to 15% water, salt, and sodium phosphates.''

3. Propose to require that the common or usual name of the product include an accurate description of the raw meat or poultry component, the percentage of added solution, and the common or usual names of the ingredients in the solution, with all of the print in a single font size, color, and style on a single-color contrasting background (the proposed amendments).

FSIS selected this alternative because it is likely to improve consumer awareness and understanding that the raw meat or poultry product contains an added solution. FSIS believes proposing to require the percentage of the solution and the ingredients of the solution as part of the common or usual name is information consumers need to make informed purchasing decisions.

Expected Cost of the Proposed Rule

The proposed rule will result in one-time costs to establishments and retail facilities that produce and package enhanced products pertaining to modifying labels of products. The estimated costs of modifying labels are determined by the number of label plates or digitalized label templates required to be modified and the average cost of modifying labels. This methodology provides an estimated cost for all labels of products with added solution in commerce, including those for retailers and foreign entities that sell meat and poultry in the United States. Based on the Agency's Labeling Information System database, FSIS estimates that there were approximately 121,350 [10] raw meat and poultry product unique labels submitted by official establishments and approved by the Agency in 2009. Therefore, FSIS estimates that there are 46,990 (121,350 * 39%) unique labels for meat and poultry raw products containing added solution in commerce.

The Agency is providing a primary cost analysis based on the costs published in the December 29, 2010, final rule, ''Nutrition Labeling of Single-Ingredient Products and Ground or Chopped Meat and Poultry Products'' (75 FR 82148). In May 2011, the Food and Drug Administration (FDA) published a report, ''Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA.'' A secondary cost analysis based on the FDA report is also provided for comment. FSIS requests comment on which cost analysis should be used for the economic analysis of the final rule.

Primary Cost Analysis

The primary cost estimate for label modification reflects administrative activities, graphic design, prepress activities, and plate engraving costs and excludes nutrient analysis costs and all other types of analysis. The mid-point label design modification cost is an estimated $1,557 per label (75 FR 82148). This estimate assumes separate label costs for every unique product containing added solution. Because subsidiary establishments are owned by parent companies, and subsidiaries

[3] U.S. Poultry & Egg Association: Poultry Statistics, 2007.

[4] Economic Research Service, USDA. U.S. Beef and Cattle Industry: Background Statistics and Information, 2007.

[5] National Pork Producers Council: Background Statistics and Information, 2007.

[6] Totals do not necessarily add up due to rounding.

[7] See footnote 2, page 8.

[8] See footnote 2, page 8.

[9] The Sorenson study did not report statistical significance.

[10] Source: FSIS Labeling and Program Delivery Division, Labeling Information System Database, 2009.

would likely use the same label, this estimate probably overestimates the total cost. Using this estimate, total costs of modifying labels for all federally inspected processors is $73 million as a central estimate (46,990 * $1,557 label modification cost).

Secondary Cost Analysis

This secondary cost analysis uses the mid-point label design modification costs for a minor coordinated label change, as provided in a March 2011 FDA report.[11] The Agency is requesting comment on whether these costs estimates are applicable to the amendments in this proposed rule. The mid-point label design modification costs for a minor coordinated label change is an estimated $310 per label (with a range of $170 to $440). A coordinated label change is when a regulatory label change is coordinated with planned labeling changes by the firm. In this case, only administrative and recordkeeping costs are attributed to the regulation and all other costs are not. Using this cost, FSIS estimates that the total costs of modifying labels for all federally inspected processors is about $14.6 million as a central estimate (46,990 labels * $310 label modification costs), with a range of approximately $8.0 to $20.7 million).

These estimated costs include the labeling costs of imported and retailer-produced raw imported meat and poultry products containing added solutions. Under either of the cost analyses presented above, the compliance cost of this proposed rule will be negligible as the cost of modifying labeling is small relative to the total sales of meat and poultry products. The 2-year compliance increments defined in the FSIS regulation titled ''Uniform Compliance Date for Food Labeling Regulations'' (75 FR 71344) will help affected establishments minimize the economic impact of labeling changes because affected establishments possibly could incorporate multiple label redesigns required by multiple Federal rules into one modification during the 2-year increments. Moreover, the ''Uniform Compliance Date for Food Labeling Regulations'' allows establishments time to use existing labels and would, therefore, result in minimal loss of inventory of labels, if any. The ''Uniform Compliance Date for Food Labeling Regulations'' also allows establishments to incorporate the new requirements as a coordinated change, which reduces the cost of complying with the proposed regulation.

FSIS Budgetary Impact of the Proposed Rule

This proposed rule will result in no impact on the Agency's operational costs because the Agency will not need to add any staff or incur any non-labor expenditures if the proposed rule is adopted.

FSIS is soliciting comments and data regarding any other potential costs that might result from finalization of this rule.

Expected Benefits of the Proposed Rule

The expected benefits of this proposed rule are:

- Improved public awareness of product identities by providing truthful and accurate labeling of meat and poultry products to clearly differentiate products containing added solutions from single-ingredient products.
- Consumers can better determine whether products containing added solutions are suitable for their personal dietary needs through increased product name prominence. For example, consumers' choices of meat and poultry products with added solutions with a high sodium content could have unintended health consequences if labels of these products were inadequate in revealing the information of added ingredients to the consumers.

This proposed action is not likely to result in a market demand shift, relative to other products, for meat and poultry products, with or without added solutions, because this proposed action is unlikely to influence consumers' preference for meat and poultry products in general. The proposed action, if adopted, will not add monetary benefits to the meat and poultry industry. Instead, the rule will make clearer product content information available to consumers of meat and poultry products with added solutions.

This rule may also help consumers reduce their sodium intake because the new product names will better alert consumers to the fact that the products contain added solutions. The prominence and design of the label on the front of the package may increase the likelihood that consumers review the nutrition facts panel, including information on sodium content, and make more healthful food choices. The benefits of improved market information are not quantifiable due to lack of data.

FSIS is soliciting comments and data that would permit the quantification of the expected benefits.

Regulatory Flexibility Analysis

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). There are about 5,719 small federally inspected establishments, of which 2,616 are small (with 10 or more but less than 500 employees), and 3,103 are very small (with fewer than 10 employees) based on Hazard Analysis Critical Control Point (HACCP) classification. Because only a portion of all meat and poultry products is sold with added solutions, a fraction of small and very small establishments will be impacted by this proposed rule at a negligible cost.

In the primary cost analysis above, FSIS estimated that the average one-time cost of modifying labels per unique label is about $1,557 and the total one-time cost for the industry is about $73 million (the secondary cost analysis total cost is $14.6 million). This results in an average one-time cost per establishment of about $11,969 ($73 million/6099 establishments). Because small and very small establishments produce less output and fewer unique labels, their average one-time cost per establishment will be lower. Therefore, FSIS believes that the cost to small and very small establishments of providing modified labels for the meat and poultry products with added solutions will be negligible. FSIS requests comment on the average number of labels of meat and poultry products with added solutions produced by small and very small producers and invites small and very small establishments to comment on the estimation of the compliance cost of the proposed rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995, the information collection or

[11] Model to Estimate Costs of Using Labeling as a Risk Reduction Strategy for Consumer Products Regulated by the Food and Drug Administration, FDA, March 2011 (Contract No. GS–10F–0097L, Task Order 5). The labeling model defines all labeling changes as minor, major, or extensive. A minor change is one in which only one color is affected and the label does not need to be redesigned. Examples of this type of change include changing an ingredient list or adding a toll-free number. A major change requires multiple color changes and label redesign. An example of a major change is adding a facts panel or modifying the front of a package. An extensive change is a major format change requiring a change to the product packaging to accommodate labeling information. An example of an extensive change is adding a peel-back label or otherwise increasing the package surface area. We, therefore, conclude that the labeling change that would be required by this proposed rule is a minor change. FSIS expects that all label changes resulting from this proposed rule will be coordinated with planned label changes.

recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB).

Title: Product Labeling Requirements for Meat and Poultry Containing Added Solutions.

Type of Collection: New.

Abstract: FSIS is proposing common or usual name labeling requirements for raw meat and poultry products that do not meet standard of identity regulations and to which solutions have been added. The proposed amendments will require establishments that manufacture products containing added solutions to modify or redesign the product label. The proposed amendments will be effective on the next compliance date provided by the Uniform Compliance Date for Food Labeling Regulations.

Estimate of Burden: FSIS estimates that it will take a respondent 75 minutes per response to comply with the information collection associated with product labeling requirements.

Respondents: Official establishments, retail stores, and foreign firms.

Estimated Number of Respondents: 6,100.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 61,000 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6083, South Building, Washington, DC 20250.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253. To be most effective, comments should be sent to OMB within 60 days of the publication date of this proposed rule.

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that minorities, women, and persons with disabilities are aware of this proposed rule, FSIS will announce it online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Publications_&_Related_Documents/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. Through the Listserv and Web page, FSIS is able to provide information to a much broader and more diverse audience. 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.

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.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

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).

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection, Nutrition, Reporting and recordkeeping requirements.

9 CFR Part 381

Food labeling.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR Chapter III as follows:

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

1. The authority citation for Part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Amend § 317.2 by redesignating paragraph (e) as paragraph (e)(1) and adding a new paragraph (e)(2) to read as follows:

§ 317.2 Labels: definition; required features.

* * * * *

(e) * * *

(2)(i) The common or usual name for a raw meat product that contains added solution and does not meet a standard of identity in 9 CFR part 319 consists of:

(A) An accurate description of the raw meat component;

(B) The percentage of added solution (total weight of the solution ingredients

divided by the weight of the raw meat without solution or any other added ingredients multiplied by 100) using numerical representation and the percent symbol ''%;'' and

(C) The common or usual name of individual ingredients or multi-ingredient components in the solution listed in descending order of predominance by weight (such as, ''pork tenderloin—15% added solution of water and salt'' or ''beef—15% added solution of water and teriyaki sauce'').

(ii) The common or usual name must be printed in a single font size, color, and style of print and must appear on a single-color contrasting background.

(iii) When the common or usual name includes all ingredients in the solution, a separate ingredients statement is not required on the label. When the common or usual name includes multi-ingredient components and the ingredients of the component are not declared in the product name, all ingredients in the product must be declared in a separate ingredients statement on the label as required in §§ 317.2(c)(2) and 317.2(f).

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138F, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

4. A new § 381.117(h) is added to read as follows:

§ 381.117 Name of product and other labeling.

* * * * *

(h) *Common or usual name for raw products containing added solution.* (1) The common or usual name for a raw poultry product that contains added solution and does not meet a standard of identity in 9 CFR part 381 consists of:

(i) An accurate description of the raw poultry component;

(ii) The percentage of added solution (total weight of the solution ingredients divided by the weight of the raw poultry without solution or any other added ingredients multiplied by 100) using numerical representation and the percent symbol ''%;'' and

(iii) The common or usual name of all individual ingredients or multi-ingredient components in the solution listed in descending order of predominance by weight (such as, ''chicken breast—15% added solution of water and salt'' or ''chicken breast—40% added solution of water, teriyaki sauce, and salt'').

(2) The common or usual name must be printed in a single font size, color, and style of print and must appear on a single-color contrasting background.

(3) When the common or usual name includes all ingredients in the solution, a separate ingredients statement is not required on the label. When the common or usual name includes multi-ingredient components and the ingredients of the component are not declared in the product name, all ingredients in the product must be declared in a separate ingredients statement on the label as required in § 381.118.

§ 381.169 [Removed and reserved]

5. Remove and reserve § 381.169.

Done at Washington, DC, on July 20, 2011.

Alfred Almanza,

Administrator.

[FR Doc. 2011–18793 Filed 7–26–11; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

RIN 3150–AI50

[NRC–2009–0079 and NRC–2011–0080]

Domestic Licensing of Source Material—Amendments/Integrated Safety Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of public comment period and public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its Title 10 of the *Code of Federal Regulations* (10 CFR) Part 40 regulations by adding additional requirements for source material licensees who possess significant quantities of uranium hexafluoride (UF6). The proposed rule and proposed guidance document were published in the **Federal Register** on May 17, 2011 (76 FR 28336), for public comment and an administrative correction to 76 FR 28336 was published in the **Federal Register** on June 1, 2011 (76 FR 31507). The Nuclear Energy Institute (NEI), in a letter dated June 21, 2011, requested the NRC to hold a public meeting on the proposed rule and draft guidance document and to extend the public comment period.

Based on NEI's request, the NRC will conduct a public meeting on August 17, 2011, to seek public input on the proposed rule and its associated draft guidance document. In addition, the NRC is extending the public comment period for the proposed rule and associated draft guidance document from 75 days to 115 days to allow the public ample opportunity to submit written comments.

DATES: Submit comments specific to the proposed rule and draft guidance document by September 9, 2011. 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.

The public meeting will be held on Wednesday, August 7, 2011, from 9 a.m. to 12 p.m. (eastern daylight time).

ADDRESSES: Please include the applicable Docket ID in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments on the proposed rule (Docket ID NRC–2009–0079) by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0079 for the proposed rule. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1677)
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You may submit comments on the proposed draft guidance document (Docket ID NRC–2011–0080) by any one of the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0080. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *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.

You can access publicly available documents related to the proposed rule and draft guidance document using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov.* The proposed rule and draft guidance document are available electronically under ADAMS Accession Numbers ML110890797 and ML102520022, respectively.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this proposed guidance document can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0080 for the proposed guidance document.

FOR FURTHER INFORMATION CONTACT: Edward M. Lohr, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0253, e-mail: *Edward.Lohr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The NRC is proposing to amend its regulations by adding additional requirements for source material licensees who possess significant quantities of UF6. The proposed amendments would require such licensees to conduct integrated safety analyses (ISAs) similar to the ISAs performed by 10 CFR Part 70 licensees; set possession limits for UF6 for determining licensing authority (NRC or Agreement States); add defined terms; add an additional evaluation criterion for applicants who submit an evaluation in lieu of an emergency plan; require the NRC to perform a backfit analysis under specified circumstances; and make administrative changes to the structure of 10 CFR Part 40. The proposed rule was published in the FR on May 17, 2011 (76 FR 28336) for a 75 day public comment period ending on August 1, 2011. An administrative correction to 76 FR 28336 was published in the FR on June 1, 2011 (76 FR 31507).

In a letter dated June 21, 2011, the NEI requested the NRC to hold a public meeting on the proposed rule and draft guidance document and to extend the public comment period. Based on NEI's request, the NRC plans to hold a public meeting on August 17, 2011, to seek public comments on the proposed rule and its associated draft guidance document. In addition, the NRC is extending the public comment period for the proposed rule from 75 days to 115 days. The public comment period on the proposed rule and the proposed guidance document will now end on September 9, 2011.

Public Meeting

The NRC plans to conduct a transcribed public meeting on August 17, 2011, to seek public input on the proposed rule and its associated draft guidance document. The public meeting will be held from 9 a.m. to 12 p.m. (eastern daylight time) at the Executive Boulevard Building, Room EBB–1–B13/15, 6003 Executive Boulevard, Rockville, Maryland 20852. The meeting will provide an opportunity for stakeholders to express their comments on the proposed rule and draft guidance document. The meeting agenda can be viewed and downloaded electronically from the NRC's Public Meeting Web site, *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

The NRC will review the meeting transcript and will consider any comments received during the public meeting on the proposed rule and draft guidance document. The NRC will summarize all comments by topic, including comments received during the public meeting, and will address the comments in the Statements of Consideration for the final rule.

Attendees are requested to notify Mr. Edward Lohr at (301) 415–0253 or e-mail *Edward.Lohr@nrc.gov* of their planned attendance and if special services are necessary, such as for the hearing impaired.

Dated at Rockville, Maryland, this 19th day of July 2011.

For the Nuclear Regulatory Commission.

Josephine M. Piccone,

Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–18955 Filed 7–26–11; 8:45 am]

BILLING CODE 7590–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 712 and 741

RIN 3133–AD93

Credit Union Service Organizations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule.

SUMMARY: NCUA proposes to amend its credit union service organization (CUSO) regulation to address certain safety and soundness concerns. Specifically, this proposal expands the requirements of the CUSO regulation that apply to federally insured state-chartered credit unions (FISCUs) to include investment limits for FISCUs that are ''less than adequately capitalized'' and requirements related to accounting and reporting by CUSOs owned by FISCUs. This proposal also adds two new requirements that would apply to both federal credit unions (FCUs) and FISCUs. These new items would include requiring CUSOs to file financial reports directly with NCUA and the appropriate state supervisory authority and requiring subsidiary CUSOs to follow all applicable laws and regulations. Finally, this proposal makes conforming amendments to NCUA's regulation on the requirements for insurance to address the items discussed above that apply to FISCUs.

DATES: Comments must be received on or before September 26, 2011.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

• *NCUA Web Site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.

• *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on Notice of Proposed Rulemaking (CUSO)'' in the e-mail subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for e-mail.

• *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Justin M. Anderson, Trial Attorney, Pamela Yu, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540 or Lisa Dolin, Program Officer, Office of Examination and Insurance, at the above address or telephone at 703–518–6630.

SUPPLEMENTARY INFORMATION:

A. Background

In 2008, the NCUA Board (the Board) issued a final rule, which, among other things, made certain provisions of the CUSO regulation applicable to FISCUs. 73 FR 79312 (December 29, 2008). Specifically, the final rule required FISCUs to maintain separate corporate identities with their CUSOs and enter into agreements with CUSOs stating that the CUSOs would provide open access to their books and records to NCUA and the applicable state supervisory authority (SSA). *Id.* Those provisions had previously only applied to FCUs, but the Board believed that, to protect the National Credit Union Share Insurance Fund (NCUSIF), it was necessary to make those requirements applicable to FISCUs as well. Since the promulgation of the 2008 rule, the Board has continued to investigate ways to gather complete and accurate information about credit unions' use of CUSOs and the services those entities provide. As a result, the Board is proposing this rule, which as discussed below, makes additional parts of the CUSO rule applicable to FISCUs, requires CUSOs to file financial reports directly to NCUA and the appropriate SSA, and addresses subsidiary CUSOs.

B. Proposal

The Board believes additional protections in the CUSO rule, currently only applicable to FCUs, addressing accounting, financial statements, and audits should apply to FISCUs as well to protect credit unions and the NCUSIF.

The Board also believes it is imperative to have complete and accurate financial information about CUSOs and the nature of their services to ensure protection of the NCUSIF and to identify emerging systemic risk posed by CUSOs within the credit union industry. At this time, the Board, through agreements between credit unions and CUSOs, maintains the right to inspect the books and records of CUSOs. This, however, does not provide NCUA with complete information necessary to evaluate CUSOs and their potential impact to the NCUSIF. As such, the Board is proposing to require both FISCUs and FCUs to include, in their agreements with CUSOs, a requirement that a CUSO submit a financial report directly to NCUA and the appropriate SSA, in the case of a FISCU, at least annually. As discussed below, NCUA will issue guidance on the required specific timing of and information contained in these reports.

The Board is also concerned that ''less than adequately capitalized'' FISCUs that continue to invest money in a failing CUSO pose serious risks to their members and the NCUSIF. Accordingly, the Board is proposing to subject FISCUs to a similar requirement contained in current § 712.2(d)(3) for FCUs. Specifically, the proposal limits a ''less than adequately capitalized'' FISCU's aggregate cash outlay to a CUSO, measured on a cumulative basis, to the permissible investment limit in the state in which the FISCU is chartered.

Finally, the Board wants to ensure that all requirements in the CUSO rule also apply to subsidiary CUSOs. For consistency, the Board is proposing to prohibit FCUs and FISCUs from investing in a CUSO unless that CUSO's subsidiaries also comply with all of the requirements of the CUSO rule and/or laws and rules of the state in which the credit union is chartered, as applicable.

C. Section by Section Analysis

1. 741.222 Requirements for Insurance—Credit Union Service Organizations

Subpart B of part 741 addresses NCUA regulations that FISCUs must follow to obtain and maintain federal insurance from NCUA. The specific section of part 741 amended by this proposal lists those portions of the CUSO regulation that FISCUs must follow as a condition of federal insurance. Currently, only two provisions of the CUSO rule apply to FISCUs: the requirements to maintain separate corporate identities with their CUSOs and enter into agreements with CUSOs stating that the CUSOs will provide open access to their books and records to NCUA and the applicable SSA.

However, the Board believes to protect the NCUSIF it is appropriate and necessary to make additional sections applicable to FISCUs. As noted in the 2008 proposed rule, while NCUA has the authority under the Federal Credit Union Act to impose regulatory requirements on FISCUs, NCUA's approach has always been to work cooperatively with the SSAs and only regulate where there are safety and soundness concerns. 73 FR 23983 (May 1, 2008).

In keeping with that approach, and for the reasons noted below, the Board is proposing to amend § 741.222 of NCUA's regulations to specify that current §§ 712.2(d)(3), 712.3(d), 712.4 and new § 712.11 apply to FISCUs (as well as FCUs). Each of these sections is discussed more fully below.

In accordance with the proposed change regarding subsidiary CUSOs, the Board is also proposing to expand the definition of a CUSO to include subsidiary CUSOs. As discussed below, a subsidiary CUSO is any entity in which a CUSO invests. The definition of a subsidiary CUSO, however, does not extend to outside third parties a CUSO contracts or otherwise does business with, but is limited only to those entities in which the CUSO has made an investment.

2. Section 712.1 What does this part cover?

The Board proposes to update this section of the CUSO regulation by creating three subsections, which retain most of the language from the current section but also address the changes made in this proposal. The first subsection will retain most of the current language in § 712.1 and state that Part 712 addresses FCUs making loans and investments in CUSOs but does not apply to corporate credit unions that have CUSOs subject to § 704.11.

The second subsection addresses those sections of the regulation that apply to FCUs as well as FISCUs and reflects the proposed changes in this rule as well as those sections that currently apply to FISCUs. Specifically, this subsection would identify §§ 712.2(d)(3), 712.3(d), 712.4 and 712.11 as those sections of the CUSO rule that apply to both FCUs and FISCUs. In addition, this new subsection contains a clarification that a FISCU must comply with the law in the state in which it is chartered with respect to any activity that is not regulated by NCUA. The Board believes that this statement will provide FISCUs with a better understanding of the interplay between federal and state laws and when each system applies to a particular activity.

The third subsection added by this proposal would provide that the term

''federally insured credit union'' or ''FICU'' means all FCUs and FISCUs . The Board believes this additional definition will add conciseness to the rule and is more favorable than repeating the phrase ''FCU and FISCU'' throughout the sections of the CUSO regulation that apply to both. In conjunction with this change, the Board also proposes to make modifications to those sections that apply to both FCUs and FISCUs to use the term ''FICU'' where applicable. The Board believes the new structure of this section proposed by this rule will add clarity to the regulation, eliminate confusion, and be more user friendly.

3. Section 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

In the 2008 final rule amending the CUSO regulation, the Board approved an addition to the regulation that required less than adequately capitalized FCUs to obtain written approval from the appropriate regional director before making an investment in a CUSO that would result in an aggregate cash outlay, measured on a cumulative basis, in an amount in excess of one percent of the credit union's paid in and unimpaired capital and surplus. 73 FR 79312 (December 29, 2008). In the 2008 proposed rule, the Board noted it was aware of credit unions that had experienced losses because they chose to recapitalize insolvent CUSOs.

As noted above, this proposed rule adds a similar requirement for FISCUs that are or would become less than adequately capitalized. Specifically, this proposed change would require a FISCU to obtain written approval from the appropriate SSA before making an investment that would result in an aggregate cash outlay, measured on a cumulative basis, that exceeds the investment limit in the state in which the FISCU is chartered, if the FISCU is less than adequately capitalized or the investment would result in the FISCU being less than adequately capitalized. In addition to submitting a request to the appropriate SSA, under this proposal, a less than adequately capitalized FISCU must also submit its request to the appropriate NCUA Regional Office. While the SSA will render decisions on such requests, the Board believes it is important that NCUA's Regional Offices also be made aware of these requests so these offices can provide appropriate input to the SSAs.

This amendment would minimize the likelihood that a FISCU may be investing in a CUSO, on an aggregate basis, more than the limit imposed in the state in which it is chartered and would eliminate the possibility of a FISCU becoming under capitalized because of its investment in a CUSO. This amendment would also prevent a FISCU from continuing to invest in an entity that has become unsustainable. As noted above, the limit for FISCUs would be the investment limit in the state in which the credit union is chartered. If the state does not regulate the investment limit for FISCUs, however, the 1% limit applicable to FCUs will apply. The Board notes that this amendment would not require a less than adequately capitalized FISCU to divest in a CUSO. Rather, a less than adequately capitalized FISCU may maintain its existing investment but cannot make additional investments without prior written concurrence from the appropriate SSA.

4. Section 712.3 What are the characteristics of and what requirements apply to CUSOs?

The Board is proposing to expand the scope of subsection (d) of this section to apply to FISCUs as well as FCUs. As noted above, in 2008 the Board approved final amendments to this section that required FISCUs to comply with the requirements addressing access to a CUSO's books and records. 73 FR 79312 (December 29, 2008). The Board noted in 2008 that FISCUs are exposed to significant potential safety and soundness and reputation risks based on their relationships with CUSOs. While NCUA currently has the ability to examine the books and records of a CUSO owned by a FISCU, this does not allow the agency to gather all of the information necessary to ensure a uniform system of monitoring and evaluation of the financial condition of CUSOs invested in or loaned to by FISCUs. As such the Board is proposing to have the remaining subsections of § 712.3(d) also apply to FISCUs. These remaining subsections necessitate a credit union's agreement with a CUSO to require the CUSO to account for all of its transactions according to Generally Accepted Accounting Principles (GAAP), prepare quarterly financial statements, and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant. These requirements will ensure NCUA will be able to clearly and uniformly review the financial condition of CUSOs and evaluate the risks posed to FISCUs and the NCUSIF. While these requirements will greatly increase the ability and efficiency of NCUA's monitoring of CUSOs, as discussed below, these requirements do not provide all of the information necessary to adequately evaluate CUSOs. As such, the Board is also proposing a new subsection that states that an FCU's or FISCU's written agreement with its CUSO further requires the CUSO to submit financial reports directly to NCUA and, in the case of a CUSO invested in by a FISCU, NCUA and the appropriate SSA.

Currently, the information NCUA has been able to compile on CUSOs is incomplete and flawed, as the agency is attempting to gather pertinent information from customer credit unions rather than directly from the CUSO. The Board notes that without further reporting directly from CUSOs, it is impossible for NCUA to determine which CUSOs maintain relationships with credit unions, the financial condition of CUSOs, and the full range of service those entities are offering. This lack of information restricts NCUA's ability to conduct offsite monitoring and evaluate the systemic risks posed by CUSOs. This new requirement will allow NCUA to collect uniform information directly from all CUSOs, which will allow the agency to adequately evaluate the relationships between CUSOs and credit unions and the systemic risk posed by those relationships. As discussed below, the information required in the reports will be comprehensive to allow NCUA to obtain a clear picture of, not only relationships between CUSOs and credit unions, but also the structure of CUSOs, the services they offer, and their financial condition.

The reporting addressed in this proposed new subsection will be required at least annually and will address five broad categories, which are summarized in the following table:

Category	Examples of required information
General Information	EIN of CUSO, state of incorporation, date of incorporation, date of most recent audit, subsidiary information, disaster recovery plans and testing, and headquarters and branch locations.

Category	Examples of required information
Board and Management	Contact information for each board member, affiliated credit union, and their position at their credit union.
Services	List of services offered.
Customer Listing	List of clients by charter number, name, service, and level of activity.
Balance Sheet and Income Statement	Balance sheet, income statement, capital structure by credit union and amount, unfunded commitments, contingent liabilities, borrowings, investments, audits, and loan activity.

While the table above provides examples of required information, NCUA will publish guidance on the report, providing specific information on the correct format, timing, and required information. The Board believes it is important to issue guidance on the specifics of the reporting to preserve maximum flexibility for the agency to adjust its information gathering to the changes in the ways in which CUSOs operate and conduct business. As such, the regulatory text of this proposal contains the five broad categories above and a requirement that the reports be filed at least annually, rather than a list of required information and a set time frame for reporting. In addition to general reporting period for all CUSOs, the Board is also proposing to require newly formed CUSOs to file the report addressed in this section within 30 days after its formation. The Board believes this reporting requirement for new CUSOs will bridge any potential gaps between the formation of a CUSO and the annual reporting date and will allow NCUA to allocate resources in preparation for CUSO reviews that will happen in the following year. For purposes of this reporting requirement, the definition of ''newly formed CUSO'' includes a newly established business or an established business that becomes subject to this regulation by virtue of a credit union's investment or loan to the business.

The Board believes that applying the current requirements in this section of the regulation to FISCUs as well as the addition of the new requirement regarding financial reporting of all CUSOs will allow NCUA to obtain accurate information on the CUSO industry and better evaluate the risks posed to credit unions and the NCUSIF. The ability to accurately inventory CUSOs and evaluate their financial condition is paramount to mitigating risk to the credit union industry as a whole.

Transition Period for Compliance

The Board recognizes that FISCUs and FCUs with loans to or investments in CUSOs will be required under this proposal to make changes in the agreements they currently have with their CUSOs. The Board proposes to establish a compliance date for these changes that is not earlier than six months following the date of publication of the final rule in the **Federal Register**.

5. 712.9 When must an FCU comply with this part?

This section currently states that FCUs must comply with the CUSO regulation by April 1, 2001 unless certain conditions are met. The Board recognizes that this section is outdated, and is proposing to delete and reserve this section for future use.

6. 712.10 How can a state supervisory authority obtain an exemption for FISCUs from compliance with § 712.3(d)?

The Board is aware that some states may already have rules or requirements that govern financial reporting, audits, and accounting practices of FISCUs and their CUSOs. In line with the changes made in 2008, the Board is proposing to expand § 712.10 to allow SSAs to obtain an exemption from compliance with certain provisions of § 712.3(d). These proposed changes do not alter the way in which an SSA can obtain an exemption, but merely make changes that take into account the amendments made to § 712.3(d) in this proposal. As stated in the current regulation, an SSA may obtain an exemption by demonstrating that compliance with an existing state rule adequately addresses NCUA's concerns. *See* current § 712.10(b). The proposed changes would merely expand that section to allow an SSA to obtain an exemption from the requirements of §§ 712.3(d)(1), (2), and (3), provided the state rules or laws address NCUA's concerns with the financial conditions of CUSOs present in the context of this section of the CUSO regulation. This section, however, would not allow an SSA to apply for an exemption from the financial reporting requirement in § 712.3(d)(4). As noted above, it is imperative that NCUA maintain complete and accurate information on CUSOs and their relationships with FCUs and FISCUs. The Board is concerned that allowing an exemption from this requirement would result in inconsistent reporting based on the varying laws in the different states. Inconsistent information and reporting formats will impede NCUA's ability to accurately evaluate systemic risk posed by CUSOs.

7. 712.11 What requirements apply to subsidiary CUSOs?

The Board is proposing to add a new section to the CUSO regulation, applicable to both FCUs and FISCUs, prohibiting a credit union from investing in a CUSO unless all subsidiaries of the CUSO also follow all applicable laws and regulations. The treatment of CUSOs with subsidiaries was previously addressed in the preamble to a 1997 rule amending the CUSO regulation, but was never included in regulatory text. In the preamble to the 1997 proposed rule, the Board stated that the CUSO rule applies to all levels or tiers of a CUSO's structure and any entity in which a CUSO invests will also be treated as a CUSO and subject to the CUSO regulation. 62 FR 11781 (March 13, 1997). The Board believes it is appropriate at this time to include the requirement articulated in the 1997 preamble into the text of the regulation to ensure credit unions and CUSOs are aware that the requirements of the CUSO rule and applicable state rules apply to all entities in which a CUSO invests. This requirement will only apply to entities in which a CUSO invests and will not apply to third parties with whom a CUSO contracts or otherwise does business. The Board believes without this change there is an inherent risk that a subsidiary CUSO could negatively impact the investing credit union and ultimately the NCUSIF. As noted above, the Board is also proposing to expand the definition of a CUSO in § 741.222 to include entities in which a CUSO invests.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities. NCUA considers credit unions

having less than ten million dollars in assets to be small for purposes of RFA. Interpretive Ruling and Policy Statement (IRPS) 87–2 as amended by IRPS 03–2. The proposed changes to the CUSO rule impose minimal compliance obligations by requiring credit unions to comply with certain regulatory requirements concerning agreements with CUSOs and investment limits. NCUA has determined and certifies that the final rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that an RFA analysis is not required.

Paperwork Reduction Act

NCUA recognizes that this proposal requires FISCUs and FCUs to comply with certain requirements that constitute an information collection within the meaning of the Paperwork Reduction Act (PRA). 44 U.S.C. 3507(d). First, under this proposal, FISCUs with an investment in or loan to a CUSO will need to revise the current agreement they have with their CUSO to provide that the CUSO will account for all its transactions in accordance with GAAP, prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant, and submit a financial report directly to NCUA. According to NCUA records, of the 2,750 FISCUs that filed a form 5300 call report with NCUA as of December 31, 2010, 988 reported at least one interest in a CUSO; a total of 1,708 CUSO interests was reported. For purposes of this analysis, NCUA estimates that this requirement will affect all FISCUs reporting an interest in a CUSO. Using these estimates, information collection obligations imposed by this aspect of the rule, on an annual basis, are analyzed below:

Changing the written agreement relating to certain accounting and reporting requirements.

FISCUs with a reported interest in a CUSO, 12/31/2010: 988.

Frequency of response: one-time.

Initial hour burden: 1.

1 hour × 988 = 988.

In addition to the requirement for FISCUs to revise their agreements with CUSOs, this proposal also requires FCUs with an investment in or loan to a CUSO to revise the current agreement they have with their CUSO to provide that the CUSO submit a financial report directly to NCUA. According to NCUA records, of the 4,589 FCUs that filed a form 5300 call report with NCUA as of December 31, 2010, 1,097 reported at least one interest in a CUSO; a total of 1,857 CUSO interests was reported. For purposes of this analysis, NCUA estimates that this requirement will affect all FCUs with a reported interest in a CUSO. Using these estimates, information collection obligations imposed by this aspect of the rule, on an annual basis, are analyzed below:

Changing the written agreement relating to financial reports to NCUA.

FCUs with a reported interest in a CUSO, 12/31/2010: 1,097.

Frequency of response: One-time.

Initial hour burden: 1.

1 hour × 1,097 = 1,097.

The final aspect of this proposal that involves PRA consideration is the requirement pertaining to recapitalizing CUSOs that have become insolvent. The proposed rule would require certain FISCUs to seek and obtain prior approval from their state supervisory authority before making an investment to recapitalize an insolvent CUSO. According to NCUA's records, as of December 31, 2010, there were only 53 FISCUs that were less than adequately capitalized (*i.e.,* net worth of under 6%). According to year-end 2010 call report data, 31 of these FISCUs currently have an interest in a CUSO. NCUA estimates it would take a FISCU approximately two hours to complete a request for the SSA's prior approval for an investment to recapitalize an insolvent CUSO.

Obtaining regulatory approval:

Total less than adequately capitalized FISCUs with an interest in a CUSO, 12/31/2010: 31.

Frequency of response: One-time.

Initial hour burden: 2.

2 hours × 31 = 62.

In accordance with the requirements of the PRA, NCUA intends to obtain a modification of its current OMB Control Number, 3133–0149, to support these proposed changes. Simultaneous with its publication of this proposed amendment to part 712, NCUA is submitting a copy of the proposed rule to the Office of Management and Budget (OMB) along with an application for a modification of the OMB Control Number. The PRA and OMB regulations require that the public be provided an opportunity to comment on the paperwork requirements, including an agency's estimate of the burden of the paperwork requirements. The NCUA Board invites comment on: (1) Whether the paperwork requirements are necessary; (2) the accuracy of NCUA's estimates on the burden of the paperwork requirements; (3) ways to enhance the quality, utility, and clarity of the paperwork requirements; and (4) ways to minimize the burden of the paperwork requirements.

Comments should be sent to: OMB Reports Management Branch, New Executive Office Building, Room 10202, Washington, DC 20503. Please send NCUA a copy of any comments submitted to OMB.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The major aspects of the rule make certain aspects applicable to state chartered, federally-insured credit unions. By law, these institutions are already subject to numerous provisions of NCUA's rules, based on the agency's role as the insurer of member share accounts and the significant interest NCUA has in the safety and soundness of their operations. In developing the proposal, NCUA worked with representatives of the state credit union regulatory community. This proposed rule incorporates a mechanism by which states may request an exemption from coverage of part of the rule for institutions in that state, provided certain criteria are met. In any event, the proposed 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. NCUA has determined that this proposal does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. NCUA does not believe, and will

seek concurrence from the Office of Management and budget, that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Parts 712 and 741

Administrative practices and procedure, credit, credit unions, insurance, investments, reporting, and record keeping requirements.

By the National Credit Union Administration Board on July 21, 2011.

Mary F. Rupp,

Secretary of the Board.

Accordingly, NCUA amends 12 CFR parts 712 and 741 as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS (CUSOs)

1. Revise the authority citation for part 712 to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1781(b)(9), 1782, 1784, 1785, 1786 and 1789(11).

2. Revise § 712.1 to read as follows:

§ 712.1 What does this part cover?

(a) This part establishes when a Federal Credit Union (FCU) can invest in and make loans to CUSOs. CUSOs are subject to review by NCUA. This part does not apply to corporate credit unions that have CUSOs subject to § 704.11 of this chapter.

(b) Sections 712.2 (d)(3), 712.3(d), 712.4 and 712.11 of this part apply to federally insured state-chartered credit unions (FISCUs), as provided in § 741.222 of this chapter. All other sections of this part only apply to FCUs. FISCUs must follow the law in the state in which they are chartered with respect to the sections in this part that only apply to FCUs.

(c) As used in §§ 712.2 (d)(3), 712.3(d), 712.4, 712.10, and 712.11 of this part, federally insured credit union (FICU) means an FCU or FISCU.

3. Revise § 712.2(d)(3) to read as follows:

§ 712.2 How much can an FCU invest in or loan to CUSOs, and what parties may participate?

* * * * *

(d) * * *

(3) *Special rule in the case of less than adequately capitalized FICUs.* This rule applies in the case of a FICU that is currently less than adequately capitalized, as determined under part 702, or where the making of an investment in a CUSO would render the FICU less than adequately capitalized under part 702. Before making an investment in a CUSO:

(i) An FCU must obtain prior written approval from the appropriate NCUA regional office if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes) in an amount that is in excess of 1% of its paid in and unimpaired capital and surplus; or

(ii) A FISCU must obtain prior written approval from the appropriate state supervisory authority if the making of the investment would result in an aggregate cash outlay, measured on a cumulative basis (regardless of how the investment is valued for accounting purposes) in an amount that is in excess of the investment limit in the state in which it is chartered. A FISCU must also, and at the same time, submit a copy of its request for prior written approval to the appropriate NCUA Regional Office. If there is no state limit in the state in which a FISCU is chartered, the requirements in subsection (d)(3)(i) of this section will apply.

* * * * *

4. Revise § 712.3(d) to read as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

* * * * *

(d) *CUSO accounting; audits and financial statements; NCUA access to information.* A FICU must obtain written agreements from a CUSO before investing in or lending to the CUSO that the CUSO will:

(1) Account for all of its transactions in accordance with GAAP;

(2) Prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing standards. A wholly owned CUSO is not required to obtain a separate annual financial statement audit if it is included in the annual consolidated financial statement audit of the FICU that is its parent;

(3) Provide NCUA, its representatives, and the state credit union regulatory authority having jurisdiction over any FISCU with an outstanding loan to, investment in or contractual agreement for products or services with the CUSO with complete access to any books and records of the CUSO and the ability to review the CUSO's internal controls, as deemed necessary by NCUA or the state credit union regulatory authority in carrying out their respective responsibilities under the Act and the relevant state credit union statute.

(4) Submit a financial report directly to NCUA and the appropriate state supervisory authority, if applicable. Pursuant to guidance duly adopted by the NCUA Board, a CUSO must submit a financial report at least annually, except in the case of a newly formed CUSO (including a pre-existing business which becomes subject to this regulation by virtue of a credit union investment or loan), which must file a financial report within 30 days of its formation, and the financial report must contain:

(i) General information about the CUSO;

(ii) A list of services;

(iii) A customer list;

(iv) Information on the CUSO's board and management; and

(v) Balance sheet and income information.

* * * * *

5. Revise § 712.4 to read as follows:

§ 712.4 What must a FICU and a CUSO do to maintain separate corporate identities?

(a) *Corporate separateness.* A FICU and a CUSO must be operated in a manner that demonstrates to the public the separate corporate existence of the FICU and the CUSO. Good business practices dictate that each must operate so that:

(1) Its respective business transactions, accounts, and records are not intermingled;

(2) Each observes the formalities of its separate corporate procedures;

(3) Each is adequately financed as a separate unit in the light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise;

(5) The FICU does not dominate the CUSO to the extent that the CUSO is treated as a department of the FICU; and

(6) Unless the FICU has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO indicate that the FICU is not liable.

(b) *Legal opinion.* Prior to a FICU investing in a CUSO, the FICU must obtain written legal advice as to whether the CUSO is established in a manner that will limit potential exposure of the FICU to no more than the loss of funds invested in, or lent to, the CUSO. In addition, if a CUSO in which an FICU has an investment plans to change its structure under § 712.3(a), a FICU must also obtain prior, written legal advice that the CUSO will remain established in a manner that will limit potential exposure of the CU to no more than the loss of funds invested in, or loaned to, the CUSO. The legal advice must address factors that have led courts to ''pierce the corporate veil'' such as inadequate capitalization, lack of

separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The legal advice may be provided by independent legal counsel of the investing FICU or the CUSO.

§ 712.9 [Removed and Reserved]

6. Remove and reserve § 712.9

7. Revise § 712.10 to read as follows:

§ 712.10 How can a state supervisory authority obtain an exemption for FISCUs from compliance with § 712.3(d)?

(a) The NCUA Board may exempt FISCUs in a given state from compliance with §§ 712.3(d)(1), (2), and (3) if the NCUA Board determines the laws and procedures available to the supervisory authority in that state are sufficient to provide NCUA with the degree of access and information it believes is necessary to evaluate the safety and soundness of FICUs having business relationships with CUSOs owned by FISCUs in that state.

(b) To obtain the exemption, the state supervisory authority must submit a copy of the legal authority pursuant to which it secures the information required in §§ 712.3(d)(1), (2), and (3) of this part to NCUA's regional office having responsibility for that state, along with all procedural and operational documentation supporting and describing the actual practices by which it implements and exercises the authority.

(c) The state supervisory authority must provide the regional director with an assurance that NCUA examiners will be provided with co-extensive authority and will be allowed direct access to CUSO books and records at such times as NCUA, in its sole discretion, may determine necessary or appropriate. For purposes of this section, access includes the right to make and retain copies of any CUSO record, as to which NCUA will accord the same level of control and confidentiality that it uses with respect to all other examination-related materials it obtains in the course of its duties.

(d) The state supervisory authority must also provide the regional director with an assurance that NCUA, upon request, will have access to copies of any financial statements or reports, which a CUSO has provided to the state supervisory authority.

(e) The regional director will review the applicable authority, procedures and assurances and forward the exemption request, along with the regional director's recommendation, to the NCUA Board for a final determination.

(f) For purposes of this section, whether an entity is a CUSO shall be determined in accordance with the definition set out in § 741.222 of this chapter.

8. Add § 712.11 to read as follows:

712.11 What requirements apply to subsidiary CUSOs?

(a) *FCUs investing in a CUSO that invests in a CUSO.* The requirements of this part apply to all tiers or levels of a CUSO's structure and FCUs may only invest in or loan to a CUSO, which has an investment in another CUSO, if the subsidiary CUSO satisfies all of the requirements of this part.

(b) *FISCUs investing in a CUSO that invests in a CUSO.* FISCUs may only invest in or loan to a CUSO, which has an investment in another CUSO, if the subsidiary CUSO complies with the following:

(1) All of the requirements of this part that apply to FISCUs, which are listed in § 712.1; and

(2) All applicable state laws and rules regarding CUSOs.

(c) For purposes of this section, a subsidiary CUSO is any entity in which a CUSO invests.

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

2. Revise § 741.222 to read as follows:

§ 741.222. Credit Union Service Organizations.

(a) Any credit union that is insured pursuant to Title II of the Act must adhere to the requirements in §§ 712.2 (d)(3), 712.3(d), 712.4 and 712.11 of this chapter concerning permissible investment limits for less than adequately capitalized credit unions, agreements between credit unions and their credit union service organizations (CUSOs), the requirement to maintain separate corporate identities, and investments and loans to CUSOs investing in other CUSOs. For purposes of this section, a CUSO is any entity in which a credit union has an ownership interest or to which a credit union has extended a loan and that is engaged primarily in providing products or services to credit unions or credit union members, or, in the case of checking and currency services, including check cashing services, sale of negotiable checks, money orders, and electronic transaction services, including international and domestic electronic fund transfers, to persons eligible for membership in any credit union having a loan, investment or contract with the entity. A CUSO also includes any entity in which a CUSO invests.

(b) This section shall have no preemptive effect with respect to the laws or rules of any state providing for access to CUSO books and records or CUSO examination by credit union regulatory authorities.

[FR Doc. 2011–18906 Filed 7–26–11; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2011–N–0522]

Effective Date of Requirement for Premarket Approval for an Implantable Pacemaker Pulse Generator

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the class III preamendments device implantable pacemaker pulse generator. The Agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements and the benefits to the public from the use of the device. In addition, FDA is announcing the opportunity for interested persons to request that the Agency change the classification of the aforementioned device based on new information. This action implements certain statutory requirements.

DATES: Submit either electronic or written comments by October 25, 2011. Submit requests for a change in classification by August 11, 2011. FDA intends that, if a final rule based on this proposed rule is issued, anyone who wishes to continue to market the device will need to submit a PMA within 90 days of the effective date of the final rule. Please see section XIII of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0522, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket Number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Elias Mallis, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1538, Silver Spring, MD 20993, 301–796–6216.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act of 2004 (Pub. L. 108–214), and the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR Part 807).

A preamendments device that has been classified into class III may be marketed by means of premarket notification procedures (510(k) process) without submission of a PMA until FDA issues a final regulation under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval. Section 515(b)(1) of the FD&C Act establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the FD&C Act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR Part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

Section 515(b)(2)(A) of the FD&C Act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The regulation; (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device; (3) an opportunity for the submission of comments on the proposed rule and the proposed findings; and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the FD&C Act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change in reclassification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the FD&C Act.

Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is finalized, section 501(f)(2)(B) of the FD&C Act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after the final classification of the device under section 513 of the FD&C Act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is

required to cease since the device would be deemed adulterated under section 501(f) of the FD&C Act.

The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and the device does not comply with IDE regulations, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act, and subject to seizure and condemnation under section 304 of the FD&C Act (21 U.S.C. 334) if its distribution continues. Shipment of devices in interstate commerce will be subject to injunction under section 302 of the FD&C Act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the FD&C Act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA or PDP has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The FD&C Act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the 1976 amendments states that: [t]he thirty month grace period afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976)).

The SMDA added section 515(i) to the FD&C Act requiring FDA to review the classification of preamendments class III devices for which no final rule requiring the submission of PMAs has been issued, and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, the SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. The SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the FD&C Act on specific devices, in the interest of public health, independent of the procedures of section 515(i). Proceeding directly to rulemaking under section 515(b) of the FD&C Act is consistent with Congress' objective in enacting section 515(i), i.e., that preamendments class III devices for which PMAs have not been previously required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of any of the devices.

II. Dates New Requirements Apply

In accordance with section 515(b) of the FD&C Act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the Agency for class III devices within 90 days after issuance of any final rule based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the FD&C Act, the Agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the Agency finds that ''the continued availability of the device is necessary for the public health.''

FDA intends that under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which the filing of a PMA or a notice of completion of a PDP is required to be filed, the exemptions from the requirements of the IDE regulations for preamendments class III devices in § 812.2(c)(1) and (c)(2) will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or notice of completion of a PDP for a class III device is not filed with FDA within 90 days after the date of issuance of any final rule requiring premarket approval for the device, commercial distribution of the device must cease. The device may be distributed for investigational use only if the requirements of the IDE regulations are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued under § 812.30. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period after the issuance of the final rule to avoid interrupting investigations.

III. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the FD&C Act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that this device have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the advisory committees (panels) for the classification of these devices along with information submitted in response to the 515(i) Order that published in the **Federal Register** of April 9, 2009 (74 FR 16214), and any additional information that FDA has encountered. Additional information regarding the risks as well as classification associated with these device types can be found in the following proposed and final rules published in the **Federal Register** on the following dates: March 9, 1979 (44 FR 13373); February 5, 1980 (45 FR 7907); and May 11, 1987 (52 FR 17736).

IV. Device Subject to This Proposal—Implantable Pacemaker Pulse Generator (21 CFR 870.3610)

A. Identification

An implantable pacemaker pulse generator is a device that has a power supply and electronic circuits that produce a periodic electrical pulse to stimulate the heart. The power supply may be a pacemaker battery although, as discussed in section X of this document, FDA has no record of the pacemaker battery ever being marketed. This device is used as a substitute for the heart's intrinsic pacing system to correct both intermittent and continuous cardiac rhythm disorders. This device may include triggered, inhibited, and asynchronous devices implanted in the human body.

B. Summary of Data

The Cardiovascular Devices Panel recommended that the implantable pacemaker pulse generator (which includes the internal pacemaker battery) be classified into class III because the device is implanted and life-supporting and presented a potential unreasonable risk of illness or injury. The power supply may be a pacemaker battery although, as discussed under section X of this document, FDA has no record of the pacemaker battery ever being marketed. The panel indicated that

although a proposed standard had been written, it did not cover all of the performance characteristics of the device and that this standard was not widely accepted. The panel indicated that general controls alone would not provide sufficient control over the performance characteristics of the device and that sufficient scientific and medical data did not exist to establish a complete standard to assure the safety and effectiveness of particular aspects of the device. Consequently, the panel believed that premarket approval was necessary to assure the safety and effectiveness of the device. FDA continues to agree with the panel's recommendation.

C. Risks to Health

1. Failure To Pace

A failure of the electronic circuitry or early battery depletion can cause failure to pace the patient's heart. Failure to pace could result in a dangerously slow heart rate (or in extreme cases, no heart beat at all), which could result in weakness, dizziness, fainting or even death.

2. Improper Pacing Rate

An electronic circuit failure or an inaccurate rate controller in the circuit can cause improper pacing rates, which could be too fast or too slow. Improper pacing rates may result in symptoms of fatigue, chest discomfort, shortness of breath, dizziness, or fainting.

3. Arrhythmias

A sensing failure of the pacemaker during vulnerable periods of the cardiac cycle can induce cardiac arrhythmias, in particular, dangerously fast arrhythmias. In this case, dangerously fast arrhythmias may lead to chest pain, shortness of breath, dizziness, fainting or even death.

4. Improper Sensing

Electromagnetic interference with pacemaker electronics, loose connections, or sensing circuitry failures may cause improper sensing by the pacemaker, which can lead to failure to pace, improper pacing cycle, and/or arrhythmias.

5. Tissue Damage

If the materials, surface finish, or cleanliness of this device are inadequate, tissue damage can occur.

6. Unintended Stimulation

Pacing pulses may stimulate unintended nerve or muscle, resulting in uncomfortable contractions of the chest wall muscles or of the diaphragm.

7. Development of Pacemaker Syndrome

Pacemaker syndrome may result from suboptimal atrioventricular (AV) synchrony or AV dyssynchrony; this could cause an uncomfortable cardiac awareness including palpitations, fatigue, dizziness, shortness of breath and near-fainting.

8. Other Complications

Other risks of pacemaker implantation include infection, erosion, fibrotic tissue formation, body rejection phenomena, hematoma, myopotential sensing, and additional surgery for replacement. Risks are also associated with pacemaker lead implantation. These are not discussed in this document.

V. PMA Requirements

A PMA for this device must include the information required by section 515(c)(1) of the FD&C Act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on the following: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA must include valid scientific evidence to demonstrate reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 CFR 860.7(c)(2)). Valid scientific evidence is ''evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use. * * * Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness.'' (21 CFR 860.7(c)(2)).

VI. PDP Requirements

A PDP for this device may be submitted in lieu of a PMA, and must follow the procedures outlined in section 515(f) of the FD&C Act. A PDP must provide: (1) A description of the device, (2) preclinical trial information (if any), (3) clinical trial information (if any), (4) a description of the manufacturing and processing of the device, (5) the labeling of the device, and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought.

VII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (b)(2)(A)(iv) of the FD&C Act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the FD&C Act.

A request for a change in the classification of this device is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including new information relevant to the classification of the device.

The Agency advises that to ensure timely filing of any such petition, any request should be submitted to the Division of Dockets Management (see **ADDRESSES**) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of these devices is submitted, the Agency will, within 60 days after receipt of the petition, and after consultation with the appropriate FDA resources, publish an order in the **Federal Register** that either denies the request or gives notice of its intent to initiate a change in the classification of the device in accordance with section

513(e) of the FD&C Act and 21 CFR 860.130 of the regulations.

IX. Environmental Impact

The Agency has determined 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.

X. Analysis of Impacts

FDA has examined the impacts of the proposed 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). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. There have been no 510(k) submissions for implantable pacemaker devices since 1999, there is no record of pacemaker batteries ever being marketed, and both of these devices are in a state of disuse. Accordingly, FDA has concluded that there is little or no interest in marketing these devices in the future. Therefore, the Agency proposes to certify that the proposed rule, if issued as a final rule, would not have a significant economic impact on a substantial number of small entities. We specifically request detailed comment regarding the appropriateness of our assumptions regarding the potential economic impact of this proposed rule.

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 $136 million, using the most current (2010) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

This proposed rule, if issued as a final rule, would be likely to have no significant impact. We base this determination on an analysis of our Registration and Listing, 510(k) and Premarket Approval Application (PMA) database information. There have been no 510(k) submissions for implantable pacemaker pulse generators since 1999, with the exception of one 510(k) submission cleared in 2001 that was erroneously coded as an implantable pacemaker pulse generator (product code DXY), but is actually for an external pacemaker and is being corrected. Current pacemakers have newer features and capabilities that have rendered them not substantially equivalent to the devices cleared under 510(k) prior to 1999, which are obsolete. Current pacemakers are marketed under a PMA; in some cases the product code DXY has been erroneously applied. In addition, there have been no valid 510(k) submissions for pacemaker batteries for implantable pacemakers, which also fall under the product code DSZ also under 21 CFR 870.3610. Two 510(k) submissions have been received for DSZ devices since 1976, but they are believed to be miscoded. The Agency has no record of pacemaker batteries ever being marketed.

This information is summarized in table 1 of this document.

TABLE 1—SUMMARY OF ELECTRONIC REGISTRATION AND LISTING INFORMATION

Device name	Product code	510(k) or PMA?	Last listed	Last marketed	Replaced by approved technology?
Implantable Pacemaker Pulse Generator	DXY	Both	2011	1990s	Yes.[1]
Pacemaker Battery	DSZ	510(k)	No Record	No Record	No.[2]

[1] Implantable pacemaker pulse generators have been submitted as PMAs since the early 1980s. The product code DXY has been erroneously applied to many of these PMA products. The last 510(k) submission for a DXY device was cleared in 1999.

[2] Pacemaker batteries are not separately marketed products. They are internal to implantable pacemakers.

Based on our review of electronic product registration and listing and other data, FDA concludes that there is currently little or no interest in marketing the affected devices and that the proposed rule would not have a significant economic impact. We specifically request detailed comment regarding the appropriateness of our assumptions regarding the potential economic impact of this proposed rule.

XI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would 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 tentatively concludes that the proposed 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.

XII. Paperwork Reduction Act of 1995

This proposed rule refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 812 are currently approved under OMB Control No. 0910–0078; the collections of information in part 807, subpart E are currently approved under OMB Control No. 0910–0120; the collections of information in 21 CFR Part 814, subpart B are currently approved under OMB Control No. 0910–0231; and the collections of information under 21 CFR Part 801 are currently approved under OMB Control No. 0910–0485.

XIII. Proposed Effective Date

FDA is proposing that any final rule based on this proposal become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final rule.

List of Subjects in 21 CFR Part 870

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR Part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR Part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 870.3610 is amended by revising paragraphs (a) and (c) to read as follows:

§ 870.3610 Implantable pacemaker pulse generator.

(a) *Identification.* An implantable pacemaker pulse generator is a device that has a power supply and electronic circuits that produce a periodic electrical pulse to stimulate the heart. This device is used as a substitute for the heart's intrinsic pacing system to correct both intermittent and continuous cardiac rhythm disorders. This device may include triggered, inhibited, and asynchronous modes and is implanted in the human body.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL RULE IN THE **FEDERAL REGISTER**], for any implantable pacemaker pulse generator that was in commercial distribution before May 28, 1976, or that has, on or before [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL RULE IN THE **FEDERAL REGISTER**], been found to be substantially equivalent to any implantable pacemaker pulse generator that was in commercial distribution before May 28, 1976. Any other implantable pacemaker pulse generator shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: July 22, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–18957 Filed 7–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0629]

RIN 1625–AA08

Special Local Regulations for Marine Events; Temporary Change of Dates for Recurring Marine Events in the Fifth Coast Guard District, Wrightsville Channel; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement period of one special local regulation for a recurring marine event in the Fifth Coast Guard District. The ''Wilmington YMCA Triathlon,'' conducted on the waters of Wrightsville Channel near Wrightsville Beach, North Carolina normally would take place on September 24, 2011; this year, the sponsor would like to have the event on September 17, 2011. This Special Local Regulation is necessary to provide for the safety of life on navigable waters during the event, which has been rescheduled from the last Saturday in September to the second-to-last Saturday in September. This action is intended to restrict vessel traffic on Wrightsville Channel during the swimming portion of this event.

DATES: Comments and related material must be received by the Coast Guard on or before August 26, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0629 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252–247–4525, e-mail *Joseph.M.Edge@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:

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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0629), 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 (via *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 via *http://www.regulations.gov,* 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 e-mail 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,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0629'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column.

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.

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,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0629'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four 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**.

Basis and Purpose

The YMCA sponsors an annual Triathlon, ''Wilmington YMCA Triathlon'', in the Wrightsville Beach area of North Carolina. The Triathlon consists of three events: a running portion, a bike-riding portion, and a swimming portion. The swimming portion of the Triathlon takes place in the waters adjacent to Wrightsville Beach. A special local regulation is effective annually to create a safety zone for the swimming portion of the Triathlon.

The regulation listing annual marine events within the Fifth Coast Guard District and their regulated dates is 33 CFR 100.501. A Table to § 100.501 identifies marine events by Captain of the Port zone. This particular marine event is listed at line No. 57.

While, according to the regulation at line No. 57, the Triathlon should take place this year on September 24, 2011, this year the event will take place instead on September 17, 2011.

The swim portion of the Triathlon, scheduled to take place on Saturday September 17, 2011, will consist of two groups of 750 swimmers entering Banks Channel at the Blockade Runner Hotel and swimming northwest along Motts Channel to Seapath Marine. A fleet of spectator vessels are expected to gather near the event site to view the competition.

To provide for the safety of the participants, spectators and other transiting vessels, the Coast Guard will temporarily restrict vessel traffic in the event area during this event. The regulation at 33 CFR 100.501 would be enforced from 7 a.m. to 9 a.m. on September 17, 2011; vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Discussion of Proposed Rule

The Coast Guard is proposing to temporarily suspend the regulation listed at line No. 57 in Table to § 100.501 and will insert this new temporary regulation at Table to § 100.501 line No. 63, in order to reflect the change in the date for this event this year. This change is needed to accommodate the change in date of the annual Triathlon. No other portion of the Table to § 100.501 or other provisions in § 100.501 shall be affected by this regulation.

This safety zone will restrict vessel movement on the specified waters of Wrightsville Channel, Wrightsville Beach, NC. The regulated area will be established in the interest of participant safety during the swim portion of the ''Wilmington YMCA Triathlon'' and will be enforced from 7 a.m. to 9 a.m. on September 17, 2011. The Coast Guard, at its discretion, when practical will allow the passage of vessels. During the Marine Event no vessel will be allowed to transit the waterway unless the vessel is given permission from the Patrol Commander to transit.

Any vessel transiting the regulated area must do so at a no-wake speed during the effective period. Nothing in this proposed rule negates the requirement to operate at a safe speed as provided in the Navigational Rules and Regulations.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation prevents traffic from transiting waters of Wrightsville Channel during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notification will be made to the maritime community via marine information broadcast and local area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking does not change the permanent regulated areas that have been published in 33 CFR 100.501, Table to § 100.501. Vessel traffic will be able to transit the regulated area before and after the races, when the Coast Guard Patrol Commander deems it is safe to do so. Coast Guard vessels enforcing this regulated area can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small

entities. This rule will affect the following entities, some of which may be small entities: The owners of operators of vessels intending to transit Wrightsville Channel from 7 a.m. to 9 a.m. on September 17, 2011.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The regulation will be enforced for only two hours. Although the regulated area will apply to Motts, Banks and Wrightsville Channels, traffic may be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander. In the case where the Patrol Commander authorizes passage through the regulated area, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course. The Patrol Commander will allow non-participating vessels to transit the event area once all swimmers are safely clear of navigation channels and vessel traffic areas. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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.

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 so that they can better evaluate its effects on them and participate in the rulemaking. 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 BOSN3 Joseph Edge, Prevention Department, Sector North Carolina, 252–247–4525. 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.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

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.

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.

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.

Protection of Children

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.

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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

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, under figure 2–1, paragraph 34(h) of the Instruction, that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. This special local regulation is necessary to provide for the safety of the general public and

event participants from potential hazards associated with movement of vessels near the event area. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C 1233.

2. In § 100.501, suspend line No. 57 and add line No. 59 in the Table to read as follows:

§ 100.501 Special Local Regulations; Recurring Marine Event in the Fifth Coast Guard District.

* * * * *

COAST GUARD SECTOR NORTH CAROLINA—COTP ZONE

Number	Date	Event	Sponsor	Location
*	*	*	*	* * *
59.	September 17, 2011	Wilmington YMCA Triathlon	Wilmington YMCA	The waters of, and adjacent to, Wrightsville Channel from Wrightsville Channel Day beacon 14 (LLNR 28040), located at 34°12′18″ N, longitude 077°48′10″ W, to Wrightsville Channel Day beacon 25 (LLNR 28080), located at 34°12′51″ N, longitude 77°48′53″ W.

* * * * *

Dated: July 18, 2011.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port North Carolina.

[FR Doc. 2011–19020 Filed 7–26–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0318]

RIN 1625–AA87

Security Zone; Escorted Vessels in Captain of the Port Ohio Valley Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to implement fixed and moving security zones around High Capacity Passenger Vessels (HCPVs) and vessels carrying Certain Dangerous Cargo (CDC) while they are being escorted in the navigable waters of the Captain of the Port (COTP), Sector Ohio Valley Zone. As used in this section, HCPVs are defined as any commercial vessel carrying 500 or more passengers and CDC is defined in 33 CFR 160.204. The proposed security zones would control the movement of vessels within 50 yards of a HCPV or vessel carrying a CDC. These security zones would mitigate potential terrorist acts and would enhance public and maritime safety and security.

DATES: Comments and related material must be received by the Coast Guard on or before August 26, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0318 using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LCDR Derek Schade, Sector Ohio Valley Response Department, Coast Guard; telephone 502–779–5413, e-mail *derek.t.schade@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:

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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0318), 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 (via *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 via *http://www.regulations.gov,* 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 e-mail 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,* click on the ''submit a comment'' box, which will

then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0318'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. 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.

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*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0318'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

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

For information on facilities or services for individuals with disabilities or to request special assistance at a public meeting, contact LCDR Derek Schade at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Basis and Purpose

Heightened awareness of potential terrorist acts requires enhanced security of our ports, harbors, and vessels; to enhance security, the Captain of the Port, Ohio Valley proposes to establish security zones around certain vessels. These security zones are needed to safeguard the vessels, the public, and the surrounding area from sabotage or other subversive acts, accidents, or other events of a similar nature.

Due to the potential for terrorist attacks, this proposed rule would create fixed and moving security zones around HCPVs and vessels carrying CDCs while they are transiting under escort on the navigable waters within the COTP Ohio Valley zone. By limiting access to these areas, the Coast Guard is reducing potential methods of attack on these vessels, and potential use of the vessels to launch attacks on waterfront facilities and adjacent population centers located within the Captain of the Port, Ohio Valley zone. Vessels having a need to enter these security zones must obtain permission from the Captain of the Port or his designated representative prior to entry.

Terrorist attacks on September 11, 2001, inflicted catastrophic human casualties and property damage. These attacks highlighted terrorists' desire and ability to use multiple means in different geographic areas to successfully carry out their mission.

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. The October 2002 attack on a tank vessel, MV LIMBURG, off the coast of Yemen and the prior attack on the USS COLE demonstrate the maritime terrorism threat. These attacks manifest a continuing threat to U.S. maritime assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002; and 75 FR 55661, September 13, 2010); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002; and 75 FR 57159, September 20, 2010).

The U.S. Maritime Administration (MARAD) in Advisory 02–07 advised U.S. shipping interests to maintain a heightened state of alert against possible terrorist attacks. MARAD Advisory 02–07 was cancelled and replaced by MARAD Advisory 05–01, which advises operators of U.S. flagged vessels that hostile actions against merchant vessels are present and growing. Finally, in recent months, hostilities in Afghanistan and other areas have escalated, making it prudent for U.S. ports and waterways to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Due to increased awareness that future terrorist attacks are possible, the Coast Guard, as lead Federal agency for maritime homeland security, has determined that the Captain of the Port must have the means to be aware of, detect, deter, intercept, and respond to asymmetric threats, acts of aggression, and attacks by terrorists on the American homeland while maintaining our freedoms and sustaining the flow of commerce. Subversive activity towards HCPVs and vessels carrying CDCs is of paramount concern to the Coast Guard. Therefore, in order to strengthen security and further control access, the COTP, Sector Ohio Valley has decided to implement a security zone around all HCPVs and vessels carrying CDCs that are being escorted within the COTP Ohio Valley zone, as described in 33 CFR 3.40–65.

Discussion of Proposed Rule

The Coast Guard proposes to establish a 50-yard security zone around HCPVs and vessels carrying CDCs while they are being escorted in the Captain of the Port Ohio Valley zone, as defined in 33 CFR 3.40–65.

This rule would establish security zones that control the movement of persons and other vessels from the surface to the bottom of the water in a 50-yard radius around escorted vessels. Vessels traveling within 50 yards of these escorted vessels would be required to slow to the minimum speed necessary to navigate safely. All vessels or persons would be prohibited from entering within a 25-yard radius around these escorted vessels without the permission from the COTP Sector Ohio Valley or his or her designated representative.

For the purposes of this rule, a designated representative of the COTP Ohio Valley includes commissioned, warrant, or petty officers of the U.S. Coast Guard; or Federal, State, and local law enforcement officers designated by or assisting the COTP Ohio Valley.

As used in this section, an *escorted vessel* is defined as a HCPV or vessel carrying CDC that is accompanied by one or more Coast Guard assets or other Federal, State, or local law enforcement assets clearly identified by lights, vessel markings, or with agency insignia.

In all cases, the COTP would notify the maritime and general public by marine information broadcast of the periods during which individual security zones will be enforced.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

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, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule does not pose a significant regulatory impact. The limited geographic area impacted by the security zones would not restrict the movement or routine operation of commercial or recreational vessels through the waterways within the COTP Ohio Valley zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit within 50 yards of escorted vessels. This rule would not have a significant impact on a substantial number of small entities because the security zones are limited in size, in most cases leaving ample space for vessels to navigate around them. The zones would not significantly impact commercial and passenger vessel traffic patterns, and mariners would be notified of the zones via broadcast notice to mariners. Where such space is not available and security conditions permit, the COTP would attempt to provide flexibility for individual vessels to transit through the zones as needed.

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 using one of the four methods specified under **ADDRESSES** explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 so that they can better evaluate its effects on them and participate in the rulemaking process.

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 proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

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.

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.

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.

Protection of Children

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.

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.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action''

under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

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. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing security zones around escorted vessels and would not have a significant environmental impact. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. The categorical exclusion determination is also 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 recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.318 to read as follows:

§ 165.318 Security Zone; Captain of the Port Ohio Valley Zone.

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

Captain of the Port or COTP means the same as described in 33 CFR 3.01–1.

Designated representative of the Captain of the Port means any U.S. Coast Guard commissioned, warrant, and petty officers; and Federal, State, and local law enforcement officers designated by or assisting the COTP in the enforcement of the security zone.

High Capacity Passenger Vessel or HCPV means as any commercial vessel carrying 500 or more passengers.

Certain Dangerous Cargo or CDC means the same as defined in 33 CFR 160.

Escorted vessel means a HCPV or vessel carrying a CDC that is accompanied by one or more U.S. Coast Guard assets or other Federal, State, or local law enforcement agency assets clearly identifiable by lights, vessel markings, or with agency insignia.

Minimum safe speed means the speed at which a vessel proceeds when it is fully off plane, completely settled in the water and not creating excessive wake. Due to the different speeds at which vessels of different sizes and configurations may travel while in compliance with this definition, no specific speed is assigned to minimum safe speed. In no instance should minimum safe speed be interpreted as a speed less than that required for a particular vessel to maintain steerageway. A vessel is not proceeding at minimum safe speed if it is:

(1) On a plane;

(2) In the process of coming up onto or coming off a plane; or

(3) Creating an excessive wake.

(b) *Location.* All navigable waters, as defined within Captain of the Port, Sector Ohio Valley zone, 33 CFR 3.40–65, within 50 yards around an escorted vessel while transiting, moored, or anchored.

(c) *Periods of enforcement.* The COTP will enforce this section during escorts of HCPVs and vessels carrying a CDC. The COTP may enlist the aid and cooperation of any Federal, State, county, or municipal law enforcement agency to assist in the enforcement of this regulation. The COTP Ohio Valley may notify the maritime and general public by broadcast notices to mariners, local notices to mariners, or marine safety information broadcasts of the periods during which individual security zones have been activated.

(d) *Regulations.* (1) Unless otherwise specified in this section, the general regulations for security zones contained in § 165.33 of this part apply to this section.

(2) No vessel may approach within 50-yards of an escorted vessel within the Captain of the Port, Sector Ohio Valley zone, unless traveling at the minimum safe speed necessary to navigate safely.

(3) No vessel or person may approach within 25 yards of an escorted vessel within the Captain of the Port Ohio Valley zone, unless authorized by the COTP Ohio Valley or his or her designated representative.

(4) Persons desiring to transit the area of the security zone within 25 yards of an escorted vessel must contact the COTP Ohio Valley on VHF–FM channel 16 (156.8 MHz) or telephone number 502–779–5300 to seek permission. If permitted to enter the security zone, a vessel must proceed at the minimum safe speed and must comply with the orders of the COTP or a designated representative.

Dated: July 6, 2011.

L.W. Hewett,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. 2011–19017 Filed 7–26–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16 and 52

[FAR Case 2011–003; Docket 2011–0003; Sequence 1]

RIN 9000–AM01

Federal Acquisition Regulation; Payments Under Time-and-Materials and Labor-Hour Contracts

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to make necessary revisions to accommodate the authorization to use time-and-materials and labor-hour contract payment requirements.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before September 26, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2011–003 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2011–003'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2011–003.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2011–003'' on your attached document.
- *Fax:* (202) 501–4067.
- *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 FAR Case 2011–003, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2011–003.

SUPPLEMENTARY INFORMATION:

I. Background

On December 12, 2006, DoD, GSA, and NASA published two final FAR rules that made significant changes to the regulations for time-and-materials and labor-hour contracts:

(1) FAR Case 2003–027, Additional Commercial Contract Types, published in the **Federal Register** at 71 FR 74667, December 12, 2006, implemented section 1432 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Title XIV of the Act, referred to as the Services Acquisition Reform Act of 2003, amended section 8002(d) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355, 41 U.S.C. 3307) to expressly authorize the use of time-and-materials and labor-hour contracts for commercial services under specified conditions.

(2) FAR Case 2004–015, Payments Under Time-and-Materials and Labor-Hour Contracts, published in the **Federal Register** at 71 FR 74656, December 12, 2006, revised and clarified policies related to the award and administration of noncommercial time-and-materials and labor-hour contracts and the policies regarding payments made under those contracts.

This rule proposes to make additional changes to enable the use of appropriate payment provisions for time-and-materials and labor-hour contracts, addressing potential problems with the new time-and-materials regulations.

II. Discussion and Analysis

A. Commercial Time-and-Material (T&M) Contracts

Termination for Cause. FAR 52.212–4, Contract Terms and Conditions—Commercial Items, contains the provisions on the Government's right to terminate commercial contracts. If the Government terminates the contract for the Government's convenience, the Government pays the contractor for work performed prior to the termination, plus reasonable charges resulting from the termination. If the Government terminates the contract for cause, the Government only pays for supplies and services ''accepted by the Government.''

Alternate I of the clause establishes the termination-for-convenience provisions for commercial T&M contracts. Consistent with the basic clause, the Government pays contractors for work performed prior to the termination plus reasonable charges that result from the termination. However, Alternate I does not provide any unique termination-for-cause provisions for commercial T&M contracts. Currently, without substitute/unique provisions, the termination-for-cause provisions of the basic clause apply. Under those provisions, the Government only pays for work ''accepted by the Government.'' However, those provisions are inconsistent with the longstanding noncommercial T&M termination-for-cause provisions.

Alternate IV of FAR 52.249–6, Termination (Cost-Reimbursement), provides that the Government pays the contractor for work performed prior to the termination for cause. For labor ''not accepted by the Government,'' the Government pays for work performed, but does not pay any profit on the work.

The proposed rule establishes commercial T&M termination-for-cause provisions that are consistent with the longstanding provisions for noncommercial T&M contracts. Under the proposed rule, the contractor will be paid for work performed prior to the termination for cause, including work ''not delivered to or accepted by the Government,'' less applicable profit.

B. Payment for Nonconforming Supplies and Services

When supplies or services do not conform to contract requirements, the Government generally rejects the supplies or services. The Government ordinarily provides contractors an opportunity to correct or replace nonconforming supplies or services when correction or replacement can be accomplished within the required delivery schedule. Correction or replacement is generally made without additional cost to the Government. However, certain contract types, including T&M contracts, generally require the Government to pay additional costs for replacement or correction, but no additional fee is paid. Payment for replacement or re-performance is consistent with the ''best efforts'' nature of T&M contracts. The Government generally pays for replacement and re-performance on both commercial and noncommercial T&M contracts.

However, a subtle difference in the terminology used for payments in the commercial and noncommercial T&M clauses may be causing confusion over whether the treatment for replacement and re-performance is the same on both commercial and noncommercial contracts. For noncommercial T&M

contracts, FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts, states—

''The Government will pay the Contractor as follows upon the submission of vouchers approved by the Contracting Officer or the authorized representative.''

In addition to the above coverage, paragraph (i)(1) of the commercial T&M clause (Alternate I of FAR 52.212–4, Contract Terms and Conditions—Commercial Items) states—

''Services accepted. Payment shall be made for services accepted by the Government that have been delivered to the delivery destinations(s) set forth in this contract.''

Inclusion of the additional text in the commercial T&M clause is unnecessary. Therefore, this rule proposes to delete the inappropriate text in the commercial T&M clause.

C. Commercial Item Materials

The payment provisions for commercial item materials are inconsistent in the commercial T&M clause and the noncommercial T&M clause. The noncommercial T&M clause provides that the price to be paid for commercial-item materials ''shall not exceed'' the contractor's established catalog or market price. The commercial T&M clause provides that the price to be paid for commercial-item materials ''shall be'' the contractor's established catalog or market price. Since commercial item pricing is subject to negotiation, the rule revises the commercial T&M clause to be consistent with the noncommercial clause.

D. Noncommercial Time-and-Materials

The Allowable Cost and Payment Clause, FAR 52.216–7, is a required contract clause for noncommercial time-and-materials contracts. However, a couple of the provisions of FAR 52.232–7, Payments Under Time-and-Materials and Labor-Hour Contracts, are inconsistent with provisions of the Allowable Cost and Payment FAR clause 52.216–7.

(a) *Payment.* The Allowable Cost and Payment FAR clause 52.216–7 authorizes bi-weekly invoicing for large businesses and more frequent invoicing for small businesses. However, FAR 52.232–7, Payments under Time-and-Materials Contracts and Labor-Hour Contracts, only authorizes monthly invoicing.

By authorizing bi-weekly invoicing for time-and-materials contracts under FAR clause 52.232–7, the proposed rule aligns invoicing under time-and-materials contracts with invoicing under FAR 52.216–7. However, the rule does not change the frequency of invoicing under labor-hour contracts which remains at no more than once each month under revised Alternate I.

(b) *Completion Voucher.* The Allowable Cost and Payment, FAR clause 52.216–7 requires the contractor to submit a completion voucher within 120 days after settlement of final indirect cost rates. However, Time-and-Materials and Labor-Hour Contracts, FAR clause 52.232–7, requires submission of a completion voucher within one year after the contract is completed. By requiring the submission of the completion voucher within 120 days after contract completion for time-and-materials contracts under FAR clause 52.232–7, the proposed rule aligns the submission of the completion voucher under time-and-materials contracts with that prescribed under FAR clause 52.216–7. However, the rule does not change the requirement for the submission of the completion voucher under labor-hour contracts which remains at one year.

E. Application of FAR 52.216–7 to Time-and-Materials and Labor-Hour Contracts

This rule proposes to amend FAR 16.307(a)(1) to clarify that for time-and-materials contracts FAR clause 52.216–7 is used in conjunction with FAR clause 52.232–7, and that FAR clause 52.216–7 does not apply to labor-hour contracts.

Revision of FAR 16.307(a)(1) and creation of new subparagraphs FAR 16.307(a)(3), (a)(4), and (a)(5). Creation of new Alternate clauses II, III, and IV at FAR 52.216–7.

Currently, FAR 16.307(a)(1) contains a series of prescriptions to modify FAR clause 52.216–7, Allowable Cost and Payment, by changing the particular subpart reference under part 31, Contract Cost Principles and Procedures, depending on the characterization of the business entity: educational institutions, State or local governments, or non-profit organizations. Consequently, this subparagraph is extremely busy and not reader friendly. For ease of reading and general clarity, FAR 16.307(a)(1) has been reduced significantly, and FAR subparagraphs 16.307(a)(3), (a)(4), and (a)(5) have been created. These new subparagraphs, respectively, prescribe the use of new Alternate clauses; II (educational institutions), III (state or local governments), and IV (non-profit organizations) at FAR 52.216–7. Each new alternate clause reflects the controlling subpart under part 31, *e.g.,* subpart 31.3 for Alternate II (educational institutions).

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it merely clarifies the existing prescriptions and clause prefaces relating to service contracts.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2011–003), in correspondence.

V. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 16 and 52

Government procurement.

Dated: July 15, 2011.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 16 and 52 as set forth below:

1. The authority citation for 48 CFR parts 16 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

2. Amend section 16.307 by revising paragraph (a) to read as follows:

16.307 Contract Clauses.

(a)(1) The contracting officer shall insert the clause at 52.216–7, Allowable Cost and Payment, in solicitations and contracts when a cost-reimbursement contract or a time-and-materials contract (other than a contract for a commercial item) is contemplated. If the contract is a time-and-materials contract, the clause at 52.216–7 applies in conjunction with 52.232–7, but only to the portion of the contract that provides for reimbursement of materials (as defined in the clause at 52.232–7) at actual cost. Further, 52.216–7 does not apply to labor-hour contracts.

(2) If the contract is a construction contract and contains the clause at 52.232–27, Prompt Payment for Construction Contracts, the contracting officer shall use the clause at 52.216–7 with its Alternate I.

(3) If the contract is with an educational institution, the contracting officer shall use the clause at 52.216–7 with its Alternate II.

(4) If the contract is with a State or local government, the contracting officer shall use the clause at 52.216–7 with its Alternate III.

(5) If the contract is with a nonprofit organization other than an educational institution, a State or local government, or a nonprofit organization exempted under OMB Circular No. A–122, the contracting officer shall use the clause at 52.216–7 with its Alternate IV.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.212–4 by amending Alternate I as follows:

a. Revising the introductory text;

b. Revising paragraph (i)(1) introductory text;

c. Removing from paragraph (i)(1)(ii)(A) ''be the contractor's'' and adding ''not exceed the Contractor's'' in its place; and

e. Adding paragraph (m).

The revised and added text reads as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

* * * * *

Alternate (I) (DATE) When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l), and (m) for those in the basic clause.

* * * * *

(i) * * *

(1) *Work performed.* The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

* * * * *

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon written request, with adequate assurances of future performance. Subject to the terms of this contract, the Contractor shall be paid an amount computed under paragraph (i) *Payments* of this clause, but the ''hourly rate'' for labor hours expended in furnishing work not delivered to or accepted by the Government shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in paragraph (a)(3) of this clause, the portion of the ''hourly rate'' attributable to profit shall be 10 percent. In the event of termination for cause, the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

4. Amend section 52.216–7 by adding Alternates II, III, and IV. The added text reads as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Alternate II (DATE). As prescribed in 16.307(a)(3), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.3 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

Alternate III (DATE). As prescribed in 16.307(a)(4), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.6 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

Alternate IV (DATE). As prescribed in 16.307(a)(5), substitute the following paragraph (a)(1) for paragraph (a)(1) of the basic clause:

(1) The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) Subpart 31.7 in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

5. Amend section 52.232–7 by—

a. Revising the date of the clause;

b. Revising paragraph (a)(5) introductory text;

c. Removing from paragraph (f) ''1 year'' and adding ''120 days'' in its place; and

d. Revising Alternate I.

The revised text reads as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

* * * * *

Payments Under Time-and-Material and Labor-Hour Contracts (Date)

* * * * *

(a) * * *

(5) Vouchers may be submitted not more than once every two weeks to the Contracting Officer or authorized representative. A small business concern may receive more frequent payments than every two weeks. The Contractor shall substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the

schedule) by evidence of actual payment and by—

* * * * *

Alternate I (DATE). If a labor-hour contract is contemplated, the Contracting Officer shall substitute paragraphs (a)(5) and (f) and (j) to the basic clause as follows:

(a)(5) Vouchers may be submitted not more than once each month (or at more frequent intervals, if approved by the Contracting Officer), to the Contracting Officer or authorized representative. The Contractor shall substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by—

(i) Individual daily job timekeeping records;

(ii) Records that verify the employees meet the qualifications for the labor categories specified in the contract; or

(iii) Other substantiation approved by the Contracting Officer.

(f) *Audit.* At any time before final payment under this contract, the Contracting Officer may request audit of the vouchers and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding vouchers, that are found by the Contracting Officer or authorized representative not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher designated by the Contractor as the ''completion voucher'' and supporting documentation, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraph (g) of this clause), the Government shall promptly pay any balance due the Contractor. The completion voucher, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(j) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

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Notices

Federal Register
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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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974, System of Records

AGENCY: United States Agency for International Development.

ACTION: Notice of new system of records.

SUMMARY: The United States Agency for International Development (USAID) is issuing public notice of its intent to establish a new system of records maintained in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, entitled ''USAID–30, Google Apps Business Edition''. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of record systems maintained by the agency (5 U.S.C. 522a(e)(4)).

DATES: Public comments must be received on or before September 9, 2011. Unless comments are received that would require a revision; this update to the system of records will become effective on September 9, 2011.

ADDRESSES: You may submit comments:

Paper Comments

- *Fax:* (703) 666–1466.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202

Electronic Comments

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- *E-mail: privacy@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions, please contact, USAID Privacy Office, United States Agency for International Development, 2733 Crystal Drive, 10th Floor, Arlington, VA 22202. E-mail: *privacy@usaid.gov.*

SUPPLEMENTARY INFORMATION: The Google Apps Business Edition is being established as an Agency-wide system of record as it is required to collect, maintain or store personal data requiring protection under the Privacy Act. It is an e-mail and collaboration application suite hosted in Software as a Service (''SaaS'') cloud computing model. The suite is composed of Gmail for e-mail, Google Docs for office productivity and collaboration, and Google Sites for Wiki style Web sites. This application will enable USAID to transition to a new e-mail and data application solution.

Dated: July 03, 2011.

William Morgan,

Chief Information Security Officer—Chief Privacy Officer.

USAID–30

SYSTEM NAME:

Google Apps Business Edition.

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION(S):

United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records of current employees, contractors, consultants, and partners.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

This system contains USAID organizational information. At a solution wide level the system will collect and display First and Last Name, Work Phone Number, and Work Address. This information is automatically collected from USAID's Active Directory of user objects. Users additionally have an option to create and maintain personal address books, accessible to only them or to users they grant access to. In these personal address books the user may manually enter First and Last Name, Home Address, Home Phone, and Date of Birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Privacy Act of 1974 (Pub. L. 93–579), sec. 552a (c), (e), (f), and (p).

PURPOSE(S):

Records in this system will be used:

(1) The solution wide information is available to all USAID users provisioned in the Google Apps system for e-mail, calendaring, and collaboration tools.

(2) The personal address book information is available to the user that created the personal address book or to users that are granted access.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

These records are not disclosed to consumer reporting agencies.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

USAID may disclose relevant system records in accordance with any current and future blanket routine uses established for its record systems. These may be for internal communications or with external partners.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records are maintained in user-authenticated, password-protected systems. All records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties.

RETRIEVABILITY:

Contact Sharing creates a searchable directory of the user names and e-mail addresses in your domain, and shares this directory with everyone in your organization. By default, the directory includes each user's primary e-mail address and any e-mail aliases or nicknames. As a Google Apps account administrator, you can control which of these e-mail addresses appear in the directory by adjusting the Contact Sharing settings. You can also hide users from the shared contact list.

E-mail addresses that users saved as Personal Contacts are not included in the directory and are not affected by changes made to the Contact Sharing setting. Suspended and deleted users also do not appear in the directory.

All users in your domain can find contacts listed in the directory through Contacts search, Contacts details view, and any autocomplete function in each Google App enabled for your domain.

Contact Sharing is automatically enabled in your Google Apps account, but can be disabled (and re-enabled) at any time.

SAFEGUARDS:

Additional administrative safeguards are provided through the use of internal standard operating procedures.

RETENTION AND DISPOSAL:

Records are retained using the appropriate, approved National Archives Records Administration—Schedules for the type of record being maintained.

SYSTEM MANAGER(S) AND ADDRESS:

Sukhvinder Singh, United States Agency for International Development, 2733 Crystal Drive, 11th Floor, Arlington, VA. 22202.

NOTIFICATION PROCEDURES:

Individuals requesting notification of the existence of records on them must send the request in writing to the Chief Privacy Officer, USAID, 2733 Crystal Drive, 11th Floor, Arlington, VA 22202. The request must include the requestor's full name, his/her current address and a return address for transmitting the information. The request shall be signed by either notarized signature or by signature under penalty of perjury and reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to a record must submit the request in writing according to the ''Notification Procedures'' above. An individual wishing to request access to records in person must provide identity documents, such as government-issued photo identification, sufficient to satisfy the custodian of the records that the requester is entitled to access.

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on himself or herself must identify the information to be changed and the corrective action sought.

Requests must follow the ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

The records contained in this system will be provided by and updated by the individual who is the subject of the record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–18981 Filed 7–26–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0018]

Notice of Decision To Authorize the Importation of Fresh Persimmon From the Republic of South Africa

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of fresh persimmon fruit from the Republic of South Africa. Based on the findings of a pest risk analysis, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of fresh persimmon fruit from South Africa.

DATES: *Effective Date:* July 27, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip B. Grove, Regulatory Coordinator, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 156, Riverdale, MD 20737–1236; (301) 734–6280.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–51, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on March 21, 2011 (76 FR 15280, Docket No. APHIS–2011–0018), in which we announced the availability, for review and comment, of a PRA that evaluates the risks associated with the importation into the continental United States of fresh persimmon fruit (*Diospyros kaki*) from the Republic of South Africa. We solicited comments on the notice for 60 days ending on May 20, 2011. We received one comment by that date, from a State agriculture agency.

The commenter stated that the PRA identified nine quarantine pest species that could potentially accompany shipments of fresh persimmon fruit from the Republic of South Africa into the United States and stated that the potential introduction of these pests into the commenter's State would pose a risk to the State's agriculture. The commenter suggested allowing persimmon fruit from South Africa to be shipped to States where the pests do not exist and would be less likely to establish in order to evaluate the effectiveness of the recommended mitigation measures.

The PRA, which includes a qualitative, pathway-initiated pest risk assessment and a risk management document, not only identifies nine quarantine pests that could potentially accompany shipments of fresh persimmon fruit from the Republic of South Africa but also identifies mitigation measures that will be required for this commodity to be imported into any State in the continental United States. The mitigation measures for persimmons from South Africa have been previously evaluated and proven effective for other commodities, and we will continuously monitor the effectiveness of those mitigations with port-of-entry inspections. We do not consider it necessary to prohibit the importation of a commodity based on identification of quarantine pests that could potentially accompany consignments when proven mitigations are available for this risk

[1] To view the notice, the PRA, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0018.*

and will be required as a condition of importation.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of fresh persimmon fruit from the Republic of South Africa subject to the following phytosanitary measures:

- The persimmon fruit may be imported into the continental United States in commercial consignments only.
- The persimmon fruit must be irradiated in accordance with 7 CFR part 305 with a minimum absorbed dose of 400 Gy.
- If the irradiation treatment is applied outside the United States, each consignment of fruit must be precleared by APHIS inspectors in the Republic of South Africa. The persimmon fruit must be jointly inspected by APHIS and the national plant protection organization (NPPO) of South Africa and accompanied by a phytosanitary certificate (PC) attesting that the fruit received the required irradiation treatment.
- If the irradiation treatment is to be applied upon arrival in the United States, each consignment of fruit must be inspected by the NPPO of South Africa prior to departure and accompanied by a PC.
- The commodity is subject to inspection at the U.S. port-of-entry.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, persimmon fruit from the Republic of South Africa will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables. Further, for fruits and vegetables requiring treatment as a condition of entry, the phytosanitary treatments regulations in 7 CFR part 305 contain administrative and procedural requirements that must be observed in connection with the application and certification of specific treatments.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–19037 Filed 7–26–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0015]

Notice of Decision To Authorize the Importation of Garlic From the European Union and Other Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to authorize the importation into the continental United States of garlic from the European Union and other countries. Based on the findings of a commodity import evaluation document, which we made available to the public for review and comment through a previous notice, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of garlic from the European Union and other countries.

DATES: *Effective Date:* July 27, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Import Specialist, Plant Protection and Quarantine, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 734–5820.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–50, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56–4 of the regulations contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis (PRA), can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. Under that process, APHIS publishes a notice in the **Federal Register** announcing the availability of the PRA that evaluates the risks associated with the importation of a particular fruit or vegetable. Following the close of the 60-day comment period, APHIS may authorize the importation of the fruit or vegetable subject to the identified designated measures if: (1) No comments were received on the PRA; (2) the comments on the PRA revealed that no changes to the PRA were necessary; or (3) changes to the PRA were made in response to public comments, but the changes did not affect the overall conclusions of the analysis and the Administrator's determination of risk.

In accordance with that process, we published a notice [1] in the **Federal Register** on March 21, 2011 (76 FR 15279–15280, Docket No. APHIS–2011–0015), in which we announced the availability, for review and comment, of a commodity import evaluation document (CIED) that evaluates the risks associated with the importation into the continental United States of fresh garlic from the European Union (EU) and other countries. For the purposes of this document, the EU and other countries refers to Algeria, Armenia, Austria, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Egypt, Estonia, Georgia, Germany, Greece, Hungary, Israel, Kazakhstan, Kyrgyzstan, Latvia, Lebanon, Lithuania, the Republic of Macedonia, Moldova, Montenegro, Morocco, Palestine Authority, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Switzerland, Syria, Tajikistan, Turkey, Turkmenistan, Ukraine, and Uzbekistan.

These countries are currently authorized to export garlic (dry bulbs, no green leaves) to the United States only if the commodity undergoes vacuum fumigation for the weevil pests *Brachycerus* spp. and *Dyspessa ulula.*

Three countries, France, Italy, and Spain, are exempt from the required fumigation. Imports of garlic from France are allowed with a phytosanitary certificate (PC) containing an additional declaration that the garlic was inspected and found free from *Brachycerus* spp. and *Dyspessa ulula.* Similarly, the regulations in § 319.56–13 provide that imports of garlic from Italy and Spain are approved if the garlic is accompanied by a PC which contains an additional declaration that the garlic has been inspected by the national plant protection organization of the exporting country and found free of *Brachycerus* spp. and *Dyspessa ulula,* based on field inspection and reexamination at the port of export. Based on the evidence presented in the CIED, we determined that the measures currently in place for garlic imported from France, Italy, and Spain are adequate to manage pest risks

[1] To view the notice, the CIED, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2011-0015.*

associated with garlic from the EU and other countries.

We solicited comments on the notice for 60 days ending on May 20, 2011. We received three comments by that date. They were from an association of garlic producers, a State agricultural agency, and a governmental organization. One commenter was in favor of allowing the importation of garlic from the EU and other countries under the conditions described in the CIED. The remaining comments are discussed below.

Two commenters expressed concern that visual inspection and a phytosanitary certificate may not be sufficient to prevent the potential accidental introduction of the two weevils (*Brachycerus* spp. and *Dyspessa ululа*) into the United States. One of these commenters recommended the continued use of vacuum fumigation of garlic bulbs originating from countries where these weevils occur because larvae develop within garlic bulbs and could easily go undetected by visual inspection.

As mentioned in the CIED published with the previous notice, garlic infested with *Brachycerus* spp. or *D. ululа* is likely to be detected during inspection. Garlic heads infested with *D. ululа* have large internal cavities and darkened holes, often with secondary mold. The cloves may be completely eaten, leaving only the outer coverings of the garlic head with the larval excrements, and a strongly attacked batch of garlic can be detected by a weight shortage (between 40 percent and 80 percent of the normal weight).

Regarding the risk of introducing *Brachycerus* spp. via the importation of garlic, *Brachycerus* spp. are rarely intercepted even in passenger baggage, with only 16 interceptions from all countries, all sources, over a 27-year period. When they are present, adult females lay clusters of eggs in holes chewed in the garlic bulb. *Brachycerus* spp. larvae bore into the garlic bulb, leaving bulging lumps, holes, frass, and fungal decay, while mature larvae are often visible externally. Because *Brachycerus* spp. cause noticeable damage to the commodity, garlic bulbs infested with this pest would be culled during packing processes or identified during inspection by the NPPO in the originating country and, therefore, are unlikely to be included in shipments. The symptoms of *Brachycerus* spp. infestation can also be readily inspected for at the port of entry into the United States.

One commenter also stated that APHIS provided no technical or scientific reason to revise regulations and no underlying, scientific, or technical basis for the historical fumigation exemption for France, Italy, and Spain. The commenter noted that pests have been intercepted in shipments of fresh garlic from countries currently allowed to ship without fumigation and that removing the fumigation requirement because the interceptions have been infrequent is inappropriate.

Although we do not have the background for the exemptions afforded to these countries, we can conclude that the decision was based on a historical lack of pest detections. Garlic from Spain and Italy has been allowed entry into the United States without methyl bromide fumigation since at least 1972. Garlic from France has been imported under similar restrictions for some time as well. Although pests have been found on garlic imported from these countries, such interceptions have occurred very rarely and these pests have not been introduced into the United States since importation of garlic from these countries began. Our experience inspecting garlic from France, Italy, and Spain, as reflected in the pest interception data, suggests that visual inspection is sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of garlic into the continental United States.

For these reasons, APHIS has concluded that commercial garlic for export from the EU and other countries is unlikely to contain the identified quarantine pests and any pests associated with this commodity would be detected by inspection. Accordingly, we have determined that no changes to the CIED are necessary based on these comments.

Therefore, in accordance with the regulations in § 319.56–4(c)(2)(ii), we are announcing our decision to authorize the importation into the continental United States of fresh garlic from the European Union and other countries subject to the following phytosanitary measures:

- The garlic must be accompanied by a phytosanitary certificate with an additional declaration attesting freedom from *Brachycerus* spp. and *Dyspessa ululа*.
- The garlic may be imported into the continental United States in commercial consignments only.

These conditions will be listed in the Fruits and Vegetables Import Requirements database (available at *http://www.aphis.usda.gov/favir*). In addition to these specific measures, garlic from the European Union and other countries will be subject to the general requirements listed in § 319.56–3 that are applicable to the importation of all fruits and vegetables.

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 22nd day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–19036 Filed 7–26–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0023]

Monsanto Co.; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status for Corn Genetically Engineered for Drought Tolerance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice; reopening of comment period.

SUMMARY: We are reopening the comment period for a petition received from the Monsanto Company seeking a determination of nonregulated status for corn designated as MON 87460, which has been genetically engineered for drought tolerance. This action will allow interested persons additional time to prepare and submit comments on the Monsanto petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments that we receive on or before August 12, 2011.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2011–0023–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0023, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0023* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue

SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

The petition, draft environmental assessment, and plant pest risk assessment are also available on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/09_05501p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/09_05501p _dea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/09_05501p _dpra.pdf.*

FOR FURTHER INFORMATION CONTACT: Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, e-mail: *evan.a.chestnut@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: On May 11, 2011, we published in the **Federal Register** (76 FR 27303–27304, Docket No. APHIS–2011–0023) a notice[1] advising the public that the Animal and Plant Health Inspection Service (APHIS) has received a petition from the Monsanto Company seeking a determination of nonregulated status for corn designated as MON 87460, which has been genetically engineered for drought tolerance.

Comments on the Monsanto petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status were required to be received on or before July 11, 2011. We are reopening the comment period on Docket No. APHIS–2011–0023 for an additional 30 days, ending August 12, 2011. We will also consider all comments received between July 12, 2011 (the day after the close of the original comment period) and the date of this notice. This action will allow interested persons additional time to prepare and submit comments on the Monsanto petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

[1] To view the notice, supporting documents, and any comments we have received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0023.*

Done in Washington, DC, this 22nd day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–19039 Filed 7–26–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Locatable Minerals

AGENCY: Forest Service, USDA.

ACTION: Notice, request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection, Locatable Minerals-36 CFR part 228, subpart A.

DATES: Comments must be received in writing on or before September 26, 2011 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Minerals and Geology Management Staff, Mail Stop 1126, 1601 N. Kent Street, 5th Floor, Arlington, VA 22209.

Comments also may be submitted via facsimile to 703–605–1575 or by e-mail to: *36cfr228a@fs.fed.us.*

The public may inspect comments received at USDA Forest Service, Minerals and Geology Management Staff, 1601 N. Kent St., 5th Floor, Arlington, Virginia 22209, during normal business hours. Visitors are encouraged to call ahead to 703–605–4794 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Tony Ferguson, Director, Minerals and Geology Management, at 703–605–4785. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 twenty-four hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Locatable Minerals—36 CFR Part 228, Subpart A.

OMB Number: 0596–0022.

Expiration Date of Approval: December 31, 2011.

Type of Request: Extension of a currently approved collection.

Abstract: This collection of information is necessary to ensure that the environmental impacts associated with locatable mineral operations on National Forest System (NFS) lands are minimized to the extent practicable. The Forest Service regulations at 36 CFR 228.5 require mining operators, with some exceptions, to notify the authorized Forest Service officer of their intent to conduct a locatable mineral operation on NFS lands by filing a Notice of Intent or Plan of Operations. Title 36 CFR part 228.10 requires mining operators to submit a Cessation of Operation when mining operations are temporarily ceased, other than for seasonal closure.

There is not a required format for the information collection, but all information identified in 36 CFR part 228 must be included. Form FS–2800–5, Plan of Operations for Mining Activities on National Forest System Lands, is available for use by mining operators to simplify this process. The information required in a Plan of Operations, detailed in 36 CFR 228.4(c), (d), and (e), includes:

1. The name and legal mailing address of operators (and claimants if they are not the same) and their lessees, assigns, or designees.

2. A map or sketch showing information sufficient to locate:

a. The proposed area of operations on the ground.

b. Existing and/or proposed roads or access routes to be used in connection with the operation as set forth in 36 CFR 228.12 on access.

c. The approximate location and size of areas where surface resources will be disturbed.

3. Information sufficient to describe:

a. The type of operations proposed and how they would be conducted.

b. The type and standard of existing and proposed roads or access routes.

c. The means of transportation used or to be used as set forth in 36 CFR 228.12.

d. The period during which the proposed activity will take place.

e. Measures to be taken to meet the requirements for environmental protection in 36 CFR 228.8.

A Notice of Intent is required, as detailed in 36 CFR 228.4(a)(2), to include information sufficient to identify the area involved, the nature of the proposed operation, the route of access to the area of operations, and the method of transport. A Cessation of Operations is required, as detailed in 36 CFR 228.10, to include verification of intent to maintain structures, equipment, and other facilities; expected reopening date; and an estimate of extended durations of operations.

These collections of information are crucial to protecting surface resources,

including plants, animals, and their habitat, as well as public safety on NFS lands. The authorized Forest Service officer will use the collected information to ensure that the exploration, development, and production of mineral resources are conducted in an environmentally sensitive manner; that these mineral operations are integrated with the planning and management of other resources using the principles of ecosystem management; and that lands disturbed by mineral operations are reclaimed using the best scientific knowledge and returned to other productive uses. If this information was not collected the Forest Service would not be in compliance with the Federal Regulations and locatable mineral operations could result in undue damage to surface resources.

Estimate of Annual Burden: 12 hours (10 hours—Plan of Operations; 1 hour—Notice of Intent; 1 hour—Cessation of Operations).

Type of Respondents: Mining operators.

Estimated Annual Number of Respondents: 3,255 (750—Plans of Operations; 2,500—Notices of Intent; 5—Cessation of Operations).

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10,005 hours (10 hours × 750 Plans of Operation = 7,500; 1 hour × 2,500 Notices of Intent = 2,500; 1 hour × 5 Cessation of Operations = 5; 7,500 + 2,500 + 5 = 10,005).

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 20, 2011.

James M. Pena,

Associate Deputy Chief, NFS.

[FR Doc. 2011–18945 Filed 7–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of May Call for Nominations 2011.

SUMMARY: The National Urban and Community Forestry Advisory Council, (NUCFAC) will be filling three positions that will expire at the end of December 2011. Interested applicants may download a copy of the application and position descriptions from the U.S. Forest Service's Urban and Community Forestry *Web site: http://www.fs.fed.us/ucf.*

DATES: Nomination(s) must be ''received'' (not postmarked) by August 29, 2011.

ADDRESSES: Nomination applications by courier should be addressed to: Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 1400 Independence Avenue, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Please submit electronic nomination(s) to: *nucfac_ucf_proposals@fs.fed.us.* The subject line should read: May NUCFAC Nominations 2011.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 1400 Independence Avenue, SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Facsimiles will not be accepted as official nominations. E-mail or a courier service is recommended. Regular mail submissions must be screened by the Agency and may delay the receipt of the application up to a month.

A total of three positions will be filled. The following three positions will serve a 3-year term from January 1, 2012, to December 31, 2014:

- A member representing forest products; nursery, or related industries.
- One of two members representing academic institutions with an expertise in urban and community forestry activities.
- Not officers or employees of any government body with a population of greater than 50,000 and has experience and is active in urban and community forestry.

Dated: July 19, 2011.

James Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. 2011–18950 Filed 7–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince William Sound Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince William Sound Resource Advisory Committee will meet via video conference in four locations (Cordova, Anchorage, Girdwood and Valdez). The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review, discuss and select projects to be funded thru the Secure Rural Schools Act.

DATES: The meeting will be held August 20, 2011 starting at 9 a.m.

ADDRESSES: The meeting will be held on video conferencing equipment at the following locations: Chugach National Forest Supervisors Office, 3301 ''C'' Street, Suite 300, Anchorage, AK; Cordova Ranger District, 612 2nd Street, Cordova, AK; Glacier Ranger District, 145 Forest Station Road, Girdwood, AK; Prince Willam Sound Community College, 303 Lowe Street, Valdez, AK . Written comments should be sent to Teresa Benson P.O. Box 280, Cordova, AK 99574. Comments and questions may also be sent via e-mail to *tbenson@fs.fed.us,* or via facsimile to (907) 424–7214.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cordova Ranger District (612 2nd Street, Cordova, AK) or the Glacier Ranger District (145 Forest Station Road, Girdwood, AK).

FOR FURTHER INFORMATION CONTACT: Teresa Benson, Designated Federal

Official, c/o USDA Forest Service, P.O. Box 280, Cordova, Alaska 99574, telephone (907) 424–4742.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: The Prince William Sound Resource Advisory Committee (RAC) will be discussing and voting on proposals that have been received from communities of the Prince William Sound. The proposals that may receive funding would enhance forest ecosystems or restore and improve land health and water quality on the Chugach National Forest and other near-by lands including the communities of Chenega, Cordova, Tatitlek, Valdez and Whittier. The RAC is responsible for approving projects with funds made available from years 2008–2012.

The public is welcome to attend the August 20th RAC meeting. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by August 19th will have the opportunity to address the Committee at those sessions.

Dated: July 15, 2011.

Nancy S. O'Brien,

Acting Cordova District Ranger.

[FR Doc. 2011–18940 Filed 7–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Pennington County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Pennington County Resource Advisory Committee will meet in Rapid City, SD. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to review and make recommendations for approval of project proposals.

DATES: The meeting will be held August 23, 2011, at 5 p.m.

ADDRESSES: The meeting will be held at the Mystic Ranger District Office at 8221 South Highway 16. Written comments should be sent to Robert J. Thompson, 8221 South Highway 16, Rapid City, SD 57702. Comments may also be sent via e-mail to *rjthompson@fs.fed.us,* or via facsimile to 605–343–7134.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Mystic Ranger District office. Visitors are encouraged to call ahead at 605–343–1567 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Robert J. Thompson, District Ranger, Mystic Ranger District, 605–343–1567.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Meetings are open to the public. The following business will be conducted: review and make recommendations for approval of project proposals.

July 21, 2011.

Dennis Jaeger,

Deputy Forest Supervisor.

[FR Doc. 2011–18983 Filed 7–26–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Non-commercial Permit and Reporting Requirements in the Main Hawaiian Islands Bottomfish Fishery.

OMB Control Number: 0648–0577.

Form Number(s): NA.

Type of Request: Regular submission (revision of a current information collection).

Number of Respondents: 100.

Average Hours per Response: Permit application, 15 minutes; appeal of denied permit, 2 hours; trip report logsheet, 20 minutes.

Burden Hours: 100.

Needs and Uses: This request is for a revision of a currently approved information collection.

All non-commercial participants (including vessel owners, operators, and crew) in the boat-based bottomfish fishery in the main Hawaiian Islands are required to obtain a federal bottomfish permit, pursuant to 50 CFR part 665. This collection of information is needed for permit issuance, to identify actual or potential participants in the fishery, determine qualifications for permits, and to help measure the impacts of management controls on the participants in the fishery. The permit program is also an effective tool in the enforcement of fishery regulations and serves as a link between the National Marine Fisheries Service (NMFS) and fishermen.

All vessel owners or operators in this fishery are required to submit a completed logbook form at the completion of each fishing trip. These logbook reporting sheets document the species and amount of species caught during the trip. The reporting requirements are crucial to ensure that NMFS and the Western Pacific Fishery Management Council (Council) will be able to monitor the fishery and have fishery-dependent information to develop an estimate of an Annual Catch Limit (annual Total Allowable Catch) for the fishery, evaluate the effectiveness of management measures, determine whether changes in fishery management programs are necessary, and estimate the impacts and implications of alternative management measures.

Affected Public: Individuals or households.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: July 21, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–18907 Filed 7–26–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before August 26, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (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.

Dated: July 21, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title of Collection: Annual Performance Report for the State Grant for Assistive Technology Program under the Assistive Technology Act of 1998, as Amended.

OMB Control Number: 1820–0572.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Business or other for-profit; Individuals or households; State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 190,456.

Total Estimated Annual Burden Hours: 23,968.

Abstract: Section 4 of the Assistive Technology (AT) Act of 1998, as amended, requires states to submit annual data reports. This instrument helps the grantees report annual data related to the required activities implemented by the state under the AT Act. This data is used by the Rehabilitation Services Administration (RSA) in order to prepare required annual reports to Congress. RSA calls this data collection an annual progress report.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4623. When you access the information collection, click on ''Download Attachments''to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–18994 Filed 7–26–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 26, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 21, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Extension.

Title of Collection: Federal Family Educational Loan Program (FFEL) Regulations—Administrative Requirements for States, Not-For-Profit Lenders, and Eligible Lender Trustees.

OMB Control Number: 1845–0085.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Not-for-profit institutions; State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 73.

Total Estimated Number of Annual Burden Hours: 73.

Abstract: The regulations in 34 CFR 682.302 (f) assure the Secretary that the integrity of the program is protected from fraud and misuse of the program funds. These regulations require a State, non-profit entity, or eligible lender trustee to provide to the Secretary a certification on the State or non-profit entity's letterhead signed by the State or non-profit's Chief Executive Officer (CEO) which states the basis upon which the entity qualifies as a State or non-profit entity. The submission must include documentation establishing the entity's State or non-profit status. In addition, the submission must include the name and lender identification number for which the eligible not-for profit designation is being certified. Once an entity has been approved as an eligible not-for-profit holder, the entity must provide to the Secretary an annual certification on the State or non-profit entity's letterhead signed by the CEO, which includes the name and lender identification number(s) of the entities for which designation is being recertified. The annual certifcation must state that the State or non-profit entity has not altered its status as a State or non-profit entity since its prior certification to the Secretary and that it continues to satisfy the requirements of an eligible not-for-profit holder either in its own right or through a trust agreement with an eligible lender trustee. Further, when an approved not-for-profit holder has a change in status, within 10 days of becoming aware of the occurrence of a change that may result in a State or non-profit entity that has been designated an eligible not-for-profit holder, either directly or through an eligible lender trustee, losing that eligibility, the State or non-profit entity must submit details of the change to the Secretary.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4663. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–18997 Filed 7–26–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–308]

Union Electric Company, dba AmerenUE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 459–308.

c. *Date Filed:* June 15, 2011.

d. *Applicant:* Union Electric Company, dba AmerenUE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The proposed non-project use would be located at mile marker 0.1 on the main channel of Lake of the Ozarks, in Miller County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, AmerenUE, P.O. Box 993, Lake Ozark, MO 65049, (573) 365–9214.

i. *FERC Contact:* Shana High at (202) 502–8674, or *e-mail: shana.high@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protest:* August 15, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–459–308) on any comments, motions, or recommendations filed.

k. *Description of Request:* AmerenUE requests Commission authorization to permit the Nauti Rooster Restaurant & Bar to construct two commercial docks with a total of 54 boat slips. The boat slips would serve customers of the restaurant and bar. No dredging activities, shoreline stabilization, or fueling facilities are associated with the proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''*Comments*'', ''*Protest*'', or ''*Motion to Intervene*'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: July 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18919 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP11–509–000; CP11–510–000]

Columbia Gulf Transmission Company and Energy Interchange, LLC; Notice of Application

Take notice that on July 1, 2011, Columbia Gulf Transmission Company (Columbia Gulf), and Energy Interchange, LLC (Energy Interchange), filed in the above referenced dockets a joint application pursuant to sections 7(c) and 7(b), of the Natural Gas Act (NGA), and Parts 157 and 284 of the Federal Energy Regulatory Commission's (FERC) Regulations for (1) A certificate of public convenience and necessity under section 7(c) authorizing the lease of interstate pipeline capacity by Energy Interchange from Columbia Gulf; (2) approval of the related abandonment under section 7(b) by Columbia Gulf of the interstate pipeline capacity through an operating lease; (3) a blanket certificate pursuant to part 284, subparts B and G, authorizing Energy Interchange to provide interruptible hub support services in interstate commerce pursuant to the terms of Energy Interchange's *pro forma* FERC Gas Tariff set forth in Exhibit P hereto; (4) a blanket certificate of public convenience and necessity pursuant to section 157.204 of the Commission's Regulations authorizing future facility construction, operations, and abandonment as set forth in the blanket certificate Regulations in 18 CFR subpart F; and (5) authority for Energy Interchange to charge market-based rates for the proposed open access hub support services that Energy Interchange will offer. In addition, Columbia Gulf and Energy Interchange respectfully request waiver of certain Commission regulations, all as more fully set forth in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to J. Curtis Moffatt, Van Ness Feldman PC, 1050 Thomas Jefferson Street, NW., Washington, DC 20007–3877, or by phone at (202) 298–1800 or Carlos F. Peña, Assistant General Counsel, NiSource Corporate Services Company, 5151 San Felipe, Suite 2500, Houston, Texas 77056, or by phone at (713) 267–4751.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process.

Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comment Date: August 4, 2011.

Dated: July 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18916 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–508–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on July 1, 2011, Texas Eastern Transmission (Texas Eastern), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP11–508–000, an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations, requesting authorization to construct, install, own, and operate natural gas pipeline and associated facilities to enable Texas Eastern to provide up to 27,000 dekatherms per day (Dth/d) of firm lateral line transportation service to the Grays Ferry Cogeneration Partnership (Grays Ferry) and Paulsboro Refining Company, LLC (Paulsboro Refining), and to establish initial incremental recourse rates for firm transportation service on the facilities to be constructed, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The proposed project will take place entirely within Delaware County, Pennsylvania. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Berk Donaldson, Director, Rates and Certificates, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, or by calling (713) 627–4488 (telephone) or (713) 627–5947 (fax), *bdonaldson@spectraenergy.com*, to Marcy F. Collins, Associate General Counsel, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251–1642, or by calling (713) 627–6137 (telephone) or (713) 989–3191 (fax), *mfcollins@spectraenergy.com*, or to James D. Seegers, Vinson & Elkins, L.L.P., 1001 Fannin, Suite 2500 Houston, Texas 77002, or by calling (713) 758–2939 (telephone) or (713) 615–5206 (fax), *jseegers@velaw.com*.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: August 3, 2011.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18915 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13824–000; 13826–000]

FFP Missouri 17, LLC; BOST2 Hydroelectric LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 6, 2010, FFP Missouri 17, LLC (FFP) and BOST2 Hydroelectric LLC (BOST2) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Columbia Lock & Dam, located on the Ouachita River near the City of Columbia, in Caldwell Parish, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

FFP's Columbia Lock & Dam Hydroelectric Project No. 13824–000 would consist of: (1) Two to four compact bulb turbines, with a combined generation capacity of 12.0 MW, placed in the existing gate bays of the Corps Columbia Dam; (2) a 40-foot x 60-foot control building located on the South Carolina side of the river; and (3) a 12,000-foot-long transmission line extending northwest from a switchyard near the dam to an existing transmission line. FFP is also exploring an alternative that would involve construction of a new powerhouse, intake channel, and tailrace opposite the lock structure on the South Carolina side of the river. Each design would have an average annual generation of 50,000 MWh/yr. The project would utilize flows from the Columbia Dam and operate as directed by the Corps.

Applicant Contact: Mr. Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930. (978) 226–1531.

BOST2's proposed Columbia Hydroelectric Project No. 13826–000 would consist of: (1) An intake channel; (2) a new powerhouse containing two generating units with a total rated capacity of 6.0 MW; (3) a tailrace channel; (4) a 12,000-foot-long 230-kilovolt (kV) transmission line extending from the switchyard to a point of interconnection. The project would have an average annual generation of 47,000 megawatt-hours/year (MWh/yr). The project would operate run-of-river and utilize flows released from the Columbia Lock and Dam.

Applicant Contact: Mr. Douglas A. Spaulding, Nelson Energy, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426. (952) 544–8133.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13824–000, or P–13826–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18911 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–50–000]

Astoria Generating Company, L.P and TC Ravenswood, LLC v. New York Independent System Operator, Inc.; Notice of Complaint

Take notice that on July 11, 2011, pursuant to sections 206 and 306 of the Federal Power Act (FPA) and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), Astoria Generating Company, L.P. and TC Ravenswood, LLC (Complainants) filed a formal complaint against New York Independent System Operator, Inc. (NYISO or Respondent) alleging NYISO's improper application of its buyer-side market power mitigation rules with respect to the new 575 MW generating facility (the Astoria II Project) owned by Astoria Energy II LLC, and potentially, other new facilities, including, but not limited to, the approximately 512 MW generating facility (the Bayonne Project) being developed by Bayonne Energy Center, LLC. The buyer-side market power rules are set forth in Attachment H of the NYISO's Market Administration and Control Area Services Tariff.

The Complainant states that a copy of the complaint has been served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 3, 2011.

Dated: July 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18918 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale; Generator Status

July 13, 2011.

Yuba City Cogeneration Partners, LP	Docket Nos. EG11–74–000
Dempsey Ridge Wind Farm, LLC	EG11–75–000
Howard Wind LLC	EG11–76–000
Highland North LLC	EG11–77–000
KES Kingsburg, LP	EG11–78–000
Gila River Energy Supply LLC	EG11–79–000

Take notice that during the month of June 2011, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18917 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–117–000]

Crosstex North Texas Pipeline, L.P.; Notice of Filing

Take notice that on July 8, 2011, Crosstex North Texas Pipeline, L.P. filed a revised Statement of Operating Conditions to comply with an unpublished Delegated letter order issued on June 24, 2011, in Docket No. PR10–39–000.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 20, 2011.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18922 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–116–000]

Crosstex LIG, LLC; Notice of Filing

Take notice that on July 7, 2011, Crosstex LIG, LLC filed a revised Statement of Operating Conditions to comply with an unpublished Delegated letter order issued on June 21, 2011, in Docket No. PR10–40–000.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 20, 2011.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18921 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4029–000]

Vermont Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Vermont Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 2, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18910 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–52–000]

Californians for Renewable Energy, Inc., Michael E. Boyd, Robert M. Sarvey v. California Public Utilities Commission, Pacific Gas and Electric Company Southern California Edison Company, San Diego Gas & Electric Company; Notice of Petition for Enforcement

Take notice that on July 12, 2011, Californians for Renewable Energy, Inc. (CARE), acting on behalf of its members, Michael E. Boyd, and Robert M. Sarvey, individually, (collectively Petitioners) filed a Petition for Enforcement, pursuant to section 210(h)(2) of the Public Utility Regulatory Policies Act of 1978 (PURPA), requesting the Federal Energy Regulatory Commission (Commission) to exercise its authority and initiate enforcement action against the California Public Utilities Commission, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company to ensure that PURPA regulations are properly and lawfully implemented.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 1, 2011.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18909 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–118–000]

Kansas Gas Service, a Division of ONEOK, Inc.; Notice of Petition for Rate Approval

Take notice that on July 11, 2011, Kansas Gas Service, a division of ONEOK, Inc. (KGS) filed, pursuant to section 284.123(b) of the Commission's regulations, a petition for rate approval

requesting that the Commission approve as fair and equitable a rate of $1.1462 per Mcf for interruptible transportation service performed pursuant to a limited jurisdictional blanket certificate issued under Section 284.224 of the Commission's regulations. KGS also submitted a baseline filing of its Statement of Operating Conditions.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, July 25, 2011.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18908 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14218–000]

FFP Project 90, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On July 1, 2011, FFP Project 90, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Carlyle Lake Water Power Project, which would be located on the Kaskaskia River, in Clinton County, Illinois. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A powerhouse; (2) installation of one 2.0-megawatt vertical Kaplan turbine; (3) a proposed 3,750-foot-long, 69-kilovolt transmission line; (4) an intake structure containing trashracks, operator's platform, and a vertical slide gate; and (5) appurtenant facilities. The proposed Carlyle Lake Water Power Project would have an estimated average annual generation of 10 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; *phone:* (978) 252–7361.

FERC Contact: Bryan Roden-Reynolds at (202) 502–6618, or via e-mail at *bryan.roden-reynolds@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*). Commenter can submit brief comment up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14218) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18920 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–505–000]

Gulf South Pipeline Company, LP; Notice of Request Under Blanket Authorization

Take notice that on July 1, 2011, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, TX 77046, filed in Docket No. CP11–505–000, an application pursuant to sections 157.205(b), 157.208(c) and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to replace approximately 3.97 miles of its 18-inch diameter natural gas pipeline with 12-inch diameter pipeline in Hinds County, Mississippi, under Gulf South's blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to M.L. Gutierrez, Director, Regulatory Affairs, Gulf South Pipeline Company, LP, 9 Greenway Plaza, Suite 2800, Houston, TX 77046 at telephone (713) 479–8252 or *e-mail: Nell.Gutierrez@bwpmlp.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18914 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–504–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Request Under Blanket Authorization

Take notice that on June 30, 2011, Transcontinental Gas Pipe Line Company, LLC (Transco), Post Office Box 1396, Houston, Texas 77251–1396, filed in Docket No. CP11–504–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA). Transco seeks authorization to abandon its Compressor Station 20 located in Refugio County, Texas. Transco proposes to perform these activities under its blanket certificate originally issued in Docket No. CP82–426–000 [20 FERC ¶ 62,420 (1982)], all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, the facilities at issue are three 1,600 horsepower compressor units, two 1,760 horsepower compressor units, and a compressor building and foundation, located at milepost 170.25 on Transco's Mainline A in Refugio County, Texas. In addition, Transco intends to abandon metering facilities, suction and discharge piping, and other appurtenances.

The filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Nan Miksovsky, Transcontinental Gas Pipe Line Company, LLC, Post Office Box 1396, Houston, Texas 77251–1396, or by calling (713) 215–3422 (telephone).

Any person or the Commission's Staff may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18913 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–503–000]

Kinder Morgan Interstate Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on June 30, 2011 Kinder Morgan Interstate Gas Transmission, LLC (KMIGT), Post Office Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP11–503–000, a Prior Notice request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon its Cozad South Compressor Station located in Dawson County, Nebraska. Specifically, KMIGT proposes to abandon by removal the existing two 500 HP compressor units with appurtenances, station piping, buildings and auxiliary equipment. KMIGT asserts that the proposed abandonment will not have any adverse effect on the services it provides and will not impact KMIGT's customers, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Kelly Allen, Manager, Certificates and Reporting, Transwestern Pipeline Company, LLC, 711 Louisiana Street, Suite 900, Houston, Texas, 77002, or call (281) 714–2056, or fax (281) 714–2181, or by *e-mail: Kelly.allen@energytransfer.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and ill not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Dated: July 13, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18912 Filed 7–26–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2011–0424; FRL–9443–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; State Water Quality Program Management Resource Analysis; EPA ICR No. 2433.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before September 26, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2011–0424, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ow-docket@epa.gov* (Identify Docket ID number EPA–HQ–OW–2011–0424, in the subject line.)
- *Fax:* 202–501–2346.
- *Mail:* Water Docket, Environmental Protection Agency, *Mailcode:* 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460]. ''Please include a total of three copies.''
- *Hand Delivery:* EPA Docket Center, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. 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–OW–2011–0424. 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 e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Kit Farber, Planning, Information, and Resource Management Staff, Office of Wastewater Management, Mail Code 4201M, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; *telephone number:* 202–564–0601; *fax number:* 202–501–2346; *e-mail address: farber.kit@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2011–0424, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC 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 Reading Room is 202–566–1744, and the telephone number for the Water Docket is 202–566–2426.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are state governments. Major respondents are state governments.

Title: State Water Quality Program Management Resource Analysis.

ICR numbers: EPA ICR No. 2433.01, OMB Control No. 2040–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: EPA, in partnership with states, is conducting the State Water Quality Program Management Resource Analysis to enumerate current and future expenditures and resources for the administration and management of state water quality programs, and to quantify the resource needs for the administration and management of state water quality programs to implement the Clean Water Act (CWA). This effort builds on an expenditure and resource needs data collection effort conducted by EPA in collaboration with the states in 1998 and 2000.

EPA requires this information to comprehend resource expenditures and needs for the administration and management of the water quality programs under 33 U.S.C. 1251 *et seq.* This effort, supported by EPA and the states, is necessary to develop strategies for better managing state water quality programs that implement the CWA, thus ensuring the long-term sustainability, efficiency, and effectiveness of these programs. This effort also helps states and EPA to effectively target resources to meet EPA's FY 2011–2015 strategic goals of protecting the nation's waters and enforcing environmental laws.

This is a one-time collection effort by the Office of Wastewater Management and responses to this ICR are voluntary. The data collection will facilitate creation of a detailed activity-based workload model to serve as a long-term budgeting, program management, and progress tracking tool for the states and EPA to use in the future.

This information will be collected by EPA and made available to the states and to the public in accordance with the requirements of the Freedom of Information Act.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 63 hours per response. Approximately 20 states are expected to respond to this one-time information collection request, for a total estimated annual burden of 1,252 hours and a total estimated cost of $49,740. The total estimated burden for this information collection activity, including the Agency, is 1,731 hours nationally; the estimated total cost is $86,518. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential state respondents: 20.

Frequency of response: One time.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 1,731 hours.

Estimated total annual costs: $86,518. This estimate includes annual labor costs only, since no capital or operation and maintenance costs are associated with this ICR.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 19, 2011.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 2011–18867 Filed 7–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–1017; FRL–8880–8]

Foremost 4809–ES Insect-O-Fog; Amended Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the U.S. Environmental Protection Agency's (EPA or the Agency) issuance, pursuant to section 6(a)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), of an amended cancellation order for the pesticide product Foremost 4809–ES Insect-O-Fog, a pesticide product containing Piperonyl Butoxide and Pyrethrins. The registrant of Foremost 4809–ES Insect-O-Fog—Delta Foremost Chemical Corp.—has requested an extension of the May 11, 2011 deadline after which the original cancellation prohibited the registrant of Foremost 4809–ES Insect-O-Fog from selling or distributing that product except for export or disposal. Under the provisions of this amended cancellation order as specified below, sale or distribution of existing stocks of Foremost 4809–ES Insect-O-Fog by the registrant is extended and is now permitted through May 11, 2013 (a 2-year extension of the May 11, 2011 deadline set forth in the original cancellation order).

DATES: This amended cancellation order is effective as of the date of signature.

FOR FURTHER INFORMATION CONTACT: Moana Appleyard, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8175; fax number: (703) 308–8090; e-mail address: *appleyard.moana@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The Agency included in the original notice a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–1017. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

In the **Federal Register** of May 11, 2010 (75 FR 26227) (FRL–8822–4), EPA announced the Agency's final order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of that **Federal Register** Notice, pursuant to section 6(f)(1) of FIFRA. Foremost 4809–ES Insect-O-Fog (EPA Registration Number 001203–00011) was listed in Table 1 of that **Federal Register** Notice. That cancellation order followed a February 3, 2010 (75 FR 5644) (FRL–8807–6) **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of the May 11, 2010 **Federal Register** Notice to voluntarily cancel product registrations. The registrant of Foremost 4809–ES Insect-O-Fog was listed in Table 2 of the May 11, 2010 Notice. In the February 3, 2010 Notice, EPA indicated that it would issue an order implementing the cancellations unless the Agency received substantive comments within a 30–day comment period that would merit its further review of those requests or unless the registrants withdrew their requests. The Agency received comments on the February 3, 2010 Notice, but none merited EPA's further review of the requests. None of the registrants withdrew their requests. Accordingly, EPA issued in the May 11, 2010 Notice a cancellation order granting the requested cancellations, and providing that any distribution, sale, or use of the products subject to that cancellation order was permitted only in accordance with the existing stocks provisions of that order. The existing stocks provisions of the May 11, 2010 cancellation order provided as follows:

> The registrants may continue to sell and distribute existing stocks of products listed in Table 1 until May 11, 2011, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1, except for export in accordance with section 17 of FIFRA, or proper disposal. Persons other than the registrant may sell, distribute, or use existing stocks of products listed in Table 1 until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.
>
> 75 FR 26227, 26255 (May 11, 2010)

Delta Foremost Chemical Corp. has requested an extension of the May 11, 2011 deadline after which the original cancellation prohibited the registrant of Foremost 4809–ES Insect-O-Fog from selling or distributing that product except for export or disposal. When EPA issued the original cancellation order on May 11, 2010, the Agency anticipated that 1 year would be enough time to allow all of the registrant's existing stocks of Foremost 4809–ES Insect-O-Fog to be sold and enter the channels of trade. However, because of an unforeseen drop in demand due to the general economic downturn, the registrant was unable to sell all of its existing stocks of that pesticide product by May 11, 2011. This pesticide product was canceled due to a voluntary request for cancellation by the registrant. There is no significant risk concern regarding Foremost 4809–ES Insect-O-Fog. Therefore, EPA believes that a 2-year extension of the May 11, 2011 deadline after which Delta Foremost Chemical Corp. is prohibited from selling or distributing its existing stocks of Foremost 4809–ES Insect-O-Fog—*i.e.,* through May 11, 2013—is consistent with the purposes of FIFRA.

III. What action is the agency taking?

This amended cancellation order allows the registrant, Delta Foremost Chemical Corporation, to sell or distribute existing stocks of EPA Registration Number 001203–00011 through May 11, 2013. All provisions of the May 11, 2010 cancellation order that are not in conflict with today's order remain in effect. This amended cancellation order is effective as of the date of signature.

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

EPA is taking this action pursuant to section 6(a)(1) of FIFRA.

V. Amended Cancellation Order

Pursuant to section 6 of FIFRA, EPA hereby issues an amended cancellation order for the registration of Foremost 4809–ES Insect-O-Fog (EPA Registration

Number 001203–00011) that was canceled by voluntary request on May 11, 2010. Any distribution, sale, or use of this product in a manner inconsistent with this order, including the provisions below regarding the disposition of existing stocks, will be considered a violation of section 12(a)(2)(K) and/or 12(a)(1)(A) of FIFRA. This order will remain in effect unless and until it is amended.

VI. Provisions for Existing Stocks

For purposes of this order, the term ''existing stocks'' is defined, pursuant to EPA's existing stocks policy that published in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4) as those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the original cancellation order (*i.e.,* May 11, 2010). Pursuant to section 6(a)(1) of FIFRA, this cancellation order includes the following existing stocks provisions.

1. Distribution or sale by the registrant of existing stocks of Foremost 4809–ES Insect-O-Fog (EPA Registration Number 001203–00011) is permitted through May 11, 2013.

2. All provisions of the May 11, 2010 original cancellation order that are not in conflict with today's amended cancellation order, including all provisions relating to sale, distribution, and use of existing stocks of Foremost 4809–ES Insect-O-Fog by persons other than the registrant, are unaffected by this amended order and remain in effect.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: July 14, 2011.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2011–18996 Filed 7–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2011–0558; FRL–8879–8]

Cancellation of Pesticides for Non-Payment of Year 2011 Registration Maintenance Fees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since the amendments of October 1988, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) has required payment of an annual maintenance fee to keep pesticide registrations in effect. The fee due last January 15, 2011, has gone unpaid for 254 registrations. Section 4(i)(5)(G) of FIFRA provides that the EPA Administrator may cancel these registrations by order and without a hearing; orders to cancel all 254 of these registrations have been issued within the past few days.

DATES: A cancellation is effective on the date the cancellation order is signed.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–6426; *e-mail address: jamula.john@epa.g*ov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2011–0558. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

Section 4(i)(5) of FIFRA, as amended in October 1988 (Pub. L. 100–532), December 1991 (Pub. L. 102–237), and again in August 1996 (Pub. L. 104–170), requires that all pesticide registrants pay an annual registration maintenance fee, due by January 15 of each year, to keep their registrations in effect. This requirement applies to all registrations granted under FIFRA section 3 as well as those granted under FIFRA section 24(c) to meet special local needs. Registrations for which the fee is not paid are subject to cancellation by order and without a hearing.

The Food, Agriculture, Conservation, and Trade Act Amendments of 1991, Public Law 102–237, amended FIFRA to allow the EPA Administrator to reduce or waive maintenance fees for minor agricultural use pesticides when she determines that the fee would be likely to cause significant impact on the availability of the pesticide for the use. The Agency has waived the fee for 194 minor agricultural use registrations at the request of the registrants.

In fiscal year 2011, maintenance fees were collected in one billing cycle. The Pesticide Registration Improvement Renewal Act (PRIRA) was passed by Congress in October 2007. PRIRA authorized the Agency to collect $22 million in maintenance fees in fiscal year 2011. In late 2010, all holders of either FIFRA section 3 registrations or FIFRA section 24(c) registrations were sent lists of their active registrations, along with forms and instructions for responding. They were asked to identify which of their registrations they wished to maintain in effect, and to calculate and remit the appropriate maintenance fees. Most responses were received by the statutory deadline of January 15. A notice of intent to cancel was sent in February, 2011, to companies who did not respond and to companies who responded, but paid for less than all of their registrations. Since mailing the notices of intent to cancel, EPA has maintained a toll-free inquiry number through which the questions of affected registrants have been answered.

Maintenance fees have been paid for about 15,327 FIFRA section 3 registrations, or about 95% of the registrations on file in December 2010. Fees have been paid for about 2,053 FIFRA section 24(c) registrations, or about 90% of the total on file in December 2010. Cancellations for non-payment of the maintenance fee affect about 238 FIFRA section 3 registrations and about 16 FIFRA section 24(c) registrations.

The cancellation orders generally permit registrants to continue to sell and distribute existing stocks of the canceled products until January 15, 2012, 1 year after the date on which the fee was due. Existing stocks already in the hands of dealers or users, however, can generally be distributed, sold, or used legally until they are exhausted. Existing stocks are defined as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for

shipment prior to the effective date of the cancellation order.

The exceptions to these general rules are cases where more stringent restrictions on sale, distribution, or use of the products have already been imposed, through special reviews or other Agency actions. These general provisions for disposition of stocks should serve in most cases to cushion the impact of these cancellations while the market adjusts.

III. Listing of Registrations Canceled for Non-Payment

Table 1 of this unit lists all of the FIFRA section 24(c) registrations, and Table 2 of this unit lists all of the FIFRA section 3 registrations which were canceled for non-payment of the 2011 maintenance fee. These registrations have been canceled by order and without hearing. Cancellation orders were sent to affected registrants via certified mail in the past several days. The Agency is unlikely to rescind cancellation of any particular registration unless the cancellation resulted from Agency error.

TABLE 1—FIFRA SECTION 24(C) REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2011 MAINTENANCE FEE

SLN No.	Product name
AZ–07–0010	Talus 40 Sc Insect Growth Regulator.
CA–08–0002	Permethrin E Pro Termiticide/insecticide.
CA–08–0008	Plantshield Hc Biological Fungicide.
CA–10–0009	Ethylene Compressed Gas.
CA–89–0037	Methyl Bromide 100.
FL–04–0004	Fyfanon ULV.
FL–09–0001	Diquat E–Pro 2 L Herbicide.
HI–07–0003	Ovocontrol P Ready-To-Use Bait.
LA–08–0013	Imida E–Pro 75 Wsp—Pre/post Construction Insecticide.
MI–09–0006	Ovocontrol P 0.5%.
OR–06–0018	Sprout Nip Emulsifiable Concentrate.
TX–07–0012	Talus 40 Sc Insect Growth Regulator.
WA–00–0031	Pear Wrap III.
WI–09–0001	Sodium Hypochlorite 12.5%.
WY–10–0003	Kaput-D Pocket Gopher Bait.
WY–10–0006	Kaput-D Pocket Gopher Bait.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2011 MAINTENANCE FEE

Registration No.	Product name
000303–00225	Matar.
000421–00435	Mist Away Cleaner-Disinfectant.
000534–00098	Ballistic.
000769–00965	Sureco Permethrin Powder.
000777–00085	Handel.
000777–00090	Lysol Brand Disinfectant All Purpose Cleaner II.
000777–00092	RB 101.
000777–00093	Lysol Brand II Disinfectant Mist Away Daily Shower Cleaner.
000777–00098	Brace Kitchens.
000777–00103	Duraguard.
000784–00087	Triple D.
001190–00040	Pepco D–C.
001386–00053	Superior Miscible Spray Oil.
001475–00159	Willert Mosquito Coils.
001677–00091	Trichlor-O–Cide XP 160.
001677–00195	Eco2000–Rx Freshbait.
001719–00044	Zin-Tox Wood Preservative.
001965–00008	Vancide 51.
001965–00089	Vancide MZ–96 Dispersion.
002517–00006	Double Duty Cat Flea & Tick Spray.
002517–00034	Sergeant's Foam 'n Comb Dry Shampoo for Dogs and Cats.
002517–00066	Sergeant's Skip Flea & Tick Spray Shampoo Plus Conditio.
002517–00090	Sergeant's Cyphenothrin+methoprene Squeeze-On for Dogs.
002517–00099	Pyrethroid W.B. Concentrate.
002517–00104	Preventic L.A. Flea and Tick Spray for Dogs.
002517–00105	Natura Flea & Tick Collar for Dogs and Cats.
002517–00108	Permethrin—IGR # 1 Flea and Tick Spray for Dogs.
002517–00113	Permethrin-Pyriproxyfen Residual Shampoo for Dogs #2.
002517–00125	Had-A–Snail.
003090–00218	Sanitized Brand Pl 21–60.
003090–00219	Sanitized Brand Pl 91–36.
003090–00222	Sanitized Brand TB 83–35 MUP–DM.
003090–00223	Sanitized Brand TB 83–35 DM.
003234–00044	Ag-West Moss Killer Plus Lawn Food.
003282–00092	D–Con Hideaway D–Con Bait Shield III.
003282–00093	D–Con Corner-Fit D–Con Bait Shield IV.
003282–00094	D–Con Hideaway D–Con Bait Shield V.
003282–00095	D–Con Corner-Fit D–Con Bait Shield Vi.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2011 MAINTENANCE FEE—Continued

Registration No.	Product Name
003487–00019	Eagles-7 Rat Bait.
003522–00015	Luseaux S Q B 550.
004091–00014	Super Mildex.
005680–00005	CHC–15.
006186–00041	Winterfect I.
006458–00001	Cube Root Powder.
006718–00018	Amway Germicidal Concentrate.
006785–00005	Prestochlor Bleach.
007152–00020	Seaboard Sea/gard the Winter Chemical.
007296–00015	Gemchlor.
007455–00023	R.o.l. Premix (contains Rabon Oral Larvicide).
007946–00018	Mycoject.
008236–00002	Thiram Technical.
008383–00001	Permicide Brand Ristex.
008848–00011	Black Jack Pine Aroma Disinfectant.
008848–00020	Leader Formula #10 Super Roach Powder.
008848–00062	Black Jack Fly and Mosquito Killer.
008848–00064	Black Jack Multipurpose Insecticide.
008848–00066	Black Jack Bull's Eye Wasp & Hornet Spray.
008848–00067	Black Jack Liquid Multi-Purpose Insect Killer.
008848–00068	Black Jack Automatic Indoor Fogger Roach Bomber II.
008848–00069	Blackjack Crawling Insect Killer II.
008848–00070	Blackjack Crawling Insect Killer I.
008848–00074	Black Jack Pyraperm Household Insect Killer WBA P59.
008848–00077	Black Jack Delta 0.02% HPC Liquid.
008848–00083	Black Jack House & Garden Spray Liquid.
009078–00006	Co-Op Cattle Mineral contains Rabon Oral Larvicide.
009374–00009	Ragland Phos-8 with Rabon Oral Larvicide.
009630–00004	6% Copper Nap-All.
009630–00005	M–Gard S120.
009630–00006	8% Zinc Nap-All.
009630–00007	Zinc Hydro-Nap.
009630–00010	M–Gard W550.
009630–00012	M–Gard S520.
009630–00021	M–Gard S 550.
010145–00004	Vitasan 33.
010308–00021	Insecticide Aerosol D–Phenothrin, 10%.
010308–00028	Sumi-Alpha 10mc for PCO Use.
010308–00029	Sumi-Alpha 10MC MUP.
010350–00057	3M Copper Granules.
010428–00016	Chlor-San 16.
010801–00005	Red Cross Nurse Brand Disinfectant & Air Deodorizer.
010806–00002	Dog & Cat Repellent.
010806–00010	Pro/pak Germicidal Cleaner Disinfectant Deodorizer.
010806–00088	Contact Roach and Ant Killer X.
010806–00092	Contact Liquid Gypsy Moth and Japanese Beetle Spray.
010937–00001	Austin's Moth Control.
011435–00007	Copper Hydroxide 50 WP.
027586–00001	TM Biocontrol-1.
027586–00002	Gypchek Biological Insecticide for the Gypsy Moth.
027586–00005	Technical MCH.
029055–00003	Sysco Reliance Ultra Disinfectant Bleach.
029055–20004	Reliance Disinfectant Bleach.
033136–00001	BRC 260 Algaecide/herbicide.
033658–00028	Navigator Specialty Insecticide.
033660–00032	Flutrix 4EC Att.
035896–00030	Copper Hydroxide Technical.
036638–00029	Nomate PBW Spiral.
037023–00003	Kenic Flea Rid Flea and Tick Control Shampoo.
037982–00002	Chlorine Gas.
039260–00001	M–44 Cyanide Capsules.
041547–00001	Algaecide Aquapill 5.
042177–00073	Trichlor Time Release Canister.
042850–00002	Diatect Multipurpose Insecticide.
043437–00003	8% Zinc Naphthenate.
043437–00004	8% Copper Naphthenate.
045851–00001	Chlorine.
046183–00002	Sani-Way 12.
046183–00006	Bioway Tcl Chlorinating Sanitizer.
046270–00005	Sanitizing Solution.
046597–00001	Chemstar Chemaquacide.
048211–00008	Stomp-Out Hydro-33 Weed Killer.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2011 MAINTENANCE FEE—Continued

Registration No.	Product Name
048211–00073	Stomp Out Granular.
048390–00001	Nutra-Blend 7.76 Fly Larvicide Premix.
048665–00002	Shoofly Concentrate I.
049292–00010	Sprite Sanitizer.
049403–00027	Nipacide BFW.
052074–00001	A.C.S. GIB.
052287–00010	Fertilizer with Starteem(r) #1.
052287–00016	Harrell's Granular Herbicide 63.
053668–00001	Halox.
053853–00001	Burgess Insect Fog.
053853–00002	Black Flag Fogging Insecticide Formula 2.
055238–20001	Sodium Hypochlorite Solution.
055272–00013	Copper Hydroxide 90%.
056410–00001	Liquefied Chlorine Gas Under Pressure.
061282–00007	Ramik Meal Rodenticide for Control of Commensal Rats.
062451–00004	Antguard Coasters and Covers.
062451–00005	Antguard for Outdoor Use.
062451–00007	Antguard Gaskets.
063191–00012	St. Gabriel Laboratories Hot Pepper Wax Insect Repellent.
065595–00001	Pine Power.
066306–00005	Formula 7511/1 Insect Repellent Sunscreen SPF 30.
066306–00011	Sunset Camo Face Paint with Insect Repellent.
067517–00063	Bromethalin Bait.
067690–00017	Cutless * TP.
067760–00014	Nufos 15G Insecticide.
068329–00002	Alpha 137.
068329–00003	Alpha 139.
068329–00005	Alpha 520.
068329–00018	Uni-Klor C.
069361–00012	Tebucon 45 Wp Fungicide.
069697–00001	Pseudozyma Flocculos Strain PF–A22 Ul (tgai).
069697–00003	Sporodex L Biological Fungicide.
069876–00001	Qwel (CTI 13–19B) Liquid Concentrate.
070214–00001	Sealife 1000 Antifouling Marine Paint.
070271–00016	Huish—Sodium Hypochlorite 6.0%.
070791–00001	Ecotru.
070799–00001	Stapine Pine Oil Disinfectant & Deodorant Coef.5.
071532–00009	LG Permastar Plus.
071713–00001	Croak Cockroach Baits.
071983–00001	Roof Reclaim! Mildew Prevention System Component I.
072158–00001	Preddeter Repellent Strips.
072159–00006	Acephate Pro 75 SP Insecticide.
072159–00010	Acephate Pro 90 SP Insecticide.
072159–00016	Shur-Kill.
072500–00016	Kaput-D Vole Bait.
073079–00001	Intice Sweet Ant Gel.
074343–00001	True Stop Insecticide.
074530–00024	Helm Diquat AG.
074530–00025	Helm Diquat Aquatic.
074530–00026	Helm Nicosulfuron 75.
074530–00029	Helopyr Herbicide.
074530–00030	Helmba Herbicide.
074530–00034	Helm Halo 75.
074530–00039	Heloprid 2 AG.
074530–00040	Heloprid 4.
074681–00001	Copper Pro 67 Marine Blue.
074681–00003	Copper Guard 56 Marine Blue.
074999–00003	Kapto K.
074999–00004	Kapto K Aerosol.
075643–00001	Clor-Fix GR90.
075710–00001	Mite Away II Single Application Formic Acid Pad.
079817–00002	Poolrx Unit & Booster.
080286–00003	Splat Cydia.
080305–00003	I–Ching Naphthalene Moth Balls.
081875–00001	WS–BTI.
081910–00004	Casacide T100.
081964–00002	Acephate 75% SP.
081987–00002	Drip Clear—Sodium Hypochlorite.
082200–00001	Turf & Garden Seven % Granular Carbaryl Insecticide.
082437–00002	5–15–5 with Gro-Root Xtra (GRX).
082498–00001	Grandslam 4 Herbicide.
082498–00006	Glyphosate 62% Manufacturing Concentrate.

TABLE 2—FIFRA SECTION 3 REGISTRATIONS CANCELLED FOR NON-PAYMENT OF 2011 MAINTENANCE FEE—Continued

Registration No.	Product Name
082542–00011	Abamectin 0.15ec AQ Insecticide/miticide.
082542–00012	Abamectin 0.15ec T&o Insecticide/miticide.
082542–00016	Technical Imidacloprid.
082542–00023	Solera Imidacloprid 2f Greenhouse/nursery Insecticide.
082542–00024	Solera Imidacloprid 2f T&O Insecticide.
082669–00001	Bio-Ud-8 Lotion.
082669–00003	Homs Bite Blocker Bioud Clothing & Gear Repellent.
082899–00001	Oxyvap.
083071–00001	Activ-Ox 20.
083607–00001	Mycotek.
083607–00002	Core Tek 24 (tm).
083979–00002	Rowrunner Ag Herbicide.
083979–00003	Rowrunner Ato Herbicide.
084054–00001	Konica Nice Print System Cleaning Agent-J.
084079–00001	Roof Reviver Roof Cleaner.
084229–00005	Triadimefon Technical.
084401–00001	Invicta Clothing Insect Repellent Kit.
084456–00001	Abamectin Technical.
084456–00003	Abamectin 2% Ornamental Miticide/insecticide.
084456–00004	Abamectin 2% Miticide/insecticide.
084592–00001	Bylohas Pest controller.
085346–00001	Armamet.
085437–00001	Food Contact Sanitizer.
085607–00001	Reddick Pic-C100.
085798–00001	Microbeguard.
085798–00002	Duraban-1.
085798–00003	Duraban.
085798–00004	Mold Shield.
085948–00001	Q–104.
086098–00001	Reserve 41 Plus.
086154–00002	Trace Mountain—Dicamba 4.
086154–00003	Trace Mountain—Acephate 90 SP.
086154–00004	Trace Mountain—Bifenthrin 2 EC.
086154–00005	Trace Mountain—Glyphosate.
086154–00006	Trace Mountain Mepiquat.
086154–00007	Trace Mountain 2,4–D Amine 4.
086154–00008	Trace Mountain 2,4–D LV 4 E.
086154–00009	Trace Mountain Dicamba + 2,4–D.
086154–00010	Trace Mountain 2,4–D Lv6e.
086154–00011	Trace Mountain Bifenthrin CA.
086197–00001	Fsti Sodium Hypochlorite Solution (12.5%).
086197–00002	Fsti Sodium Hypochlorite Solution (10%).
086296–00001	Trustchem Tebuconazole Technical Fungicide.
086501–00002	Clear Up.
086501–00003	Glyphosate 62% Manufacturing Concentrate.
086516–00002	Bug Blockade Bed Bug Treatment.
086530–00003	Agrilon Glyphosate 62% Mup II.
086530–00004	Agrilon Glyphosate Technical II.
086702–00001	Gly 62% MC.
086702–00002	Gly 41% Herbicide.
086722–00001	Syncide SCP MUP.
086722–00002	Syncide SCP.
086869–00001	Imidacloprid 75 WSP Select.
087099–00001	Greenstar Ag Chemical Dynasty Plus 41% Glyphosate.
087276–00002	Equil Bifen 7.9f Insecticide.
087276–00003	Equil Cyper Insecticide.
087792–00001	Silvertex.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date the cancellation order is signed. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks until January 15, 2012, 1 year after the date on which the fee was due.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation order. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a special review action, or where the Agency has

identified significant potential risk concerns associated with a particular chemical.

V. Docket

Complete lists of registrations canceled for non-payment of the maintenance fee will also be available for reference during normal business hours in the OPP Regulatory Public Docket, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Product-specific status inquiries may be made by calling toll-free, 1–800–444–7255.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests.

Dated: July 15, 2011.

Steven Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2011–18706 Filed 7–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9444–2]

Science Advisory Board Staff Office; Notification of Closed Meetings of the Science Advisory Board's Scientific and Technological Achievement Awards Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency's (EPA), Science Advisory Board (SAB) Staff Office announces a meeting and teleconference of the SAB's Scientific and Technological Achievement Awards (STAA) Committee to develop draft recommendations regarding the recipients of the Agency's 2011 Scientific and Technological Achievement Awards for consideration by the SAB. The meetings will be closed to the public.

DATES: The meeting dates are Tuesday and Wednesday, August 9 and 10, 2011, from 8 a.m. to 6 p.m. (Eastern Time).

ADDRESSES: The closed meeting will be held at the Madison Hotel, 1177 15th St., NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain further information regarding this announcement may contact Mr. Edward Hanlon, Designated Federal Officer, by telephone: (202) 564–2134 or e-mail at *hanlon.edward@epa.gov.* The SAB Mailing address is: U.S. EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB concerning the meeting and teleconference announced in this notice may be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(d) of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2, and section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), EPA has determined that the meeting and teleconference will be closed to the public. The purpose of the meeting and teleconference is for the Committee to discuss recommendations for the SAB regarding the recipients of the Agency's 2011 Scientific and Technological Achievement Awards. These awards are established to honor and recognize EPA employees who have made outstanding contributions in the advancement of science and technology through their research and development activities, as exhibited in publication of their results in peer reviewed journals. I have determined that the SAB meeting and teleconference will be closed to the public because it is concerned with selecting employees deserving of awards. In making these recommendations, the Agency requires full and frank advice from the EPA Science Advisory Board. This advice will involve professional judgments on the relative merits of various employees and their respective work. Such personnel matters involve the discussion of information that is of a personal nature and the disclosure of which would be a clearly unwarranted invasion of personal privacy and, therefore, are protected from disclosure by section (c)(6) of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6). Minutes of the meeting and teleconference will be kept and certified by the Chair.

Dated: July 21, 2011.

Lisa P. Jackson,

Administrator.

[FR Doc. 2011–18982 Filed 7–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket #EPA–RO4–SFUND–2011–3760, FRL–9444–4]

Landia Chemical Company Site; Lakeland, Polk County, FL; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Landia Chemical Company Superfund Site located in Lakeland, Polk County, Florida for publication.

DATES: The Agency will consider public comments on the settlement until August 26, 2011. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments by Site name Landia Chemical Company Superfund Site by one of the following methods:

- *http://www.epa.gov/region4/waste/sf/enforce.htm*
- *E-mail. Painter.Paula@epa.gov*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: July 6, 2011.

Greg Armstrong,

Acting Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2011–18990 Filed 7–26–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket #EPA–RO4–SFUND–2011–3752, FRL–9444–5]

Callaway and Son Drum Service Superfund Site; Lake Alfred, Polk County, FL; Notice of Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of Settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability

Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Callaway and son Drum Service Superfund Site located in Lake Alfred, Polk County, Florida for publication.

DATES: The Agency will consider public comments on the settlement until August 26, 2011. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the settlement are available from Ms. Paula V. Painter. Submit your comments by Site name Callaway and Son Drum Service Superfund Site by one of the following methods:

- *http://www.epa.gov/region4/waste/sf/enforce.htm*
- *E-mail. Painter.Paula@epa.gov*

FOR FURTHER INFORMATION CONTACT: Paula V. Painter at 404/562–8887.

Dated: July 7, 2011.

Greg Armstrong,

Acting Chief, Superfund Enforcement & Information Management Branch, Superfund Division.

[FR Doc. 2011–18987 Filed 7–26–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request (3064–0109)

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the PRA. On April 28, 2011 (76 FR 23815), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Notice of Branch Closure (OMB No. 3064–0109). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before August 26, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number (3064–0109). A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collections of information:

Title: Notice of Branch Closure.

OMB Number: 3064–0109.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 509.

Estimated Time per Response: 2.6 hours.

Total Annual Burden: 1,323 hours.

General Description of Collection: An institution proposing to close a branch must notify its primary regulator no later than 90 days prior to the closing. Each FDIC-insured institution must adopt policies for branch closings. This collection covers the requirements for notice, and for policy adoption.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of July 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–18963 Filed 7–26–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing information collections, as required by the PRA. On April 28, 2011 (76 FR 23814), the FDIC solicited public comment for a 60-day period on renewal of the following information collections: Recordkeeping and Disclosure Requirements in Connection with Regulation M—Consumer Leasing (3064–0083); Recordkeeping and Disclosure Requirements in Connection with Regulation B—Equal Credit Opportunity (3064–0085). No comments were received. Therefore, the FDIC hereby gives notice of submission of its requests for renewal to OMB for review.

DATES: Comments must be submitted on or before August 26, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *E-mail: comments@fdic.gov.* Include the name of the collection in the subject line of the message.

• *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).

OMB Number: 3064–0083.

Frequency of Response: On occasion.

Affected Public: State nonmember banks engaging in consumer leasing.

Estimated Number of Respondents: 2000.

Estimated Time per Response: 0.75 hours ongoing; one-time systems update—40 hours.

Total Annual Burden: 166,000 ongoing; 80,000 hours one-time update.

General Description of Collection: Regulation M (12 CFR 213), issued by the Board of Governors of the Federal Reserve System, implements the consumer leasing provisions of the Truth in Lending Act.

2. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation B (Equal Credit Opportunity).

OMB Number: 3064–0085.

Frequency of Response: On occasion.

Affected Public: State nonmember banks engaging in credit transactions.

Estimated Number of Respondents: 4,380

Estimated Time per Response: notice of action—2.5 minutes; credit reporting—2 minutes; data monitoring—0.5 minutes; appraisal report—5 minutes; notice of right to appraisal—0.25 minutes; test recordkeeping—2 hours; corrective action recordkeeping—8 hours; self-test disclosure—1 minute.

Total Annual Burden: 599,924.

General Description of Collection: Regulation B (12 CFR 202), issued by the Board of Governors of the Federal Reserve System, prohibits creditors from discriminating against applicants on any of the bases specified by the Equal Credit Opportunity Act, establishes guidelines for gathering and evaluating credit information, and requires creditors to give applicants a written notification of rejection of an application.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of July 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–19002 Filed 7–26–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. A copy of the agreement is available through the Commission's Web site (*http://www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012134.

Title: Maersk Line/MSC Panama Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S and Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Conner; 1627 I Street, NW., Suite 1100; Washington, DC 20006–4007.

Synopsis: The agreement authorizes MSC to charter space to Maersk Line in the trade from Panama to U.S. Gulf Coast ports.

Dated: July 22, 2011.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–18967 Filed 7–26–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 11, 2011.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Patriot Financial Partners, GP, L.P., Patriot Financial Partners, L.P., Patriot Financial Partners Parallel, L.P., Patriot Financial Partners, GP, LLC, Patriot Financial Managers, L.P., and Ira M. Lubert, W. Kirk Wycoff and James J. Lynch, all of Philadelphia, Pennsylvania; to acquire voting shares of Porter Bancorp, Inc., Louisville, Kentucky, and thereby indirectly acquire voting shares of PBI Bank, Louisville, Kentucky.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. The Henry C. Kirschner Trust B1, the Henry C. Kirschner Trust A2, David E. Kirschner and Margaret Kirschner, individually and as co-trustees of the Henry C. Kirschner Trust B1 and the Henry C. Kirschner Trust A2, the David

E. Kirschner Declaration of Trust and David E. Kirschner as trustee, the Margaret Kirschner Declaration of Trust and Margaret Kirschner as trustee, The Noble Foundation, Philip and Cheryl Kirschner, Khajha Kirschner, Pamela Kirschner Bolduc, the Mary C. Kirschner 2007 Trust, and David E. Kirschner as trustee of the Mary C. Kirschner 2007 Trust; to retain, as a group acting in concert, voting shares of Town and Country Financial Corporation, Springfield, Illinois, and thereby indirectly retain control of Town and Country Bank, Springfield, Illinois, and Logan County Bank, Lincoln, Illinois.

In connection with the above application, Margaret Kirschner, individually and as trustee and co-trustee of various trusts, has applied to retain voting shares of Town and Country Financial Corporation, Springfield, Illinois, and thereby indirectly retain control of Town and Country Bank, Springfield, Illinois, and Logan County Bank, Lincoln, Illinois.

In addition, David E. Kirschner, individually and as trustee and co-trustee of various trusts, has applied to retain voting shares of Town and Country Financial Corporation, Springfield, Illinois, and thereby indirectly retain control of Town and Country Bank, Springfield, Illinois, and Logan County Bank, Lincoln, Illinois.

C. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Stephen L. Grobel, Tabb, Virginia; to individually acquire voting shares of First Community Bancorp, Inc., Glasgow, Montana, and thereby indirectly acquire voting shares of First Community Bank, Glasgow, Montana.

In addition, Stephen L. Grobel and Peter J. Grobel, Helena, Montana, as members of the Grobel Family Group, to acquire voting shares of First Community Bancorp, Inc., and thereby indirectly acquire voting shares of First Community Bank, Glasgow, Montana.

D. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. Castle Creek Capital Partners IV, L.P., and persons that are acting with, or control Castle Creek Capital Partners IV, L.P. (Castle Creek Advisors IV, LLC; Castle Creek Capital IV, LLC; John T. Pietrzak; Pietrzak Advisory Corp.; John M. Eggemeyer, III; JME Advisory Corp.; William J. Ruh; Ruh Advisory Corp.; Mark G. Merlo; Legions IV Corp.; Joseph Mikesell Thomas and Thomas Advisory Corp., all of Rancho Santa Fe, California; to acquire voting shares of First NBC Bank Holding Company, and thereby indirectly acquire voting shares of First NBC Bank, both of New Orleans, Louisiana.

Board of Governors of the Federal Reserve System, July 22, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–18956 Filed 7–26–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Statement of Policy Regarding Communications in Connection With the Collection of Decedents' Debts

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

ACTION: Policy statement.

SUMMARY: Pursuant to the FTC's authority to enforce the Fair Debt Collection Practices Act (''FDCPA''), 15 U.S.C. 1692l(a), and Section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45, the Commission issues this final Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts (''Statement'').[1] When a person dies, creditors and the debt collectors they hire usually have the right to collect on the person's debts from the assets of his or her estate. Sections 805(b) and (d) of the FDCPA prohibit debt collectors from contacting individuals other than the debtor to collect a debt, unless the individual is the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator. The Commission has learned that, to recover on a decedent's debts, some debt collectors contact the decedent's relatives, although these relatives may have no authority to pay the debts from the decedent's estate and no legal obligation to pay the debts from their own assets. By contacting persons who are not specified in Section 805 of the FDCPA, and by engaging in practices that may deceive those persons about their obligations, these debt collectors may be violating the FDCPA. The Commission recognizes, however, that imposing unnecessary restrictions on a debt collector's ability to collect a decedent's debt from the person authorized to pay those debts may instead cause some debt collectors to seek to recover by invoking the probate process, imposing substantial costs on the estate and delaying the distribution of assets to heirs and beneficiaries. To balance these interests and protect consumers from unfair, deceptive, and abusive practices, this Statement announces that the FTC will forebear from enforcing Section 805(b) of the FDCPA, 15 U.S.C. 1692c(b), against a debt collector for communicating about a decedent's debts with persons specifically identified as appropriate to contact under Section 805 of the FDCPA (*e.g.,* spouse, parent, guardian, executor, or administrator) or any other person who has the authority to pay the decedent's debts from the assets of the decedent's estate. The Statement also clarifies how a debt collector can comply with the law in locating the person who has the requisite authority with whom to discuss the decedent's debts. Finally, the Statement explains how a debt collector can avoid engaging in deceptive practices in communicating with a third party about a decedent's debts.

DATES: This final statement of policy is effective on August 29, 2011.

ADDRESSES: Requests for copies of this Statement should be sent to: Public Reference Branch, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Room 130, Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the final Statement, are available at (*http://www.ftc.gov*).

FOR FURTHER INFORMATION CONTACT: Christopher Koegel or Quisaira Whitney, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION:

I. The Proposed Policy Statement and Public Comments Received

On October 8, 2010, the Commission published in the **Federal Register** a notice of proposed statement of enforcement policy regarding communications in connection with the collection of decedents' debts (''proposed Statement'').[2] The proposed Statement addressed three issues under the FDCPA pertaining to debt collectors who attempt to collect on the debts of deceased persons: (1) With whom a debt collector may lawfully discuss a decedent's debt consistent with the

[1] An enforcement policy statement describes the Commission's future enforcement plans, goals, and objectives with respect to a particular industry or practice. Enforcement policy statements do not have the force or effect of law, but they may reflect the Commission's interpretation of a legal requirement.

[2] 75 FR 62,389 (Oct. 8, 2010).

limitations in Sections 805(b) and (d) of the FDCPA; (2) how a debt collector may locate the appropriate person with whom to discuss the debt and seek payment; and (3) how a debt collector can avoid misleading consumers about their personal obligation to pay the debt.

The proposed Statement noted that Sections 805(b) and (d) of the FDCPA limit the persons whom a collector can contact about a debt (including a decedent's debt) to the debtor's spouse, parent (if the debtor is a minor), guardian, executor, or administrator. The proposed Statement then described the evolution of state probate laws and estate resolution procedures that, in recent years, have expanded the class of persons who have the authority to pay a decedent's debts from the assets of the decedent's estate beyond those listed in Sections 805(b) and (d). In light of these developments, the Commission proposed that it would forebear from taking enforcement action against collectors who contacted persons other than those listed in Sections 805(b) and (d), if those persons had the authority to pay the decedent's debts from the estate's assets. The proposed Statement further described permissible means by which a collector could identify and locate a person with such authority, and admonished collectors not to deceive such persons into believing they were obligated personally to pay the debt, recommending that collectors disclose affirmatively that the person was not so obligated.

The notice requested public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the proposed Statement and designated November 8, 2010, as the deadline for filing public comments. On November 8, 2010, the Commission extended the deadline for submission of public comments until December 1, 2010.[3]

In response to the proposed Statement, the Commission received 145 total comments[4] from stakeholders, including consumer and community groups, state law enforcers, attorneys who represent debt collectors, debt collectors who specialize in the collection of deceased accounts, and individual consumers. As discussed further below, the comments provided a diverse array of opinions and suggestions on the proposed Statement. Based on the comments and other information obtained by the Commission, the Commission has made several revisions to the proposed Statement in this final Statement.

II. Background

A. Probate Law and Estate Resolution

Most debts incurred in life do not simply vanish upon death.[5] Instead, the decedent's estate (comprised of the assets held by the decedent at the time of death) is responsible for paying them. Some debts arise from accounts on which the decedent was current at the time of death (*e.g.,* the amount owing for the decedent's last electric bill, even if he or she was current on the account at the time of death). Other debts may be on bills for which the decedent was delinquent in making payments at the time of death (*e.g.,* the amount owing for the last six months on the decedent's electric bill). Regardless of whether the decedent was current or delinquent on a bill at the time of death, creditors and collectors, for a period of time, generally are permitted under state law to seek to recover from the decedent's estate.

To understand consumer protection concerns related to collecting on decedents' debts requires knowledge not only of the FDCPA but of state probate and estate law as well. As detailed in the proposed Statement,[6] there is no single set of laws and procedures that governs the resolution of a decedent's estate in all or even most states. Indeed, even individual counties in some states have their own requirements. Generally, however, there are two main questions that probate and estate laws answer: (1) What assets are part of the estate, and thus at least potentially subject to creditors' claims; and (2) what procedures will the estate use to distribute its assets.

1. Assets in the Decedent's Estate

Not all of a decedent's assets become part of his or her estate. Assets that pass outside of the estate generally include: (1) Those that are jointly owned by the decedent and another person;[7] and (2) those that pass directly to individuals named as beneficiaries.[8] Assets that never become part of the decedent's estate generally are beyond the reach of creditors and third-party debt collectors. All other assets, including cash and real and personal property owned solely by the decedent, become part of the decedent's ''gross estate.'' Funeral and administrative expenses, homestead and exempt property allowances, and family allowances[9] are paid out of the estate first, leaving the ''net estate.'' Creditors and third-party debt collectors can seek to collect amounts the decedent owes them from the net estate,[10] after which the remaining assets in the estate are transferred to the decedent's heirs (if the decedent died without a will) or beneficiaries (if the decedent had a will).

2. Distribution of Estate Assets

How a decedent's assets are distributed also depends on the probate practices that are administered under state laws and procedures, which vary significantly. All of the various procedures, however, are designed to ensure that creditors are provided with notice of the decedent's passing, and that some finality is achieved with regard to the decedent's financial affairs.

At the time Congress enacted the FDCPA, most estates were resolved through a process known as formal probate and administration. In that process, the probate court appoints a person with the title of ''executor'' or ''administrator'' to handle the estate's affairs. Section 805 of the FDCPA allows collectors to contact persons with those titles about the decedent's debts.

Formal probate, however, has proven to be time-consuming and expensive for consumers.[11] For example, many estates

[3] 75 FR 70,262 (Nov. 17, 2010).

[4] One comment was submitted twice (nos. 89 and 90, by the National Consumer Law Center); thus, the Commission received 144 distinct comments, which are available at *http://www.ftc.gov/os/comments/decedentdebtcollection/index.shtm.*

[5] *See, e.g.,* Portillo (''as debt doesn't disappear when a person dies * * *''). Comments are identified by the name of the organization or the last name of the individual who submitted the comment.

[6] 75 FR 62,389 at 62,390–62,392 (Oct. 8, 2010).

[7] Common examples of joint assets that do not become part of the estate are the proceeds of joint bank accounts, and real property held by joint tenancy. In addition, in the ten states with community property laws, assets accumulated during a marriage generally are considered joint property, but the state laws vary as to which assets of the community can be reached by creditors of one of the spouses. The community property states are Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

[8] Such assets include the proceeds from life insurance policies (where the beneficiary is not the estate), union or pension benefits, Social Security benefits, veterans' benefits, and various types of retirement accounts.

[9] A ''family allowance'' is an amount of money payable out of the estate to support, typically, the spouse and minor children during the pendency of the estate administration.

[10] In some circumstances, another person, including a surviving relative, may be personally liable for the decedent's debts. Examples include a person who shared a joint credit card account with the decedent or who co-signed or guaranteed repayment of credit extended to the decedent. In such cases, both the other person and the decedent's estate are liable for the account balance at the time of the decedent's death. This Statement does not apply if a creditor or a collector is collecting from a person who is personally liable for the decedent's debt, because in those circumstances the person is a ''consumer'' rather than a third party for purposes of Section 805(b) of the FDCPA.

[11] *See, e.g.,* Nat'l Consumer Law Ctr. at 4 (''Survivors often feel the costs of probate are prohibitive.''); Steven Seidenberg, *Plotting Against Probate: Efforts by estate planners, courts and legislatures to minimize probate haven't killed it*

that go through formal probate remain open for 18 months, and, in some cases, even longer. This delay is due, in part, to mandatory periods during which the estate must publish notice of the probate proceeding to potential creditors, as well as months-long periods in which creditors have a right to file claims against the estate.[12] In instances where the estate includes significant assets, states generally have determined that the benefits of such rigorous notice requirements outweigh the costs to estates, heirs, and beneficiaries.

Most states, however, permit less formal procedures for resolving smaller estates. These procedures are quicker, easier, and less expensive for consumers. For example, nineteen states have adopted the Uniform Probate Code (''UPC''),[13] which makes probating a will and administering an estate simpler and less expensive and gives more flexibility to executors than formal probate.[14] The UPC and similar state laws have created a ''flexible system of administration'' designed to provide persons interested in decedents' estates with the level of procedural and adjudicative safeguards appropriate for the circumstances.[15]

In addition, the UPC and state laws generally exempt entirely certain ''small estates'' [16] with no real property from probate and administration. These laws provide two additional ways of distributing the small estate's assets: (1) Collection of personal property using an out-of-court affidavit process; and (2) ''summary administration.'' [17] Under these various alternatives to formal probate, the person who is authorized to deal with the estate's creditors often does not receive the title of ''executor'' or ''administrator,'' but is called a ''personal representative,'' ''universal successor,'' or some other title. Finally, extrajudicial disposition of decedents' estates also occurs, whereby heirs distribute the assets without state probate codes providing any procedural or adjudicative safeguards.

In sum, there are multiple ways of distributing an estate's assets other than through the traditional formal probate process. Because of this evolution of probate law, most estates today do not go through formal probate, and thus no executor or administrator is appointed.[18] Instead, far more estates are administered through one of the less formal options. But even when the estate is administered outside of the probate process, a creditor or collector always has the option of initiating a formal probate of the estate in order to collect on a debt, thereby preventing the estate's survivors from taking advantage of the benefits of the less formal probate alternatives.[19] In most cases, filing these actions ''impose[s] legal, accounting and other professional expenses and fees on those families, unnecessarily draining off assets that could otherwise go to the family.'' [20]

B. Current Industry Practice in Collecting Decedents' Debt

A number of debt collectors now specialize in the collection of debts owed by deceased debtors. The FTC has conducted investigations of several of these collectors and, in doing so, has reviewed recordings of thousands of collection calls. From this law enforcement experience and the comments received in response to the proposed Statement, the Commission has gained insight into the current practices of collectors who seek to recover on decedents' debts.

In collecting on deceased accounts, collectors must first identify the appropriate person(s) with whom they can discuss the decedent's debt. As noted earlier, Section 805 of the FDCPA permits collectors to contact certain individuals other than the debtor, such as the executor or administrator of the decedent's estate. Thus, if the probate court has named an executor or administrator, collectors can contact that person to seek payment from the estate's assets. At present, however, few estates have a person with the official title of ''executor'' or ''administrator.'' As a result, some collectors attempt to recover by cold-calling relatives, asking whether they are the ''person handling the final affairs'' of the decedent or are the decedent's ''personal representative.'' In some cases, collectors ask whether the family member with whom they are speaking has been opening the decedent's mail or paid for the funeral. Some collectors treat an affirmative response to such questions as sufficient proof that these relatives are responsible for resolving the decedent's estate.

Alternatively, some collectors send letters and other written communications addressed to either ''The Estate of'' or ''The Executor or Administrator of the Estate of'' the decedent. These letters often disclose the details of the decedent's debt, including the original creditor and the amount due. The letters cause many of those who read them—who may or may not be the executor or administrator—to call collectors to discuss decedent's debts.[21]

Once collectors have determined that they are speaking with someone whom they have decided to treat as responsible for resolving the decedent's estate, they often proceed to discuss the decedent's debt and inquire about assets and liabilities. This frequently includes a series of questions about assets the decedent may have left behind, such as whether the decedent owned a car, a house, a bank account, a life insurance policy, or a retirement account. These assets may or may not be legally collectible to pay the decedent's debts, depending on how the assets were titled,[22] whether the decedent was married at the time of death and lived in a community property state, who was the designated beneficiary of the asset, and other considerations.[23]

Finally, in some cases, collectors ask relatives to make a ''voluntary'' or ''family'' payment. For example, some collectors state or imply that the family has a moral obligation to pay the

yet, 94 A.B.A.J. 56 (May, 2008) (''Probate can be expensive * * *. Probate can tie up an estate * * * even a short delay in distributing assets can hurt beneficiaries.'').

[12] *See, e.g.,* P. Mark Accettura, *The Michigan Estate Planning Guide,* at Ch. 7 (2d ed. 2002), available at *http:www.elderlawmi.com/the-michigan-estate-planning-guide/chapter-7/chapter-7-probate.*

[13] Alaska, Arizona, Colorado, Hawaii, Idaho, Maine, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Jersey, New Mexico, North Dakota, Pennsylvania, South Carolina, South Dakota, Utah, and Wisconsin. Each state that has adopted the UPC, however, has modified it, in some cases extensively.

[14] UPC, Article III, Part 12, General Comment (2006).

[15] *See, e.g.,* UPC, Article III, General Comment (2006).

[16] The amount considered to be a ''small estate'' varies by jurisdiction. For example, in California, probate and administration is required if the amount of the estate is greater than $100,000. Cal. Prob. Code 13100 (2009). In Alabama, however, probate and administration is required if the value of the estate exceeds $25,000. Ala. Code 43–2–692 (2010).

[17] As detailed further in the proposed Statement, 75 FR 62,392, many states allow certain qualified individuals to acquire title to certain kinds of property (like a financial account) by signing an affidavit attesting, among other things, that they are entitled to the property and that all of the decedent's debts have been satisfied. ''Summary administration'' is a streamlined probate process available for smaller, uncontested estates. Summary administration typically requires far less involvement from attorneys and probate courts, allowing beneficiaries to save time and money.

[18] *See* Nat'l Consumer Law Ctr. at 4 (''Probably the majority of estates are not probated.'').

[19] *See id.* (''Decedent's creditors are permitted by state law to initiate administration of the estate if they believe it will be worthwhile and the survivors do not.'').

[20] Barron, Newburger & Sinsley, PLLC (Dec. 1, 2010) at 3.

[21] *See* Phillips & Cohen Assocs., Ltd. at 5; West Asset Mgmt., Inc. at 4.

[22] For example, as described above, assets held jointly often are outside the estate and cannot be reached by collectors to pay the decedent's debts.

[23] *See* Section II.A.1, *supra.*

decedent's debt, or that the decedent would have wanted the debt to be paid.

C. The Applicability of the FDCPA

The FDCPA covers the conduct of third-party debt collectors who seek to recover on deceased accounts. Several commenters interpreted the proposed Statement as conveying that the FTC would not enforce the FDCPA in the context of decedents' debts,[24] or that, once a collector was speaking to an authorized representative of the estate, the collector would be free to use deceptive, unfair, or abusive practices to induce the representative to pay the decedent's debt.[25] These interpretations are incorrect.

The FDCPA applies to all efforts by third-party collectors to collect on the obligations of a debtor—including a deceased debtor—to repay a debt that arose out of a transaction in which the money, property, insurance, or services that were the subject of the transaction were primarily for personal, family, or household purposes.[26] Accordingly, the protections and requirements of the FDCPA apply in the context of collecting on the debts of a deceased debtor.[27] Most significantly, Sections 806, 807, and 808 protect all persons against unfair, deceptive, and abusive practices in debt collection. Indeed, as a representative of debt collectors engaged in the collection of decedents' debts acknowledged:

> The proposed statement of the FTC enforcement policy does nothing to provide cover for collectors who engage in deceptive or misleading representations. Current law already prohibits such activities and the proposed Policy Statement specifically prohibits misleading relatives into thinking that they have an obligation to pay the decedent's debts.[28]

Moreover, Sections 804 and 805 limit how collectors may communicate in connection with collecting on deceased accounts.[29]

III. Discussion of the Final Policy Statement

This final Statement of Policy Regarding Communications in Connection with the Collection of Decedents' Debts provides guidance to consumers, debt collectors, and creditors concerning how the FTC will enforce the law in connection with the collection of the debts of deceased debtors. In particular, this Statement sets forth the types of individuals whom debt collectors may contact to collect on deceased accounts and what collectors may do to locate them, without being subject to FTC enforcement efforts. The Statement also advises collectors that certain practices in communicating with these individuals may be unfair, deceptive, or abusive in violation of the FDCPA or Section 5 of the FTC Act, and engaging in such conduct may subject them to law enforcement action.[30]

A. Permissible Individuals for Collection Communications

The proposed Statement enunciated that the Commission would not bring an enforcement action under Section 805(b) of the FDCPA against a debt collector for communicating, for the purpose of collecting a decedent's debt, with any of the individuals specified in Section 805(d)—the decedent's spouse, parent (if the decedent was a minor at the time of death), guardian, executor, or administrator—or another person who has authority to pay the decedent's debts from the assets of the decedent's estate. The Commission has determined to retain this policy in the final Statement.

A broad spectrum of comments addressed this proposal. On one end of the spectrum, several commenters asserted that collectors should be restricted to contacting only limited types of individuals. Several commenters noted that the express language of Section 805 of the FDCPA limits the acceptable contacts to specific classes of individuals; many of these commenters recommended that the Commission limit the permissible contacts to those specific classes. Several commenters, however, appeared to suggest restrictions beyond those in the statute, *e.g.,* that creditors' and collectors' ''sole remedy should be to file a claim against the estate for the estate to pay''[31] or that the types of persons who could be contacted be narrower than under the express language of Section 805.[32] Another commenter recommended that the Statement permit collectors to contact ''*only* individuals specified by the FDCPA or otherwise identified in public probate court records as having authority to pay the decedent's debts''.[33]

At the other end of the spectrum, other commenters contended that collectors should be allowed to contact a broad range of types of individuals.

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[24] *See, e.g.,* Privacy Rights Clearinghouse at 5.

[25] *See, e.g.,* MacQuarrie; Marino; and Merrick.

[26] *See* Section 803(3), (5), and (6) of the FDCPA. 15 U.S.C. 1692a(3), (5), and (6). One law firm representing debt collectors argued in its comment that the FDCPA does not apply to any debt placed for collection after the debtor's death because it then becomes the debt of an estate and not of a ''natural person'' as the term is used in the definition of ''consumer'' in Section 803(3). *See* Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 2, n.1. This argument is incorrect. For purposes of the FDCPA, the critical time for determining the status of a debt is when the obligation arises, and not when the debt is placed for collection. *See, e.g., Newman* v. *Boehm, Pearlstein, & Bright, Ltd.,* 119 F.3d 477, 481 (7th Cir. 1997) (''the obligation to pay is derived from the purchase transaction itself.''); *Zimmerman* v. *HBO Affiliate Group,* 834 F.2d 1163, 1168–69 (3d Cir. 1987) (the transaction that creates a debt under the FDCPA occurs when ''a consumer is offered or extended the right to acquire 'money, property, insurance, or services' which are 'primarily for household purposes' and to defer payment.''). In the case of a deceased account, the obligation is a debt as defined in the FDCPA when the decedent undertook the obligation. At that point, the debtor was alive, and thus the debt was that of a ''natural person.'' The debtor's subsequent death does not change that fact.

[27] *See* ACA Int'l at 4 (''the personal representative is afforded all the protections and rights available to the consumer under the Act.'').

[28] *See* Barron, Newburger & Sinsley, PLLC (Dec. 1, 2010) at 2.

[29] One commenter argued that the term ''spouse'' in Section 805(d), 15 U.S.C. 1692c(d), does not cover widows or widowers because marriage terminates at the death of a spouse. *See* Nat'l Consumer Law Ctr. at 1–2. Therefore, the commenter maintained that collectors should not be permitted to discuss the decedent's debts with surviving spouses. This is incorrect. In 1996, Congress created an omnibus definition for ''spouse'' to apply ''[i]n determining the meaning of any Act of Congress, or any ruling or interpretation of the various administrative bureaus and agencies of the United States.'' 1 U.S.C. 7. The only court to address whether a surviving spouse is a ''spouse'' within the omnibus definition held that a surviving spouse remains a ''spouse'' in determining the meaning of any Act of Congress. *Taing* v. *Napolitano,* 567 F.3d 19 (1st Cir. 2009). The court expressly rejected the government's arguments that the use of the present tense in the omnibus definition and what the government contended was the common, ordinary meaning of the term compelled the conclusion that the plaintiff ceased being a ''spouse'' upon her husband's death. Rather, the court stated that the traditional meaning of ''spouse'' includes surviving spouse and cited *Black's Law Dictionary* to note that ''surviving spouse'' is subsumed within the dictionary definition of ''spouse.'' *Id.* at 24–26.

[30] The Commission's views in this Statement are specifically limited to the situation of the collection of a decedent's debts. As detailed throughout the Statement, these types of collections pose unique challenges in the enforcement and application of the FDCPA.

[31] Andrew; *see also* Jerome S. Lamet, Ltd. d/b/a Debt Counsel for Seniors and the Disabled (''Current probate laws give creditors sufficient protection in that they require notification to creditors that an estate was opened and that the creditors are free to submit claims. Even in small estate resolutions, creditors are either notified that there is an estate, or an affidavit is signed stating that the creditor's claims are satisfied.''). These commenters appear to be arguing that creditors and collectors not be permitted to contact anyone directly, but rather must follow probate procedures by filing a claim. As explained below, the Commission believes that forcing collectors to use the probate process would, in many instances, increase costs and inconvenience for the estate's beneficiaries or heirs.

[32] *See, e.g.,* Uhlmansiek (''there must first be proof that the person being contacted has authority over a minimum portion of the assets of the decedent's estate, provided by either that person or any of the previously authoritative parties listed in section 805.''); AARP at 1 (''AARP strongly opposes the proposed suggestion that an unobligated survivor may be contacted by a debt collector regarding collection of a decedent's debt.'').

[33] Privacy Rights Clearinghouse at 3.

One debt collector argued that the FTC should permit collectors to discuss a decedent's debts with anyone who self-identifies as a ''person handling the final affairs'' or a ''personal representative'' of the estate. This commenter asserted that those forms of self-identification are synonymous with the terms ''executor'' or ''administrator'' in Section 805 and are not too vague for a consumer to understand.[34] The commenter suggested that the Statement focus instead on requiring ''full disclosure and avoidance of any misrepresentation.''[35]

Between these two ends of the spectrum, many comments from government regulators as well as the debt collection industry supported the approach proposed by the Commission. An association of state regulators and a local regulator of debt collectors commented that the proposed Statement reached a reasonable accommodation between protecting consumers and allowing legitimate debt collection activities to occur.[36] Debt collection industry representatives articulated similar views.[37] One industry representative emphasized that the FTC's proposed approach would be consistent with other provisions of Federal law.[38]

Based on the information received in the comments and on the Commission's law enforcement experience, the FTC has decided to retain the proposed Statement's approach in the final Statement: The Commission will forebear from taking law enforcement action against a debt collector for communicating about a decedent's debts with either the classes of individuals specified in Sections 805 (b) and (d) of the FDCPA or an individual who has the authority to pay the debts out of the assets of the decedent's estate. Individuals with the requisite authority may include personal representatives under the informal probate and summary administration procedures of many states, persons appointed as universal successors, persons who sign declarations or affidavits to effectuate the transfer of estate assets, and persons who dispose of the decedent's assets extrajudicially.

The Commission believes that this enforcement policy best ensures the protection of consumers while allowing collectors to engage in legitimate collection practices. If collectors are unable to communicate about a decedent's debts with individuals responsible for paying the estate's bills, because those individuals were not court-appointed ''executors'' or ''administrators,'' collectors would have an incentive to force many estates into the probate process to collect on the debts. Typically, it is easy and inexpensive under state law for creditors and others to petition for the probate of an estate.[39] The actual probate process, on the other hand, can impose substantial costs and delays for heirs and beneficiaries.[40] Policies that result in the imposition of these costs are contrary to the goal of state probate law reforms to promote simpler and faster alternatives to probate, especially for smaller estates.

B. Locating Proper Individuals for Deceased Account Collection

In instances in which collectors do not know the identity of those with the authority to pay the decedent's debts from the estate's assets, they may communicate with others to try to identify these individuals. The proposed Statement emphasized that these efforts are location communications to which Section 804 of the FDCPA applies. Section 803(7) of the FDCPA defines ''location information'' as ''a consumer's place of abode and his telephone number at such place, or his place of employment.'' In addition, Section 804 requires that in communications seeking location information, a debt collector must: ''(1) Identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer; [and] (2) not state that such consumer owes any debt''.[41] The comments received in response to the proposed Statement offered views on what collectors must do in seeking to locate those with the authority to pay decedents' debts, including whether strict adherence to the literal terms of Section 804 is practical and beneficial to consumers in the context of the collection of deceased accounts.

1. Identifying the Person With the Authority To Pay the Decedent's Debts

Some comments advocated that collectors should check available public records for the names and contact information of court-appointed executors and administrators before contacting other individuals.[42] Other comments, however, pointed out that there are significant logistical and cost barriers to conducting a thorough search of state and local probate records.[43] Although such challenges may exist in some jurisdictions, the FTC encourages collectors to make a good faith effort[44] to do record searches before contacting individuals other than executors and

[34] West Asset Mgmt., Inc. at 3.

[35] *Id.*

[36] *See* N. Am. Collection Agency Regulatory Ass'n (''We believe the three basic guidelines are tailored to effectively collect these types of debts and at same time protect the grieving parties from feeling obligated to personally settle the financial affairs of their deceased loved ones.''); New York City Dept. of Consumer Affairs at 1 (''the New York City Department of Consumer Affairs (DCA) supports and strongly encourages the adoption of the Federal Trade Commission's (FTC) proposed policy statement * * *'').

[37] *See, e.g.,* ACA Int'l at 4 (''ACA agrees with the Commission's conclusion that collectors are permitted to communicate with the person who has authority to pay a decedent's estate, even if that person does not fall within the enumerated categories listed in Section 805(d) of the FDCPA.''); Barron, Newburger & Sinsley, PLLC (Dec. 1, 2010) at 3 (''instituting probate proceedings would impose legal, accounting and other professional expenses and fees on those families, unnecessarily draining off assets that could otherwise go to the family * * * The FTC's approach, unlike that suggested by the NCLC, avoids imposing an unwanted and costly probate proceeding that could delay resolution of the estate.''); Reich; Vargo (''I agree with the FTC's opinion. The Personal Representative of the decedent is, in essence, the designated agent of the decedent in concluding the decedent's financial affairs. The FDCPA specifically authorizes communication with a person designated by the debtor to process the matter at issue.'').

[38] Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 7. To implement the Credit Card Accountability Responsibility and Disclosures Act of 2009 ''CARD Act''), the staff of the Federal Reserve Board recently modified its commentary on Regulation Z under the Truth in Lending Act to provide that ''the term 'administrator' of an estate means an administrator, executor, *or any personal representative of an estate who is authorized to act on behalf of the estate.*'' Regulation Z Commentary, 22.6.11(c)(1) (emphasis added). The Commentary allows debt collectors to contact such individuals to effectuate the timely resolution of credit card debts of decedents, a goal the comment asserted was consistent with the objectives the FTC espoused in its proposed Statement.

[39] The filing fee that a collector must pay to force an estate into probate varies by jurisdiction, ranging from nothing to as much as several hundred dollars. *See, e.g.,* Ala. Code 12–19–90 ($45 + $3 per page over five pages); Ark. Code 16–10–305 ($140); Nev. Rev. Stat. 19.013 (up to $20,000, no fee; $20,000–200,000, $99 fee; over $200,000, $352); Wyo. Stat. Ann. 5–3–206 (under $5,000, $50 fee; $5,000–10,000, $55; for each $10,000 over $10,000, another $5).

[40] 75 FR 62,389 at 62,390–62,393 (Oct. 8, 2010). *See also* Barron, Newburger & Sinsley, PLLC (Dec. 1, 2010) at 3; Phillips & Cohen Assocs., Ltd. at 3.

[41] A collector thus cannot mention a specific debt during a location communication and cannot ask for payment from the third party with whom they are speaking, including asking for payment out of any ''moral'' obligation. To do so would violate Section 804.

[42] *See* Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 3–4.

[43] *See* Bass & Assocs., P.C. at 1–2; West Asset Mgmt., Inc. at 4 (''local court records are not easily accessible and even where a formal estate will be opened nothing may be filed for several months after the date of death. Furthermore, collectors may not know the county or even the state where an estate would be properly opened.'').

[44] A good faith effort, for example, would include checking the records of the probate court in the jurisdiction where the decedent resided, which is typically the jurisdiction where probate will occur.

administrators. In addition, once a collector has identified an executor or administrator, the collector thereafter must communicate only with that individual (or any type of individual specifically identified in Sections 805(b) and (d)) about the decedent's debts.[45] Limiting communications to the executor or administrator minimizes unnecessary contacts with family members and provides additional protection against unfair, deceptive, and abusive collection practices.

2. Information That May Be Revealed in Location Communications

In a location communication seeking the person with the authority to pay the decedent's debts from the estate, the FDCPA imposes limitations on what can be conveyed to the recipient of the communication in order to protect the privacy of the debtor. Section 804 specifically prohibits collectors from revealing that the debtor owes a debt.[46] In addition, Section 804(2) prohibits collectors from making statements that the debtor owes a debt, while Sections 804(4) and (5) prohibit disclosing that the debtor owes a debt when communicating by post card or through information on the outside of an envelope, respectively.

The proposed Statement suggested that a location communication in the context of a deceased debtor can state that the collector is seeking to identify and locate the person who has the authority to pay any outstanding bills of the decedent out of the decedent's estate, but cannot make any other references to the decedent's debts or provide any information about the specific debts at issue. The Commission has determined to retain this policy in this final Statement.

The Commission received numerous comments addressing whether strict adherence to these requirements is in the public interest in the context of the collection of decedents' debts.[47] On one end of the continuum, several commenters asserted that because letters addressed to either ''the Estate of'' or ''the Executor or Administrator of the Estate of'' the decedent are consistent with an effort to have individuals with the requisite authority open the letters, collectors should be permitted to inform the persons opening such letters that the decedent owed a debt and the details of such debt.[48] In effect, these commenters posit that a letter addressed to the estate or an unnamed ''executor'' or ''administrator'' is sufficiently targeted at a person considered to be a ''consumer'' under Section 805 of the FDCPA (*e.g.,* a surviving spouse, administrator, or executor) to constitute a collection communication rather than a location communication. Because these letters are collection communications, the collectors should be permitted to mention, and seek payment on, the decedent's debts.

The Commission disagrees with this analysis. The Commission's law enforcement experience suggests that letters addressed to the estate or an unnamed administrator or executor (legal terms with which many consumers are unfamiliar) often are opened by individuals who do so in an effort to help out, but who lack the authority to pay the decedent's debts from the estate's assets.[49] Accordingly, the Commission concludes that a communication addressed to the decedent's estate, or an unnamed executor or administrator, is a location communication and must not refer to the decedent's debts or otherwise violate Section 804 of the FDCPA.[50]

On the other end of the continuum, comments from two consumer advocacy groups noted that just using the word ''debt'' (and not even providing any more specific information such as the creditor or the amount) in location communications was inconsistent with the express language of Section 804(2).[51] One of these groups also argued that it is not necessary for collectors to mention decedents' debts in attempting to locate the appropriate person, because ''collectors can simply state that they are calling or writing to obtain the contact information of the person representing the estate of the deceased.'' [52]

In between the two ends of the continuum, ten comments, including one from an association of state regulators, had no objection to collectors mentioning outstanding obligations generally in a location communication, such as referring to ''any outstanding bills of the decedent.'' [53] A debt collection trade association, noting that the purpose of the prohibition in Section 804(2) is to protect the privacy of the debtor, asserted that ''the deceased generally have a reduced privacy interest as compared to the privacy rights during life. Any modest infringement on the privacy interest after death is not an infringement on an individual's privacy right, but of the estate.'' [54] It also pointed out that there is a substantial benefit to permitting collectors to communicate generally with third parties to locate the person who has the authority to pay the debts of the estate, because ''doing so avoids litigation that otherwise draws down on the estate's assets.'' [55]

[45] *See, e.g.,* AARP at 4 (''this protection should be extended to prohibit any contact after the collector becomes aware that the estate is represented by anyone recognized by state law.''); West Asset Mgmt., Inc. at 5. Note that a collector is legally permitted to contact other individuals who are in the categories specifically listed in Sections 805(b) and (d) of the FDCPA.

[46] Section 805(b) generally prohibits communications with third parties unless they are location communications that satisfy the requirements of Section 804. Thus, a communication with a third party that does not meet the standards of Section 804 violates Section 805(b).

[47] The Commission also received a letter, dated January 18, 2011, from Congressman Walter B. Jones, representing North Carolina's third Congressional district, addressing this issue. Congressman Jones advocated that collectors should be allowed to include the creditor's name and the amount of the debt in the initial communication, because such information would facilitate the timely resolution of debts.

[48] *See, e.g.,* Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 4; Weltman, Weinberg & Reis Co., LPA at 1. These commenters argued that the risk that unauthorized third parties would open such a letter is small because it is, or might be, a federal crime to open another's mail without authorization. There is no evidence, however, that persons without the requisite authority are even aware of this prohibition or, if they are, would refrain from opening the mail out of a fear of criminal prosecution. In fact, many laws protect persons who in good faith assist a person who has the authority to resolve a decedent's debts. *See* Uniform Probate Code 3–714. In addition, a person acting in an effort to help likely would not have the requisite scienter to have engaged in a crime. Accordingly, the Commission finds this argument unpersuasive.

[49] The Commission has not assessed whether some form of communication sent with the initial letter (such as a validation letter in an enclosed envelope accompanied by a cover letter warning that only the appropriately authorized party should open the envelope) would effectively prevent unauthorized third parties from viewing details about the decedent's debt. The Commission is concerned, however, that merely admonishing the recipient of, for example, a mailed letter not to open it unless he or she is authorized to pay the estate's debts might not be effective. Well-meaning family members or others, who perhaps may not be familiar with legal terminology, might open the enclosed envelope despite such an admonishment in an effort to be helpful. Ultimately, the question of whether any particular admonishment or other mechanism to avoid third-party disclosure would be effective is an empirical one and would depend on the specific circumstances.

[50] Similar considerations arise when a letter with information about a debt is addressed to a debtor who is dead. In some circumstances, debt collectors will neither know nor have reason to know that the debtor has died; for example, a debtor could be alive when the letter is sent, but dead by the time the letter arrives. In other circumstances, debt collectors will know or should know that the debtor has died. Collectors with such knowledge should refrain from mentioning the debt in any letter addressed to the deceased debtor, because of the risk that an inappropriate third party will open the letter.

[51] AARP at 5; Nat'l Consumer Law Ctr. at 2.

[52] Nat'l Consumer Law Ctr. at 2.

[53] *See, e.g.,* N. Am. Collection Agency Regulatory Ass'n at 1; Weltman, Weinberg & Reis Co., LPA at 2.

[54] ACA Int'l at 4.

[55] *Id.* Although the comment does not provide a basis for this conclusion, the commenter appears to

Based on the comments received and on its law enforcement experience, the Commission will forebear from taking enforcement action for violating Section 804(2) of the FDCPA against a debt collector who includes in location communications a general reference to paying the ''outstanding bills'' of the decedent out of the estate's assets. Such a reference balances the legitimate needs of the collector with the privacy interests of the decedent. Such language should provide sufficient information for the recipient of the communication to identify the person with authority to pay the decedent's debts out of the estate's assets, while minimizing the harm to the decedent's reputation that might ensue from a reference to the decedent's debts.[56] The Commission, however, cautions collectors using the term ''outstanding bills'' that stating or implying in other ways that the decedent was delinquent on those bills would violate Section 804 of the FDCPA.

C. Compliance in Communicating With Permitted Individuals

The FDCPA and Section 5 of the FTC Act govern a collector's communications with a person who has the authority to pay the decedent's debts from the estate's assets. During such interactions, collectors must not engage in unfair, deceptive, abusive, or other unlawful conduct in violation of the FDCPA. Collectors also must not engage in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act. To underscore the nature and scope of the restrictions on collectors in this context, the Commission believes that it is useful to discuss how the FDCPA and Section 5 apply to three specific issues that arise in such interactions.

1. Time of Communication

A significant issue raised in comments from individual consumers and consumer groups was whether there should be a ''cooling-off period'' after the debtor's death during which collectors are prohibited from commencing communications to collect from the person who has the authority to pay the decedent's debts from the estate's assets, and from contacting others seeking location information concerning that person. Some comments specifically suggested that the FTC impose a 30-day or longer cooling off period.[57] According to the commenters, the deceased's relatives and others are likely to be bereaved for a period of time after the death, and thus may be vulnerable to collectors' blandishments.[58]

The FTC recognizes that many family members may be vulnerable emotionally and psychologically in the aftermath of a relative's death. But the record does not indicate a significant incidence of calls by collectors immediately following the debtor's death. Thus, the final Statement does not include a cooling-off period. Nevertheless, the Commission stresses that Section 805(a)(1) of the FDCPA prohibits collectors from contacting consumers at ''any unusual time or place or at a time or place known or which should be known to be inconvenient to the consumer.''; [59] Depending on the circumstances, contacting survivors about a debt shortly after the debtor dies may be unusual, inconvenient, or both.[60] The Commission's investigations indicate that debt collectors typically do not initiate communications regarding decedents' debts for weeks or even longer after death.[61] The Commission emphasizes that such restraint is a key business practice in allaying concerns arising from collection of deceased accounts.

2. Questions About Authority To Pay

The proposed Statement cautioned debt collectors about using leading questions when seeking to elicit information as to who is the person with the authority to pay the decedent's debts from the estate's assets. The proposed Statement identified several examples of problematic questions, such as asking whether the person contacted is ''handling the decedent's final affairs,'' paid for the decedent's funeral, or is opening the decedent's mail. The proposed Statement explained that such questions are not likely to elicit sufficient evidence of authority, because relatives often undertake these types of activities to assist without assuming the general authority to pay the decedent's debts from the estate's assets.

One commenter, a local debt collection regulator, asserted that complaints it receives from consumers show that, in addition to dealing with the loss of a loved one, grief-stricken family members ''must contend with deceptive and aggressive tactics by collectors to induce consumers to pay debts consumers may very well not be obligated to pay.'' [62] To prevent collectors from asking ''roaming questions'' that may mislead consumers, this commenter therefore recommended that the final Statement give specific examples of questions that may be appropriate for a collector to ask. Another commenter, emphasizing that this is an extraordinarily complicated area of law and that unsophisticated surviving family members cannot be expected to understand the nuances of probate law, argued that limiting collectors to asking a narrowly circumscribed set of open-ended questions that may not apply to all situations may lead to confusion.[63] According to this commenter, collectors should have the flexibility to pose

suggest that if collectors cannot initiate a meaningful discussion with the person who has the requisite authority, many will seek relief in probate court, or, if probate is closed, through litigation.

[56] Nearly all individuals leave some outstanding bills at the time they die, even if they are not delinquent on those bills. Thus, a reference in the location communication to the decedent's ''outstanding bills'' is not likely to imply that the decedent was delinquent at time of death. The word ''debts,'' on the other hand, is more likely to imply that the decedent was delinquent at time of death.

[57] *See, e.g.,* Barboza; Forgie (''I feel in NO INSTANCE should a debt collector be allowed to contact either the family or friends of deceased until at least 30 days after the date of death.''); and Steinbach at 1 (''we urge the FTC to adopt an enforcement rule that communication with the family of a deceased individual within 30 days of the individual's death is a *per se* 'unfair' communication under 15 U.S.C. sec. 1692f. This rule would not preclude the finding that, depending on the circumstances, such communication within 60 days or even longer could be a violation.'').

[58] *See, e.g.,* AARP at 1 (''Debt collectors are keenly aware that survivors are particularly vulnerable after the death of their loved one.''), 2 (''Older people are extremely vulnerable to abuses by debt collectors.''), 2 (''Older people living alone * * * may be socially isolated, particularly after the death of a spouse or loved one. They are also more easily upset by an abusive telephone call; indeed the stress from harassing tactics can actually threaten their health.''); Corcoran (''grieving families are in no frame of mind to talk about debt that belongs to the deceased.''); Atticus; Carter (''At a time when family and friends are grieving and at their most vulnerable it is particularly important to keep debt * * * [collectors] at bay.''); Corley (''We are at our most vulnerable when losing a family member * * *''); Hoffman; Lamet (''family and friends of recently deceased loved ones are in a very fragile emotional state and are thus more susceptible to abuse by predatory tactics of creditors.''); McGill; Nat'l Consumer Law Ctr. at 1 (''* * * particular sensitivity and vulnerability of bereaved relatives and friends.''), 4, and 5; Starkey; and Steinbach at 1.

[59] 15 U.S.C. 1692c(a)(1).

[60] For example, it likely would be unusual or inconvenient to call during a wake, during a funeral, at a place of worship, or during a period of religious observance at any location.

[61] It typically takes a significant period of time—sometimes weeks or even months—for a creditor to learn of the debtor's death. Often, the creditor first learns of the passing because a family member or friend contacts the creditor. It then takes time for the creditor to close the account, transfer it to either the appropriate internal department or a third-party debt collector, and then usually check the account against a database to confirm the passing. Some debt collectors who specialize in collecting on the debts of deceased debtors also search proprietary databases to check for state probate filings before first attempting to collect.

[62] New York City Dept. of Consumer Affairs at 3.

[63] Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 13.

specific questions that are more appropriate to the situation at hand.

Based on its law enforcement experience[64] and the comments received, the Commission believes that it is impractical to limit collectors to a prescribed list of questions that would apply to all possible situations in which a collector may need to communicate with a person to obtain location information. Thus, the Commission will not prescribe the precise language that a collector must use in such situations. Instead, a collector may ask a person clarifying questions when seeking to identify and locate the person with the authority to pay the decedent's debts from the estate's assets, but a collector should not use inappropriate leading questions[65] or engage in any other conduct that may cause the person contacted to assert mistakenly that he or she has the requisite authority. In most cases, questions about whether the person contacted is ''handling the decedent's final affairs'' or paid for the decedent's funeral are not likely to elicit sufficient evidence of authority on their own and may lead the person contacted to assert authority mistakenly. Questions about whether the person contacted is opening the decedent's mail also are unlikely to be probative of whether that person has authority to pay the decedent's debts out of the estate's assets. Debt collectors using these questions must assess whether, in the context of a specific communication, they effectively solicit useful information without misleading consumers.

3. Misleading Consumers About Their Personal Obligation To Pay the Decedent's Debt

The proposed Statement advised that, in communicating with persons who have the authority to pay the decedent's debts out of the estate's assets, it would violate Section 5 of the FTC Act and Section 807 of the FDCPA[66] for a debt collector to mislead those persons about whether they are personally liable for those debts, or about which assets a collector could legally seek to satisfy those debts. The proposed Statement specifically emphasized that:

[e]ven in the absence of any specific representations, depending on the circumstances, a collector's communication with an individual might convey the misimpression that the individual is personally liable for the decedent's debts, or that the collector could seek certain assets to satisfy the debt. To avoid creating such a misimpression, it may be necessary for the collector to disclose clearly and prominently that: (1) It is seeking payment from the assets in the decedent's estate; and (2) the individual could not be required to use the individual's assets or assets the individual owned jointly with the decedent to pay the decedent's debt.[67]

Commenters, including debt collectors, strongly agreed with the FTC that debt collectors have an affirmative responsibility under the law not to mislead individuals they contact about their responsibility to pay for the decedent's debts.[68] An association of state debt collection regulators, in particular, supported the proposed disclosure unequivocally, as a means of preventing deception.[69]

Other comments supported the idea of a disclosure, but suggested that collectors use different language than that suggested in the proposed Statement. Some comments argued that the proposed disclosure is too narrow, asserting that consumers need more or better information.[70] On the other hand, some comments argued that the proposed disclosure is too broad, emphasizing that there are circumstances in which the individual contacted in fact could be personally liable out of his or her own assets or out of assets owned jointly with the decedent.[71]

Based on the comments received and its law enforcement experience, the Commission concludes that the information that must be disclosed to avoid deception when collectors contact individuals with the authority to pay the decedent's debts depends on the circumstances. The proposed Statement suggested two possible disclosures: (1) That the collector is seeking payment from the assets in the decedent's estate; and (2) the individual could not be required to use the individual's assets or assets the individual owned jointly with the decedent to pay the decedent's debt. These disclosures generally will be sufficient to prevent deception. Nevertheless, there may be circumstances in which these disclosures are not applicable or sufficient to prevent deception.[72] The collector has the responsibility of tailoring the information it discloses to avoid misleading consumers.[73]

A collector also should not use questions about the decedent's assets to mislead the person who has the authority to pay the decedent's debts from the estate into believing incorrectly that those assets are subject to the collector's claim.[74] Although such questions are not necessarily deceptive, the collector may need to take precautions to prevent the person from

[64] During its law enforcement investigations of collectors of deceased accounts, FTC staff listened to thousands of calls between collectors and relatives, including calls in which collectors sought to ascertain the scope of the relatives' authority to pay the decedent's debts.

[65] An inappropriate leading question is one that instructs the person on how to answer or puts words in his or her mouth to be echoed back.

[66] 15 U.S.C. 1692e.

[67] 75 FR at 62,394.

[68] *See, e.g.,* Phillips & Cohen Assocs., Ltd. at 4 (''collectors have an affirmative responsibility to help avoid creating the misimpression that Informal Administrators are responsible for paying the debts of the decedent in instances in which they are not.''); Weltman, Weinberg & Reis Co., LPA at 3; AARP at 1; New York City Dept. of Consumer Affairs at 4.

[69] N. Am. Collection Agency Regulatory Ass'n at 1.

[70] Nat'l Consumer Law Ctr. at 3; AARP at 5; New York City Dept. of Consumer Affairs at 4–5.

[71] ACA Int'l at 4–5; Phillips & Cohen Assocs., Ltd. at 4–5; West Asset Mgmt., Inc. at 4–5; Bass & Assocs., P.C. at 3; Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 13.

[72] Some comments claimed that the disclosures in the proposed Statement would be inaccurate because they would be used in circumstances in which individuals, in fact, are personally liable. Barron, Newburger & Sinsley, for example, suggested that the second clause of the disclosure could be improved by modifying it to read, ''the individual *may* not be required to use the individual's assets * * *'' Barron, Newburger & Sinsley, PLLC (Nov. 4, 2010) at 13 (emphasis added). The Commission believes that the word ''may'' would not convey accurately the unlikelihood that the authorized person would have to use his or her own assets to pay the debt. In any event, collectors should be able to determine in most cases whether the person contacted is liable to pay the debts at issue from his or own assets. For example, by reviewing underlying credit contracts, collectors often can determine if the individual is jointly liable as a co-signor. By knowing the identity of original creditors, such as a hospice or hospital, and applicable state laws concerning medical debts, collectors likewise can often ascertain if the decedent incurred medical debts for which a spouse is liable. And, by reviewing applicable state laws, collectors generally can determine whether a spouse is liable under state community property laws. Collectors have an obligation to resolve these issues and disclose sufficient information to the individuals contacted so that consumers are not deceived in violation of the FDCPA and Section 5 of the FTC Act.

[73] It is not a *per se* violation of the law for collectors to attempt to persuade the person with the requisite authority to pay the debt out of her own assets. It is a violation, however, for a collector to: (1) Misrepresent that the person has a legal obligation to use his or her own assets to pay the debt; or (2) engage in harassing, oppressive, or abusive conduct to collect the debt.

[74] Many of the calls to which FTC staff listened during its investigations of collectors of deceased accounts included questions about assets. For example, collectors have, in the past, asked whether the decedent owned any cars, real property, bank accounts, life insurance policies, etc. Often, depending on the applicable laws and/or how the asset was titled, some of these assets may not be subject to creditors' claims. Consequently, consumers can easily be misled into believing that a particular asset is subject to the debt collector's claim when it is not, and that the consumer may have to use the proceeds of unreachable assets to satisfy the decedent's debts. Collectors may still ask about these assets to ascertain whether the assets are reachable or not, but should make clear to the consumer that those assets that are unreachable are, in fact, not part of the estate or otherwise subject to the collector's claim.

being misled—for example, by disclosing that jointly-held assets are not subject to the collector's claim and that the collector is trying to determine what assets are in the estate. Once the collector has reason to believe that a particular asset is not part of the decedent's estate, the collector should stop asking questions about that particular asset or otherwise create the misimpression that the particular asset is subject to the debt.

Finally, in determining whether individuals are taking away the misimpression that they are personally liable for the decedent's debts, the Commission will consider whether the collector has obtained an acknowledgment at the time of the first payment that, if appropriate, the person understands that he or she is obligated to pay debts only out of the decedent's assets and is not legally obligated to use his or her own assets—including those jointly owned with the decedent—to pay the debts.

By direction of the Commission.

Donald S. Clark,

Secretary.

FDCPA Enforcement Policy Statement

Matter No. P104806

Concurrence of Commissioner Julie Brill

July 20, 2011

The Fair Debt Collection Practices Act (''FDCPA'') describes, in no uncertain terms, the individuals with whom a debt collector may communicate regarding a consumer's debts: the consumer, her attorney, her spouse, her parent (if the consumer is a minor), her guardian, and a small group of other individuals.[75] If the consumer is deceased, the FDCPA expands this group to allow a debt collector to contact the consumer's executor or administrator.[76] As the FDCPA Enforcement Policy Statement (''Policy Statement'') issued by the Commission today points out, state probate laws have changed significantly since the passage of the FDCPA over three decades ago. As a result of these changes, when a consumer dies, her estate will not necessarily have an ''executor'' or an ''administrator'' with whom a debt collector can communicate regarding the decedent's debt.

The Policy Statement expands the communications in which debt collectors may engage with a decedent's friends and family members, so that debt collectors may identify the person who has ''the authority to pay the decedent's outstanding bills from the decedent's estate.'' The Policy Statement also permits debt collectors to follow up with ''clarifying questions'' until the person with whom the debt collector is speaking has, to the collector's satisfaction, identified the executor, administrator, or individual with authority to pay the decedent's outstanding bills from the decedent's estate. The rationale for the Commission's action today is that Congress intended to give creditors a right to engage in limited communications in order to collect the legitimate debts of deceased debtor through the estate. Through its action, the Commission wishes to avoid a hyper-technical reading of the statute that allows contact only with statutorily required, but in reality likely non-existent administrators or executors. The Commission's action is thus designed to prevent us from elevating form over substance in a manner that defeats the intent of the statute. Without a reasonable and narrowly defined safe harbor, a debt collector's alternative may be to force the appointment of an executor or administrator, which could be costly and time consuming for decedent's relatives and the estate.

Balanced against these concerns for rational administration of estates are equally legitimate concerns that the Policy Statement will operate as a license for some debt collectors to take unfair advantage of the survivors and loved ones of recently deceased debtors. Most consumers, even in the best of times, will likely be unable to understand and respond accurately to arcane questions of law regarding the identity of ''the person who has legal authority to pay outstanding bills from a decedent's estate.'' Allowing debt collectors to contact the survivors and loved ones of recently deceased consumers will require them to respond to these arcane questions of law at a time when they find themselves in unfamiliar and unsettling territory, trying to sort through the finances and personal affairs of the deceased, while simultaneously trying to cope with their loss. A consumer in this vulnerable condition may mistakenly identify himself as the person with whom the debt collector should be speaking. Worse still, he may end up feeling as if he has an obligation—legal, moral, or otherwise—to pay the debt from personal funds, even though debt collectors cannot legally ask him to do so.

In view of the pitfalls of allowing debt collectors to contact family members to identify the person who has authority to pay outstanding bills from the decedent's estate, the Policy Statement is crafted to limit potential abuses. First, when contacting the family members, the debt collector must include in the statement that he is looking for the person who is responsible for paying the outstanding bills of the decedent ''from the decedent's estate.'' Second, until such time as it is established that the debt collector is talking to the person with such authority, the collector cannot reveal that the decedent owes a debt. This should eliminate any opportunity by debt collectors to make appeals to those without authority to pay bills from the estate's assets to pay a debt out of a sense of moral obligation. Third, the Policy Statement makes clear the debt collector's general responsibility to disclose that the person with authority to pay the debts from the estate is not required to use his individual's assets to pay the decedent's debt.[77] Finally, if the debt collector does reach the person with authority to pay the bills from the estate of the decedent, that person stands in the shoes of the ''consumer'' and must be given notice that he is entitled to proof of the decedent's debt and has the right to contest it.

On balance, I concur in the issuance of the Policy Statement at this time, despite concerns that the Policy Statement may operate as a license for some debt collectors to take unfair advantage. I take this view, in large part, because staff's review of thousands of interactions between debt collectors and the family members and survivors of decedents indicates that, while some collectors were engaged in egregious conduct, the vast majority were trying to comply with a reasonable, although at times incorrect, interpretation of the requirements of the FDCPA.

Yet, in light of these strong policy reasons for protecting the survivors and loved ones of recently deceased debtors, the Commission should ensure that any forbearance of enforcement will occur only when debt collectors strictly comply with the criteria set forth in the Policy Statement, especially the four safeguards listed above. The debt collection industry should know that we will not refrain from aggressive

[75] Fair Debt Collection Practices Act, 15 U.S.C. 1692c (b) and (d). Subsection (b) provides that a debt collector may also communicate with ''a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.''

[76] FDCPA 15 U.S.C. 1692c (d).

[77] There may be circumstances where the individual, in fact, is legally obligated to pay the debt himself. In those cases, the disclosure requirement would not apply. [End Lit]

enforcement when debt collectors go beyond the very limited inquiries allowed by today's action. I urge my fellow Commissioners and staff to couple today's action with strict monitoring of the industry going forward, to ensure its close adherence to the criteria set forth in the Policy Statement. If abuse becomes widespread, I would recommend withdrawal of the Policy Statement by the Commission.

The new Bureau of Consumer Financial Protection, created under the Dodd-Frank Wall Street Reform and Consumer Protection Act, will have an important role in this area as well. Dodd-Frank grants the new Bureau of Consumer Financial Protection the authority to promulgate regulations under the FDCPA, an authority that the Federal Trade Commission has not possessed. In the event that the Commission finds that the debt collection industry is not adequately adhering to the limited inquiries allowed under this Policy Statement, I hope my fellow Commissioners and staff will work closely with the new Bureau to further develop appropriate rules to be applied to the collection of the debts of decedents.

[FR Doc. 2011–18904 Filed 7–26–11; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 091 0136]

Cardinal Health, Inc.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before August 22, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Cardinal Health, File No. 091 0136'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/cardinalhealthconsent,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William H. Efron (212–607–2827), FTC Northeast Region, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for July 21, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before June 10, 2011. Write ''Cardinal Health, File No. 091 0136'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

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

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

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

If you file your comment on paper, write ''Cardinal Health, File No. 091 0136'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or

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

before July 1, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

I. Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Order (''Consent Agreement'') from Cardinal Health, Inc. (''Cardinal'') to remedy the anticompetitive effects stemming from Cardinal's acquisition of Biotech's nuclear pharmacies in the Southwestern United States. Under the terms of the Consent Agreement, Cardinal is required to reconstitute and divest to one or more Commission-approved acquirers, Cardinal's former nuclear pharmacies in Las Vegas, Nevada, Albuquerque, New Mexico, and El Paso, Texas, and to take certain additional measures to restore competition in nuclear pharmacy markets in Las Vegas, Albuquerque, and El Paso.

On July 31, 2009, Cardinal acquired Biotech's nuclear pharmacies in Las Vegas, Albuquerque, and El Paso (the ''Acquisition'') pursuant to an Asset Purchase Agreement (''Agreement''). Prior to the Acquisition, both Cardinal and Biotech operated nuclear pharmacies in these cities. These nuclear pharmacies produced, distributed, and sold single photon emission computed tomography (''SPECT'') radiopharmaceuticals (also referred to as ''low energy radiopharmaceuticals'') to hospitals and cardiology clinics. The Commission's complaint alleges that the Acquisition and the Agreement violated Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, because the Acquisition and Agreement may substantially lessen competition or tend to create a monopoly in the production, sale, and distribution of low energy radiopharmaceuticals in Las Vegas, Albuquerque, and El Paso and surrounding local areas.

The Consent Agreement has been placed on the public record for 30 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw the proposed Consent Agreement, modify it, or make final the Consent Agreement's proposed Decision and Order (''Order'').

II. Respondent Cardinal Health, Inc.

Cardinal is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its principal executive offices at 7000 Cardinal Place, Dublin, Ohio 43017. Cardinal, a $99 billion health care services company, is one of the leading suppliers of pharmaceuticals and medical products in the world. Cardinal is also a leading manufacturer of medical and surgical products, including gloves, surgical apparel, and fluid management products. In addition, Cardinal operates the nation's largest network of nuclear pharmacies.

III. The Products and Structure of the Markets

Nuclear pharmacies provide radiopharmaceuticals to local hospitals and cardiology clinics, which use the products to diagnose and treat various diseases. Radiopharmaceuticals are drugs containing a radioactive isotope combined with a chemical compound. Due to the fact that the radioactive isotopes have short half-lives and decay rapidly, a nuclear pharmacy can only serve its local area. Accordingly, competition between nuclear pharmacies occurs at the local level.

The Commission's complaint alleges that the relevant product market in which to assess the effects of the Acquisition is the production, sale, and distribution of SPECT radiopharmaceuticals or low energy radiopharmaceuticals. The Commission's complaint further alleges that the relevant geographic markets in which to analyze the effects of the Acquisition are (i) Albuquerque, New Mexico and surrounding areas (the ''Albuquerque market''); (ii) El Paso, Texas and surrounding areas (the ''El Paso market''); and (iii) Las Vegas, Nevada and surrounding areas (the ''Las Vegas market'').

The Commission's complaint alleges that Cardinal and Biotech were the only two providers of low energy radiopharmaceuticals prior to the Acquisition in the Albuquerque market. As a result of the Acquisition, Cardinal holds a monopoly in the Albuquerque market. With respect to the El Paso market, the Commission's complaint alleges that Cardinal and Biotech were the only two providers of low energy pharmaceuticals prior to the Acquisition. As a result of the Acquisition, Cardinal held a monopoly in the El Paso market, until approximately November of 2010, when Rio Grande Nuclear Pharmacy, LLC opened in El Paso. Currently, Cardinal holds a large market share in the El Paso market. Finally, regarding the Las Vegas market, the Complaint alleges that prior to the Acquisition, there were three providers of low energy radiopharmaceuticals in the market. Cardinal and Biotech were the two leading providers, followed by Advanced Isotopes of Las Vegas. As a result of the Acquisition, Cardinal obtained and has since held a large market share in the Las Vegas market.

IV. Effects of the Acquisition

The Commission's complaint charges that the Acquisition may substantially lessen competition in the Las Vegas, Albuquerque, and El Paso markets for the production, sale, and distribution of low energy radiopharmaceuticals, by, among other things, (i) eliminating the direct and substantial competition between Cardinal and Biotech; (ii) reducing the number of significant competitors in each relevant market giving Cardinal substantial market power; (iii) facilitating the ability of Cardinal to unilaterally exercise market power; (iv) reducing Cardinal's incentives to improve service or product quality or pursue further innovation; (v) increasing the likelihood of coordinated interaction among the remaining competitors; and (vi) allowing Cardinal, unconstrained by effective competition, to increase prices.

V. Entry

The Commission's complaint alleges that entry into the relevant markets would not be timely, likely, or sufficient to prevent or deter the likely anticompetitive effects of the Acquisition. The Commission's complaint further alleges that entrants face significant barriers in capturing sufficient business to replicate the scale and strength of either Cardinal or Biotech prior to the Acquisition.

VI. Terms of the Order

The Consent Agreement is designed to remedy the likely anticompetitive effects of the Acquisition by restoring, to the extent possible, the lost competition between Cardinal and Biotech in Las Vegas, Albuquerque, and El Paso. Specific terms of the Order are discussed further below.

A. Reconstitution and Divestiture of the Former Cardinal Nuclear Pharmacies to One or More Commission-Approved Acquirers

Prior to the Acquisition, both Cardinal and Biotech operated nuclear pharmacies in Las Vegas, El Paso, and Albuquerque. After the Acquisition, Cardinal relocated its nuclear pharmacy business in these cities to the former

Biotech nuclear pharmacy locations and closed its Cardinal facilities. The Order requires that within six months of the date on which the Order is accepted for public comment, Cardinal must reconstitute each of the three former Cardinal nuclear pharmacies and divest each of the pharmacies to a Commission-approved acquirer.

In connection with the divestiture of the three nuclear pharmacies, Cardinal is also required to divest to each acquirer the intellectual property related to the nuclear pharmacies owned by Biotech prior to the Acquisition. Cardinal must also obtain, maintain, and transfer to the acquirer(s) all regulatory approvals, licenses, qualifications, permits, or clearances that are necessary to operate a nuclear pharmacy. Finally, although, as stated above, the Commission must approve each acquirer, the Order specifically requires that Cardinal demonstrate that each acquirer has a supply of the two vital low energy radiopharmaceutical inputs, the radioisotope technetium 99 and a heart perfusion agent.

B. Customer Rights To Terminate Contracts With Cardinal

To ensure that the acquirer(s) have the opportunity to compete for sufficient business to obtain viable scale and restore competition, the Order requires that Cardinal grant each of its customers in Las Vegas, Albuquerque, and El Paso the right to terminate, without penalty or charge, its existing contract with Cardinal for the purchase of radiopharmaceuticals. Specifically, any customer that purchased radiopharmaceuticals from either Cardinal's or Biotech's nuclear pharmacy in Las Vegas, Albuquerque, or El Paso, at any time between July 1, 2009 (30 days prior to the Acquisition) and the relevant closing date (*i.e.,* the day on which Cardinal divests the reconstituted pharmacy in the customer's market), has the right to terminate its existing contract for radiopharmaceuticals with Cardinal. However, the Order does not grant customers the right to terminate radiopharmaceutical contracts with Cardinal that relate solely to the purchase of Positron Emission Tomography radiopharmaceuticals (also referred to as high energy radiopharmaceuticals).

Pursuant to the Order, Cardinal is required to notify each relevant customer within five days after the relevant closing date of the customer's right to terminate its existing contact. The Order further requires that Cardinal will terminate any relevant customer's existing contract within 30 days upon receiving that customer's request to terminate. Relevant customers will have the option to terminate their existing contract with Cardinal for a period of 24 months from the relevant closing date.

C. Facilitating the Acquirer's Employment of Certain Cardinal and Former Biotech Employees

To provide the acquirer(s) with access to any necessary employees, the Order requires Cardinal to facilitate and not interfere with the recruitment of certain former Biotech employees and current Cardinal nuclear pharmacy employees in Las Vegas, Albuquerque, and El Paso. Such employees also are released from any restrictions on their ability to work for the acquirer(s).

D. A Monitor Will Help Ensure Compliance

The Order provides for the appointment by the Commission of an independent monitor with fiduciary responsibilities to the Commission, to help ensure that Cardinal carries out all of its responsibilities and obligations under the Order. The Order provides that Katherine L. Seifert, a person with significant experience in the radiopharmaceutical industry, shall serve as monitor. Ms. Seifert, currently of Seifert and Associates, Inc., provides consulting services for various clients in the radiopharmaceutical industry. In the event Cardinal fails to comply with its divestiture obligations, the Order also provides that the Commission may appoint a divestiture trustee to fulfill those requirements.

VII. Purpose of the Analysis To Aid Public Comment

The purpose of this analysis is to facilitate public comment on the proposed Decision and Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement and Order.

By direction of the Commission, Commissioner Kovacic recused.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2011–18932 Filed 7–26–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Renewal of Declaration Regarding Emergency Use of Doxycycline Hyclate Tablets Accompanied by Emergency Use Information and Amendment To Include All Oral Formulations of Doxycycline

AGENCY: Office of the Secretary (OS), HHS.

ACTION: Notice.

SUMMARY: The Secretary of Homeland Security determined on September 23, 2008 that there is a significant potential for a domestic emergency involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis.* On the basis of this determination, the Secretary of Health and Human Services is renewing the October 1, 2008 declaration by former Secretary Michael O. Leavitt of an emergency justifying the authorization of emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued by the Commissioner of Food and Drugs under 21 U.S.C. 360bbb–3(a) and amending the declaration to include all oral formulations of doxycyline accompanied by emergency use information subject to the terms of any authorization issued by the Commissioner of Food and Drugs under 21 U.S.C. 360bbb-3(a). This notice is being issued in accordance with section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b)(4).

DATES: This Notice and referenced HHS declaration are effective as of July 20, 2011.

FOR FURTHER INFORMATION CONTACT: Nicole Lurie, MD MSPH, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: On September 23, 2008, former Secretary of Homeland Security, Michael Chertoff, determined that there is a significant potential for a domestic emergency, involving a heightened risk of attack with a specified biological, chemical, radiological, or nuclear agent or agents—in this case, *Bacillus anthracis*—although there is no current

domestic emergency involving anthrax, no current heightened risk of an anthrax attack, and no credible information indicating an imminent threat of an attack involving *Bacillus anthracis.* Pursuant to section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b), and on the basis of such determination, on October 1, 2008, former Secretary of Health and Human Services, Michael O. Leavitt, declared an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a).[1]

Pursuant to section 564(b)(2)(B) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b), and on the basis of Secretary Chertoff's September 23, 2008 determination, I hereby renew former Secretary Leavitt's October 1, 2008 declaration of an emergency justifying the authorization of the emergency use of doxycycline hyclate tablets accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a) and amend the declaration to justify the authorization of all oral formulations of doxycycline accompanied by emergency use information subject to the terms of any authorization issued under 21 U.S.C. 360bbb–3(a). I previously renewed the declaration on October 1, 2009 and October 1, 2010.[2] I am issuing this notice in accordance with section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 360bbb–3(b)(4).

Dated: July 20, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–18937 Filed 7–26–11; 8:45 am]

BILLING CODE P

[1] Pursuant to section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act, notice of the determination by the Secretary of Homeland Security and the declaration by the Secretary of Health and Human Services was provided at 73 FR 58242 (October 6, 2008).

[2] Pursuant to section 564(b)(4) of the Federal Food, Drug, and Cosmetic Act, notices of the renewal of the declaration of the Secretary of Health and Human Services were provided at 74 FR 51,279 (Oct. 6, 2009) and 75 FR 61,489 (Oct. 5, 2010).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Pre-test of an Assisted Living Consensus Instrument.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on May 11, 2011 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by August 26, 2011.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by e-mail at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Pre-Test of an Assisted Living Consensus Instrument

Using a consensus-based process and in partnership with the Center for Excellence in Assisted Living (CEAL), AHRQ has developed a data collection tool that will collect uniform information about individual assisted living facilities (ALFs) in the United States to increase the value of healthcare for consumers by helping them make informed choices when selecting an ALF. Included in the development process were a voluntary committee of national representatives of Assisted Living Facilities, consumers, and researchers.

Assisted living (AL) is a relatively new long-term care option that currently serves approximately one million older and dependent Americans. Unlike skilled nursing facilities which are federally regulated and relatively uniform from state to state, ALFs vary from state to state, as well as within each state, reflecting various core values that embrace consumer choice and provider diversity.

Most states mandate a set of basic services that an ALF must offer, such as meals and housekeeping. The upper limits of allowable services are also often prescribed. However, within the range of services required and allowed, ALFs in most states are given some latitude as to who they choose to serve and what services they choose to provide. Further, the choice of services is not always confined by geography; that is, given the widespread dispersion of families, potential AL residents may be looking to choose among assisted living properties in different states, thereby widening the choices available.

While some ALFs are equipped to serve a wide range of resident needs, it is more common that an assisted living property will address a particular ''market niche.'' There are many ways in which ALFs offer diversity — in the religious or cultural affiliations of its target market; in the house rules that influence expectations about dress and behavior in the dining room; in the admission and discharge criteria in place; as well as in the range of services provided. Major variation is found in the extent to which a particular ALF is able and willing to serve those with dementia. While most ALFs admit and retain residents with mild cognitive impairment, those without a specialized dementia program may have difficulty serving residents with common symptoms such as a lack of safety awareness, wandering, sleep disturbances and agitation.

To some extent, admission and discharge criteria are dictated by the laws and regulations of the state in which a particular ALP operates. Beyond this, ALFs have considerable latitude in assessing individuals whom they will admit and retain in their facilities.

In addition to the assessment of needed services in relation to the services that are available, the ability to pay for AL services is a critical factor for both the consumer and ALF decision-making about whether and when an individual moves into and out of a particular ALF. Approximately ten

percent of AL residents receive subsidies through State Medicaid Waiver or State Plan programs, and fewer than three percent are covered by long-term care insurance. Thus, a substantial percentage of AL consumers use savings and other assets, including proceeds from the sale of their homes, to pay for their stay in an ALF. In choosing an ALF, consumers need to consider whether a particular facility is able to accept Medicaid or other third party payments, both now and in the future, should their assets become depleted.

This research has the following goals:

(1) Refine the data collection tool through pre-testing with a sample of ALFs; and

(2) Make the data collection tool publically available through the AHRQ website.

This study is being conducted by AHRQ through its contractor, Abt Associates Inc., pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness, and value of healthcare services. 42 U.S.C. 299a(a)(1).

Method of Collection

To achieve the goals of this project the following data collection will be undertaken:

(1) Telephone verification. The purpose of the telephone verification is to ensure that the most current mailing address of each ALF is utilized for the survey pre-test, and to obtain the name of the Administrator or Executive Director of the ALF so the mailed pre-test survey can be addressed directly to that person; and

(2) Pre-test of the Assisted Living Provider Information Tool for Consumer Education. The data collection will include information on several topics of interest to consumers including services available in ALFs and costs of those services, criteria for moving into and out of an ALF, resident's rights, house rules, life safety features, staffing within the ALF, and the availability of dementia care services within the ALF. The purpose of the pre-test is to assess the utility of the data collection tool as well as the feasibility for its implementation.

The data that will be collected through this effort will be used to make final refinements to the Assisted Living Provider Information Tool for Consumer Education and to make adjustments to the recommended processes for implementing a similar data collection effort on a broader basis.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden for the respondents' time to participate in this project. The telephone verification will be completed by 285 AL providers and will take approximately one minute to complete. The pre-test of the Assisted Living Provider Information Tool for Consumer Education will be completed by 191 ALFs and will require approximately 25 minutes to complete. The total annual burden is estimated to be 85 hours.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this project. The total annualized cost burden is estimated to be $3,576.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Telephone verification	285	1	1/60	5
Pre-test	191	1	25/60	80
Total	476	na	na	85

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Telephone verification	285	5	$15.37	$77
Pre-test	191	80	43.74	3,499
Total	476	85	na	3,576

* Based upon the mean of the average wages reflected in the National Compensation Survey (May 2009), US. Department of Labor, Bureau of Labor Statistics. Wage categories used: Phone verification—office and administrative support workers; pre-test—medical and health services managers in the United States.

Estimated Annual Costs to the Federal Government

The total cost of this contract to the government is $424,000. The project extends over four years, but this request is for a one-year OMB clearance. Exhibit 3 shows a breakdown of the total cost as well as the annualized cost.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$125,000	$31,250
Data Collection Activities	90,000	22,500
Data Processing and Analysis	30,000	7,500
Reporting of results	30,000	7,500

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost	Annualized cost
Project Management	164,552	41,138
Total Costs	439,552	109,888

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 13, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–18789 Filed 7–26–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Evaluation of ARRA Comparative Effectiveness Research Dissemination Contractor Efforts.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by September 26, 2011.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by e-mail at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Evaluation of ARRA Comparative Effectiveness Research Dissemination Contractor Efforts

Today, both patients and their health care providers have many options when deciding on a treatment plan. Information available to patients and their health care providers offers great opportunities for informed decision making. However, the volume of information that needs to be reviewed and synthesized can be daunting. To complicate matters, studies may offer conflicting information or have a conflict of interest (*e.g.,* research sponsored by pharmaceutical companies that make drugs). Sorting through conflicting information requires a background in research that most patients do not have, and physicians have limited time to conduct these reviews. Having a neutral third party review research, draw conclusions, and disseminate findings is necessary to ensure effective health care delivery and consumption of quality care.

AHRQ recognizes the need to fill this gap and has taken a lead role in developing mechanisms for reviewing and disseminating Comparative Effectiveness Research (CER) and findings to clinicians, health care decision makers, purchasers/business decision makers, and consumers through its Effective Healthcare Program (EHCP). CER directly compares the benefits, potential risks, and costs of two or more health care interventions. These direct comparisons allow assessments of how well a health care treatment or intervention works under real-world conditions. AHRQ has paid careful attention not only to how studies are conducted but also to how results are communicated to its audiences.

To augment AHRQ's existing CER dissemination efforts performed by the Eisenberg Center and other initiatives, AHRQ is conducting four one-time projects to test other ways to disseminate CER results. These four related projects will test new approaches to CER dissemination and promote awareness of the EHCP. Collectively, dissemination efforts will reach AHRQ's priority audiences of: clinical decision makers, health care system decision makers, purchasers/business decision makers, public policy decision makers, and consumers/patients.

Through these four projects AHRQ aims to: (1) Educate professional and consumer audiences about CER; (2) inform professional and consumer audiences about AHRQ's EHCP; (3) and inform a wide range of audiences about new EHCP research findings.

This project will evaluate the effectiveness of these four new dissemination efforts. The evaluation has four main goals:

1. Assess the effectiveness of the four dissemination strategies in creating awareness of CER, specific CER topics, and the EHCP.

2. Assess the effectiveness of the four dissemination strategies in fostering knowledge and understanding of CER finding, specific CER topics, and the EHCP.

3. Assess the effectiveness of the four dissemination strategies in promoting utilization, including use of the EHCP materials by consumers and by clinicians in patient care and if usage by clinicians is increasing across time.

4. Assess the effectiveness of the four dissemination strategies in supporting the benefits of using CER, and specific CER topics, for both patients and health care providers.

This study is being conducted by AHRQ through its contractor, IMPAQ

International, LLC and its subcontractor, Battelle Memorial Institute, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to clinical practice, including primary care and practice-oriented research. 42 U.S.C. 299a(a)(1) and (4).

Method of Collection

To achieve project goals the following data collections will be implemented, each of which apply to all of the above-stated goals:

1. Clinician Survey—Conduct three cross-sectional mail surveys with clinicians to measure awareness, understanding, use of the EHCP materials, and benefits of CER. Collecting survey data at multiple time points is critical to assess trends in the outcomes of interest among clinicians and the impact of ongoing and increased dissemination contractor activities. Three data points for the survey will allow us to test if the proportion of clinicians aware of CER and the Effective Healthcare Program is changing over time and if the rate of change is changing. The Survey will be administered at the end of years 1, 3 and 4; the burden for the year 4 data collection is not included in the estimates in Exhibits 1 and 2 since it will be included in a second OMB clearance package to be submitted after year 3.

2. Consumer/Patient Survey—Conduct two cross-sectional telephone surveys with consumers/patients to measure awareness, understanding, use of the EHCP materials, and benefits of CER. Collecting survey data at multiple time points is critical to assess trends in the outcomes of interest among consumers/patients and the impact of ongoing and increased dissemination contractor activities. Two data points for the survey will allow us to test if the proportion of consumers/patients aware of CER and the Effective Healthcare Program is changing over time. The Survey will be administered at the end of years 1 and 3. A short screener questionnaire will be used to identify eligible respondents.

3. Health System Decision Maker Survey—Conduct one cross-sectional telephone survey with health care system decision makers to measure awareness, understanding, use of the EHCP materials, and benefits of CER. The questionnaire and respondent materials for this data collection are not included in this submission since it occurs in year 4 of the project and have not yet been developed. These materials will be submitted in another OMB clearance package in year 3 of this project. This data collection is mentioned here in order to provide an overview of the entire 5 years of the project; it is not included in the burden estimates in Exhibits 1 and 2.

4. Clinician Focus Groups—Conduct six follow-up focus groups with clinicians after the first and third cross-sectional surveys of this audience, The focus groups will be conducted with three clinician segments: (1) Those who report awareness of CER and have self-reported use of CER in their clinical practice; (2) those who report awareness of CER and have self-reported non-use of CER in their clinical practice; and (3) those who report no awareness of CER. One moderator guide will be used for each focus group. By asking the same questions to each clinician segment, who will have been targeted by all four dissemination contractors, differences among answers are more likely to be attributed to the segmentation criteria and eliminate bias through different questions. Two focus groups will be conducted for each of the three segments. The clinician focus groups will be conducted by telephone. The focus groups will be administered at the end of year 2 and during year 5; the burden for the year 5 data collection is not included in the estimates in Exhibits 1 and 2 since it will be included in a second OMB clearance package to be submitted after year 3.

5. Consumer/Patients Focus Groups—Conduct twelve follow-up focus groups with consumers/patients after the first cross-sectional survey of this audience, at the end of year 2 of the project. The focus groups will be conducted with three consumer/patient segments: (1) Those who report awareness of CER and have self-reported use of CER in medical decision making; (2) those who report awareness of CER and have self-reported non-use of CER in medical decision making; and (3) those who report no awareness of CER. Four focus groups will be conducted for each of the three segments. A single screening questionnaire will be used to recruit participants. The consumer/patient focus groups will be conducted by telephone.

6. Health System Decision Maker Focus Groups—Conduct twelve follow-up focus groups with health care system decision makers, after the cross-sectional survey of this audience. The focus groups will be conducted with three decision maker segments: (1) Those who reported awareness of CER and have self-reported use of CER in business decision making; (2) those who reported awareness of CER and have self-reported non-use of CER in business decision making; and (3) those who report no awareness of CER. Four focus groups will be conducted for each of the three segments. The focus groups will be conducted by telephone. The screener, moderator guides, and respondent materials for this data collection are not included in this submission since it occurs in year 5 of the project and have not yet been developed. These materials will be submitted in another OMB clearance package in year 3 of this project. This data collection is mentioned here in order to provide an overview of the entire 5 years of the project; it is not included in the burden estimates in Exhibits 1 and 2.

7. Semi-structured Interviews—Conduct semi-structured interviews, in year 3 of the project, with 20 individuals in each of the following groups: health care system decision makers, purchasers, and policymakers for a total of 60 interviews. In-depth interviews will be used to determine how people receive and interpret CER-related materials and verbal information, and adopt new behaviors based on information they receive.

AHRQ will use the survey, focus group, and in-depth interview data to assess trends and the effectiveness of the four complementary and different dissemination methods to inform current and future dissemination of the EHCP. Specific attention will be given to changes in audience awareness, understanding, behavior change/use, and benefits of CER. Collecting data at multiple times will enable AHRQ to determine whether increased dissemination contractors' activities over time is associated with any change in CER awareness, knowledge, use, or benefit. Finally, collecting data from five audiences (*i.e.,* clinicians, consumers/patients, health system decision makers, purchasers, and policy makers) will enable AHRQ to assess the effectiveness of its CER-related dissemination efforts among its target populations.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondent's time to participate in this evaluation. The total burden hours are estimated to be 3,760.

Clinician Surveys: The design for the clinician survey consists of three cross sectional waves (only 2 of which are included in the estimates here, as explained in section 1), each wave having 1,926 respondents for a total of

3,852 across the two waves included in this information collection request. The survey will take no longer than 20 minutes to complete.

Consumer/Patient Surveys: The design for the consumer/patient survey consists of two cross-sectional waves, each wave having 1,000 respondents for a total of 2,000 across both waves. The screener will take no longer than 5 minutes to complete. The survey will take no longer than 20 minutes to complete.

Clinician Focus Groups: Six follow-up focus groups with clinicians will be conducted by telephone twice; once after the first and again after the third cross-sectional surveys of this audience (only one of which is included in the estimates here, as explained in section 1). Focus group participants will have completed the survey and will have expressed interest in participating in a telephone focus group. For each of the two rounds of focus groups, twelve clinicians will be recruited for each of six focus groups.

Focus groups will last one hour.

Consumer/Patient Focus Groups: Twelve follow-up focus groups with consumer/patients will be conducted by telephone after the first cross-sectional survey of this audience. Focus group participants will have completed the survey and will have expressed interest in participating in a telephone focus group. Eight people will be in each focus group. The screener will take no longer than 5 minutes to complete. Focus group will last approximately 90 minutes.

In-Depth Interviews with Other Key Audiences: In-depth interviews will be conducted with up to 20 representatives in each of three key audiences: (1) Health care system decision makers, (2) purchasers, and (3) policy makers. Respondents located in the metropolitan Washington, DC/Baltimore area will be interviewed in person, and respondents located outside the local area will be interviewed by telephone. Participant recruitment should take no longer than five minutes. The interviews will last one hour.

The estimated annualized cost burden associated with the respondent's time to participate in this evaluation is shown in Exhibit 2. The total cost burden is estimated to be $144,266.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Data Collection Activity	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Clinician Survey	3,852	1	20/60	1,284
Consumer/Patient Survey Screener	2560	1	5/60	214
Survey	2000	1	20/60	667
Clinician Focus Groups	72	1	60/60	72
Consumer/Patient Focus Groups Screener	120	1	5/60	10
Focus Group	96	1	90/60	144
Semi-structured Interviews with Health System Decision Makers	20	1	60/60	20
Semi-structured Interviews with Purchasers	20	1	60/60	20
Semi-structured Interviews with Policymakers	20	1	60/60	20
Total	8,760	n/a	n/a	2,451

EXHIBIT 2: ESTIMATED ANNUALIZED COST BURDEN

Data Collection Activity	Number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Clinician Survey	3,852	1,284	$88.46	$113,583
Consumer/Patient Survey Screener	2560	214	20.90	4,473
Survey	2000	667	20.90	13,940
Clinician Focus Groups	72	72	88.46	6,369
Consumer/Patient Focus Groups Screener	120	10	20.90	209
Focus Groups	96	144	20.90	3,010
Semi-structured Interviews with Health System Decision Makers	20	20	43.74	875
Semi-structured Interviews with Purchasers	20	20	46.59	932
Semi-structured Interviews with Policymakers	20	20	43.74	875
Total	8,760	2,451	n/a	144,266

*Based upon the mean of the average wages, National Compensation Survey: Occupational wages in the United States May 2009, ''U.S. Department of Labor, Bureau of Labor Statistics.'' Hourly wage rates for clinicians were estimated using the mean wage for internists (occupation code 29–1063). Hourly wage rates for consumers/patients were estimated using the mean wage for all occupations (occupation code 00–0000) since participants in the consumer groups may have a wide range of jobs and occupations. Hourly wage rates for health system decision makers and policymakers were estimated using the mean wage for medical and health services managers (occupation code 11–9111). Hourly wage rates for purchasers were estimated using the mean wage for purchasing managers (occupation code 11–3061). These rates were obtained in January 2011 at the following Web site: *http://www.bls.gov/oes/current/oes_nat.htm#b29–0000.*

Estimated Annual Costs to the Federal Government

The total cost to the Government for this information collection is $2,719,272 over the five years of the project. Exhibit 3 provides a breakdown of these costs.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost Component	Total cost	Annualized cost
Project Development	$420,055	$84,011
Data Collection Activities	1,452,290	290,458
Data Processing and Analysis, and Reports to AHRQ	141,637	28,327
Project Management	291,706	58,341
Overhead	413,584	82,717
Total	2,719,272	543,854

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ healthcare research and healthcare information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 6, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–18790 Filed 7–26–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council Subcommittee Identifying Quality Measures for Medicaid Eligible Adults

AGENCY: Agency for Healthcare Research and Quality (AHRQ).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of a Subcommittee of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Tuesday, August 9th from 10 a.m. to 6 p.m., and Wednesday, August 10th from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Westin Washington, DC City Center, 1400 M Street, NW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Nancy Wilson, MD MPH, Coordinator of the National Advisory Council Subcommittee Identifying Quality Measures for Medicaid Eligible Adults at the Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland, 20850, (301) 427–1310. For press-related information, please contact Karen Migdail at (301) 427–1855.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact the Food and Drug Administration (FDA) Office of Equal Employment Opportunity and Diversity Management on (301) 827–4840, no later than August 1, 2011. The agenda, roster, and meeting report will be available from Dr. Wilson.

SUPPLEMENTARY INFORMATION:

I. Purpose of the National Advisory Council Subcommittee Identifying Quality Measures for Medicaid Eligible Adults

The purpose of the National Advisory Council Subcommittee Identifying Quality Measures for Medicaid Eligible Adults is to develop consensus on a core set of health quality measures for Medicaid-eligible adults. While a number of current efforts to assess, publicly report, and improve quality of care include Medicaid eligible adults, this core set of measures will reflect aspects of care particularly important to Medicaid recipients that are not currently assessed consistently and routinely.

Section 2701 of the Affordable Care Act (ACA), which added Section 1139B to Title XI of the Social Security Act, requires the Secretary of Health and Human Services to identify and publish a recommended core set of health quality measures for Medicaid eligible adults. AHRQ and the Centers for Medicare and Medicaid Services (CMS) have entered into an interagency agreement to collaboratively identify these measures. Section 2701 also requires the Secretary, in consultation with States, to develop a standardized format for reporting information and to develop procedures that encourage voluntary reporting based on the initial core set of measures. The Secretary is also required to establish a Medicaid Quality Measurement Program that will fund the development, testing, and validation of emerging and innovative evidence-based measures and to subsequently publish recommended changes to the initial core measure set. Not later than September 30, 2014 and annually thereafter the Secretary is required to collect, analyze, and make publically available the information reported by the States.

The National Advisory Council Subcommittee Identifying Quality Measures for Medicaid Eligible Adults met on October 18th and 19th 2010, and identified an initial core set of measures. These measures were subsequently posted in the **Federal Register** for a two month public comment period. This initial core set of measures must be finalized by January 1, 2012.

The purpose of the National Advisory Council Subcommittee Identifying Quality Measures for Medicaid Eligible Adults is to: (a) Review the public comment analysis, (b) determine and apply criteria by which the initial list is further refined, and (c) make recommendations to the National Advisory Council regarding finalizing the initial core set of measures. The National Advisory Council Subcommittee Identifying Quality Measures for Medicaid Eligible Adults membership will reflect expertise in healthcare quality measurement, healthcare disparities, and in the populations eligible for Medicaid. Elizabeth McGlynn, PhD, Director, Kaiser Permanente Center for Effectiveness & Safety Research, and Foster Gesten, M.D., Medical Director of

Office of Insurance Programs for New York, co-chair the SNAC.

Role of the National Advisory Council

The National Advisory Council for Healthcare Research and Quality is authorized by Section 941 of the Public Health Service Act, 42 U.S.C. 299c. In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to AHRQ's conduct of its mission including providing guidance on (A) Priorities for health care research, (B) the field of health care research including training needs and information dissemination on health care quality and (C) the role of the Agency in light of private sector activity and opportunities for public private partnerships.

The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members specified in the authorizing legislation.

II. Agenda

The final agenda will be available on the AHRQ Web site at *http://www.AHRQ.gov* no later than August 1, 2011.

Dated: July 8, 2011.

Carolyn M. Clancy,

Director.

[FR Doc. 2011–18791 Filed 7–26–11; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH–227]

Determination on Adding Cancer, or a Certain Type of Cancer, to the List of WTC-Related Health Conditions

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the availability of the ''First Periodic Review of Scientific and Medical Evidence Related to Cancer for the World Trade Center Health Program.'' The Review can be found at: *http://www.cdc.gov/niosh/topics/wtc/prc/prc-1.html*.

Background: The James Zadroga 9/11 Health and Compensation Act of 2010 (Pub. L. 111–347), Title XXXIII of the Public Health Service Act, 124 Stat. 3623 (codified at 42 U.S.C. 300mm–300mm–61) requires in Section 300mm–22(a)(5)(A) that the Administrator of the World Trade Center (WTC) Health Program ''periodically conduct a review of all available scientific and medical evidence, including findings and recommendations of Clinical Centers of Excellence, published in peer-reviewed journals to determine if, based on such evidence, cancer or a certain type of cancer should be added to the applicable list of WTC-related health conditions.''

The first periodic Review of Cancer provides a summary of the current scientific and medical findings in the peer-reviewed literature about exposures resulting from the September 11, 2001 terrorist attacks in New York City and cancer studies. The review discusses criteria that have been used previously to assist in weighing the scientific evidence to determine if a causal association exists between exposure and cancer. The review summarizes input from the public on three questions regarding conditions relating to cancer for consideration under the WTC Health Program, as requested in the **Federal Register** on March 8, 2011 (76 FR 12740) and modified on March 29, 2011 (76 FR 17421). See *http://www.cdc.gov/niosh/docket/archive/docket227.html*.

The review also provides reports from the Mount Sinai School of Medicine, the Bureau of Health Services of the Fire Department of New York City, the WTC Health Registry of the New York City Department of Health and Mental Hygiene and the New York State Department of Health about cancer studies ongoing or planned.

Based on the scientific and medical findings in the peer-reviewed literature reported in the first periodic Review of Cancer for the WTC Health Program, insufficient evidence exists at this time to propose a rule to add cancer, or a certain type of cancer, to the List of WTC-Related Health Conditions found at 42 U.S.C. 300mm–22(a)(3) through (4) and 300mm–32(b).

FOR FURTHER INFORMATION CONTACT: Jessica Bilics, NIOSH, Patriots Plaza 1, 395 E Street, SW., Suite 9200, Washington, DC 20201, E-mail *WTC@cdc.gov*.

Dated: July 19, 2011.

John Howard,

Administrator, World Trade Center Health Program; and Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2011–18754 Filed 7–26–11; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS), (**Federal Register**, Vol. 75, No. 56, pp. 14176–14178, dated March 24, 2010; as amended at Vol. 76, No. 17, p. 4703, dated January 26, 2011; as amended at Vol. 76, No. 75, pp. 21908–21909, dated April 19, 2011) is amended to reflect the establishment of the Office of Minority Health.

Part F is described below:

- Section FC. 10 (Organization) reads as follows:

Office of the Administrator (FC)
Office of Equal Opportunity and Civil Rights (FCA)
Office of Legislation (FCC)
Office of the Actuary (FCE)
Office of Strategic Operations and Regulatory Affairs (FCF)
Office of Clinical Standards and Quality (FCG)
Center for Medicare (FCH)
Center for Medicaid, CHIP and Survey & Certification (FCJ)
Center for Strategic Planning (FCK)
Center for Program Integrity (FCL)
Chief Operating Officer (FCM)
Office of Minority Health (FCN)
Center for Medicare and Medicaid Innovation (FCP)
Federal Coordinated Health Care Office (FCQ)
Center for Consumer Information and Insurance Oversight (FCR)
Office of Public Engagement (FCS)
Office of Communications (FCT)

- Section FC. 20 (Functions) reads as follows:

Office of Minority Health (FCN)

- Serves as the principal advisor and coordinator to the Agency for the special needs of minority and disadvantaged populations.
- Provides leadership, vision and direction to address HHS and CMS

Strategic Plan goals and objectives related to improving minority health and eliminating health disparities.

- Develops an Agency-wide data collection infrastructure for minority health activities and initiatives.
- Implements activities to increase the availability of data to monitor the impact of CMS programs in improving minority health and eliminating health disparities.
- Participates in the formulation of CMS goals, policies, legislative proposals, priorities and strategies as they affect health professional organizations and others involved in or concerned with the delivery of culturally and linguistically-appropriate, quality health services to minorities and disadvantaged populations.
- Consults with HHS Federal agencies and other public and private sector agencies and organizations to collaborate in addressing health equity.
- Establishes short-term and long-range objectives and participates in the focus of activities and objectives in assuring equity of access to resources and health careers for minorities and disadvantaged populations.

Authority: 44 U.S.C. 3101.

Dated: July 12, 2011.

Donald Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–19000 Filed 7–26–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Child Care Quarterly Case Record Report—ACF–801.

OMB No.: 0970–0167.

Description: Section 658K of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858) requires that States and Territories submit monthly case-level data on the children and families receiving direct services under the Child Care and Development Fund. The implementing regulations for the statutorily required reporting are at 45 CFR 98.70. Case-level reports, submitted quarterly or monthly (at grantee option, include monthly sample or full population case-level data. The data elements to be included in these reports are represented in the ACF–801. ACF uses disaggregate data to determine program and participant characteristics as well as costs and levels of child care services provided. This provides ACF with the information necessary to make reports to Congress, address national child care needs, offer technical assistance to grantees, meet performance measures, and conduct research. Consistent with the statute and regulations, ACF requests extension of the ACF–801. With this extension, ACF is proposing to add several new data elements as well as some minor changes and clarifications to the existing reporting requirements and instructions. These proposed revisions to the ACF–801 would allow OCC to capture child-level data on provider quality for each child receiving a child care subsidy.

Respondents: States, the District of Columbia, and Territories including Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Marianna Islands.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–801	56	4	25	5,600

Estimated Total Annual Burden Hours: 5,600.

In compliance with the requirements of Section 506(c) (2) (A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Planning Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *e-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: July 20 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–18787 Filed 7–26–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children And Families

Announcement of Five Single Source Grant Awards

AGENCY: Office of Child Care, ACF, HHS.

ACTION: Award of five single source grants under the Tribal Home Visiting Program to the Eastern Band of Cherokee Indians, Cherokee, NC; Native American Health Center, Inc., Oakland, CA; Riverside-San Bernardino County Indian Health, Inc., Banning, CA; Taos Pueblo, Taos, NM; and United Indians of All Tribes Foundation, Seattle, WA.

CFDA Number: 93.508.

Statutory Authority: Section 511(h)(2)(A) of Title V of the Social Security Act, as added by Section 2951 of the Affordable Care Act of 2010 (Pub. L. 111–148, ACA), authorizes the Secretary of HHS to award grants to

Indian Tribes (or a consortium of Indian Tribes), Tribal Organizations, or Urban Indian Organizations to conduct an early childhood home visiting program. Specifically, the legislation provides for a 3 percent set-aside of the total Maternal, Infant, and Early Childhood Home Visiting Program appropriation (authorized in Section 511(j)) for discretionary competitive grants to Tribal entities.

Summary: The Administration for Children and Families (ACF), Office of Child Care (OCC) announces the award of five Fiscal Year 2011 Tribal Maternal, Infant, and Early Childhood Home Visiting single source grants to the following:

Eastern Band of Cherokee Indians: $205,000. Cherokee, NC.

Eastern Band of Cherokee Indians will provide home visiting services to children under the age of 5 and their families on the Qualla Boundary.

Native American Health Center, Inc.: $227,000. Oakland, CA.

Native American Health Center, Inc. is an urban Tribal organization that will provide home visiting services to the American Indian and Alaska Native (AIAN) population in a five-county region in Northern California, which includes Oakland and San Francisco.

Riverside-San Bernardino County Indian Health, Inc.: $348,000. Banning, CA.

Riverside-San Bernardino County Indian Health, Inc. is a tribally controlled health care organization that will provide home visiting services to approximately 2,000 families on 10 tribal reservations in Riverside and San Bernardino Counties.

Taos Pueblo: $340,000. Taos, NM.

At the Taos Pueblo, there are currently no services for infants under the age of 18 months and their parents. The award will allow the Taos Pueblo to provide home visiting services for up to 300 families in order to complete the continuum of services for children, aged birth to age 5, and their families.

United Indians of All Tribes Foundation: $182,000. Seattle, WA.

This is an urban Indian organization that will provide home visiting services to the AIAN population in King County, WA, which represents more than 100 different Tribal entities.

The Tribal Maternal, Infant, and Early Childhood Home Visiting single source awards will support the grantees in conducting community needs assessments; planning for and implementation of high-quality, culturally relevant, evidence-based home visiting programs in at-risk Tribal communities for pregnant women and families with young children aged birth to kindergarten entry; and participate in research and evaluation activities to build the knowledge base on home visiting among American Indian and Alaska Native populations.

It is expected that the five grantees will continue with their projects for the remainder of a projected five-year project period by implementing home visiting activities for which grantees may receive noncompetitive continuation awards. Home visiting programs are intended to promote outcomes such as improvements in maternal and prenatal health, infant health, and child health and development; reduced child maltreatment; improved parenting practices related to child development outcomes; improved school readiness; improved family socio-economic status; improved coordination of referrals to community resources and supports; and reduced incidence of injuries, crime, and domestic violence.

Dates: July 1, 2011–June 30, 2016.

FOR FURTHER INFORMATION CONTACT: Carol Gage, Office of Child Care, 370 L'Enfant Promenade SW., Washington, DC 20047, *Telephone:* 202–690–6243, *e-mail: carol.gage@acf.hhs.gov*.

Dated: July 21, 2011.

Shannon L. Rudisill,

Director, Office of Child Care.

[FR Doc. 2011–18960 Filed 7–26–11; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0453]

Draft Guidance for Industry and Food and Drug Administration Staff; 510(k) Device Modifications: Deciding When To Submit a 510(k) for a Change to an Existing Device; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''510(k) Device Modifications: Deciding When To Submit a 510(k) for a Change to an Existing Device.'' The recommendations in this guidance document are intended to describe when a new 510(k) should be submitted for a change or modification to a legally marketed device. This draft guidance is not final nor is it in effect at this time.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by October 25, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled ''510(k) Device Modifications: Deciding When To Submit a 510(k) for a Change to an Existing Device'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Michael J. Ryan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–6283.

SUPPLEMENTARY INFORMATION:

I. Background

Since the amendment of the Federal Food, Drug, and Cosmetic Act by the Medical Device Amendments of 1976, FDA has attempted to define with greater clarity when a modification to an existing medical device would trigger the requirement that a new premarket notification (510(k)) be submitted to the Agency and cleared prior to marketing. FDA regulations state in 21 CFR 807.81(a)(3) when a 510(k) must be submitted, but the language used in this regulation sometimes leads to varying interpretations of when a 510(k) is required for a device modification. In order to address this issue, FDA issued in 1997 the guidance document entitled ''Deciding When To Submit a 510(k) for a Change to an Existing 510(k)''; however, regulatory changes such as the implementation of the Quality System Regulation have occurred since that time, and medical device technology has evolved.

In addition, in September 2009, FDA convened an internal 510(k) Working Group to conduct a comprehensive assessment of the 510(k) process. The 510(k) Working Group evaluated the 510(k) program with the goal of strengthening the program and improving the consistency in the Agency's decisionmaking process. In August 2010, the Center for Devices and Radiological Health (CDRH) published two documents in consideration of the comments made at the public meeting and the Agency's preliminary assessment of the program. These documents are titled ''CDRH Preliminary Internal Evaluations—Volume I: 510(k) Working Group Preliminary Report and Recommendations'' and ''CDRH Preliminary Internal Evaluations—Volume II: Task Force on the Utilization of Science in Regulatory Decision Making Preliminary Report and Recommendations'' (*http://www.fda.gov/AboutFDA/CentersOffices/CDRH/CDRHReports/ucm239448.htm*). In January 2011, CDRH published the ''Plan of Action for Implementation of 510(k) and Science Recommendations'' (*http://www.fda.gov/downloads/AboutFDA/CentersOffices/CDRH/CDRHReports/UCM239450.pdf*). One of the action items identified in the Plan of Action included publication of an update to the 1997 Device Modifications Guidance.

The recommendations in this draft guidance document are consistent with longstanding FDA policy for when a modification to a device does and does not require the submission of a 510(k). The guidance has been updated, however, to address issues associated with software and other rapidly changing technologies, and to provide greater clarity about changes that do not trigger the need for a new premarket submission. This guidance uses examples of modifications to devices involving such technologies to illustrate changes that require a new 510(k), and changes that may simply be documented in accordance with a manufacturer's existing Quality System without prompting the need for a new 510(k) submission. FDA believes increased certainty about the regulatory consequences of device modifications is critical to facilitating advancements in device technology. FDA is specifically interested in seeking comments on the changes described, types of changes that are not covered by this document but should be, and illustrative examples of types of changes.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on when a new 510(k) should be submitted for a change or modification to a legally marketed device. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* To receive the draft guidance entitled ''510(k) Device Modifications: Deciding When To Submit a 510(k) for a Change to an Existing Device,'' you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1793 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; and the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073.

V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 21, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–18923 Filed 7–26–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Organ Transplantation; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Organ Transplantation (ACOT).

Date and Times: August 23, 2011, 1 p.m. to 5 p.m.; August 24, 2011, 8:30 a.m. to 5 p.m.

Place: Georgetown University Hotel and Conference Center, 3800 Reservoir Road, NW., Washington, DC 20057.

Status: The meeting will be open to the public.

Purpose: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. ACOT is composed of up to 25 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

Agenda: The Committee meeting will convene at 1 p.m. The Committee will hear reports from two ACOT Work Groups: Declining Rates of Donation/Geographical

and Other Variations in Organ Distribution and the Alignment of the Centers for Medicare and Medicaid Services' Regulatory Requirements with the Organ Procurement and Transplantation Network and the Health Resources and Services Administration. ACOT presentations will include an update on the Kidney Allocation Policy; financial challenges of kidney paired donation; circulatory determination of death criteria; organ donation and transplantation alliance; vascularized composite allografts; and disease transmission and informed consent. Agenda items are subject to change as priorities indicate.

After the presentations and Committee discussions, members of the public will have an opportunity to provide comments. Because of the Committee's full agenda and the timeframe in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting. Meeting summary notes will be made available on the Department's donation Web site at *http://www.organdonor.gov/legislation.asp.* The draft meeting agenda will be available on the Department's donation Web site at *http://www.organdonor.gov/legislation.asp* and at *http://www.team-psa.com/dot/spring2011/ACOT.*

Registration can be completed by e-mailing or faxing a confirmation of participation to Brittany Carey, with the HRM/Professional and Scientific Associates (PSA), the logistical support contractor for the meeting. Ms. Carey's e-mail address is *b_carey@team-psa.com* and her fax number is (703) 234–1701. Individuals without access to the Internet who wish to register may call Brittany Carey with HRM/PSA at (703) 889–9033.

For Further Information Contact: Patricia Stroup, Executive Secretary, Healthcare Systems Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 12C–06, Rockville, Maryland 20857; telephone (301) 443–1127.

Dated: July 21, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–18935 Filed 7–26–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Comments Under the Paperwork Reduction Act, Section 3506

SUMMARY: The National Institute of Health (NIH), 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, Section 3506.

Proposed Collection: Title: The Genetic Testing Registry; *Type of Information Collection Request:* New collection; *Need and Use of Information Collection:* Laboratory tests for more than 2,000 genetic conditions are available; however, there is no centralized public resource that provides information about the availability and scientific basis of these tests. Recognizing the importance of making this information easily accessible to health care providers, patients, consumers, and others, NIH is developing a voluntary registry of genetic tests. The Genetic Testing Registry (GTR) will provide a centralized, online location for test developers, manufacturers, and researchers to submit detailed information about genetic tests. The overarching goal of the GTR is to advance the public health and research in the genetic basis of health and disease.

As such, the Registry will have several key functions, including (1) encouraging providers of genetic tests to enhance transparency by publicly sharing information about the availability and utility of their tests; (2) providing an information resource for the public, including health care providers, patients, and researchers, to locate laboratories that offer particular tests; and (3) facilitating genetic and genomic data-sharing for research and new scientific discoveries.

Frequency of Response: The information will be submitted voluntarily on a non-repeating, continual basis, which means submitters will register a test once and can add new tests on a continual basis. Submitters will be requested to update their test information at least once every 12 months.

Description of Respondents: Submitters to the GTR are expected to include clinical laboratories, test manufacturers, researchers, and entities that report and interpret tests performed elsewhere. The GTR is not limited to U.S. respondents; it will also include submissions from outside the United States. Information will be collected and managed using an online submission system.

Estimate of Burden: Data from the GeneTests Laboratory Directory, which is currently the most comprehensive listing available for laboratories that provide genetic tests, was used to estimate both the number of participating laboratories as well as the number of genetic tests which might be submitted to the GTR. Analysis of the database showed that there are 593 laboratories and approximately 7,800 genetic tests listed in GeneTests. Approximately half of the laboratories in GeneTests (291, or 49 percent) list 12 or fewer tests, while approximately 40 percent (239) list between 13 and 100 tests, and the remaining 10 percent (63) list 100 or more tests. To account for genetic test providers that are not listed in GeneTests, the number of laboratories was multiplied by 1.2, bringing the estimated number of potential participants in GTR to 770. A multiplier of 1.2 was used to account for tests that are not in GeneTests but that might be submitted to the GTR, including test categories not covered by GeneTests (e.g., pharmacogenomic tests), as well as tests that meet the criteria for GeneTests but that have not been submitted to the database. Applying the 1.2 multiplier yields an estimated 9,360 tests for which information could be submitted to GTR.

Although participation in the GTR is voluntary, in order to participate, the submitter must provide information for a certain subset of data fields, identified as the ''minimal fields.'' GTR includes 31 minimal fields and 85 optional fields. Separate estimates of hour burden are provided for minimal, optional, and all fields (Table 1). The calculations include the time and effort necessary for the test provider to gather information for the data elements and to enter the information into the GTR online submission form.

Based on simulated trials of entering test information into GTR, it will take submitters an average of 0.5 hours per test to provide information for the minimal fields. With an average of 12.2 tests per respondent, the estimated annual hour burden for a respondent to complete the minimal fields is 6.1 hours. An estimated additional 2.5 hours per test was projected for the optional fields for an annual burden of 30.5 hours per respondent. The annual hour burden for a respondent to complete all fields is 36.6 hours.

The calculations for annual burden reflect the average time for submitters who are familiar with their tests and know where to find information about the tests. For those submitters who are not familiar with information about their tests, it may take longer than the estimated 2.5 hours to provide the optional fields information. However, submitters should become more efficient in data entry as they gain experience with GTR, and significant time savings can be achieved by laboratories with large numbers of tests who use the bulk upload feature. In addition, those test providers whose

tests are already listed in GeneTests will have the data from GeneTests automatically transferred to GTR, saving them data entry time.

TABLE 1—ESTIMATES OF HOUR BURDEN

Type of respondent	Number of respondents	Frequency of response	Estimated average time per response	Annual hour burden per respondent	Total annual hour burden
Laboratory Personnel	770	An average of 12.2 tests per respondent; submitted once.	Minimal Fields: 0.5 hr	6.1	4,697
			Optional Fields: 2.5 hr	30.5	23,485
			Total (All Fields): 3.0 hr	36.6	28,182

To estimate the annualized cost to respondents, NIH used the mean hourly wage of medical and clinical laboratory technicians from the U.S. Bureau of Labor and Statistics 2010 National Occupational Employment and Wage Estimates.[1] Based on an average of 12.2 submissions per respondent, 3.0 hours to provide information for all data fields (i.e., minimal and optional fields) per submission, and a mean hourly wage of $22.85, the estimated annualized cost to respondents is $836.30. Cost savings can be achieved by laboratories with large numbers of tests that use the bulk upload feature. Table 2 provides the estimated annualized cost per respondent and for all respondents.

TABLE 2—ESTIMATED ANNUALIZED COST TO RESPONDENTS

Type of respondent	Average number of submissions per respondent	Estimated average time (hours) per submission per respondent	Mean hourly wage	Estimated annual cost per respondent	Total annual cost (based on a total of 9,360 submissions for 770 respondents)
Laboratory Personnel	12.2	Minimal Fields: 0.5	$22.85	$139.38	$106, 938
		Optional Fields: 2.5	22.85	696.92	534, 690
		All Fields: 3.0	22.85	836.30	641, 628

Request for comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate 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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication. Comments should be directed to Amy Patterson, M.D. through the contact information below.

FOR FURTHER INFORMATION CONTACT: For additional information on the proposed project, please visit the GTR Web site (*http://oba.od.nih.gov/gtr/gtr.html*) or contact: Amy P. Patterson, M.D., Associate Director for Science Policy, NIH by mail to the Office of Biotechnology Activities, 6705 Rockledge Dr., Suite 750, Bethesda, MD 20892; telephone 301–496–9838; fax 301–496–9839; or e-mail *gtr@od.nih.gov,* Attention: Dr. Patterson.

Dated: July 21, 2011.

Amy P. Patterson,

Associate Director for Science Policy, NIH.

[FR Doc. 2011–18970 Filed 7–26–11; 8:45 am]

BILLING CODE 4140–01–P

[1] U.S. Bureau of Labor and Statistics. May 2010 National Occupational Employment and Wage Estimates. See *http://www.bls.gov/oes/current/oes_nat.htm#29-0000.* Accessed June 8, 2011.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery: National Cancer Center (NCI)

ACTION: 30-Day notice of submission of information collection approval from the Office of Management and Budget and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, National Cancer Center (NCI) has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' to OMB for approval under the Paperwork

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

DATES: Comments must be submitted within 30 days of the date of this publication.

ADDRESSES: 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:

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Vivian Horovitch-Kelley, Program Analyst, Office of Management Analysis and Assessment, National Cancer Institute, 6116 Executive Boulevard, Suite 705, Rockville, MD 20892, or call non-toll-free number 301–435–8526 or e-mail your request, including your address to: *horovitchkellv@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery: National Cancer Institute (NCI). *Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

The Agency received no comments in response to the 60-day notice published in the **Federal Register** of December 22, 2010 (75 FR 80542).

Below we provide the National Cancer Institute projected average estimates for the next three years:

Current Actions: New collection of information.

Type of Review: New collection.

Affected Public: Individuals and households, businesses and organizations, State, Local or Tribal Government.

Average Expected Annual Number of activities: 15.

Respondents: 6,500.

Annual responses: 6,500.

Frequency of Response: Once per request.

Average minutes per response: Ranges from 30 minutes through 90 minutes.

Burden hours: 8,750.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: July 20, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–19027 Filed 7–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Wirelessly Powered MRI Signal Amplification System and Method

Description of Technology: The invention is in the field of MRI, and more specifically relates to device and method that may provide great improvements in the area of interventional MRI. The technology describes an MRI detection coil that has been integrated with a parametric amplifier to provide local signal detection fully integrated with amplification. This amplification is done in a way that is inherently wireless, thus enabling efficient signal transmission. The integrated MRI detector/amplifier can be used in a number of applications. First, it can replace conventional MRI amplification typically done with transistor, thus eliminating the need for wires. Second, it can replace what is traditionally used as part of implanted or catheter coils for interventional procedures with MRI. The advantage is that the signal can be amplified, and wireless transmission is part of the amplification scheme. Therefore signal can be transmitted from the subject in a way that provides detection at higher sensitivity than conventional coils without internal amplification.

Applications: MRI diagnostics and in particular in interventional MRI applications:

• The device can be used as part of a catheter MRI coil for MRI guided surgery.

• It can also be used as implantable NMR coils for localized spectroscopy with better sensitivity.

• The device can potentially be used as a free floating MRI detector/amplifier and swallowed for internal MRI detection as has been done quite successful with optical imaging devices for imaging the human intestine.

• There may be use in MRI coil arrays where interaction between wires in large element arrays is a problem.

Advantages:

• The detector/amplifier integrated system eliminates the need for transistors and is wireless, therefore heat is reduced and sensitivity of detection is increased.

• The system is compatible with interventional MRI devices.

Development Status:

• Proof of principle has been demonstrated on a prototype device.

• Testing a second generation device right now with smaller dimension that could be implanted into transplanted organs and used in mm sized catheters for interventional devices or the digestive tract.

• Plans to develop methods to decouple elements for use in MRI detector arrays.

Inventors: Chunqi Qian *et al.* (NINDS)

Relevant Publications:

1. Qian C, Murphy-Borsch J, Dodd S, Koretsky A. Local detection and parametric amplification of MRI signals. Abstract/Presentation, 52nd Experimental Nuclear Magnetic Resonance Conference, April 10–15, 2011, Pacific Grove, CA.

2. Qian C, Murphy-Borsch J, Dodd S, Koretsky A. Integrated detection and wireless transmission of MRI signal using parametric amplifier. Abstract/Presentation, 19th Annual Meeting & Exhibition of the International Society of Magnetic Resonance in Medicine, May 7–13, 2011, Montreal, Quebec, Canada.

3. Qian C, Murphy-Borsch J, Dodd S, Koretsky A. Sensitivity enhancement of remotely coupled NMR detectors using wirelessly powered parametric amplification. Magn Reson Med. 2011, under review.

Patent Status: U.S. Provisional Application No. 61/648,911 filed 29 Mar 2011 (HHS Reference No. E–113–2011/0–US–01).

Licensing Status: Available for licensing and commercial development.

Licensing Contacts:

• Uri Reichman, PhD, MBA; 301–435–4616; *UR7a@nih.gov.*

• John Stansberry, PhD; 301–435–5236; *js852e@nih.gov.*

An Antibody Specific for the Ubl4A Protein

Description of Technology: The antibody developed against the Ubl4A protein is available for licensing. Ubl4A is involved in the proper targeting of tail-anchored proteins to membranes by acting as a chaperone to prevent inappropriate interactions or aggregation. Alterations in membrane insertion or protein degradation may be related to Ubl4a in certain disease states making Ubl4a an attractive biomarker for the study of disease development or as a tool for the development of assays for disease detection.

Applications: The Ubl4a-specific antibody detects Ubl4a in total cell lysates and tissues and can be used to study Ubl4a interactions with other proteins.

Inventor: Ramanugan Hegde (NICHD).

Related Publication: Mariappan M, Li X, Stefanovic S, Sharma A, Mateja A, Keenan RJ, Hegde RS. A ribosome-associating factor chaperones tail-anchored membrane proteins. Nature. 2010 Aug 26;466(7310):1120–1124. [PMID: 20676083].

Patent Status: HHS Reference No. E–058–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Status: This technology is available as a research tool under a Biological Materials License.

Licensing Contact: Steve Standley, PhD; 301–435–4074; *sstand@od.nih.gov.*

Collaborative Research Opportunity: The NICHD is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Ubl4A assay detection for disease diagnostics. Please contact Charlotte McGuinness at 301–435–3130 or *mcguinnc@mail.nih.gov* for more information.

The Human Nuclear Co-Repressor Gene: Applications for Cancer Diagnostics/Therapeutics and Gene Expression Research

Description of Technology: The human nuclear receptor co-repressor (huN-CoR) forms multimolecular complexes that alters chromatin structure, resulting in disrupted gene expression. The huN-CoR complex is central to normal processes such as erythropoiesis and thymocyte development, but is also linked to multiple cancers including colorectal carcinomas, endometrial cancers and leukemia, particularly acute myeloid leukemia. Thus, huN-CoR is a potentially-valuable tool for cancer diagnosis, as well as a target for the development of huN-CoR-based cancer therapeutics. HuN-CoR is also an attractive research tool for the study of gene regulation, epigenetic modification and gene silencing.

The technology claims nucleic acid sequences comprising the huN-CoR gene and fragments thereof, as well as a gene chip array incorporating such fragments.

Applications:

• Target for novel anti-cancer therapies.

• Use as a tool for prognosis and diagnosis of HuN-Cor-related diseases.

• Use as a target for antibody production and development of biological assays to diagnose human disease related to HuN-CoR.

• Target for rational drug design of novel agents to reverse transcriptional repression

• Study of molecular repression of targeted genes using HuN-Cor fusion proteins.

Inventors: Johnson M. Liu and Jianxiang Wang (NHLBI).

Related Publications:

1. Wang J, Wang M, Liu JM. Domains involved in ETO and human N-CoR interaction and ETO transcription repression. Leuk Res. 2004 Apr;28(4):409–414. [PMID: 15109542].

2. Wang J, Hoshino T, Redner RL, Kajigaya S, Liu JM. ETO, fusion partner in t(8;21) acute myeloid leukemia, represses transcription by interaction with the human N-CoR/mSin3/HDAC1 complex. Proc Natl Acad Sci U.S.A. 1998 Sep 1;95(18):10860–10865. [PMID: 9724795]

Patent Status: HHS Reference No. E–088–1999/0—U.S. Patent No. 6,949,624 issued 27 Sep 2005.

Licensing Status: Available for licensing.

Licensing Contact: Tara Kirby PhD; 301–435–4426; *tk200h@nih.gov.*

Dated: July 21, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–18966 Filed 7–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Monoclonal Antibodies for Rare Diseases

Description of Technology: Available for licensing are three monoclonal antibodies (mAb) that bind with high specificity and affinity to the tumor cell surface antigen tyrosine kinase-like orphan receptor 1 (ROR1). ROR1 is expressed in chronic lymphocytic leukemia (CLL) and mantle cell lymphoma (MCL), two incurable B-cell malignancies that are designated as rare diseases by NIH's Office of Rare Diseases Research. Therapeutics for rare diseases can qualify for orphan drug status and receive expedited review by the FDA. Currently, there are no therapeutic mAbs that target CLL or MCL but not healthy cells.

Investigators from the National Cancer Institute developed chimeric antibodies that selectively target ROR1 malignant B-cells but not normal B-cells. Additionally, this technology allows for mAb derivatives with potentially higher pharmacokinetic and/or pharmacodynamic activity, including humanized mAb in an IgG and IgM format, antibody-drug conjugates, immunotoxins, and bispecific antibodies. These three mAbs have been characterized in vitro for mediating antibody-dependent cellular cytotoxicity, complement-dependent cytotoxicity, apoptosis, and internalization. Results show that these mAbs bind with high specificity and affinity to three different epitopes on human ROR1, and ROR1-expressing primary CLL cells from untreated CLL patients and MCL cell lines. Moreover, as these antibodies selectively target ROR1, they can also be used to diagnose B-cell malignancies.

Applications:

- Antibody treatments for B–CLL and MCL
- Diagnostics for B–CLL and MCL

Advantages:

- Therapeutics that can qualify for an orphan drug status by the FDA and receive expedited FDA review
- Antibodies that selectively target malignant B-cells and not healthy cells

Development Status: The technology is currently in the pre-clinical stage of development.

Market:

- Global orphan drugs market reached $58.7 billion in 2006 and it is expected to reach $81.8 billion by 2011
- Biologic drugs account for over 60% of the orphan drug market with sales of $35.3 billion in 2006 and it is projected to be worth $53.4 billion by 2011

Inventors: Christoph Rader and Jiahui Yang (NCI)

Relevant Publication: Yang J et al. Therapeutic potential and challenges of targeting receptor tyrosine kinase ROR1 with monoclonal antibodies in B-cell malignancies. PLoS ONE 2011;6(6):e21018. Epub 2011 Jun 15. [PMID: 21698301]

Patent Status: U.S. Provisional Application No. 61/418,550 filed December 1, 2010 (HHS Reference No. E–039–2011/0–US–01)

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; Phone No.: 301–435–4633; E-mail Address: *wongje@mail.nih.gov.*

Collaborative Research Opportunity: The National Cancer Institute, Center for Cancer Research, Experimental Transplantation and Immunology Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize anti-ROR1 monoclonal antibodies and their derivatives. Please contact Dr. Christoph Rader at (301) 451–2235 or *raderc@mail.nih.gov* for more information.

Oral Vaccine for Inducing Mucosal Immunity

Description of Technology: Available for licensing is a micro/nanoparticle oral vaccine delivery system that specifically targets the large intestine for vaccine deposition and in situ immune activation, with minimal perturbation in the upper part of the gastrointestinal (GI) tract.

Vaccine delivery to the large intestine has been experimentally demonstrated as an effective means for inducing mucosal immunity against infections transmitted through the recto-genital mucosal area such as sexually transmitted disease as well as fungal and parasitic infections. In this system, the vaccine components are encapsulated by nanometer-sized particles to allow optimal uptake once it reaches the lumen and makes contact with the intestinal mucosal surface. To protect from premature degradation and uptake in the upper GI, these particles are coated within micrometer-sized particles. This coating is designed with a pH- and time-dependent release profile that is optimized for vaccine uptake to occur within the large intestine. This particular feature may also make this technology a potential delivery system for recto-colon cancer therapies.

Applications:

- Vaccine delivery system for inducing mucosal immunity against a variety of infections transmitted through the recto-genital mucosal area
- Potential delivery system for recto-colon cancer therapeutics
- Potential delivery system for recto-colon immunotherapies or controlled drug release

Advantages:

- Oral delivery provides a more practical and less invasive means of vaccine delivery to the large intestine compared to intrarectal or intracolorectal routes
- Delivery system can be used against a variety of diseases transmitted through the recto-genital mucosa
- Proof of concept has been demonstrated in vivo.

Development Status:

- Early-stage
- Pre-clinical
- In vitro data available
- In vivo data available (animal)

Market: Global vaccine market is expected to be worth an estimated $23.8 billion by 2012

Inventors: Qing Zhu (NCI), Jay A. Berzofsky (NCI), James Talton (Nanotherapeutics Inc.)

Relevant Publication: Manuscript submitted, under review.

Patent Status: HHS Reference Number E–132–2009/0 —

- US Application No. 61/238,361 filed 31 Aug 2009
- PCT Application No. PCT/US2010/047338 filed 31 Aug 2010

Licensing Status: Available for licensing.

Licensing Contact: Jennifer Wong; 301–435–4633; *wongje@mail.nih.gov*.

Collaborative Research Opportunity: The Center for Cancer Research, Vaccine Branch, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize Oral Delivery of a Vaccine to the Large Intestine to Induce Mucosal Immunity. Please contact John Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

Dated: July 21, 2011.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2011–18965 Filed 7–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Sensation and Perception.

Date: August 17–18, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; ADHD and Brain Development.

Date: August 19, 2011.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Samuel C. Edwards, PhD, Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Kidney and Urological Diseases.

Date: August 24, 2011.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Chantal A Rivera, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2186, MSC 7818, Bethesda, MD 20892, 301–435–1243, *riveraca@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 21, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18969 Filed 7–26–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Molecular Neuroscience.

Date: August 5, 2011.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call)

Contact Person: Toby Behar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, (301) 435–4433, *behart@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 21, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18968 Filed 7–26–11; 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.

Cross-Site Evaluation of the Minority Substance Abuse/HIV Prevention Program—(OMB No. 0930–0298)—Revision

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Prevention (CSAP) is requesting from the Office of Management and Budget (OMB) approval for the revision of data collection activities for the cross-site study of the Minority HIV/AIDS Initiative (MAI), which includes both youth and adult questionnaires. This revision includes the addition of 4 cohorts, changes to the data collection procedures based on intervention duration, and the addition of two questions on binge drinking behavior. The current approval is under OMB No. 0930–0298, which expires on 4/30/12.

This cross-site evaluation supports two of SAMHSA's 8 Strategic Initiatives: Prevention of Substance Abuse and Mental Illness and Data, Outcomes, and Quality. It builds on six previous grant programs funded by SAMHSA's CSAP to provide substance abuse and HIV prevention services for minority populations. The first two were planning grant programs and the last four were service grant programs. The goals for the Cohort 3–6 grants were to add, increase, or enhance integrated substance abuse (SA) and HIV prevention services by providing supportive services and strengthening linkages between service providers for at-risk minority populations. The HIV Cohort 1–3 previously received clearance under OMB No. 0930–0208 and Cohort 6 grants previously received clearance under OMB No. 0930–0298. Since neither the HIV Cohort 4 nor the Cohort 5 Programs were cross-site studies, they did not require OMB clearance. The current HIV Minority SA/HIV Prevention Program funded:

- Cohorts 7 and 8 Prevention of Substance Abuse (SA) and HIV for At-Risk Racial/Ethnic Minority Subpopulations Cooperative Agreements—60 grants for 5 years,
- Cohort 9 Ready-To-Respond Initiative—35 grants for 5 years, and
- Cohort 10 Capacity Building Initiative—27 grants for 5 years.

Grantees are community based organizations that are required to address the SAMSHA Strategic Prevention Framework (SPF) and participate in this cross-site evaluation. The grantees are expected to provide leadership and coordination on the planning and implementation of the SPF that targets minority populations, the minority reentry population, as well as other high risk groups residing in communities of color with high prevalence of SA and HIV/AIDS. The primary objectives of the cross-site study are to: (1) Determine the success of the MAI in preventing, delaying, and/or reducing the use of alcohol, tobacco, and other drugs (ATOD) among the target populations. The results of this cross-site study will assist SAMHSA/CSAP in promoting and disseminating optimally effective prevention programs; (2) Measure the effectiveness of evidence-based programs and infrastructure development activities such as: Outreach and training, mobilization of key stakeholders, substance abuse and HIV/AIDS counseling and education, referrals to appropriate medical treatment and/or other intervention strategies (*i.e.,* cultural enrichment activities, educational and vocational resources, and computer-based curricula); and (3) Assess the process of adopting and implementing the Strategic Prevention Framework (SPF) with the target populations.

The grantees are expected to provide an effective prevention process, direction, and a common set of goals, expectations, and accountabilities to be adapted and integrated at the community level. While the grantees have substantial flexibility in choosing their individual evidence-based programs, they are all required to base them on the five steps of the SPF to build service capacity specific to SA and HIV prevention services. Conducting this cross-site evaluation will assist SAMHSA/CSAP in promoting and disseminating optimally effective prevention programs.

Grantees must also conduct ongoing monitoring and evaluation of their projects to assess program effectiveness including Federal reporting of the Government Performance and Results Act (GPRA) of 1993, SAMHSA/CSAP National Outcome Measures (NOMs), and HIV Counseling and Testing. All of this information will be collected through self-report questionnaires administered to program participants. All grantees will use two instruments, one for youth aged between 12 and 17 and one for adults aged 18 and older. Participants in interventions lasting 30 days or longer will complete questionnaires three times, taking an average of 50 minutes for baseline, exit, and follow-up questionnaires. Participants in interventions lasting 2–29 days will complete questionnaires two times taking an average of 30 minutes to complete. Single-session intervention participants will complete one questionnaire at exit only. The GPRA and NOMs measures on the instruments have already been approved by OMB (OMB No. 0930–0230), and the remaining HIV-related questions have been approved under OMB No. 0930–0298.The youth questionnaire contains 125 questions, of which 28 relate to HIV/AIDS and the adult questionnaire contains 118 items, 47 of which relate to HIV/AIDS. Two additional questions have been added to address SAMHSA's need to collect information on binge drinking behavior.

These questions are:

1. Females only: During the past 30 days, on how many days did you have 4 or more drinks on the same occasion?

2. Males only: During the past 30 days, on how many days did you have 5 or more drinks on the same occasion?

Sample size, respondent burden, and intrusiveness have been minimized to be consistent with the cross-site objectives. Procedures are employed to safeguard the privacy and confidentiality of participants. Every effort has been made to coordinate cross-site data collection with local data collection efforts in an attempt to minimize respondent burden.

The cross-site evaluation results will have significant implications for the substance abuse and HIV/AIDS prevention fields, the allocation of grant funds, and other evaluation activities conducted by multiple Federal, State, and local government agencies. They will be used to develop Federal policy in support of SAMHSA/CSAP program initiatives, inform the public of lessons learned and findings, improve existing programs, and promote replication and dissemination of effective prevention strategies.

Total Estimates of Annualized Hour Burden

The following table shows the estimated annualized burden for data collection.

TABLE 1A—ESTIMATES OF ANNUALIZED HOUR BURDEN BY INTERVENTION LENGTH

Intervention length	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
30-Day or More Intervention					
Baseline	7,937	1	7,937	0.83	6,588
Exit	4,887	1	4,887	0.83	4,056
Follow-up	2,942	1	2,942	0.83	2,442
Subtotal	7,937		15,766		13,086
2- to 29-Day Intervention					
Baseline	1,416	1	1,416	0.5	708
Exit	872	1	872	0.5	436
Subtotal	1,416		2,288		1,144
Single Day Intervention					
Exit	2,458	1	2,458	0.25	614
Annualized Total	11,811		20,512		14,844

TABLE 1B—ESTIMATES OF ANNUALIZED HOUR BURDEN BY SURVEY TYPE

Questionnaire	Number of respondents	Total responses	Total hour burden
Annualized Total Adult	9,682	16,899	12,234
Annualized Total Youth	2,128	3,612	2,610
Annualized Total	11,811	20,512	14,844

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 8–1099, One Choke Cherry Road, Rockville, MD 20857 or e-mail a copy to *summer.king@samhsa.hhs.gov*. Written comments must be received before 60 days after the date of the publication in the **Federal Register.**

Dated: July 21, 2011.

Kathleen G. Milenkowic,

Director, Division of Operational Support.

[FR Doc. 2011–18941 Filed 7–26–11; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1995–DR; Docket ID FEMA–2011–0001]

Vermont; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Vermont (FEMA–1995–DR), dated June 15, 2011 and related determinations.

DATES: *Effective Date:* June 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Vermont is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 15, 2011.

Washington County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: June 23, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–19030 Filed 7–26–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: TSA Airspace Waiver Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0033, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the

information collection and its expected burden. This collection of information allows TSA to conduct security threat assessments on individuals on board aircraft operating in restricted airspace pursuant to an airspace waiver. This collection will enhance aviation security and protect assets on the ground that are within the restricted airspace.

DATES: Send your comments by September 26, 2011.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0033; TSA Airspace Waiver Program, 49 CFR part 1562. TSA is seeking approval to renew this collection of information in order to operate the airspace waiver program. The airspace waiver program allows general aviation U.S. and foreign aircraft operators who undergo security threat assessments to apply for approval to operate in U.S. restricted airspace, including over flying the United States and its territories. TSA is requesting this approval to respond to the needs of the general aviation community and to allow freedom of movement and commerce throughout U.S. airspace. Applicants can apply for a waiver online and must submit the request electronically within five business days prior to the start date of the flight. TSA will transmit the waiver request form to applicants either electronically or by facsimile, if necessary.

To obtain a waiver, the aircraft operator must file a waiver request in advance of the flight containing certain information about all passengers and crew members on board the flight in order for TSA to perform a security threat assessment on each individual. The waiver request requires aircraft operators to provide information about the flight, passengers, and crew members. Specifically, waivers must include the purpose of the flight, the aircraft type and tail number, corporate information, including company name and address, and the proposed itinerary. Additionally, aircraft operators must provide the names, dates and places of birth, and Social Security or passport numbers of all passengers and crew members. The current estimated annual reporting burden is 2,500 hours.

Issued in Arlington, Virginia, on July 20, 2011.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information and Technology.

[FR Doc. 2011–18902 Filed 7–26–11; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: New Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: OMB 65, Secondary Inspections Tool; OMB Control No. 1615—New.

The Department of Homeland Security, 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 was previously published in the **Federal Register** on May 13, 2011, at 76 FR 28057, allowing for a 60-day public comment period. USCIS did not receive any comments.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until August 26, 2011. This process is conducted in accordance with 5 CFR 1320.10.

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 Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *USCISFRComment@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB 65, Secondary Inspections Tool in the subject box. 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* Secondary Inspections Tool.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No Form Number; File No. OMB–65. U.S.

Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* The Secondary Inspections Tool (SIT) is an Internet-based tool that processes, displays, and retrieves biometric and biographic data from the Automated Biometric Identification System (IDENT) within the US-Visitor and Immigrant Status Indicator Technology (US-VISIT) system. USCIS trained staff in USCIS District/Field Offices will be instructed to use SIT at the time of a required interview in connection with an immigration or naturalization benefit request, or at the time of an individual's appearance at a USCIS District/Field Office to receive a document evidencing an immigration benefit, each instance following a required appearance at an Application Support Center (ASC) for fingerprinting. This information collection is necessary for USCIS to collect and process the required biometric and biographic data from an applicant, petitioner, sponsor, beneficiary, or other individual residing in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,622,176 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 134,641 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: July 21, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–18900 Filed 7–26–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0G03219]

Notice of Filing of Plats of Survey; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on August 26, 2011.

DATES: Protests of the survey must be filed before August 26, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Director, Bureau of Indian Affairs, Great Plains Region, Aberdeen, South Dakota and was necessary to determine boundaries of individual and tribal trust lands.

The lands we surveyed are:

Fifth Principal Meridian, North Dakota

T. 152 N., R. 64 W.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, and a portion of the subdivision of section 19, and the subdivision of section 19, Township 152 North, Range 64 West, Fifth Principal Meridian, North Dakota, was accepted June 29, 2011.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

James D. Claflin,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–18995 Filed 7–26–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0R04760]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on August 26, 2011.

DATES: Protests of the survey must be filed before August 26, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Rocky Mountain Region, Bureau of Indian Affairs, and was necessary to determine boundaries of individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 27 N., R. 47 E.

The plat, in two sheets, representing the corrective dependent resurvey of a portion of the line between sections 29 and 30, the dependent resurvey of a portion of the subdivisional lines, a portion of the subdivision of sections 21, 28, and 29, and

the adjusted original meanders of the former left bank of the Missouri River, downstream, through sections 21, 29, and 30, the subdivision of sections 21, 28, and 29, and the survey of the meanders of the present left bank of the Missouri River and informative traverse, downstream, through portions of sections 21, 28, and 29, the limits of erosion and informative traverse in sections 28 and 29, the left bank and the medial line of a relicted channel of the Missouri River and informative traverse, in sections 29 and 30, and certain division of accretion and partition lines, Township 27 North, Range 47 East, Principal Meridian, Montana, was accepted July 11, 2011.

We will place a copy of the plat, in two sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–19008 Filed 7–26–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME0R04760]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on August 26, 2011.

DATES: Protests of the survey must be filed before August 26, 2011 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine individual and tribal trust lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 2 S., R. 41 E.

The plat, in two sheets, representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and a portion of the subdivision of section 25, the subdivision of section 25, and the survey of a portion of the former centerline of U.S. Highway No. 212, through section 25, a portion of the present southerly right-of-way of U.S. Hwy. No. 212, through section 25, a deed to restricted Indian land, and certain metes and bounds descriptions within section 25, Township 2 South, Range 41 East, Principal Meridian, Montana, was accepted July 20, 2011.

We will place a copy of the plat, in two sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in two sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in two sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

William C. Grayson,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2011–19004 Filed 7–26–11; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: University of Michigan Museum of Anthropology, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan Museum of Anthropology, in consultation with the appropriate Indian tribe, has determined that the items meet the definition of sacred objects and repatriation to the Indian tribe stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the sacred objects may contact the University of Michigan Museum of Anthropology.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact the University of Michigan Museum of Anthropology at the address below by August 26, 2011.

ADDRESSES: Ben Secunda, NAGPRA Project Manager, Office of the Vice President for Research, University of Michigan, 4080 Fleming Building, 503 Thompson St., Ann Arbor, MI 48109–1340, telephone (734) 647–9085.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the University of Michigan Museum of Anthropology, Ann Arbor, MI, that meet the definition of sacred objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

The five cultural items are one snake skin strap/belt (catalog number 23755), two medicine bags (catalog numbers 23756 and 22201), and two drums (catalog numbers 23759 and 23754). Between 1930 and 1940, these five objects were purchased by W. Vernon Kinietz on behalf of the University of Michigan Museum of Anthropology.

The first cultural object (23755) is a strap or belt made from the complete skin of a fox snake with the snake's jaw attached to the end of the strap. The strap is backed with blue wool fabric with a band of red cotton cloth that creates a border along the edges. Beading runs down the center of the wool fabric forming a floral design of red and white glass beads. This item

was purchased by W. Vernon Kinietz in the 1930s from Mrs. Anna Scott and was accessioned into the museum in 1940.

The second cultural object (23756) is a bag made from weasel skin with five long loom-worked beaded pieces, four of the same length and one of greater length, that once attached to the bag. The beaded pieces have decorations of white, red, and blue zigzags with larger green beads and tassels attached to the ends. This item was purchased by W. Vernon Kinietz in the 1930s from Mrs. Anna Scott and was accessioned into the museum in 1940.

The third cultural object (22201) is a small bag made from a full weasel skin. The tail end of the bag is open. At the other end, the animal's head is tied shut by a white, blue, and red cotton ribbon. This item was donated to the museum by W. Vernon Kinietz in 1939.

The fourth cultural object (23754) is a hand drum made of thin hide stretched over a narrow wood frame. The hide is painted on one side with two red birds, possibly turkeys, and on the other side is a large red circle or disk. The drum is roughly 43.2 cm in diameter and 10.2 cm in height. The wooden frame has been damaged and the hide is no longer taut. On July 8, 1940, the drum was purchased from Mrs. Anna Scott by W. Vernon Kinietz.

The fifth cultural object (23759) is a tall drum made of wood with hide set in place by a cloth band. The wooden frame has a bottom and contains a small hole on one side that is plugged by a wooden peg. The drum measures approximately 43 cm in height and 29 cm in diameter. Museum records indicate that this drum was purchased from Jon Pete, a former chief of the Lac Vieux Desert Band of Lake Superior Chippewa Indians. The exact date of the purchase is unknown.

In consultation with Lac Vieux Desert Band of Lake Superior Chippewa representatives, and review of museum documentation and published literature, all five of these objects are determined to be sacred objects under NAGPRA. The materials and motifs of the strap (23755) were identified as being related to Midewiwin, a secret Medicine Society. Additionally, the tall wooden drum (23759) was identified as a water drum used in traditional Midewiwin ceremonies. The two weasel bags (22201 and 23756) were identified as medicine bags used to carry and hold sacred objects. The hand drum (23754) was found to be a dream drum used in naming ceremonies.

Determinations Made by the University of Michigan Museum of Anthropology

Officials of the University of Michigan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(3)(C), the five cultural items described above are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Ben Secunda, NAGPRA Project Manager, Office of the Vice President for Research, University of Michigan, 4080 Fleming Building, 503 Thompson St., Ann Arbor, MI 48109–1340, telephone (734) 647–9085, before August 26, 2011. Repatriation of the sacred objects to the Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan, may proceed after that date if no additional claimants come forward.

The University of Michigan Office of the Vice President is responsible for notifying the Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan, that this notice has been published.

Dated: July 20, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–18999 Filed 7–26–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and were pending through December 31, 2010, and contract actions that have been completed or discontinued since the last publication of this notice on December 29, 2010. From the date of this publication, future notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Services Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be

approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) The significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

ARRA American Recovery and Reinvestment Act of 2009
BCP Boulder Canyon Project
Reclamation Bureau of Reclamation
CAP Central Arizona Project
CVP Central Valley Project
CRSP Colorado River Storage Project
FR **Federal Register**
IDD Irrigation and Drainage District
ID Irrigation District
LCWSP Lower Colorado Water Supply Project
M&I Municipal and Industrial
NMISC New Mexico Interstate Stream Commission
O&M Operation and Maintenance
P–SMBP Pick-Sloan Missouri Basin Program
PPR Present Perfected Right
RRA Reclamation Reform Act of 1982
SOD Safety of Dams
SRPA Small Reclamation Projects Act of 1956
USACE U.S. Army Corps of Engineers
WD Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

1. Irrigation, M&I, and Miscellaneous Water Users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim irrigation and M&I water service, water storage, water right settlement, exchange, miscellaneous use, or water replacement contracts to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Poplar ID, all in the Minidoka Project, Idaho; and Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Amendatory repayment and water service contracts; purpose is to conform to the RRA.

5. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

6. Queener Irrigation Improvement District, Willamette Basin Project, Oregon: Renewal of long-term water service contract to provide up to 2,150 acre-feet of stored water from the Willamette Basin Project (a USACE project) for the purpose of irrigation within the District's service area.

7. West Extension ID, Umatilla Project, Oregon: Contract for long-term boundary expansion to include lands outside Federally recognized District boundaries.

8. Six water user entities of the Arrowrock Division, Boise Project, Idaho: Repayment agreements with districts with spaceholder contracts for repayment, per legislation, of the reimbursable share of costs to rehabilitate Arrowrock Dam Outlet Gates under the O&M program.

9. Five irrigation water user entities, Rogue River Basin Project, Oregon: Long-term contracts for exchange of water service with five entities for the provision of up to 1,163 acre-feet of stored water from Applegate Reservoir (a USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use.

10. Cowiche Creek Water Users Association and Yakima-Tieton ID, Yakima Project, Washington: Warren Act contract to allow the use of excess capacity in Yakima Project facilities to convey up to 1,583.4 acre-feet of nonproject water for irrigation of approximately 396 acres of nonproject land.

11. State of Washington, Columbia Basin Project, Washington: Long-term contract for up to 25,000 acre-feet of project water to substitute for State-issued permits for M&I purposes with an additional 12,500 acre-feet of project water to be made available to benefit stream flows and fish in the Columbia River under this contract or a separate operating agreement.

12. East Columbia Basin ID, Columbia Basin Project, Washington: Supplement No. 3 to the 1976 Master Water Service Contract providing for the delivery of up to 30,000 acre-feet of project water for irrigation of 10,000 acres located within the Odessa Subarea with an additional 15,000 acre-feet of project water to be made available to benefit stream flows and fish in the Columbia River under this contract or a separate operating agreement.

13. Willow Creek Group, Willow Creek Project, Oregon: Irrigation water service contract for up to 2,500 acre-feet of project water.

14. Prineville Reservoir water users, Crooked River Project, Oregon: Repayment agreements with spaceholder contractors for reimbursable cost of SOD modifications to Arthur R. Bowman Dam.

15. Burley and Minidoka IDs, Minidoka Project, Idaho: Contracts for the repayment of extraordinary O&M

work on the spillway structure and canal headworks of Minidoka Dam pursuant to Public Law 111–11.

16. Water user entities responsible for payment of O&M costs for Reclamation projects in Idaho, Montana, Oregon, Washington, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

17. Water user entities responsible for payment of O&M costs for Reclamation projects in Idaho, Montana, Oregon, Washington, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

18. East Columbia Basin ID, Columbia Basin Project, Washington: Amendment No. 1 to Supplement No. 2 to the 1976 Master Water Service Contract providing for the delivery of up to an additional 5,450.5 acre-feet of project water for the irrigation of 1,816.8 additional acres located within the Odessa Subarea under this contract.

19. Conagra Foods Lamb Weston, Inc., Columbia Basin Project, Washington: Miscellaneous purposes water service contract providing for the delivery of up to 1,500 acre-feet of water from the Scooteney Wasteway for effluent management.

The following action has been completed since the last publication of this notice on December 29, 2010: (8) Greenberry ID, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 7,500 acre-feet of project water.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users; California, Nevada, and Oregon: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of excess capacity in project facilities for terms up to 5 years; temporary conveyance agreements with the State of California for various purposes; long-term contracts for similar service for up to 1,000 acre-feet annually.

2. Contractors from the American River Division, Cross Valley Canal, San Felipe Division, West San Joaquin Division, and Elk Creek Community Services District; CVP; California: Renewal of 29 long-term water service contracts; water quantities for these contracts total in excess of 2.1M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575. Prior to completion of negotiation of long-term renewal contracts, existing interim renewal water service contracts may be renewed through successive interim renewal of contracts. Execution of long-term renewal contracts have been completed for the Friant, Delta, Shasta, and Trinity River Divisions. Long-term renewal contract execution is continuing for the other contractors.

3. Redwood Valley County WD, SRPA, California: Restructuring the repayment schedule pursuant to Public Law 100–516.

4. El Dorado County Water Agency, CVP, California: M&I water service contract to supplement existing water supply. Contract will provide for an amount not to exceed 15,000 acre-feet annually authorized by Public Law 101–514 for El Dorado County Water Agency. The supply will be subcontracted to El Dorado ID and Georgetown Divide Public Utility District.

5. Sutter Extension WD, Delano-Earlimart ID, and the State of California Department of Water Resources, CVP, California: Pursuant to Public Law 102–575, cooperative agreements with non-Federal entities for the purpose of providing funding for CVP refuge water wheeling facility improvements to provide water for refuge and private wetlands.

6. CVP Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by Public Law 102–575 for terms of up to 3 years.

7. El Dorado ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the amount of 17,000 acre-feet annually. The contract will allow CVP facilities to be used to deliver nonproject water to the District for use within its service area.

8. Horsefly, Klamath, Langell Valley, and Tulelake IDs; Klamath Project; Oregon: Repayment contracts for SOD work on Clear Lake Dam. These districts will share in repayment of costs, and each district will have a separate contract.

9. Casitas Municipal WD, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

10. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts (up to 25 years) with various entities for conveyance of nonproject water in the Delta and Friant Divisions and San Luis Unit facilities.

11. Tuolumne Utilities District (formerly Tuolumne Regional WD), CVP, California: Long-term water service contract for up to 9,000 acre-feet from New Melones Reservoir, and possibly a long-term contract for storage of nonproject water in New Melones Reservoir.

12. Banta Carbona ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

13. Byron-Bethany ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal or a long-term operational exchange agreement with Byron-Bethany ID.

14. Madera-Chowchilla Water and Power Authority, CVP, California: Agreement to transfer the operation, maintenance, and replacement and certain financial and administrative activities related to the Madera Canal and associated works.

15. Montecito WD, Cachuma Project, California: Contract to transfer title of the distribution system to the District. Title transfer authorized by Public Law 108–315, ''Carpinteria and Montecito Water Distribution Conveyance Act of 2004.''

16. Sacramento Suburban WD, CVP, California: Execution of long-term Warren Act contract for conveyance of 29,000 acre-feet of nonproject water. The contract will allow CVP facilities to be used to deliver nonproject water provided from the Placer County Water Agency to the District for use within its service area.

17. Town of Fernley, State of California, City of Reno, City of Sparks, Washoe County, State of Nevada, Truckee-Carson ID, and any other local interest or Native American Tribal Interest who may have negotiated rights under Public Law 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and the Preliminary Settlement Agreement. The contracts shall be consistent with the Truckee River Water Quality Settlement Agreement and the terms and conditions of the Truckee River Operating Agreement.

18. A Canal Fish Screens, Klamath Project, Oregon: Negotiation of an O&M contract for the A Canal Fish Screens with Klamath ID.

19. Ady Canal Headgates, Klamath Project, Oregon: Transfer of operational control to Klamath Drainage District of the headgates located at the railroad. Reclamation does not own the land at the headgates, only operational control pursuant to a railroad agreement.

20. Delta Lands Reclamation District No. 770, CVP, California: Long-term Warren Act contract for conveying up to 300,000 acre-feet acre of nonproject

flood flows via the Friant-Kern Canal for flood control purposes.

21. Pershing County Water Conservation District, Pershing County, Lander County, and the State of Nevada; Humboldt Project; Nevada: Title transfer of lands and features of the Humboldt Project.

22. Mendota Wildlife Area, CVP, California: Reimbursement agreement between the California Department of Fish and Game and Reclamation for conveyance service costs to deliver Level 2 water to the Mendota Wildlife Area during infrequent periods when the Mendota Pool is down due to unexpected but needed maintenance. This action is taken pursuant to Public Law 102–575, Title 34, Section 3406(d)(1), to meet full Level 2 water needs of the Mendota Wildlife Area.

23. Mercy Springs WD, CVP, California: Proposed partial assignment of 2,825 acre-feet of the District's CVP supply to San Luis WD for irrigation M&I use.

24. Oro Loma WD, CVP, California: Proposed partial assignment of 4,000 acre-feet of the District's CVP supply to Westlands WD for irrigation and M&I use.

25. San Luis WD, CVP, California: Proposed partial assignment of 2,400 acre-feet of the District's CVP supply to Santa Nella County WD for M&I use.

26. Placer County Water Agency, CVP, California: Proposed exchange agreement under section 14 of the 1939 Act to exchange up to 71,000 acre-feet annually of the Agency's American River Middle Fork Project water for use by Reclamation, for a like amount of CVP water from the Sacramento River for use by the Agency.

27. Eighteen contractors in the Klamath Project, Oregon: Amendment of 18 repayment contracts or negotiation of new contracts to allow for recovery of additional capital costs to the Klamath Project. These contract actions will be accomplished through amendments to the existing repayment contracts or negotiation of new contracts.

28. Orland Unit Water User's Association, Orland Project, California: Repayment contract for the SOD costs assigned to the irrigation of Stony Gorge Dam.

29. Goleta WD, Cachuma Project, California: An agreement to transfer title of the federally owned distribution system to the District subject to approved legislation.

30. Cawelo WD, CVP, California: Long-term Warren Act contract for conveying up to 20,000 acre-feet annually of previously banked nonproject water in the Friant-Kern Canal.

31. Colusa County WD, CVP, California: Execution of a long-term Warren Act contract for conveyance of up to 40,000 acre-feet of groundwater per year through the use of the Tehama-Colusa Canal.

32. County of Tulare, CVP, California: Proposed assignment of the County's Cross Valley Canal water supply in the amount of 5,308 acre-feet to its various subcontractors. Water will be used for both irrigation and M&I purposes.

33. City of Santa Barbara, Cachuma Project, California: Execution of a temporary contract and a long-term Warren Act contract with the City for conveyance of nonproject water in Cachuma Project facilities.

34. Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA. Added costs to rates to be collected under irrigation and interim M&I ratesetting policies.

35. Water user entities responsible for payment of O&M costs for Reclamation projects in California, Nevada, and Oregon: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

36. Cachuma Operation and Maintenance Board, Cachuma Project, California: Amendment to SOD Contract No. 01–WC–20–2030 to provide for increased SOD costs associated with Bradbury Dam.

37. Reclamation will become signatory to a three-party wheeling agreement with the Cross Valley Contractors and the California State Department of Water Resources for conveyance of Cross Valley Contractors' CVP water supplies that are made available pursuant to long-term water service contracts.

38. Westlands WD, CVP, California: Negotiation and execution of a long-term repayment contract to provide reimbursement of costs related to the construction of drainage facilities. This action is being undertaken to satisfy the Federal Government's obligation to provide drainage service to Westlands located within the San Luis Unit of the CVP.

39. San Luis WD, Meyers Farms Family Trust, and Reclamation, CVP, California: Revision of an existing contract between San Luis WD, Meyers Farms Family Trust, and Reclamation providing for an increase in the exchange of water from 6,316 to 10,526 acre-feet annually and an increase in the storage capacity of the bank to 60,000 acre-feet.

40. San Joaquin Valley National Cemetery, U.S. Department of Veteran Affairs, Delta Division, CVP, California: Negotiation of a 5-year wheeling agreement with an effective date in 2011 is pending. A wheeling agreement with the State of California, Department of Water Resources provides for the conveyance and delivery of CVP water through State of California facilities to the San Joaquin Valley National Cemetery.

41. Byron-Bethany ID, CVP, California: A current wheeling agreement with the State of California, Department of Water Resources and Byron-Bethany ID for the conveyance and delivery of CVP water through the California State Aqueduct to Musco Family Olive Company, a customer of Byron-Bethany.

42. Southern San Joaquin Municipal Utility District and Kern-Tulare WD, CVP, California: Partial assignment of Southern San Joaquin's current Friant Division contract quantity of water. The proposed action permanently assigns 5,000 acre-feet of Southern San Joaquin's class 2 CVP water to the Kern Tulare WD.

43. Tea Pot Dome WD and Saucelito ID, CVP, California: Partial assignment of 300 acre-feet of Tea Pot Dome's current Friant Division contract class 1 water supply to Saucelito ID.

44. Lewis Creek WD and Hills Valley ID, CVP, California: Partial assignment of 250 acre-feet of Lewis Creek's current Friant Division contract class 1 water to Hills Valley ID.

45. Porterville ID and Hills Valley ID, CVP, California: Partial assignment of 1,000 acre-feet of Porterville's class 1 water to Hills Valley ID.

46. Exeter ID and Tri-Valley WD, CVP, California: Partial assignment of 400 acre-feet of Exeter's class 1 water to Tri-Valley WD.

The following actions have been completed since the last publication of this notice on December 29, 2010:

1. (31) Ivanhoe ID, CVP, California: Proposed partial assignment of 1,200 acre-feet of class 1 and 7,400 acre-feet of class 2 of the District's CVP water supply to Kaweah Delta Conservation District, a non-CVP contractor, for irrigation purposes. Assignment was executed on February 26, 2010.

2. (38) California Department of Fish and Game, CVP, California: Proposed renewal of a water service contract for the Department's San Joaquin Fish Hatchery. The contract would allow 35 cubic feet per second of continuous flow to pass through the Hatchery prior to it returning to the San Joaquin River. Contract was executed on March 23, 2011.

3. (40) Contractors from the Friant Division, CVP, California: Contracts to be negotiated and executed with existing Friant long-term contractors for the conversion from water service contracts entered into pursuant to subsections 9(c) and 9(e) of the Reclamation Projects Act of 1939 to repayment contracts pursuant to subsection 9(d) of the Reclamation Projects Act of 1939. This action is intended to satisfy the mandate set forth in section 10010 of Title X of the Omnibus Public Land Management Act of 2009. Contracts executed prior to December 31, 2010.

4. (42) California Department of Water Resources, CVP, California: Proposed operation, maintenance, repair, and replacement agreement with the Department for the Delta-Mendota Canal-California Aqueduct Intertie, as authorized by Public Law 108–361. Agreement was executed May 20, 2010.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

1. Milton and Jean Phillips, BCP, Arizona: Colorado River water delivery contract for 60 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

2. John J. Peach, BCP, Arizona: Colorado River water delivery contracts for 456 acre-feet of Colorado River water per year as recommended by the Arizona Department of Water Resources.

3. Gila Project Works, Gila Project, Arizona: Title transfer of facilities and certain lands in the Wellton-Mohawk Division from the United States to the Wellton-Mohawk IDD.

4. White Mountain Apache Tribe, Miner Flat Project, Arizona: Execution of a contract to repay any amounts loaned to the Tribe pursuant to Section 3 of Public Law 110–390.

5. Gila Monster Farms, Inc., BCP, Arizona: Request for partial assignment and transfer of third-priority water entitlement for domestic use to Ausra, AZ I, LLC.

6. Gila Monster Farms, Inc., BCP, Arizona: Amend contract to decrease Gila Monster Farms' third-priority water entitlement.

7. Ausra, AZ I, LLC, BCP, Arizona: Enter into a new Section 5 contract with Ausra for 2,126 acre-feet per year of third-priority water being assigned to Ausra from Gila Monster Farms.

8. Arizona State Lands Department, BCP, Arizona: Amend Contract No. 4–07–30–W0317 to decrease the Department's fourth-priority agricultural water entitlement that is being assigned to the Department's fourth-priority domestic water entitlement Contract No. 7–07–30–W0358 to change the type of use from agricultural to domestic use.

9. Arizona State Lands Department, BCP, Arizona: Amend the Department's Contract No. 7–07–30–W0358 to increase the Department's fourth-priority water entitlement for domestic use.

10. Sherrill Ventures, LLLP and Green Acres Mohave, LLC; BCP; Arizona: Draft contracts for PPR No. 14 for 1,080 acre-feet of water per year as follows: Sherrill Ventures, LLLP, a draft contract for 954.3 acre-feet per year and Green Acres Mohave, LLC, a draft contract for 125.7 acre-feet per year.

11. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

12. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, California, Nevada, and Utah: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

13. Bureau of Land Management, LCWSP, California: Amend Contract No. 8–07–30–W0375 to add a new point of diversion and place of use; San Bernardino County's Park Moabi, a Bureau of Land Management-leased site.

14. Imperial ID, Colorado River Front Work and Levee System/BCP, California: Proposed agreement for the operation, maintenance, repair and replacement of the Lower Colorado River Drop 2 Storage Reservoir Project.

15. Arizona Water Company (Superstition System), CAP, Arizona: Proposed transfer of Town of Superior's 285 acre-feet and proposed Amendment No. 1 to Arizona Water Company's subcontract to allow for the annual delivery of up to 6,285 acre-feet (6,000 acre-feet prior and 285 transferred) of CAP water for M&I purposes within its Superstition System.

16. Arizona-American Water Company and Lake Havasu City, BCP, Arizona: Proposed exhibit revisions to the Company's and Lake Havasu's contract service areas to include certain lands into Lake Havasu's contract service area and simultaneously exclude those same lands from the Company's contract service area.

17. San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Proposed 100-year lease not to exceed 5,925 acre-feet per year of CAP water from the Tribe to Gilbert.

The following actions have been completed since the last publication of this notice on December 29, 2010:

1. (12) Clark County, BCP, Nevada: Agreement with Clark County for an annual diversion of up to 50 acre-feet of Colorado River water from Reclamation's Secretarial Reservation Entitlement for use on Reclamation land that is managed by Clark County and is part of the Laughlin Regional Heritage Greenway Train Project. Specifically, the water will be used for a natural bathing area (lagoon), construction, dust control, and riparian re-vegetation, which are all features of the Reclamation-approved project. Contract was executed November 10, 2010.

2. (13) ChaCha, LLC, Arizona, BCP: Partial assignment of the water delivery contract with ChaCha, LLC for transfer of ownership of 50 percent of the land within ChaCha LLC's contract service area. ChaCha LLC's 50 percent ownership will transfer to the following entities (undivided interest): Befra Farming, LLC, a California limited liability company; R&R Almond Orchards, Inc., a California corporation; and XLNT, LLC, a California limited liability company. Contract was executed November 18, 2010.

3. (26) Valley Utilities Water Company, CAP, Arizona: Proposed transfer of Valley Utilities' 250 acre-feet per year CAP entitlement to the Central Arizona Water Conservation District to meet its Central Arizona Ground Water Replenishment District function. Contract was executed December 22, 2010.

4. (28) San Carlos Apache Tribe and the Town of Gilbert, CAP, Arizona: Execute a 1-year lease for the delivery of not to exceed 20,000 acre-feet of CAP water from the Tribe to Gilbert. Contract was executed November 4, 2010.

5. (30) Fort McDowell Yavapai Nation and the Town of Gilbert, CAP, Arizona: Execute a 1-year lease for the delivery of up to 13,683 acre-feet of CAP water from the Nation to Gilbert. Contract was executed December 14, 2010.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Dick Morfitt, Aspinall Storage Unit, CRSP: Mr. Morfitt has requested a

40-year water service contract for 35 acre-feet of M&I water out of the Blue Mesa Reservoir, which requires Mr. Morfitt to present a Plan of Augmentation to the Division 4 Water Court.

(b) Liman, LLC, Aspinall Storage Unit, CRSP: Liman, LLC has requested a 40-year water service contract for 3 acre-feet of M&I water out of Blue Mesa Reservoir, which requires Liman to present a Plan of Augmentation to the Division 4 Water Court.

(c) Edward Tuft, Aspinall Storage Unit, CRSP: Mr. Tuft has requested a 40-year water service contract for 1 acre-foot of M&I water out of the Blue Mesa Reservoir, which requires Mr. Tuft to present a Plan of Augmentation to the Division 4 Water Court.

(d) Woodrow Pond Partners, Aspinall Storage Unit, CRSP: Woodrow Pond Partners has requested a 40-year water service contract for 3 acre-feet of M&I water out of the Blue Mesa Reservoir, which requires Woodrow Pond Partners to present a Plan of Augmentation to the Division 4 Water Court.

2. San Juan-Chama Project, New Mexico: The United States, pending passage of The Taos Indian Water Rights Settlement legislation by the Congress, expects to enter into a new repayment contract with the Taos Pueblo, New Mexico for 2,215 acre-feet annually of project water. The Town of Taos and the United States are expected to execute a new contract, or amend an existing repayment contract, for an additional 366 acre-feet annually of project water. The settlement legislation is expected to provide for a third repayment contract for 40 acre-feet of project water to be delivered to the El Prado Water Sanitation District. The United States is holding the remaining 369 acre-feet of project water for potential use in Indian water rights settlements in New Mexico.

3. Various Contactors, San Juan-Chama Project, New Mexico: The United States proposes to lease water from various contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow.

4. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, and the Colorado River Water Conservation District; Uncompahgre Project; Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

5. Individual Irrigators, Carlsbad Project, New Mexico: The United States proposes to enter into long-term forbearance lease agreements with individuals who have privately held water rights to divert nonproject water either directly from the Pecos River or from shallow/artesian wells in the Pecos River Watershed. This action will result in additional water in the Pecos River to make up for the water depletions caused by changes in operations at Sumner Dam which were made to improve conditions for a threatened species, the Pecos bluntnose shiner.

6. City of Page, Arizona, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 975 acre-feet of water for municipal purposes.

7. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

8. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado: Water delivery contract for 33,519 acre-feet of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

9. State of Colorado, Animas-La Plata Project, Colorado and New Mexico: Cost-sharing/repayment contract for up to 10,460 acre-feet per year of M&I water; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554).

10. Public Service Company of New Mexico, Reclamation, and the U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Public Service Company's site pursuant to Public Law 106–392, dated October 30, 2000 (114 Stat. 1602).

11. Navajo Nation, San Juan River Dineh Water Users, Reclamation, and U.S. Fish and Wildlife Service; San Juan River Basin Recovery Implementation Program: The agreement identifies that Reclamation may provide cost-share funding for the recovery monitoring and research, and O&M of the constructed fish passage at the Hogback Diversion Dam, pursuant to Public Law 106–392 dated October 30, 2000 (114 Stat. 1602).

12. Jensen Unit, Central Utah Project, Utah: The Uintah Water Conservancy District has requested a contract with provision to prepay at a discounted rate the remaining 3,300 acre-feet of unmarketed project M&I water.

13. Aaron Million, Million Conservation Resource Group, Flaming Gorge Storage Unit, CRSP: Mr. Million has requested a Standby Contract to secure the first right to contract for up to 165,000 acre-feet annually of M&I water service from Flaming Gorge Reservoir for a proposed privately financed and constructed transbasin diversion project.

14. Cottonwood Creek Consolidated Company, Emery County Project, Utah: Cottonwood Creek Consolidated Irrigation Company has requested a contract for carriage of up to 5,600 acre-feet of nonproject water through Cottonwood Creek-Huntington Canal.

15. Albuquerque Bernalillo County Water Utility Authority and Reclamation, San Juan-Chama Project, New Mexico: Contract to store up to 50,000 acre-feet of project water in Elephant Butte Reservoir. The proposed contract would have a 40-year maximum term and would replace existing Contract No. 3–CS–53–01510 which expired on January 26, 2008. The Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717 provides authority to enter into this contract.

16. Dolores Water Conservancy District, Dolores Project, Colorado: The District has requested a water service contract for 1,402 acre-feet of newly identified project water for irrigation. The proposed water service contract will provide 417 acre-feet of project water for irrigation of the Ute Enterprise and 985 acre-feet for use by the District's full-service irrigators.

17. Elkhead Reservoir Enlargement: This contract will supersede Contract No. 05–WC–40–420. The proposed contract will include the Recovery Program's pro-rata share of the actual construction cost plus fish screen costs. Also identified in this proposed contract is the pro-rata share of the actual construction costs for the other signatory parties. Upon payment by Recovery Program, this proposed contract will ensure a permanent water supply for the endangered fish.

18. Bridger Valley Water Conservancy District, Lyman Project, Wyoming: The District has requested that their Meeks Cabin repayment contract be amended from two 25-year contacts to one 40-year contract.

19. City of Santa Fe and Reclamation, San Juan-Chama, New Mexico: Contract to store up to 50,000 acre-feet of project Water in Elephant Butte Reservoir. The proposed contract would have a 25- to 40-year maximum term. The Act of December 29, 1981, Public Law 97–140, 95 Stat. 1717 provides authority to enter into this contract.

20. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming:

Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

21. Water user entities responsible for payment of O&M costs for Reclamation projects in Arizona, Colorado, New Mexico, Texas, Utah, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

22. Pine Glen, LLC, Mancos Project, Colorado: Pine Glen LLC has requested a new carriage contract to replace existing Contract No. 14–06–400–4901, Assignment No. 6. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.56 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

23. Navajo-Gallup Water Supply Project, New Mexico: Repayment contract with the City of Gallup for up to 7,500 acre-feet per year of M&I water. Contract terms to be consistent with the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).

24. Navajo-Gallup Water Supply Project, New Mexico: Repayment contract with the Jicarilla Apache Nation for up to 1,200 acre-feet per year of M&I water. Contract terms to be consistent with the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).

25. Northwestern New Mexico Rural Water Projects Act, New Mexico: Settlement contract with the Navajo Nation for up to 530,650 acre-feet per year of irrigation and M&I water. Contract terms to be consistent with the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).

26. Navajo-Gallup Water Supply Project, New Mexico: Cost-sharing agreement with the State of New Mexico. Contract terms to be consistent with the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).

27. Voiles, Katherine Marie and William Thomas, Mancos Project, Colorado: Katherine Marie and William Thomas Voiles have requested a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 2–A. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.38 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

28. Hanson, Brian E. and Joan M. Brake-Hanson, Mancos Project, Colorado: Brian E. Hanson and Joan M. Brake-Hanson have requested a new carriage contract to replace existing contract No. 14–06–400–4901, assignment No. 5. The new contract is the result of a property sale. Remaining interest in the existing assignment is for 0.12 cubic feet per second of nonproject water to be carried through Mancos Project facilities.

29. Navajo Tribal Utility Authority, Animas-La Plata Project: Title Transfer Agreement for the Navajo Nation Municipal Pipeline; contract terms to be consistent with the Colorado Ute Settlement Act Amendments of 2000 (Title III of Pub. L. 106–554) and the Northwestern New Mexico Rural Water Projects Act (Title X of Pub. L. 111–11).

30. Central Utah Project, Utah: ARRA contract with the Central Utah Water Conservancy District for extraordinary O&M at Upper Stillwater Dam. Reimbursable costs to be repaid within 4 years.

31. La Plata Water Conservancy District: Three-year water lease of Reclamation shares of the Pine Ridge Ditch, up to 4.38 cubic feet per second from point of diversion for use during construction of Long Hollow Dam.

32. Orchard Mesa Canal Automation Project, Orchard Mesa Division, Grand Valley Project: Orchard Mesa ID has requested improvements to its delivery system. The major components of the current configuration of the improvements include a buffer reservoir, Supervisory Control and Data Acquisition system, pumping station, replacing the unlined portion of the Mutual Mesa Lateral with a pipeline and installing a booster pump, and enhancements to Canal Nos. 1 and 2. Act of June 17, 1902 (32 Stat.388) and acts amendatory thereof or supplementary thereto, particularly the Endangered Species Act 16 U.S.C. 1531, Section 2; Act of October 30, 2000 (Pub. L. 106–392).

33. Jensen Unit, Central Utah Project, Utah: The Uintah Water Conservancy District has requested a long-term contract for 10,000 acre-feet of irrigation water out of Flaming Gorge.

34. El Paso County Water Improvement District No. 1 and Ysleta del Sur Pueblo, Rio Grande Project, Texas: Contract to convert up to 1,000 acre-feet of the Pueblo's project irrigation water to use for tradition and religious purposes.

The following actions have been completed since the last publication of this notice on December 29, 2010:

1. (5) Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to Contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of project water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement. Contract was executed January 24, 2011.

2. (1.d) Woodrow Pond Partners, Aspinall Storage Unit, CRSP: Woodrow Pond Partners has requested a 40-year water service contract for 3 acre-feet of M&I water out of the Blue Mesa Reservoir, which requires Woodrow Pond Partners to present a Plan of Augmentation to the Division 4 Water Court. Contract was executed March 2, 2011.

The following action has been discontinued since the last publication of this notice on December 29, 2010: (19) Central Utah Project, Utah: Petition for project water among the United States, the Central Utah Water Conservancy District, and the Duchesne County Water Conservancy District for use of 2,500 acre-feet of irrigation water from the Bonneville Unit of the Central Utah Project.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406–247–7752.

1. Individual irrigators, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term of up to 1 year or up to 1,000 acre-feet of water annually for a term of up to 5 years.

2. Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to ARRA.

3. Water user entities responsible for payment of O&M costs for Reclamation projects in Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Contracts for extraordinary maintenance and replacement funded pursuant to Subtitle G of Public Law 111–11.

4. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contracts for the sale of water from the marketable yield to water users within the Colorado River Basin of western Colorado.

5. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Water service and repayment contracts for up to 17,000 acre-feet annually for M&I use.

6. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Dakota Water Resources Act of 2000; negotiation of repayment contracts with irrigators and M&I users.

7. Fryingpan-Arkansas Project, Colorado: Consideration of temporary excess capacity contracting in the Fryingpan-Arkansas Project.

8. Municipal Subdistrict of the Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract or amendment of contract No. 4–07–70–W0107 with the Municipal Subdistrict and the Northern Colorado Water Conservancy District for the proposed Windy Gap Firming Project.

9. Northern Integrated Supply Project, Colorado-Big Thompson Project, Colorado: Consideration of a new long-term contract with approximately 15 regional water suppliers and the Northern Colorado Water Conservancy District for the Northern Integrated Supply Project.

10. Stutsman County Park Board, Jamestown Unit, P–SMBP, North Dakota: The Board is requesting a contract for minor amounts of water under a long-term contract to serve domestic needs for cabin owners at Jamestown Reservoir, North Dakota.

11. Security Water and Sanitation District, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

12. City of Fountain, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

13. LeClair ID, Boysen Unit, P–SMBP, Wyoming: Contract renewal of long-term water service contract.

14. Riverton Valley ID, Boysen Unit, P–SMBP, Wyoming: Contract renewal of long-term water service contract.

15. ExxonMobil Corporation, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of ExxonMobil Corporation's request to amend its Ruedi Round I contract to include additional uses for the water.

16. Pueblo West Metropolitan District, Pueblo West, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project.

17. Colorado River Water Conservation District, Colorado-Big Thompson Project, Colorado: Long-term exchange, conveyance, and storage contract to implement the Exhibit B Agreement of the Settlement Agreement on Operating Procedures for Green Mountain Reservoir Concerning Operating Limitations and in Resolution of the Petition Filed August 7, 2003, in Case No. 49–CV–2782 (The United States v. Northern Colorado Water Conservancy District, et al., U.S. District Court for the District of Colorado, Case No. 2782 and Consolidated Case Nos. 5016 and 5017).

18. Glendo Unit, P–SMBP, Wyoming: Renewal of long-term water storage contract with Pacificorp.

19. Roger W. Evans (Individual), Boysen Unit, P–SMBP, Wyoming: Renewal of long-term water service contract.

20. Big Horn Canal ID, Boysen Unit, P–SMBP, Wyoming: Renewal of the District's long-term water service contract.

21. Hanover ID, Boysen Unit, P–SMBP, Wyoming: Renewal of the District's long-term water service contract.

22. Busk-Ivanhoe, Inc., Fryingpan-Arkansas project, Colorado: Renewal of their long-term carriage and storage contract.

23. State of Colorado, Department of Corrections, Fryingpan-Arkansas Project, Colorado: Consideration of a request for long-term excess capacity storage contract out of Pueblo Reservoir.

24. Southeastern Water Conservancy District, Fryingpan-Arkansas Project, Colorado: Consideration of a master storage contract.

25. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity.

26. Municipal Recreation Contract out of Granby Reservoir, Colorado-Big Thompson Project, Colorado: Water service contract for delivery of 5,412.5 acre-feet of water annually out of Lake Granby to the 15-Mile Reach.

27. State of Kansas Department of Wildlife and Parks, Glen Elder Unit, P–SMBP, Kansas: Reclamation is contemplating a contract for the remaining conservation storage in Waconda Lake.

28. Arkansas Valley Conduit, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for the Arkansas Valley Conduit.

29. Milk River Irrigation Project Joint Board of Control, Milk River Project, Montana: Reclamation is contemplating a new contract for transferring O&M responsibilities of Fresno Dam and Reservoir and Nelson Dikes and Reservoir.

30. Frenchman Valley ID, Frenchman-Cambridge Division, P–SMBP, Nebraska: Consideration of a request for a repayment of extraordinary maintenance work on stilling basin outlet works at Enders Dam, in accordance with Subtitle G of Public Law 111–11.

31. Individual irrigators, Cambridge Unit, Frenchman-Cambridge Division, P–SMBP, Nebraska: Consideration of a request for a long-term excess capacity conveyance contract for transporting nonproject irrigation water.

32. Scotty Phillip Cemetery, Mni-Wiconi Project, South Dakota: Consideration of a new long-term M&I water service contract.

33. Northern Colorado Water Conservancy District, Colorado Big Thompson Project, Colorado: Amend or supplement the repayment contract to include the Carter Lake Dam Additional Outlet Works and Flatiron Power Plant Bypass facilities.

34. Colorado Springs Utilities, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract for the use of excess capacity in the Fryingpan-Arkansas Project and annual repayment for the operation, maintenance, and replacement costs of the single-purpose municipal works.

35. Garrison Diversion Conservancy District, Garrison Diversion Project, North Dakota: Intent to enter into temporary or interim irrigation or miscellaneous use water service contracts to provide up to 1,000 acre-feet of water annually for terms of up to 5 years.

36. Garrison Diversion Conservancy District, Garrison Diversion Unit, P–SMBP, North Dakota: Intent to enter into a project pumping power contract with the District to pump project water to authorized areas in conformance with the Dakota Water Resources Act of 2000.

37. Garrison Diversion Conservancy District, Garrison Diversion Unit, P–SMBP, North Dakota: Intent to enter into a long-term irrigation or miscellaneous use water service contract to provide up to 14,000 acre-feet of water annually for a term of up to 40 years, to authorized areas in conformance with the Dakota Water Resources Act of 2000.

38. Helena Valley ID, P–SMBP, Montana: Proposed contract amendment to allow use of water for other purposes other than irrigation.

39. Frenchman-Cambridge ID, P–SMBP, Nebraska: Proposed contract for SOD repairs to Red Willow Dam.

40. Dickey-Sargent ID, Garrison Diversion Unit, P–SMBP, North Dakota:

Negotiation of long-term water service contract and OM&R transfer agreement.

41. Miscellaneous water users in North Dakota and South Dakota: Intent to develop short- or long-term water service contracts for minor amounts of water to serve domestic needs at Reclamation reservoirs.

42. Jamestown Reservoir, Jamestown Unit, P–SMBP, North Dakota: Intent to enter into an individual long-term irrigation water service contract to provide up to 285 acre-feet of water annually for a term of up to 40 years from Jamestown Reservoir, North Dakota.

43. Colorado River Water Conservation District, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a long-term contract to provide 5,412.5 acre-feet of water annually to supplement flows for fish in the 15–Mile Reach of the Colorado River near Grand Junction.

44. Frenchman-Cambridge ID, P–SMBP, Nebraska: Consideration of a request to amend the repayment contract to change the irrigation season start date from May 1 to April 15.

45. Frenchman Valley ID, P–SMBP, Nebraska: Consideration of a request to amend the water service contract to change the billing due date to better account for when assessments are paid to the District.

46. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Consideration to amend Contract No. 14–06–500–360 to change the irrigation season definition to year-round usage and recognize agreements between the City of San Angelo and the District for putting treated wastewater to beneficial use in accordance with the State of Texas requirements for wastewater re-use.

47. City of San Angelo, San Angelo Project, Texas: Consideration to amend Contract No. 14–06–500–368 to change the irrigation season definition to year-round usage and recognize agreements between the City of San Angelo and the Tom Green County Water Control and Improvement District No. 1 for putting treated wastewater to beneficial use in accordance with the State of Texas requirements for wastewater re-use.

48. Glendo Unit, P–SMBP, Wyoming: Consideration of a request from the State of Wyoming to enter into a long-term contract for the uncontracted portion of Glendo Reservoir storage water allocated to Wyoming.

The following action has been completed since the last publication of this notice on December 29, 2010: (43) Barretts Minerals, East Bench Unit, P–SMBP, Montana: Renewal of long-term water service contract. Contract was executed January 11, 2011.

Dated: July 19, 2011.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2011–18980 Filed 7–26–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree regarding the United States' claims against Gregory D. Bee in *United States* v. *Hertrich, et al.,* Case No. 1:10–cv–03068–JKB, was lodged with the United States District Court for the District of Maryland, Northern Division, on July 20, 2011.

This proposed Consent Decree concerns a complaint filed by the United States against Frederick W. Hertrich, III, Charles Ernesto, and Gregory D. Bee, pursuant to 33 U.S.C. 1319(b) and (d), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves allegations against Gregory D. Bee by requiring him to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Kent E. Hanson, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026–3986 and refer to *United States* v. *Hertrich, et al.,* DJ # 90–5–1–1–18877.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Maryland, Edward A. Garmatz Federal Building and United States Courthouse, 101 West Lombard Street, Room 4415, Baltimore, MD 21201–2605. In addition, the proposed Consent Decree may be viewed at: *http://www.usdoj.gov/enrd/Consent_Decrees.html*.

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 2011–18974 Filed 7–26–11; 8:45 am]

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DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement; Correctional Health Care Executive Curriculum Development

AGENCY: U.S. Department of Justice, National Institute of Corrections.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) Administration Division is seeking applications for the development of a competency-based correctional health care executive curriculum to train two-person teams comprised of a Warden, Associate Warden, or Jail Administrator and a Health Services Administrator. This project will be for an eighteen-month period. NIC Administration Division staff will direct the project and will participate in curriculum design, lesson plan development, and the creation of related material.

DATES: Applications must be received by 4 p.m. (E.D.T.) on August 26, 2011.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at NIC is sometimes delayed due to security screening.

Hand-delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial (202) 307–3106, extension 0 for pickup.

Faxed and e-mailed applications will not be accepted; however, electronic applications can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and links to the required application forms can be downloaded from the NIC Web site at *http://www.nicic.gov/cooperativeagreements.*

All technical or programmatic questions concerning this announcement should be directed to CDR Anita E. Pollard, Corrections Health Manager, National Institute of Corrections. CDR Pollard can be reached by e-mail at *apollard@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *http://www.nicic.gov* for public review. (The names of those submitting questions will not be posted.) The Web site will be updated regularly and postings will remain on the Web site until the closing

date of this cooperative agreement solicitation. Only questions received by 12 p.m. (EDT) on August 17, 2011 will be answered.

SUPPLEMENTARY INFORMATION:

Background: Both jails and state and federal prisons are daily responsible for providing medically necessary care to more than 2.5 million offenders housed within the confines of their facilities. The administration of correctional hospitals and ambulatory care clinics involves specialized knowledge related to procuring and managing the myriad services provided, *i.e.,* medical, dental, laboratory, pharmaceutical, radiographic, infection control, long-term care, restorative therapy, health information management, and medical specialty services, including behavioral health and obstetrical/gynecological services.

In addition to managing these services and personnel, correctional health care executives must judiciously contract with community-based facilities and practitioners to deliver services that are not provided in jail and/or prison health units. Prior knowledge and experience in managing a health care facility expedites the successful administration of health care resources and programs using proven strategies for efficient health care delivery. However, this specialized correctional health care knowledge is not typically part of the traditional education and training of key administration staff positions—Warden, Associate Warden, Jail Administrator or Health Services Administrator. The complexities of a dual-missioned facility (*i.e.,* correctional & medical management) can present overwhelming and seemingly insurmountable challenges.

NIC intends to develop a training program to better prepare staff in each of these positions to complete their duties in support of a facility's overarching health care mission. This training program will promote the use of evidence-based policies and practices in a curriculum format using the Instructional Theory Into Practice (ITIP) model.

The occurrence of strategic partnerships within organizations is on the rise. In a time of changing workforce issues, security issues, technological advances, and fiscally constraining budgets, it is imperative that organizations and individuals learn to adapt. Approaching leadership strategically is a learned skill. Forward-looking organizations proactively seek ways to advance the leadership capacities of the administrators they promote, or intend to promote, to senior and executive administration.

Target Audience: Wardens, Associate Wardens, Jail Administrators, or Health Services Administrators who are serving in jails, state and federal prisons, as well as community corrections facilities with a demonstrated health care mission.

Scope of Work: The cooperative agreement awardee will produce a complete training curriculum using a blended learning format designed with ITIP model instruction, which will contain an instructor/facilitator's guide with associated tools, materials, and resources with a final, agreed upon curriculum delivered to NIC no later than January 30, 2013; a participant resource guide to be used in conjunction with all training activities; instructional aides and materials, including presentation slide shows, CDs, charts, handouts, case studies, assessments, *etc.* to support instruction and facilitation; and a pilot demonstration training facilitation and delivery.

The schedule of activities for project completion should include, at a minimum, the following activities (for the development of the blended curriculum): Meet with the NIC project manager for a project overview and initial planning; review materials provided by NIC, including the Correctional Health Care Executive Competency Profile (September 2011); meet with NIC staff to draft a framework for the curriculum, including content topics, performance objectives, estimated timeframes, sequencing, and potential instructional strategies; meet with NIC staff to outline content for each module and assign writers; write lesson plans; exchange lesson plans among the writers for review; revise lesson plans; send lesson plans to advisory committee for review and comment (the committee comprises five members identified by NIC and paid by the awardee); meet with NIC staff to review comments and agree on draft curriculum revisions; revise lesson plans; develop a participant manual, presentation slides, and program overview; submit a final draft of all curriculum materials to NIC for review; revise as directed by NIC; and submit final curriculum in hard copy and on a USB flash drive in Microsoft Word format.

The awardee, in conjunction with NIC, will identify up to four trainers for the 36-hour classroom training program, contract with and pay all costs associated with the trainers, including travel, lodging, meals, fees, and miscellaneous expenses. NIC will secure training space at the National Corrections Academy in Aurora, CO; select pilot program participants (12); notify participants of selection and program details; supply training equipment and materials; and provide for participant lodging, meals, and transportation.

Application Requirements: An application package must include: OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year under which the applicant operates (*e.g.,* July 1 through June 30); an outline of projected costs with the budget and strategy narratives described in this announcement; a project summary/abstract; and a sample curriculum. The following additional forms must also be included: OMB Standard Form 424A; Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (both available at *http://www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf.*)

Applications should be concisely written, typed double-spaced and reference the project by the NIC opportunity number and title referenced in this announcement.

If you are hand delivering or submitting via Fed-Ex, please include an original and three copies of the full proposal (program and budget narrative, application forms, assurances and other descriptions). The originals should have the applicant's signature in blue ink. Electronic submissions will be accepted only via *http://www.grants.gov.*

The single-page project summary/abstract portion of the application should include a concise summary of the application's project description and a brief description of the critical elements of the proposed project. Place the following information at the top of the abstract: Project title; applicant name; mailing address; contact telephone number & e-mail address; and any applicable Web site URLs.

The narrative portion of the cooperative agreement application should include, at a minimum: A brief statement indicating the applicant's understanding of the purpose of this cooperative agreement; a brief paragraph that summarizes the project goals and objectives; a clear description of the methodology that will be used to complete the project and achieve its goals; a clearly developed work plan with measurable project milestones and timelines for the completion of each milestone; a description of the

qualifications of the applicant organization and any partner organizations doing the work proposed, and the expertise of key staff to be involved in the project; and a budget that details all costs for the project, shows a consideration for all contingencies for the project, notes a commitment to work within the proposed budget, and demonstrates the ability to provide deliverables reasonably according to schedule.

The narrative portion of the application should not exceed 10 double-spaced typewritten pages, excluding attachments related to the credentials and relevant experience of staff.

In addition to the project summary/abstract and narrative, the applicant must submit one full sample curricula developed by the primary curriculum developers named in the application. The sample curriculum must include lesson plans, presentation slides, and a participant manual.

Authority: Public Law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds (up to $100,000) may be used only for the activities linked to the desired outcome of the project.

Eligibility of Applicants: Eligible applicants include any state or general unit of local government, private agencies, educational institutions, individuals, organizations, or teams with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

Review Considerations: Applications received under this announcement will be subject to a NIC review process consisting of a three to five person team. Evaluation will be based on criteria such as: Clarity of applicant's understanding of project tasks; background, experience, and expertise of the proposed project staff, including subcontractors; specific experience with and expertise in local jail and/or prison health care administration; innovative approaches, techniques, or design aspects that enhance the project; experience with curriculum design based on ITIP; experience in designing, managing, facilitating, or delivering training on correctional health-care-related topics; clarity of the description of all project elements and tasks; technical soundness of the project design and methodology; financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes; a sufficiently detailed budget that shows consideration of all contingencies for this project and a commitment to work within the proposed budget; an indication of availability to meet with NIC staff at various points during the project; and design and quality of sample curriculum.

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

Applicants can obtain a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505. Applicants who are sole proprietors should dial 1–866–705–5711 and select option 1.

Applicants may register in the CRR online at the CCR Web site, *http://www.ccr.gov.* Applicants can also review a CCR handbook and worksheet at this Web site.

Number of Awards: One.

NIC Opportunity Number: 11AD11. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

NIC expects this award to be signed by September 30, 2011.

Thomas J. Beauclair,

Deputy Director, National Institute of Corrections.

[FR Doc. 2011–18985 Filed 7–26–11; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Quarterly Publication of a ''Corrections Mental Health Newsletter''

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a Cooperative Agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups or individuals to enter into a cooperative agreement for a twelve-month period to publish the ''Corrections Mental Health Newsletter'' quarterly and provide up-to-date information, news, research, relevant issues, highlighted training and programs, etc. to a correctional audience responsible for and interested in mental health issues in community corrections, prisons, and jails. It is expected that such a newsletter will be released in Fall/Winter 2011 and continue quarterly thereafter for the next fiscal year. The recipient of this award may be awarded a cooperative agreement for up to two successive years in 2012 and 2013 to continue the publication.

DATES: Applications must be received by 2 p.m. EDT on Monday, August 29, 2011.

ADDRESSES: Mailed applications must be sent to: Director, National Institute of Corrections, 320 First Street, NW., Room 5002, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, dial 7–3106, extension 0 for pickup.

Faxed applications will not be accepted. Electronic applications can be submitted only via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC web page at *http://www.nicic.gov.*

All technical or programmatic questions concerning this announcement should be directed to Anita Pollard, Corrections Health Manager, National Institute of Corrections (NIC) at *Apollard@bop.gov.*

SUPPLEMENTARY INFORMATION:

Overview: The overall goal of the initiative is to provide state and local correctional officials, corrections mental health professionals, practitioners, policy makers and others with an interest in mental health and corrections an up-to-date outlet for communicating relevant, comprehensive and timely information on issues and resources pertaining to mental illness and mental health issues in jails, prisons, and community corrections.

Background: Substantial numbers of persons with mental illness have found their way into all areas of the criminal justice system, including corrections. According to the New Freedom Commission on Mental Health: Subcommittee on Criminal Justice, ''people with serious mental illnesses who come in contact with the criminal justice system are typically poor and uninsured, are disproportionately members of minority groups, and often are homeless and have co-occurring

substance abuse and mental disorders. They cycle in and out of homeless shelters, hospitals, and jails, occasionally receiving mental health, substance abuse services, but most likely receiving no services at all (APA, 2000).'' The large and disproportionate number of offenders under correctional custody and supervision continue to be a serious management and safety problem in both our correctional institutions and our communities. This is not a new problem and has been a trend over the past four decades.

Three of the top six issues from a June 2010 membership survey of the Association of State Correctional Administrators highlighted health-related concerns—mentally ill inmates in prisons, the cost of inmate health care, and aging inmate populations—as issues most prevalent and pressing in member agencies.

A study released in the summer of 2009 conducted by the Council of State Governments Justice Center, in partnership with Policy Research Associates, on the prevalence of adults with serious mental illnesses in jails found that more than 20,000 adults entering five local jails document serious mental illnesses in 14.5 percent of the men and 31 percent of the women, rates in excess of three to six times those found in the general population. Prevalence estimates for females were double those for male inmates. This gender difference is particularly important given the rising number of women in U.S. jails. These findings represent the most reliable estimates in the last 20 years of rates of serious mental illness among adults entering jails. (Steadman, Osher, Robbins, Case and Samuels, June 2009)

In an NIC 2008 Needs Assessment, interviewees noted that problems with mental illness continue to challenge both prison and jail operations, and there is a critical need for more collaboration with providers of services for the mentally ill and a review of policies driving them into the corrections system.

The challenges to corrections are significant and multi-faceted. This frequent involvement with the criminal justice system will continue to have a significant adverse impact on corrections, public safety, and government spending, not to mention the devastating impact for these individuals and their families. The mentally ill offender, along with the professionals and practitioners who make policy and make operational decisions, need a conduit and voice for the current news, trends, and issues. It is about being routinely informed so that best policy, best practice, and best responses emerge as the foundation for managing mentally ill offenders in jails, prisons, and community corrections.

Project Deliverables: The following are the expected products and services for the project: Publish an innovative quarterly newsletter over one fiscal year; Develop a method and conduct a comprehensive survey of the corrections behavioral health field for trends and issues that can generate topics and items for the publication; and Develop and maintain a targeted distribution list of corrections mental health professionals (e.g., state mental health directors, jail/prison mental health coordinators, etc.) and community Web sites (e.g., the NIC Web site, CMHS GAINS Center Web sites, National Commission on Correctional Health Care Web sites, etc.) that reach these practitioners.

Publication Specifications: The newsletter must be designed and developed adhering to the following standards and specifications: (1) Make available in an approved format for electronic distribution (**Note:** The format will depend on further consultation with NIC Information Center staff and NIC communications staff and must follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the ''General Guidelines for Cooperative Agreements,'' which will be included in the award package); (2) Adhere to best practices in technical writing and editing standards and formats for this type of newsletter; (3) Span and attend to the interest of the broad array of correctional stakeholders including jails, prisons, and community corrections through relevant publication content and topics; (4) Focus topics and items published on current issues pertaining to corrections and mental health, which may include but is not limited to feature articles on NIC initiatives and work, innovative work and programs, demonstrated best practices, current research trends, legal issues, scheduled events/workshops/conferences, and articles from practitioners in the field or qualified freelance writers.

Work Requirements: The recipient of this cooperative agreement award must, at a minimum, do the following within the scope of performing work on this project:

Consult with the Corrections Health Manager (CHM) assigned to manage the cooperative agreement to ensure understanding of, and agreement on, the scope of work to be performed;

Consult and work with the NIC Information Center for posting and availability through the Web site, including the Corrections Community, Corrections News, and blogs. The applicant can visit the NIC Web site at *http://nicic.gov/*. (**Note:** All final publications submitted for posting on the NIC Web site must meet the federal government's requirement for accessibility [508 PDF and 508 HTML file or other acceptable format]);

Consult and work with the NIC Writer/Editor for inclusion and promotion of newsletter topics through the NIC E-Newsletter and other communications outlets;

Submit a detailed work plan with timelines and milestones for accomplishing project activities to the assigned CPS for approval prior to any work being performed under this agreement;

Designate a point of contact who would serve as the conduit of information and work between the CHM and the awardee;

Submit a layout and prototype to the CHM/Project Manager or designee for approval before the first edition is published;

Consult periodically with the CHM/Project Manager or designee on the proposed content for the newsletter.

Required Expertise: The successful applicant will need skills, abilities, and knowledge in the following areas: Knowledge of mental illness and behavioral health issues in jails, prisons and community corrections, or be able to access such knowledge and expertise; knowledge and skill in designing, editing, and publishing an electronic newsletter; knowledge and skills in soliciting content, articles, and features for inclusion in the newsletter; project management experience; effective written and oral communication skills.

Application Requirements: Applications should be concisely written, typed double spaced and reference the ''NIC Opportunity Number'' and Title provided in this announcement. The application package must include: OMB Standard Form 424, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period of fiscal year that the applicant operates under (e.g., July 1 through June 30), an outline of projected costs, and the following forms: OMB Standard Form 424A, Budget Information—Non Construction Programs, OMB Standard Form 424B, Assurances—Non Construction Programs (available at *http://www.grants.gov*), and DOJ/NIC Certification Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (available at

http://www.nicic.gov/Downloads/PDF/certif-frm.pdf.)

Applications may be submitted in hard copy, or electronically via *http://www.grants.gov.* If submitted in hard copy, there needs to be an original and three copies of the full proposal (program and budget narratives, application forms and assurances). The original should have the applicant's signature in blue ink. The program narrative text must be limited to no more than 10 double spaced pages, exclusive of resumes and summaries of experience.

A sample of a prior or proposed newsletter publication including format done by the applicant is required as a supplement to the application. Please do not submit full curriculum vitae.

All technical or programmatic questions concerning this announcement should be directed to CDR Anita E. Pollard, Corrections Health Manager, National Institute of Corrections. CDR Pollard can be reached by email at *apollard@bop.gov.* In addition to the direct reply, all questions and responses will be posted on NIC's Web site at *http://www.nicic.gov* for public review. (The names of those submitting questions will not be posted.) The Web site will be updated regularly and postings will remain on the Web site until the closing date of this cooperative agreement solicitation. Only questions received by 12 p.m. (EDT) on August 19, 2011 will be answered.

Authority: Public law 93–415.

Funds Available: NIC is seeking the applicant's best ideas regarding accomplishment of the scope of work and the related costs for achieving the goals of this solicitation. Funds may only be used for the activities that are linked to the desired outcome of the project.

Eligibility of Applicants: An eligible applicant is any private agency, educational institution, organization, individual or team with expertise in the described areas.

Review Considerations: Applications received under this announcement will be subjected to a 3- to 5-person NIC Peer Review Process. The criteria for the evaluation of each application will be as follows:

Project Management: 50 points.

Does the applicant provide a preliminary structure for organizing the newsletter, including proposed newsletter length, topics, and distribution format? Does the applicant present a timeline for working with NIC staff to ensure timely distribution, posting, and promotion of the newsletter and its related information or materials?

Organizational: 25 Points.

Does the applicant demonstrate relevant experience and expertise in producing a newsletter for public consumption that is readable for mainstream audiences (those not directly associated with the corrections or mental health fields)? Is there staff available to complete any design, photography, research, writing, or editing that may be associated with producing the newsletter? Is there evidence of the applicant's ability to use appropriate software or digital technologies to create a newsletter? Is there evidence of experience in corrections, mental health, or technical writing that would demonstrate an ability to communicate effectively on correctional mental health topics?

Budget: 25 Points.

Does the applicant present a reasonable budget for meeting the solicitation requirements for producing the newsletter and publishing the newsletter quarterly?

Note: NIC will not award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request; line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: *http://www.ccr.gov.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 11AD05. This number should appear as a reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Executive Order 12372: This project is not subject to the provisions of Executive Order 12372.

Thomas J. Beauclair,

Deputy Director, National Institute of Corrections.

[FR Doc. 2011–18986 Filed 7–26–11; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Report on Current Employment Statistics

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Bureau of Labor Statistics (BLS) sponsored information collection request (ICR) titled, ''Report on Current Employment Statistics,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 26, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Congress has charged the Bureau of Labor Statistics with the responsibility of collecting and publishing monthly information on employment, the average wage received, and the hours worked, by area and by industry. *See* 29 U.S.C. 2. The Current Employment Statistics program provides current monthly statistics on employment, hours, and earnings, by industry. The statistics are fundamental inputs in economic decision processes at all levels of government, private enterprise, and organized labor. The data necessary to

produce these estimates are voluntarily reported.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1220–0011. The current OMB approval is scheduled to expire on July 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 30, 2011 (76 FR 17710).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1220–0011. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics (BLS).

Title of Collection: Report on Current Employment Statistics.

OMB Control Number: 1220–0011.

Affected Public: Private Sector—Business or other for-profits and not-for-profit institutions; State, Local, and Tribal Governments; Federal Government.

Total Estimated Number of Respondents: 290,600.

Total Estimated Number of Responses: 3,487,200.

Total Estimated Annual Burden Hours: 582,120.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 20, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–18899 Filed 7–26–11; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Alternative Method of Compliance for Certain Simplified Employee Pensions

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Alternative Method of Compliance for Certain Simplified Employee Pensions,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 26, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain*, on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The alternative disclosure arrangement established through regulations 29 CFR 2520.104–49 relieves a sponsor of a non-model Simplified Employee Pension (SEP) of most of the reporting and disclosure requirements under Employee Retirement Income Security Act (ERISA) Title I. In addition, the disclosure requirements set forth in the regulation ensure that an administrator of a non-model SEP provides participants with specific written information concerning the SEP. This information collection requirement generally requires timely written disclosure to employees eligible to participate in a non-model SEP, including specific information concerning: Participation requirements; allocation formulas for employer contributions; designated contact persons for further information; and, for employer recommended Individual Retirement Accounts (IRAs), specific terms of the IRAs such as rates of return and any restrictions on withdrawals. Moreover, general information is required that provides a clear explanation of the operation of the non-model SEP; participation requirements, and any withdrawal restrictions; and the tax treatment of the SEP-related IRA. Furthermore, statements must be provided that inform participants of: Any other IRAs under the non-model SEP other than that to which employer contributions are made; any options regarding rollovers and contributions to other IRAs; descriptions of U.S. Department of the Treasury, Internal Revenue Service disclosure requirements to participants and information regarding social security integration (if applicable); and timely notification of any amendments to the terms of the non-model SEP.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not

display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1219–0034. The current OMB approval is scheduled to expire on July 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on April 22, 2011 (76 FR 22728).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1210–0034. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employee Benefits Security Administration (EBSA).

Title of Collection: Alternative Method of Compliance for Certain Simplified Employee Pensions.

OMB Control Number: 1219–0034.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 36,000.

Total Estimated Number of Responses: 68,000.

Total Estimated Annual Burden Hours: 21,000.

Total Estimated Annual Other Costs Burden: $23,000.

Dated: July 21, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–18936 Filed 7–26–11; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

DATE AND TIME: The Legal Services Corporation's Finance Committee will meet August 1, 2011. The meeting will commence at 3 p.m., Eastern Standard Time, and will continue until the conclusion of the Committee's agenda.

LOCATION: Pound Hall, Room 335, Harvard Law School, 1563 Massachusetts Avenue, Cambridge, MA 02138.

PUBLIC OBSERVATION: Members of the public who are unable to attend but wish to listen to the public proceeding may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately ''MUTE'' your telephone.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda.
2. Consider and act on a recommendation to make to the Board regarding Temporary Operating Authority for FY 2012.
   - David Richardson, Treasurer/Comptroller.
3. Consider and act on a recommendation to make to the Board regarding LSC's FY 2013 appropriation request.
4. Public comment.
5. Consider and act on other business.
6. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: July 25, 2011.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2011–19165 Filed 7–25–11; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* This is the second notice for public comment; the first was published in the **Federal Register** at 76 FR 28244 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.

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 (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

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: FY 2011 and FY 2013 Survey of Science and Engineering Research Facilities.

OMB Control Number: 3145–0101.

Type of Request: Intent to seek approval to reinstate an information collection for three years.

Proposed Project: The National Science Foundation Survey of Science and Engineering Research Facilities is a Congressionally mandated (Pub. L. 99–159), biennial survey that has been conducted since 1986. The survey collects data on the amount, condition, and costs of the physical facilities used to conduct science and engineering research. The survey also requests information on the networking and high performance computing capacity at the surveyed institutions, a critical part of the infrastructure for science and engineering research. Due to the rapidity of technological change, these questions are continually updated. It was expected by Congress that this survey would provide the data necessary to describe the status and needs of science and engineering research facilities and to formulate appropriate solutions to documented needs. During the FY 2007 and FY 2009 survey cycles, data were collected from a population of approximately 495 research-performing colleges and universities and approximately 163 nonprofit biomedical research institutions receiving research support from the National Institutes of Health.

Use of the Information: Analysis of the Facilities Survey data will provide updated information on the status of scientific and engineering research facilities and capabilities. The information can be used by Federal policy makers, planners, and budget analysts in making policy decisions, as well as by institutional academic officials, the scientific/engineering establishment, and state agencies and legislatures that fund universities.

Burden on the Public: The Facilities Survey will be sent by mail to approximately 495 higher education institutions. The completion time per academic institution is expected to average 41 hours. Assuming a 95% response rate, this would result in an estimated burden of 19,280 hours for academic institutions.

Dated: July 22, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–18964 Filed 7–26–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewals

The NSF management officials having responsibility for the Proposal Review Panel for Emerging Frontiers in Biological Sciences, #44011 have determined that renewing this committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 USC 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Effective date for renewal is August 5, 2011. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: July 22, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–18934 Filed 7–26–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Call for Nominations

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Call for Nominations.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is advertising for nominations for the position of Agreement State representative on the Advisory Committee on the Medical Uses of Isotopes (ACMUI).

DATES: Nominations are due on or before September 26, 2011.

Nomination Process: Submit an electronic copy of resume or *curriculum vitae* to Ms. Sophie Holiday, *sophie.holiday@nrc.gov.* Please ensure that the resume or curriculum vitae includes the following information, if applicable: Education, certification, current state regulatory experience, professional association membership, committee membership activities, and leadership activities.

FOR FURTHER INFORMATION CONTACT: Ms. Sophie Holiday, U.S. Nuclear Regulatory Commission, Office of Federal and State Materials and Environmental Management Programs; (301) 415–7865; *sophie.holiday@nrc.gov.*

SUPPLEMENTARY INFORMATION: The ACMUI advises NRC on policy and technical issues that arise in the regulation of the medical use of byproduct material. Responsibilities include providing comments on changes to NRC rules, regulations, and guidance documents; evaluating certain non-routine uses of byproduct material; providing technical assistance in licensing, inspection, and enforcement cases; and bringing key issues to the attention of NRC, for appropriate action.

ACMUI members possess the medical and technical skills needed to address evolving issues. The current membership is comprised of the following professionals: (a) Nuclear medicine physician; (b) nuclear cardiologist; (c) medical physicist in nuclear medicine unsealed byproduct material; (d) therapy physicist; (e) radiation safety officer; (f) nuclear pharmacist; (g) two radiation oncologists; (h) patients' rights advocate; (i) Food and Drug Administration representative; (j) State representative; and (k) health care administrator.

NRC is inviting nominations for the Agreement State representative appointment to the ACMUI. The

individual currently occupying this position resigned on July 15, 2011. Committee members currently serve a four-year term and may be considered for reappointment to an additional term.

Nominees must be U.S. citizens and be able to devote approximately 160 hours per year to Committee business. Members who are not Federal employees are compensated for their service. In addition, members are reimbursed travel (including per-diem in lieu of subsistence) and are reimbursed secretarial and correspondence expenses. Full-time Federal employees are reimbursed travel expenses only.

Security Background Check: The selected nominee will undergo a thorough security background check. Security paperwork may take the nominee several weeks to complete. Nominees will also be required to complete a financial disclosure statement to avoid conflicts of interest.

Dated at Rockville, Maryland this 21st day of July 2011.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–18951 Filed 7–26–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on U.S. Evolutionary Power Reactor; Notice of Meeting

The ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR) will hold a meeting on August 18, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, August 18, 2011—8:30 a.m. until 5 p.m.

The Subcommittee will review Chapter 18 and continue their review of chapter 15 of the U.S. EPR Document Control Design (DCD) Safety Evaluation Report (SER) with open items. The Subcommittee will also review Chapter 18 of the Calvert Cliffs Unit 3 Combined License Application (COLA) with open items. The Subcommittee will hear presentations by and hold discussions with the NRC staff, AREVA, Unistar, 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), Derek Widmayer (Telephone 301–415–7366 or *e-mail: Derek.Widmayer@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 21, 2010, (75 FR 65038–65039).

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 contact Jonah Fitz (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: July 20, 2011.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–18952 Filed 7–26–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on August 17, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, August 17, 2011—1 p.m. Until 5 p.m.

The Subcommittee will review the Low-Level Waste Disposal Site-Specific Analysis Rulemaking language, technical basis, and draft guidance. The Subcommittee will hear presentations by and hold discussions with the NRC staff 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), Derek Widmayer (Telephone 301–415–7366 or *E-mail: Derek.Widmayer@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 e-mailed 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 21, 2010, (75 FR 65038–65039).

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 contact Jonah Fitz (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: July 20, 2011.

Cayetano Santos,

Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–18954 Filed 7–26–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Revision of an Existing Information Collection, USAJOBS; Withdrawal

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice; Withdrawn.

SUMMARY: The U.S. Office of Personnel Management (OPM) is announcing the withdrawal of an information collection notice that published on Friday, July 22, 2011. The notice offered the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0219, USAJOBS.

DATES: The notice published on Friday, July 22, 2011 at 76 FR 44051 is withdrawn as of July 27, 2011.

FOR FURTHER INFORMATION CONTACT: The Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503. *Attention:* Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: This notice will re-publish in the **Federal Register** in August, once the current 60-day comment period has ended.

U.S. Office of Personnel Management.

Dale Anglin,

USAJOBS Program Director.

[FR Doc. 2011–18973 Filed 7–26–11; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Revision of Standard Forms 39 and 39–A

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of revision.

SUMMARY: The U.S. Office of Personnel Management (OPM) has revised Standard Form (SF) 39, *Request For Referral Of Eligibles,* and SF 39–A, *Request and Justification for Selective Factors and Quality Ranking Factors,* to update legal citations; remove the outdated reference to the Federal Personnel Manual; and to include the current citation of 5 CFR part 332. The SF 39 outlines instructions to be used by hiring officials to request a list of eligible applicants to fill a position. The SF 39–A, which is attached by hiring officials to the SF 39, identifies the selective and/or quality ranking factors that will be used to determine whether an applicant is qualified for a position. The revised forms are PDF fillable and are located on OPM's Web site at *http://www.opm.gov/forms/html.sf.asp* for agency use. These versions supersede all previous versions. Please destroy any versions you may have in stock.

DATES: The revised form is effective August 26, 2011.

FOR FURTHER INFORMATION CONTACT: Michael Gilmore by telephone at (202) 606–2429; by fax at (202) 606–2329; by TTY at (202) 418–3134; or by e-mail at *Michael.gilmore@opm.gov*.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–18972 Filed 7–26–11; 8:45 am]

BILLING CODE 6325–29–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement: [76 FR 44057, July 22, 2011].

STATUS: Open meeting.

PLACE: 100 F Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: July 26, 2011 at 11 a.m.

CHANGE IN THE MEETING: Deletion of an Item.

The following item will not be considered during the Commission's Open Meeting on July 26, 2011 at 11 a.m.

The Commission will consider whether to adopt rule and form amendments under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to require an institutional investment manager that is subject to Section 13(f) of the Securities Exchange Act to report annually how it voted proxies relating to executive compensation matters as required by Section 14A of the Securities Exchange Act, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 25, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19131 Filed 7–25–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register CITATION OF PREVIOUS ANNOUNCEMENT: [76 FR 44057, July 22, 2011].

STATUS: Open meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, July 26, 2011.

CHANGE IN THE MEETING: Cancellation of meeting.

The Open Meeting scheduled for Tuesday, July 26, 2011 at 10:00 a.m. has been cancelled.

For further information please contact the Office of the Secretary at (202) 551–5400.

Dated: July 25, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–19130 Filed 7–25–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64935; File No. SR–NYSEArca–2011–31]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change to List and Trade the Shares of the WisdomTree Dreyfus Euro Debt Fund Under NYSE Arca Equities Rule 8.600

July 20, 2011.

I. Introduction

On May 24, 2011, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 list and trade the shares (''Shares'') of the WisdomTree Dreyfus Euro Debt Fund (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published in the **Federal Register** on June 10, 2011.[3] The Commission received no comments on the proposal. This order grants approval of the proposed rule change.

II. Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the WisdomTree Trust (''Trust''), which was established as a Delaware statutory trust and is registered with the Commission as an investment company.[4] The Fund is currently known as the ''WisdomTree Dreyfus Euro Fund'' and is an actively managed exchange-traded fund.[5] On April 14, 2011, the WisdomTree Dreyfus Euro Fund filed a supplement to its Registration Statement (''Supplement'') pursuant to Rule 497 under the Securities Act of 1933.[6] As stated in the Supplement, the WisdomTree Dreyfus Euro Fund seeks to change its investment objective and strategy and will be renamed the ''WisdomTree Dreyfus Euro Debt Fund.'' The WisdomTree Dreyfus Euro Fund's new name, investment objective, and investment strategies, which are not reflected in the May 2008 Order, are described below.[7] Shareholders of the WisdomTree Dreyfus Euro Fund who wish to remain in the Fund do not need to take any action; shareholders who do not wish to remain invested in the Fund may sell their Shares at any time.[8]

WisdomTree Asset Management, Inc. is the investment adviser (''Adviser'') to the Fund. The Dreyfus Corporation serves as sub-adviser for the Fund (''Sub-Adviser'').[9] The Bank of New York Mellon is the administrator, custodian, and transfer agent for the Trust. ALPS Distributors, Inc. serves as the distributor for the Trust.[10] The Exchange states that, while the Adviser is not affiliated with any broker-dealer, the Sub-Adviser is affiliated with multiple broker-dealers. As a result, the Sub-Adviser has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.[11]

Euro-Denominated Debt

The Fund's new investment objective will be to seek a high level of total returns consisting of both income and capital appreciation. Under normal circumstances, the Fund will invest at least 80% of its net assets in Fixed Income Securities denominated in Euros and may invest up to 20% of its assets in Fixed Income Securities denominated in U.S. dollars.[12] For purposes of this proposed rule change, Fixed Income Securities include bonds, notes or other debt obligations, such as government or corporate bonds, denominated in Euros, including issues denominated in Euros that are issued by ''supranational issuers,'' such as the European Investment Bank, International Bank for Reconstruction and Development, and the International Finance Corporation, or other regional development banks, as well as development agencies supported by other national governments. The Fund may also invest in Money Market Securities and derivative and other instruments, as described below.

The Fund intends to focus its investments on ''Sovereign Debt,'' which, with respect to this Fund, means Fixed Income Securities issued by governments, government agencies, and government-sponsored enterprises of countries in the European Union (''EU'') that are denominated in Euros, including inflation-linked bonds designed to provide protection against increases in general inflation rates. The Fund may invest up to 20% of its net assets in corporate debt of companies organized in EU countries or that have significant economic ties to EU countries. The Fund will invest only in corporate bonds that the Adviser or Sub-Adviser deems to be sufficiently liquid. Generally, a corporate bond must have $200 million or more par amount outstanding and significant par value traded to be considered as an eligible investment. Economic and other conditions may lead to a decrease in the average par amount outstanding of bond issuances. Therefore, although the Fund does not intend to do so, the Fund may invest up to 5% of its net assets in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64608 (June 6, 2011), 76 FR 34112 (''Notice'').

[4] The Fund has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission.

[5] The Commission approved the listing and trading on the Exchange of the WisdomTree Dreyfus Euro Fund pursuant to Section 19(b)(2) of the Exchange Act on May 8, 2008 (''May 2008 Order''). *See* Securities Exchange Act Release No. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively managed exchange-traded funds of the WisdomTree Trust).

[6] *See* Form 497, Supplement to Registration Statement on Form N–1A for the Trust, dated April 14, 2011 (File Nos. 333–132380 and 811–21864).

[7] The Fund's new name and changes to the investment objective and investment strategies will take effect following approval of this proposed rule change, and the filing by the Fund of an amendment to the Fund's Form N1–A. E-mail from Michael Cavalier, Chief Counsel, NYSE Euronext, to Edward Y. Cho, Special Counsel, Division of Trading and Markets, Commission, dated July 18, 2011 (''July 18 E-mail'').

[8] The Adviser represents that the Supplement has been sent to existing Shareholders of the Fund to notify them of the planned changes. The Supplement and additional information have been posted on the Fund's Web site at *http://www.wisdomtree.com*.

[9] The Sub-Adviser is responsible for day-to-day management of the Fund and, as such, typically makes all decisions with respect to portfolio holdings. The Adviser has ongoing oversight responsibility.

[10] The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (''1940 Act''). *See* Investment Company Act Release No. 28171 (October 27, 2008) (File No. 812–13458). In compliance with Commentary .05 to NYSE Arca Equities Rule 8.600, which applies to Managed Fund Shares based on an international or global portfolio, the Trust's application for exemptive relief under the 1940 Act states that the Fund will comply with the federal securities laws in accepting securities for deposits and satisfying redemptions with redemption securities, including that the securities accepted for deposits and the securities used to satisfy redemption requests are sold in transactions that would be exempt from registration under the Securities Act of 1933.

[11] *See* Commentary .06 to NYSE Arca Equities Rule 8.600. The Exchange represents that, in the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[12] The term ''under normal market circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

corporate bonds with less than $200 million par amount outstanding if (i) The Adviser or Sub-Adviser deems such security to be sufficiently liquid based on its analysis of the market for such security (based on, for example, broker-dealer quotations or its analysis of the trading history of the security or the trading history of other securities issued by the issuer), (ii) such investment is consistent with the Fund's goal of providing exposure to a broad range of Fixed Income Securities denominated in Euros, and (iii) such investment is deemed by the Adviser or Sub-Adviser to be in the best interest of the Fund.

The Fund intends to provide broad exposure to countries in the EU and, as a general matter, will invest a higher percentage of its assets in countries with larger and more liquid debt markets. The Fund's exposure to any single country generally will be limited to 20% of the Fund's assets. The percentage of Fund assets invested in a specific country or issuer will change from time to time.

The universe of Euro-denominated Fixed Income Securities in which the Fund may invest includes securities that are rated both ''investment grade'' and ''non-investment grade.'' The Fund expects to have 75% or more of its assets invested in investment grade bonds, though this percentage may change based, for example, on market conditions and/or debt ratings assigned to countries and issuers.

Because the debt ratings of issuers will change from time to time, the exact percentage of the Fund's investments in investment grade and non-investment grade Fixed Income Securities will change from time to time in response to economic events and changes to the credit ratings of such issuers. Within the non-investment grade category, some issuers and instruments are considered to be of lower credit quality and at higher risk of default. In order to limit its exposure to these more speculative credits, the Fund will not invest more than 10% of its assets in securities rated BB or below by Moody's or equivalently rated by S&P or Fitch. The Fund does not intend to invest in unrated securities. However, it may do so to a limited extent, such as where a rated security becomes unrated, if such security is determined by the Adviser or Sub-Adviser to be of comparable quality.[13]

The Fund attempts to limit interest rate risk by maintaining an aggregate portfolio duration of between two and eight years under normal market conditions, but the Fund's actual portfolio duration may be longer or shorter depending upon market conditions. The Fund may also invest in short-term Money Market Securities (as defined below) denominated in the currencies of countries in which the Fund invests.

The Fund intends to invest in Fixed Income Securities of at least 13 non-affiliated issuers. The Fund will not concentrate 25% or more of the value of its total assets (taken at market value at the time of each investment) in any one industry, as that term is used in the 1940 Act (except that this restriction does not apply to obligations issued by the U.S. government, any non-U.S. government, or their respective agencies and instrumentalities or government-sponsored enterprises).

The Fund intends to qualify each year as a regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended. In addition to satisfying the RIC diversification requirements, no portfolio security held by the Fund (other than U.S. and/or non-U.S. government securities) will represent more than 30% of the weight of the Fund's portfolio. The five highest-weighted portfolio securities of the Fund (other than U.S. and/or non-U.S. government securities) will not in the aggregate account for more than 65% of the weight of the Fund's portfolio. For these purposes, the Fund will treat repurchase agreements collateralized by U.S. government securities or non-U.S. government securities as U.S. or non-U.S. government securities, respectively.

Money Market Securities

Assets not invested in Fixed Income Securities generally will be invested in Money Market Securities to help manage cash flows in and out of the Fund, such as in connection with payment of dividends or expenses, to satisfy margin requirements, to provide collateral, or to otherwise back investments in derivative instruments. For these purposes, Money Market Securities include: short-term, high-quality obligations issued or guaranteed by the U.S. Treasury or the agencies or instrumentalities of the U.S. government; short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; repurchase agreements backed by short-term U.S. government securities or non-U.S. government securities; money market mutual funds; and deposits and other obligations of U.S. and non-U.S. banks and financial institutions. All Money Market Securities acquired by the Fund will be rated investment grade, except that the Fund may invest in unrated Money Market Securities that are deemed by the Adviser or Sub-Adviser to be of comparable quality to Money Market Securities rated investment grade.[14]

Derivative Instruments and Other Investments

The Fund may use derivative instruments as part of its investment strategies, such as listed futures contracts,[15] forward currency contracts, non-deliverable forward currency contracts, currency and interest rate swaps, currency options, options on futures contracts, swap agreements, and credit-linked notes. The Fund's use of derivative instruments (other than credit-linked notes) will be collateralized or otherwise backed by investments in short term, high-quality U.S. Money Market Securities. Under normal circumstances, the Fund will invest no more than 20% of the value of the Fund's net assets in derivative instruments. Such investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

With respect to certain kinds of derivative transactions entered into by the Fund that involve obligations to make future payments to third parties, including, but not limited to, futures, forward contracts, swap contracts, the purchase of securities on a when-issued or delayed delivery basis, or reverse repurchase agreements, the Fund, in accordance with applicable federal securities laws, rules, and interpretations thereof, will set aside liquid assets to cover open positions with respect to such transactions.

[13] In determining whether a security is of ''comparable quality,'' the Adviser or Sub-Adviser will consider, for example, current information about the credit quality of the issuer and whether or not the issuer of the security has issued other rated securities. *See* July 18 E-mail, *supra* note 7.

[14] In determining whether a security is of ''comparable quality,'' the Adviser or Sub-Adviser will consider, for example, current information about the credit quality of the issuer and whether or not the issuer of the security has issued other rated securities.

[15] The futures contracts in which the Fund will invest may be listed on exchanges in the U.S. or in London, Hong Kong, or Singapore. Each of the United Kingdom's primary financial markets regulator, the Financial Services Authority, Hong Kong's primary financial markets regulator, the Securities and Futures Commission, and Singapore's primary financial markets regulator, the Monetary Authority of Singapore, are signatories to the International Organization of Securities Commissions (''IOSCO'') Multilateral Memorandum of Understanding (''MMOU''), which is a multi-party information sharing arrangement among major financial regulators. Both the Commission and the Commodity Futures Trading Commission are signatories to the IOSCO MMOU.

The Fund may engage in foreign currency transactions and invest directly in foreign currencies in the form of bank and financial institution deposits, certificates of deposit, and bankers acceptances denominated in a specified non-U.S. currency. The Fund may enter into forward currency contracts in order to ''lock in'' the exchange rate between the currency it will deliver and the currency it will receive for the duration of the contract.

The Fund may enter into swap agreements, including interest rate swaps and currency swaps (*e.g.,* Euro vs. U.S. dollar), and may buy or sell put and call options on foreign currencies, either on exchanges or in the over-the-counter market. The Fund may enter into repurchase agreements with counterparties that are deemed to present acceptable credit risks and may enter into reverse repurchase agreements. In addition, the Fund may invest in the securities of other investment companies (including money market funds and exchange-traded funds (''ETFs'')). The Fund may invest up to an aggregate amount of 15% of its net assets in (a) Illiquid securities and (b) Rule 144A securities. The Exchange represents that the Fund will not invest in non-U.S. equity securities.

Additional information regarding the Trust and the Shares, the Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice, the Registration Statement, and the Supplement, as applicable.[16]

III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6 of the Act [17] and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[19] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[20] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be updated and disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session on the Exchange.[21] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Trust will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), held by the Fund that will form the basis for the Fund's calculation of the net asset value (''NAV'') at the end of the business day.[22] The NAV of the Fund's Shares generally is calculated once daily Monday through Friday as of the close of regular trading on the New York Stock Exchange (''NYSE'') (generally 4:00 p.m. Eastern time). In addition, information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Intra-day and end-of-day prices are readily available through major market data providers and broker-dealers for the Fixed Income Securities, Money Market Securities, and derivative instruments held by the Fund. The Fund's Web site will also include a form of the prospectus for the Fund, information relating to NAV, and other quantitative and trading information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[23] In addition, the Exchange will halt trading in the Shares under the specific circumstances set forth in NYSE Arca Equities Rule 8.600(d)(2)(D), and may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[24] The Exchange represents that the Sub-Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Fund's portfolio.[25] The

[16] *See* Notice, Registration Statement, and Supplement, *supra* notes 3, 4, and 6, respectively.

[17] 15 U.S.C. 78f.

[18] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[21] During hours when the markets for Fixed Income Securities in the Fund's portfolio are closed, the Portfolio Indicative Value will be updated at least every 15 seconds during the Core Trading Session to reflect currency exchange fluctuations.

[22] The Disclosed Portfolio will include, as applicable, the names, quantity, percentage weighting, and market value of Fixed Income Securities and other assets held by the Fund and the characteristics of such assets.

[23] *See* NYSE Arca Equities Rule 8.600(d)(2)(D).

[24] *See* NYSE Arca Equities Rule 8.600(d)(2)(C)(ii). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[25] *See supra* note 10 and accompanying text. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an

Exchange also states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the portfolio.[26]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading and other information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act,[27] as provided by NYSE Arca Equities Rule 5.3.

(6) The Fund will not invest in non-U.S. equity securities.

(7) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on the Exchange's representations.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[28] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–NYSEArca–2011–31) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Elizabeth M. Murphy,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64945; File No. SR–NYSEArca–2011–47]

Self-Regulatory Organizations; NYSE Arca Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Commentary .06 to NYSE Arca Rule 6.8 To Increase Position Limits for Options on the SPDR® S&P 500® Exchange-Traded Fund, Which List and Trade Under the Option Symbol SPY, and To Update the Names and One Trading Symbol for the Options Reflected Therein, Including SPY

July 21, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 11, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .06 to NYSE Arca Rule 6.8 to increase position limits for options on the SPDR® S&P 500® exchange-traded fund (''SPY ETF''),[4] which list and trade under the option symbol SPY, and to update the names and one trading symbol for the options reflected therein, including SPY. The text of the proposed rule change is available at the Exchange's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to amend Commentary .06 to NYSE Arca Rule 6.8 to increase position limits for SPY options from 300,000 to 900,000 contracts on the same side of the market and to update the names, and one trading symbol, for the options reflected therein, including SPY.[5] The Exchange is basing this proposal on a recently

annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[26] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[27] *See* 17 CFR 240.10A–3.

[28] 15 U.S.C. 78f(b)(5).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] ''SPDR®,'' ''Standard & Poor's®,'' ''S&P®,'' ''S&P 500®,'' and ''Standard & Poor's 500'' are registered trademarks of Standard & Poor's Financial Services LLC. The SPDR S&P 500 ETF represents ownership in the SPDR S&P 500 Trust, a unit investment trust that generally corresponds to the price and yield performance of the SPDR S&P 500 Index.

[5] By virtue of NYSE Arca Rule 6.9, which is not amended by this filing, exercise limits on SPY options would be the same as position limits for SPY options established in Commentary .06 to NYSE Arca Rule 6.8.

approved rule change by NASDAQ OMX PHLX (''PHLX'').[6]

Background

Institutional and retail traders have greatly increased their demand for SPY options for hedging and trading purposes, such that these options have experienced an explosive gain in popularity and have been the most actively traded options in the U.S. in terms of volume for the last two years. For example, SPY options traded a total of 33,341,698 contracts across all exchanges from March 1, 2011 through March 16, 2011. In contrast, over the same time period options on the PowerShares QQQ TrustSM, Series 1 (''QQQ''SM),[7] the third [sic] most actively traded option, traded a total of 8,730,718 contracts (less than 26.2% of the volume of SPY options).

Currently, SPY options have a position limit of only 300,000 contracts on the same side of the market while QQQ options, which are comparable to SPY options but exhibit significantly lower volume, have a position limit of 900,000 contracts on the same side of the market. The Exchange believes that SPY options should, like options on QQQ, have a position limit of 900,000 contracts. Given the increase in volume and continuous unprecedented demand for trading SPY options, the Exchange believes that the current position limit of 300,000 contracts is entirely too low and is a deterrent to the optimal use of the product for hedging and trading purposes. There are multiple reasons to increase the position limit for SPY options.

First, traders have informed the Exchange that the current SPY option position limit of 300,000 contracts, which has remained flat for more than five years despite the tremendous trading volume increase, is no longer sufficient for optimal trading and hedging purposes. SPY options are, as noted, used by large institutions and traders as a means to invest in or hedge the overall direction of the market. Second, SPY options are one-tenth the size of options on the S&P 500 Index, traded under the symbol SPX.[8] Thus, a position limit of 300,000 contracts in SPY options is equivalent to a 30,000 contract position limit in options on SPX. Traders who trade SPY options to hedge positions in SPX options (and the SPY ETF) have indicated on several occasions that the current position limit for SPY options is simply too restrictive, which may adversely affect their (and the Exchange's) ability to provide liquidity in this product. Finally, the products that are perhaps most comparable to SPY options, namely options on QQQ, are subject to a 900,000 contract position limit on the same side of the market.[9] This has, in light of the huge run-up in SPY option trading making them the number one nationally-ranked option in terms of volume, resulted in a skewed and unacceptable SPY option position limit. Specifically, the position limit for SPY options at 300,000 contracts is but 33% of the position limit for the less active options on QQQ at 900,000 contracts.[10] The Exchange proposes that SPY options similarly be subject to a position limit of 900,000 contracts.

The volume and notional value of SPY options and QQQ options as well as the volume and market capitalizations of their underlying ETFs, are set forth below:

Option national rank 2010	Option symbol	Name of underlying ETF	Option ADV 2010	Option notional value* as of December 31, 2010	Current options position limit
1	SPY	SPDR S&P 500	3,625,904 contracts	$177,823,76 million	300,000 contracts.
4	QQQ	PowerShares QQQ Trust.	963,502 contracts	$27,141,91 million	900,000 contracts.

ETF Nat'l rank 2010	Name of ETF	ETF ADV 2010	ETF Market capitalization December 31, 2010	ETF Average dollar volume
1	SPDR S&P 500	210,232,241 shares	$90,280.71 million	$ 20,794 million.
3	PowerShares QQQ Trust	85,602,200 shares	$23,564.8 million	$3,593 million.

*Notional value is calculated as follows: OI x Close x 100; where OI = underlying security's open interest (in contracts), Close = closing price of underlying security on 12/31/2010.

The Exchange notes that the Large Option Position Reporting requirement in NYSE Arca Rule 6.6 would continue to apply. Rule 6.6 requires OTP Holders to file a report with the Exchange with respect to each account in which the OTP Holder has an interest; each account of a partner, officer, director, trustee or employee of such OTP Holder; and each customer account that has established an aggregate position (whether long or short) that meets certain determined thresholds (*e.g.,* 200 or more option contracts if the underlying security is a stock or Exchange-Traded Fund Share). Rule 6.6 also permits the Exchange to impose a higher margin requirement upon the account of an OTP Holder when it determines that the account maintains an under-hedged position. Furthermore,

[6] *See* Securities Exchange Act Release No. 64695 (June 17, 2011), 76 FR 36942 (June 23, 2011) (SR–Phlx–2011–58). The Exchange commented favorably on that PHLX proposal, noting that ''the continued disparate treatment of SPY options, which have a position limit and are traded on multiple exchanges, versus SPX options, which have no position limit and are traded exclusively on CBOE [the Chicago Board Options Exchange], only serves to thwart competition and harm the marketplace,'' and that the ''PHLX's Proposal to increase the position limits for SPY options is a step in the right direction.'' *See* (*http://www.sec.gov/comments/sr-phlx-2011-58/phlx201158-1.pdf*).

[7] QQQ options were formerly known as options on the Nasdaq-100 Tracking Stock℠ (former option symbol QQQQ℠). NASDAQ, Nasdaq-100 Index, Nasdaq-100 Index Tracking Stock and QQQ are trade/service marks of The Nasdaq Stock Market, Inc. and have been licensed for use by Invesco PowerShares Capital Management LLC.

[8] CBOE, which exclusively lists and trades SPX options, has established that there are no position limits on SPX options. *See* CBOE Rule 24.4 and Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR–CBOE–2001–22).

[9] *See* Commentary .06 to Rule 6.8 and Securities Exchange Act Release No. 57417 (March 3, 2008), 73 FR 12788 (March 10, 2008) (SR–NYSEArca–2008–26). *See also* Securities Exchange Act Release No. 51286 (March 1, 2005), 70 FR 11297 (March 8, 2005) (SR–PCX–2003–55).

[10] Similarly to SPY options being one-tenth the size of options on SPX, QQQ options are also one-tenth the size of options on the related index NASDAQ–100 Index (option symbol NDX). The position limit for QQQ options and its related index NDX have a comparable relationship to that of SPY options and SPX. That is, the position limit for options on QQQ is 900,000 contracts and there is no position limit for NDX options.

large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[11]

Monitoring accounts maintaining large positions provides the Exchange with the information necessary to determine whether to impose additional margin and/or whether to assess capital charges upon an OTP Holder carrying the account. In addition, the Commission's net capital rule, Rule 15c3–1 under the Securities Exchange Act of 1934 (''Act''),[12] imposes a capital charge on OTP Holders to the extent of any margin deficiency resulting from the higher margin requirement, which should serve as an additional form of protection.

The Exchange believes that position and exercise limits, at their current levels, no longer serve their stated purpose. There has been a steadfast and significant increase over the last decade in the overall volume of exchange-traded options; position limits, however, have not kept up with the volume. Part of this volume is attributable to a corresponding increase in the number of overall market participants, which has, in turn, brought about additional depth and increased liquidity in exchange-traded options.[13]

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at the Exchange, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.[14]

Finally, the Exchange believes that while position limits on options on QQQ, which as noted are similar to SPY options, has been gradually expanded from 75,000 contracts to the current level of 900,000 contracts since 2005, there have been no adverse effects on the market as a result of this position limit increase.[15] Likewise, there have been no adverse effects on the market from expanding the position limit for SPY options from 75,000 contracts to the current level of 300,000 contracts in 2005.[16]

The Exchange believes that restrictive option position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to and hedging protection through the use of SPY options. This can result in lost liquidity in both the options market and the equity market. The proposed position limit increase would remedy this situation to the benefit of large as well as retail traders, investors, and public customers. The Exchange believes that increasing position and exercise limits for SPY options would lead to a more liquid and competitive market environment for SPY options that would benefit customers interested in this product.

Update to Names

The Exchange proposes non-substantive technical changes to update the names and one trading symbol for the option products specifically identified within Commentary .06 to NYSE Arca Rule 6.8. This change would result in Commentary .06 reflecting the current names and symbols by which these products trade in the marketplace as follows: PowerShares QQQ Trust (''QQQQ'') changes to PowerShares QQQ TrustSM, Series 1 (''QQQ''); Standard and Poor's Depository Receipts changes to SPDR® S&P 500® ETF (''SPY''); and DIAMONDS changes to SPDR®Dow Jones Industrial AverageSM ETF Trust (DIA).

2. *Statutory Basis*

The proposed rule change is consistent with Section 6(b)[17] of the Act, in general, and furthers the objectives of Section 6(b)(5),[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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 is proposing to expand the position limits on SPY options. The Exchange believes that this proposal would be beneficial to large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[19] and Rule 19b–4(f)(6)(iii) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6)[21] normally does not

[11] 17 CFR 240.13d–1

[12] 17 CFR 240.15c3–1.

[13] The Commission has previously observed that: ''Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes.'' *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276, 278 (January 5, 1998) (SR–CBOE–97–11) (footnote omitted).

[14] These procedures have been effective for the surveillance of SPY options trading and will continue to be employed.

[15] *See supra* note 9.

[16] *See* Securities Exchange Act Release No. 51044 (January 14, 2005), 70 FR 3415 (January 24, 2005) (SR–PCX–2005–05).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written

Continued

become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[22] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will enable the Exchange to immediately compete with other exchanges that have already adopted the higher position and exercise limit for options on the SPY. Therefore, the Commission designates the proposal operative upon filing.[23]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2011–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2011–47 and should be submitted on or before August 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18926 Filed 7–26–11; 8:45 am]

BILLING CODE 8011–01–P

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 filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6)(iii).

[23] 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).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64946; File No. SR–CBOE–2011–064]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Compliance Deadline for Registration and Qualification Pursuant to Rule 3.6A

July 21, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 8, 2011, Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items, I, II and III below, which Items have been prepared by CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[1] and Rule 19b–4(f)(1) thereunder,[2] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[3] the Exchange proposes to extend the August 12, 2011 deadline to comply with its rules regarding registration and qualification of individual Trading Permit Holders and individual associated persons. CBOE is not proposing any textual changes to the Rules of CBOE. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis of 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. CBOE 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, Proposed Rule Change

(a) Purpose

Pursuant to Rule 15b7–1,[4] promulgated under the Exchange Act,[5] ''No registered broker or dealer shall effect any transaction in * * * any security unless any natural person

[1] 15 U.S.C. 78s(b)(3)(A)(i).

[2] 17 CFR 240.19b–4(f)(1).

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.15b7–1.

[5] 15 U.S.C. 78a *et seq.*

associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards * * * established by the rules of any national securities exchange. * * * '' CBOE Rule 3.6A sets forth the requirements for registration and qualification of individual Trading Permit Holders and individual associated persons. In response to a request by the Division of Trading and Markets at the Securities and Exchange Commission (the ''Commission'' or ''SEC''), CBOE recently amended its rules to expand its registration and qualification requirements set forth in CBOE Rule 3.6A to include individual Trading Permit Holders and individual associated persons that are engaged or to be engaged in the securities business of a Trading Permit Holder or TPH organization.[6] CBOE Rule 3.6A provides that these individuals must be registered with the Exchange in the category of registration appropriate to the function to be performed as prescribed by the Exchange. Further, Rule 3.6A requires, among other things, that an individual Trading Permit Holder or individual associated person submit an application for registration and pass the appropriate qualification examination before the registration can become effective. The revised requirements apply to both CBOE and CBOE Stock Exchange (''CBSX'') Trading Permit Holders and their associated persons.

In conjunction with the registration requirements established by SR–CBOE–2010–084, three new qualification examinations became available on June 20, 2011 in the Central Registration Depository system (''WebCRD''), which is operated by the Financial Industry Regulatory Authority, Incorporated (''FINRA''). These registration categories include the following (the required qualification examinations and prerequisites, as applicable, associated with each registration category are in parentheses): PT—Proprietary Trader (Series 56), CT—Proprietary Trader Compliance Officer (Series 14, Series 56 prerequisite) and TP—Proprietary Trader Principal (Series 24, Series 56 prerequisite). In the Approval Order for SR–CBOE–2010–084, the SEC established a deadline of August 12, 2011 for CBOE and CBSX individual Trading Permit Holders and individual associated persons of CBOE and CBSX Trading Permit Holders to register for and pass the applicable qualification examination(s), approximately seven weeks from the date the qualification exams became available. CBOE respectfully requests to extend the August 12, 2011 deadline to September 19, 2011 (or such other later compliance date as the Commission deems appropriate for the participating self-regulatory organizations) to be consistent with the time period allotted to ISE members to comply with the registration and qualification requirements.[7] CBOE believes its proposal to extend this deadline is reasonable and necessary in an effort to implement consistent standards for registration and qualification across self-regulatory organizations.

CBOE continues to evaluate the reasonability of the proposed ninety-day deadline in light of various factors including, but not limited to, the following: (i) Potential disruption to the marketplace if a Market-Maker or Designated Primary Market-Maker does not satisfy the qualification requirements; (ii) system enforced delays in registering for an examination in WebCRD upon an individual's failure of a qualification examination; (iii) examination scheduling limitations due to the volume of individuals required to take the examination(s); and (iv) the ability for those individuals subject to heightened qualification examinations to prepare for, schedule and pass more than one examination in an extremely limited window of time. CBOE will continue to update Commission staff and evaluate whether additional rule filings are necessary to address reasonability concerns in conjunction with requiring compliance within a ninety-day window.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(1)[9] of the Act in particular, in that it is designed to enforce compliance by Exchange members and persons associated with its members with the rules of the Exchange. The Exchange also believes the proposed rule change furthers the objectives of Section 6(c)(3)[10] of the Act, which authorizes CBOE to prescribe standards of training, experience and competence for persons associated with CBOE members, in that this filing is proposing to extend the deadline for compliance with the standards of training, experience and competence established by the Exchange. CBOE believes that its proposal is reasonable in that it establishes a deadline for compliance with the registration and qualification requirements that is consistent with the deadline in place for ISE members and their associated persons.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[11] and Rule 19b–4(f)(1) thereunder,[12] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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

[6] *See* Securities Exchange Act Release No. 63314 (November 12, 2010), 75 FR 70957 (November 19, 2010) (SR–CBOE–2010–084).

[7] The International Securities Exchange (''ISE'') received approval for a rule filing establishing substantially similar registration and qualification requirements on February 4, 2011. The Approval Order for SR–ISE–2010–115 provides that ''Associated persons of ISE members will have 90 days from the date [sic] *See* Securities Exchange Act Release No. 63843 (February 4, 2011), 76 FR 7884 (February 11, 2011) (SR–ISE–2010–115).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(c)(3).

[11] 15 U.S.C. 78s(b)(3)(A)(i).

[12] 17 CFR 240.19b–4(f)(1).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–064 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–2011–064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2011–064 and should be submitted on or before August 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18927 Filed 7–26–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64940; File No. SR–BX–2011–036]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Application and Annual Fees for the BX Venture Market

July 21, 2011.

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 July 14, 2011, NASDAQ OMX BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 modify the application and annual fees payable by a company listing on the BX Venture Market. The Exchange will implement the proposed rule immediately.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.[3]

5910. Listing Fees

(a) Application Fee

A Company that submits an application to list any class of its securities on the Exchange, shall pay to the Exchange a non-refundable application fee of [$7,500] *$10,000,* which must be submitted with the Company's application. However, if a Company is listed on another national securities exchange and has received notice that it is subject to being delisted from that exchange for failure to comply with a quantitative listing requirement, the application fee does not have to be paid to the Exchange until the other exchange issues a final decision to delist the Company's securities or the Company is listed on the Exchange, whichever occurs first.

(b) Annual Fee

(1) Each issuer shall pay an annual fee of [$15,000] *$20,000* for the first class of securities listed on the Exchange and $5,000 for each additional class of securities listed on the Exchange.

(2)–(4) No change.

(c)–(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently received approval for the BX Venture Market, a new listing venue for the Exchange. Under the approved rules, a company that submits an application to list any class of its securities on the BX Venture Market must pay a non-refundable application fee of $7,500[4] and a listed company must pay an annual fee of $15,000 for the first class of securities listed on the BX Venture Market and $5,000 for each additional listed class of securities.[5]

The listing fees for the BX Venture Market were originally proposed in August 2010.[6] Following that original proposal, and in connection with seeking approval for the BX Venture Market, the Exchange committed to substantial enhancements to its regulatory process.[7] Among these enhancements are rules requiring the Exchange to engage independent qualified third party investigative firms to assist in its public interest review process in specified situations and on a random basis.[8] The Exchange may also

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomxbx.cchwallstreet.com.*

[4] Exchange Rule 5910(a).

[5] Exchange Rule 5910(b).

[6] Securities Exchange Act Release No. 62818 (September 1, 2010), 75 FR 54665 (September 8, 2010) (proposing SR–BX–2010–059).

[7] Securities Exchange Act Release No. 64437 (May 6, 2011), 76 FR 27710 (May 12, 2011) (approving SR–BX–2010–059 as amended).

[8] Exchange Rule 5205(d).

engage independent qualified third party investigative firms in reviewing listed companies in certain situations, including where there may be potential public interest concerns.[9] The Exchange has also committed to enhanced surveillance of the trading of listed securities, including by FINRA and through the use of technology by the SMARTS Group.

These enhancements were not envisioned when the Exchange originally proposed the fees for the BX Venture Market and the fees were not previously adjusted in response to these changes. As such, the Exchange now proposes to increase the application fee for the BX Venture Market from $7,500 to $10,000 and the annual fees for the first class of securities from $15,000 to $20,000.

The Exchange notes that the proposed fees remain substantially lower than the fees for other markets. For example, the initial listing fees for listing common stock on the NASDAQ Capital Market range from $50,000 to $75,000 and the annual fees are $27,500;[10] the initial listing fees for listing common stock on NYSE Amex range from $50,000 to $70,000 and the annual fees range from $27,500 to $40,000;[11] and the initial listing fees for listing common stock on the New York Stock Exchange range from $125,000 to $250,000 and the annual fees range from $38,000 to $500,000.[12]

In addition, the fees remain comparable to those charged by OTC Markets Group for companies to appear on its OTCQX tier. While OTC Markets Group does not operate a national securities exchange, and does not undertake a regulatory review similar to that required by the Exchange's rules, it claims to have ''listings'' [13] and charges a $5,000 application fee and $15,000 annual fee for marketplace services that it describes as ''formerly available only on a U.S. exchange.'' [14]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[15] in general, and with Section 6(b)(4) of the Act,[16] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed rule change, which increases the application and annual fees to listed companies, proposes a reasonable allocation of the Exchange's costs, as it will allow the Exchange to recoup the costs of the additional regulatory steps the Exchange has agreed to in connection with the BX Venture Market. Moreover, the fees remain substantially lower than fees on other national securities exchanges, and comparable to the fees for OTCQX.[17] In addition, the Exchange believes that the fees are equitable, insomuch as they are charged to all companies that chose to apply and list on the BX Venture Market; and reasonable, insomuch as these companies will receive the benefits commensurate with a listing on a national securities exchange, including heightened regulatory oversight.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act [18] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. As noted above, the Exchange believes the proposed fee increases will help allow it to recoup the costs of performing its regulatory responsibilities. As such, the Exchange believes that the proposed rule change promotes just and equitable principles of trade and removes impediments to the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[19] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BX–2011–036 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–BX–2011–036. This file number should be included on the subject line if e-mail 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

[9] Exchange Rule 5205(e).

[10] Nasdaq Rule 5920(a)(1) and (c)(1)(A).

[11] NYSE Amex Listed Company Guide Sections 140 and 141.

[12] NYSE Listed Company Manual 902.03

[13] *http://www.otcqx.com/qx/otcqx/listing* (June 15, 2011).

[14] *http://www.otcqx.com/qx/otcqx/overview* (June 15, 2011).

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] The Exchange notes that the fees charged by OTCQX have not been filed with the Commission.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–036 and should be submitted on or before August 17, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18925 Filed 7–26–11; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12693 and # 12694]

Washington Disaster # WA–00031

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Washington dated 07/19/2011.

Incident: White Swan Fire.

Incident Period: 02/12/2011 through 02/13/2011.

Effective Date: 07/19/2011.

Physical Loan Application Deadline Date: 09/19/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 04/19/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Yakima.

Contiguous Counties:

Washington: Benton, Grant, King, Kittitas, Klickitat, Lewis, Pierce, Skamania.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.563
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-profit organizations Without credit available elsewhere	3.000

The number assigned to this disaster for physical damage is 12693 5 and for economic injury is 12694 0.

The State which received an EIDL Declaration # is Washington.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

July 19, 2011.

Karen G. Mills,

Administrator.

[FR Doc. 2011–18896 Filed 7–26–11; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for Fourth Quarter FY 2011

In accordance with the Code of Federal Regulations 13—Business Credit and Assistance § 123.512, the following interest rate is effective for Military Reservist Economic Injury Disaster Loans approved on or after July 22, 2011.

Military Reservist Loan Program: 4.000%.

Dated: July 21, 2011.

Lisa Lopez-Suarez,

Acting Associate Administrator For Disaster Assistance.

[FR Doc. 2011–18897 Filed 7–26–11; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 7534]

Culturally Significant Objects Imported for Exhibition Determinations: ''Heroic Africans: Legendary Leaders, Iconic Sculptures''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Heroic Africans: Legendary Leaders, Iconic Sculptures,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about September 19, 2011, until on or about January 29, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 20, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–18979 Filed 7–26–11; 8:45 am]

BILLING CODE 4710–05–P

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7535]

Culturally Significant Objects Imported for Exhibition Determinations: ''Nobility and Virtue: Masterpieces of Ming Loyalist Art From the Chih Lo Lou Collection''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Nobility and Virtue: Masterpieces of Ming Loyalist Art from the Chih Lo Lou Collection,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about September 6, 2011, until on or about January 2, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 20, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–18988 Filed 7–26–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7536]

Culturally Significant Objects Imported for Exhibition Determinations: ''De Kooning: A Retrospective''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''De Kooning: A Retrospective,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art in New York, New York, from on or about September 18, 2011, until on or about January 9, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Kevin M. Gleeson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 21, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–18978 Filed 7–26–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6827]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct two separate open meetings to prepare for upcoming events at the International Maritime Organization (IMO) in London, United Kingdom. The first of these open meetings will be held at 09:30 a.m. on Wednesday, August 17, 2011, in Room 1303 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–7126. The primary purpose of the meeting is to prepare for the thirty-seventh Session of the International Maritime Organization's (IMO) Facilitation Committee (FAL 37) to be held at the IMO Headquarters, London, United Kingdom on September 5–9, 2011.

The primary matters to be considered at FAL 37 include:

—Adoption of the agenda.
—Decisions of other IMO Bodies.
—Consideration and adoption of proposed amendments to the Convention.
—General review of the Convention.
—E-business possibilities for the facilitation of maritime traffic.
—Formalities connected with the arrival, stay and departure of persons.
—Certificates and documents required to be carried on board ships and FAL Forms.
—Ensuring security in and facilitating international trade.
—Ship/port interface.
—Technical co-operation and assistance.
—Relations with other organizations.
—Application of the Committee's Guidelines.
—Role, mission, strategic direction and work of the Committee.
—Work Programme.
—Election of Chairman and Vice-Chairman for 2012.
—Any other business.
—Consideration of the report of the Committee on its thirty-seventh session.

The second open meeting will be held at 10 a.m. on Tuesday, September 6, 2011, in Room 1303 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–7126. The primary purpose of this meeting is to prepare for the sixteenth Session of the International Maritime Organization's (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers (DSC 16) to be held at IMO Headquarters, London, United Kingdom on September 19–23, 2011.

The primary matters to be considered at DSC 16 include:

—Adoption of the agenda.
—Decision of other IMO Bodies.
—Amendments to the International Maritime Dangerous Goods (IMDG) Code and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods.

—Amendments to the International Maritime Solid Bulk Cargoes Code (IMSBC Code) including evaluation of properties of solid bulk cargos.
—Casualty and incident reports and analysis.
—Stowage of water-reactive materials.
—Revised Guidelines for packing of cargo transport units.
—Consideration for the efficacy of Container Inspection Programme.
—Installation of equipment for detection of radioactive contaminated objects in port.
—Amendments to the International Convention for Safe Containers, 1972 and associated circulars.
—Amendment to SOLAS to mandate enclosed space entry and rescue drills.
—Biennial agenda and provisional agenda for DSC 17.
—Election of Chairman and Vice-Chairman for 2012.
—Any other business.
—Report to the Maritime Safety Committee.

Members of the public may attend the two meetings up to the seating capacity of the rooms. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend one or all of the four meetings should contact the following coordinators at least 7 days prior to the meetings:

—For the FAL 37 meeting on August 17, 2011, contact Mr. David Du Pont, by e-mail at *David.A.DuPont@uscg.mil*, by phone at (202) 372–1497, by fax at (202) 372–1928, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than August 10, 2011, 7 days prior to the meeting. Requests for reasonable accommodation made after August 10, 2011 might not be able to be accommodated.
—For the DSC 16 meeting on September 6, 2011, contact LT Elizabeth Newton, by e-mail at *Elizabeth.J.Newton@uscg.mil*, by phone at (202) 372–1419, by fax at (202) 372–1426, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126 not later than August 30, 2011, 7 days prior to the meeting. Requests for reasonable accommodation made after August 30 might not be able to be accommodated.

Please note that due to security considerations at Coast Guard Headquarters in Washington, DC, two valid, government issued photo identifications must be presented to gain entrance to the CG Headquarters building. The CG Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited.

Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo*.

Dated: July 18, 2011.

Greg O'Brien,

Senior Oceans Policy Advisor, Shipping Coordinating Committee, Department of State.

[FR Doc. 2011–18977 Filed 7–26–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2011–0786]

Notice of FAA Intent To Carry Over Airport Improvement Program (AIP) Entitlement Funds

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: By 12 p.m. prevailing local time on Friday, August 12, 2011, airport sponsors eligible to receive entitlement funds under the Airport Improvement Program (AIP) must notify, in writing, the designated representative in the appropriate FAA Regional or Airports District Office if they intend to submit a final grant application in support of eligible projects with their fiscal year 2011 and/or prior-year entitlement funds. This notice must address all entitlement funds apportioned for fiscal year 2011, regardless of whether the FAA has authority to obligate those funds. After that deadline, the FAA will carry over all remaining entitlement funds, and the funds will not be available again until at least the beginning of fiscal year 2012. This notification requirement does not apply to non-primary airports covered by the block-grant program.

FOR FURTHER INFORMATION CONTACT: Mr. Frank J. San Martin, Manager, Airports Financial Assistance Division, APP–500, on (202) 267–3831.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You can get an electronic copy of this policy and all other documents in this docket using the Internet by:

(1) Searching the Federal eRulemaking portal (*http://www.regulations.gov/search*);

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Airports Financial Assistance Division, Office of Airport Planning and Programming, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3831. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

Title 49 of the United States Code, Chapter 471, allows the FAA to grant apportioned or entitlement funds to eligible airport sponsors in support of eligible projects. Chapter 471 also allows the FAA to defer or carry over such grants to the following year. In such cases, the FAA converts the current-year funds to AIP discretionary funds, and then protects an equal amount of funding to be available to the sponsor in the following year, subject to legislative action to give the FAA both legal authority to issue grants and an appropriation of funds.

Over the five fiscal years from 2003 through 2007, the FAA converted entitlements averaging just over $450 million annually, representing approximately 13 percent of the overall amount appropriated for AIP. Beginning in fiscal year 2008, that percentage increased sharply, to an annual average closer to $600 million, representing approximately 18 percent of the amount appropriated for AIP.

Chapter 471 requires the FAA to establish a deadline for sponsors to notify the FAA of their intention to request a grant using their available entitlement funds. The FAA has historically established May 1 as the deadline for sponsor notification. By the end of July in each of the fiscal years from 2006 through 2010, the FAA has historically been able to convert at least $400 million in entitlement funds based on sponsor requests.

On February 3, 2011, the FAA published a notice in the **Federal Register** (23 FR 6178), establishing May 1, 2011 as the notification deadline. However, as of July 20, 2011 (with about 10 weeks remaining in the fiscal year), the FAA has been able to convert only about $120 million in carryover based on sponsor notifications. This represents a significantly slower rate of carryover conversion.

As the end of the fiscal year approaches, it will quickly become difficult to convert further carryover funds to discretionary in sufficient time to obligate the funds. The FAA recognizes the unique circumstances that many sponsors face due to the series of short-term extensions of the FAA's authorizing legislation, which has prevented the FAA from making apportioned AIP funds fully available during FY 2011. The FAA also recognizes that in many cases, sponsors have been awaiting access to the full amount of entitlement funds. In other cases, sponsors have been waiting in the hope of securing AIP discretionary or state apportionment funds.

Therefore, the FAA is hereby notifying sponsors about steps required to ensure that the FAA has sufficient time to carryover and convert remaining entitlement funds, due to processes required under federal and local laws. The FAA is hereby notifying all sponsors that by 12 p.m. prevailing local time on Friday, August 12, 2011, they must submit written notice to the appropriate FAA office if they intend to submit a final grant application in support of eligible projects with its fiscal year 2011 or prior-year entitlement funds. This notice must address all apportioned for fiscal year 2011, regardless of whether the FAA has authority to obligate those funds. After that deadline, the FAA will carry over all remaining entitlement funds, and the funds will not be available again until at least the beginning of fiscal year 2012. This notification requirement does not apply to non-primary airports covered by the block-grant program.

In addition, the FAA is also reminding sponsors that the February 3, 2011 Federal Register notice established August 1, 2011 as the deadline to submit a grant application. In light of the protracted uncertainty about the program, the FAA is hereby revising that deadline to Friday, August 12, 2011. The FAA urges sponsors who cannot meet this deadline for grant applications to contact the designated representative in the appropriate Airports Regional or District Office.

The FAA is also notifying sponsors who have requested but not received AIP discretionary funding in fiscal year 2011 that they must contact the designated representative in the appropriate Airports District Office or Regional Office. The FAA will advise such sponsors if it is unlikely that the FAA can fulfill those funding requests in fiscal year 2011, enabling such sponsors to make timely decisions about their fiscal year 2011 entitlement funds.

In the absence of either a final grant application or written notification from the sponsor stating their intent to use fiscal year 2011 entitlement funds, the FAA will carry over all remaining entitlement funds, and the funds will not be available again until at least the beginning of fiscal year 2012.

Issued in Washington, DC on July 22, 2011.

Frank J. San Martin,

Manager, Airports Financial Assistance Division, Office of Airport Planning and Programming.

[FR Doc. 2011–18943 Filed 7–26–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Section 5309 Discretionary Bus and Bus Facilities Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of FTA Bus and Bus Facilities Program Funds: Solicitation of Project Proposals for Veterans Transportation and Community Living Initiative grants.

SUMMARY: The Federal Transit Administration (FTA) announces the availability of discretionary Section 5309 Bus and Bus Facilities grant funds in support of the Federal Interagency Coordinating Council on Access and Mobility's (CCAM or Coordinating Council) Veterans Transportation and Community Living Initiative (VTCLI or Initiative). This grant opportunity will be funded using $30 million in unallocated Discretionary Bus and Bus Facilities Program funds, authorized by 49 U.S.C. 5309(b) of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy For Users (SAFETEA–LU), Public Law 109–59, August 10, 2005.

This VTCLI grant opportunity makes funds available to local governmental agencies to finance capital costs of implementing, expanding, or increasing access to local One-Call/One-Click Transportation Resource Centers. These Centers simplify access to transportation for the public by connecting customers in one place to rides and transportation options provided in their locality by a variety of transportation providers and programs. This notice includes priorities established by the Coordinating Council's partnership for these discretionary funds, the criteria the interagency review panel will use to identify meritorious projects for funding, and describes how to apply. Additionally, the Department of Veterans Affairs (VA) will make mobility management training assistance and support available to Veteran's Affairs networks in communities selected for award. The Department of Labor (DOL) will make social communication technologies and training available to selected grantees in order to actively engage veterans, military service personnel and families as well as others in the community in the development of plans to better respond to the transportation needs of veterans and military service families.

This announcement is available on the FTA's Web site, on the Veterans Transportation and Community Living initiative Web page at: *http://www.fta.dot.gov/veterans.* FTA will announce final selections on its Web site and in the **Federal Register**. A synopsis of this announcement will be posted in the FIND module of the government-wide electronic grants Web site at *http://www.grants.gov.* Proposals must be submitted to FTA, electronically, through the GRANTS.GOV ''APPLY'' function.

DATES: Complete proposals for the discretionary Veterans Transportation and Community Living grants must be submitted by September 16, 2011. The proposals must be submitted electronically through the GRANTS.GOV Web site. Applicants who have not already done so should initiate the process of registering on the GRANTS.GOV site immediately to ensure completion of registration before the deadline for submission.

ADDRESSES: Proposals must be submitted electronically at *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: For general program information, as well as proposal-specific questions, please send an e-mail to *VeteransTransportation@dot.gov* or contact Doug Birnie, (202) 366–1666, or, Pamela Brown, (202) 493–2503. A TDD is available at 1–800–877–8339 (TDD/FIRS).

SUPPLEMENTARY INFORMATION:

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I. Funding Opportunity Description

A. Authority

The program is authorized under 49 USC Section 5309(b) as amended by Section 3011 of SAFETEA–LU:

''The Secretary may make grants under this section to assist State and local governmental authorities in financing capital projects * * * to replace, rehabilitate, and purchase buses and related equipment and to construct bus-related facilities, including programs of bus and bus-related projects for assistance to subrecipients that are public agencies, private companies engaged in public transportation, or private non-profit organizations.''

Eligible capital projects, as defined in 49 U.S.C. 5302(a)(1) include:

''* * * acquiring and constructing equipment or facilities for use in public transportation'' (including design and engineering), ''transit-related intelligent transportation systems'', and ''the introduction of new technology through innovations and improved products, into public transportation.''

B. Background

President Obama has made the care and support of military families a top national security policy priority. In a January, 2011 report, ''Strengthening Our Military Families: Meeting America's Commitment,'' the White House noted the importance of ''harnessing resources and expertise across the Federal Government [to improve] the quality of military family life [and help] communities more effectively support military families.''

Reliable mobility has direct and substantial impacts on many of the priorities presented in the report—such as promoting housing security among veterans, developing career and educational opportunities, and reducing barriers to employment. To fulfill the President's objectives on behalf of veterans, active duty service persons and their families, members of the Federal Interagency Coordinating Council on Access and Mobility came together with Veteran and Military Service Organizations (VSO/MSO) around the country to discuss transportation challenges. They agreed that:

1. When it comes to transportation, more effective and consistent coordination is needed among Federal, state, and community-based programs that already deliver or sponsor services to veterans and people with disabilities where they live; and,

2. Enhancing veterans' awareness of, and access to, transportation choices in their communities is integral to successfully reintegrating these men and women and their families.

In order to achieve these outcomes, several CCAM members—the Departments of Transportation, Veterans Affairs, Labor, and Health and Human Services—have joined with the Department of Defense to launch the Veterans Transportation and Community Living Initiative (VTCLI). As part of this initiative, the FTA will make available $30 million in unallocated Section 5309 Bus and Bus Facilities funds under this notice. With these funds, FTA will help communities address transportation needs of veterans, military families, people with disabilities and other transportation disadvantaged populations acquire technologies to implement One-Call/One Click Transportation Resource Centers (One-Call/One-Click Centers). These local One-Call/One-Click Centers, supported with FTA funding, will be complemented by training, technical assistance, outreach and social media technology investments provided by FTA and other participating agencies in the VTCLI.

C. Program Purpose

Building on the success of the FTA Office of United We Ride (UWR) ''One Call Center'' model, the Veterans Transportation and Community Living initiative will help communities build or expand local One-Call/One-Click Centers to bring together transportation services available to the general public with those available to customers of human services programs, and especially services for veterans and military families. Coordinating transportation services will promote improved access to community services and employment, and will advance the integration of those with disabilities into their communities.

Based on its mission to care for America's veterans, the Department of Veterans Affairs (VA) provides transportation only to and from VA medical facilities. As our existing veterans age and as veterans and injured service members returning from Iraq and Afghanistan transition from active duty into the VA system need reliable transportation options and services beyond those the VA is able to provide in order to maintain or regain an active community life.

In many communities, transportation resources already exist for those who are not able to drive themselves. Yet all too often, members of the veterans and military communities are unable to participate fully in their communities because they aren't aware of the existing transportation resources, don't know how to access them, or don't participate in the transportation planning and the resource allocation processes.

The one-call model requires coordination efforts that ensure local and regional transportation planners, providers, and Federal agencies work together more effectively to help veterans, their families and other community members tap into any and all mobility options that meet their needs—whether it's picking up a ride from a fellow college student to get to campus or arranging for a wheelchair-accessible van to get to a physical therapy appointment. Veterans and military families represent a population with needs that have not traditionally been fully considered or addressed by transportation coordinators and providers around the nation. Therefore, improving transportation options for America's veterans, service members and their families will help to integrate these valued members of our society. The VTCLI will award a funding, technical assistance and training package to communities whose proposals:

1. Identify transportation and mobility needs of their veterans and military community;

2. Propose to create or increase access to a community One-Call/One-Click Transportation Resource Center or expand existing community One-Call/One-Click Center to include transportation resources and address identified needs of veterans and military families;

3. Commit to increase the use of mobility management techniques within the VA system; and,

4. Commit to use innovative or technology-based approaches to increase involvement in locally coordinated transportation planning to address additional mobility needs of veterans and members of the military community.

II. FTA and Other Partnership Award Information

A. FTA Award Information

Federal transit funds are available to State or local governmental authorities as recipients and other public, private and non-profit organizations as subrecipients at up to 80% of the project cost, requiring a 20% local match. FTA will award a maximum of $2 million for any single grant, but will award as many grants as possible with the available $30 million based on the number and size of funding requests. The evaluation team will consider geographical diversity as well as distribution amongst large urban, small urban and rural areas in

making funding recommendations. The FTA Administrator will determine the final selection and amount of funding for each project. Selected projects will be announced in November 2011. FTA will publish the list of all selected projects and funding levels in the **Federal Register**.

B. Other Partnership Award Information

Upon selection to receive FTA Section 5309 funds, communities will also receive a combination of technical assistance and training, as listed below:

1. The Department of Veterans Affairs will support VA hospitals and medical facilities in or nearest the selected communities by providing mobility management training assistance and/or staff positions.

2. DOL's Office of Disability Employment Policy will fund online, collaborative workspaces for communities to use in planning and implementing their one-call center and further transportation coordination efforts.

3. The FTA Office of United We Ride, through its transportation technical assistance centers, will provide technical assistance to each awardee to assist in building or expanding a One-Call/One-Click Center to address customer transportation connections and issues.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants for Section 5309 funds under this program are Direct Recipients under FTA's Section 5307 Urbanized Area Formula program, local governments, States, and Indian Tribes. States may submit consolidated proposals for projects in a given State.

Proposals may contain projects to be implemented by the recipient or its subrecipients. Eligible subrecipients of FTA funding include: Public agencies, private non-profit organizations, including VSOs and MSOs, and private providers engaged in public transportation.

B. Eligible Expenses

SAFETEA–LU grants authority to the Secretary of Transportation to make grants to assist State and local governmental authorities in financing capital projects to improve public transportation. Eligible capital projects, defined in 49 U.S.C. 5302(a)(1) includes ''acquiring and constructing equipment or facilities for use in public transportation'' (including design and engineering), ''transit-related intelligent transportation systems,'' and ''the introduction of new technology through innovations and improved products, into public transportation.''

Projects eligible for funding under the Veterans Transportation and Community Living Initiative must focus on the implementation of One-Call/One-Click Centers and related transportation coordination. Eligible expenses under the Initiative include capital expenses related to the establishment of a One-Call/One-Click Center. These costs can include: hardware purchases (computers, servers); in-vehicle technology (automatic vehicle location systems, communication devices, mobile data terminals); software (scheduling & dispatching, communications, billing, consumer mobile applications); facility-related capital (purchase, lease, alteration); design and engineering, including consultant costs; and project administration (not to exceed 10% of costs).

Note: Unlike other Section 5309 competitive programs, vehicle acquisition and preventive maintenance costs are not eligible under this grant opportunity. Additionally, mobility management transportation coordination expenses to support the operating expenses of Centers are not an eligible capital cost under the Section 5309 program, but are eligible under other FTA programs.

C. Cost Sharing

Costs will be shared at the following ratio: 80% FTA/20% local contribution, unless the grantee requests a lower Federal share. FTA will not approve deferred local share under this program.

IV. Proposal Submission Information

A. Proposal Process

An applicant may submit a project whereby funding for capital elements would be expended during the design, development, procurement and implementation stages of the One Call Center. The project would, however, need to be ready to actively initiate these stages upon receiving a grant and would need to complete the project in a reasonable period, in order to provide the new or enhanced coordinated services as soon as practicable.

Project proposals must be submitted electronically through GRANTS.GOV. Complete proposals for the Veterans Transportation and Community Living Initiative must be submitted electronically through the GRANTS.GOV Web site no later than September 16, 2011.

Applicants are encouraged to begin the process of registration on the GRANTS.GOV site well in advance of the submission deadline. Registration is a multi-step process, which may take several weeks to complete before a proposal can be submitted. In addition to the mandatory SF424 Form that will be downloaded from GRANTS.GOV, FTA requires applicants to complete the Supplemental FTA Form (Applicant and Proposal Profile) for this Initiative. The supplemental form provides guidance and a consistent format for applicants to respond to the criteria outlined in this Notice and described in detail on the FTA Web site at the program Web site: *http://www.fta.dot.gov/veterans.*

Applicants must use this Supplemental Form and attach it to their submission in GRANTS.GOV to successfully complete the application process. Within 24–48 hours after submitting an electronic proposal, the applicant should receive an e-mail validation message from GRANTS.GOV. The validation will state whether GRANTS.GOV found any issues with the submitted application. As an additional notification, FTA's system will notify the applicant if there are any problems with the submitted Supplemental FTA Form. If making a resubmission for any reason, include all original attachments regardless of which attachments were updated. Complete instructions on the proposal process can be found at *http://www.fta.dot.gov/veterans.*

Important: FTA urges applicants to submit their proposal at least 72 hours prior to the due date to allow time to receive the validation message and to correct any problems that may have caused a rejection notification. Submissions received after September 16, 2011 will not be accepted.

B. Proposal Content

1. Proposal Information

This provides basic sponsor identifying information, including:

a. Applicant's name and FTA recipient ID number.

b. Contact Information for notification of project selection (including contact name, title, address, congressional district, e-mail, fax and phone number).

c. Description of services provided by the agency including areas served.

d. Eligibility information.

e. A description of the agency's technical, legal and financial capacity to implement the proposed project. Some of this information is included in Standard Form 424 when applying through GRANTS.GOV.

f. For the Veterans Transportation and Community Living Initiative please select ''Other'' for project type and indicate ''VTCLI One-Call/One-Click Transportation Resource Center Project'' in the text box.

g. Applicants may ignore the ''fleet age'' section.

2. Proposal Information

Every proposal must:

a. Describe concisely, but completely, the project scope to be funded. As FTA may select to only partially fund some project proposals (see below), the scope should be ''scalable'' with specific components of independent utility clearly identified.

b. Address each of the evaluation criteria separately, demonstrating how the project responds to each criterion.

c. Provide a basic line-item budget for the total project, describing the various key components of the project and estimating their cost.

NOTE: Project proposals may be at different stages of development. Some projects may be oriented to design and development of a new One Call/One Click Center while other proposers may be seeking these capital funds to upgrade or expand the scope of services already offered in another context. Proposals may use estimated costs for implementation if exact costs are unknown prior to development. Scalable guidelines for cost estimation of one-call technology are available on the FTA Web site.

d. Provide the Federal amount requested and document the matching funds, including amount and source of the match, while demonstrating strong local or private sector financial participation in the project.

e. Provide an estimated project timeline and major milestones.

f. *Congressional Districts (Place of Performance)*—Enter the congressional district(s) in which the project will be implemented.

V. Proposal Review, Selection and Notification

A. Project Evaluation Criteria

As an initiative of the CCAM, the VTCLI should not create narrowly focused programs or services. Applicants must identify how the proposal will enhance and/or increase transportation or mobility benefits to other community members, particularly, transportation disadvantaged populations.

Projects will be evaluated by an interagency review team based on the proposals submitted according to: (1) Planning and prioritization at the local/regional level; (2) readiness; (3) technical, legal and financial capacity; and (4) demonstration of need.

Each applicant is encouraged to demonstrate the responsiveness of a project to all of the selection criteria with the most relevant information that the applicant can provide, regardless of whether such information has been specifically requested, or identified, in this notice.

The review panel will assess the extent to which a project addresses the following criteria.

1. Planning and Prioritization at the Local/Regional Level

a. Demonstrate that the project can be included in the financially-constrained Transportation Improvement Program (TIP)/Statewide Transportation Improvement Program (STIP). If the project is selected, the project must be in TIP before grant can be awarded.

b. Local support is demonstrated by availability of local match and letters of support for project.

c. Applicants are required to form partnerships with the following types of organizations or service providers:

i. Transportation organizations, which include, but are not limited to: transit agencies, brokers, taxis, volunteer driver services; planning agencies, such as, MPO, and local coordinated plan's public transit/human services lead agency;

ii. Veteran/Military Governmental Service Providers, which include, but are not limited to: VA medical center networks, DoD recovery care programs, Military bases & hospitals, and other medical providers;

iii. Veteran/Military Service which include, but are not limited to: Veterans of Foreign Wars, Disabled American Veterans; and Military Family Organizations, which include, but are not limited to: Wounded Warrior Project, Blue Star Families, National Military Family Association; and,

iv. Existing One-Call/One-Click Service or Transportation Centers in the community, if any. As the goal of United We Ride is to improve coordination and eliminate silos of operation, if the new One-Call/One-Click Transportation Resource Center will stand-alone as its own entity, the proposer must indicate that there are either no existing One-Call/One-Click Service or Transportation Centers in the community OR provide a strong justification why a separate One-Call/One-Click Transportation Resource Center will produce the best outcomes for the community and document the partnerships through letters of support.

v. Applicants must also indicate how the partners were involved in the proposal development and how they will participate in its implementation. Proposals without proof of partnerships with all four of the above-listed organizations will not be considered.

d. Applicants should also consider and develop partnerships with additional groups beyond those required above. Partnerships with employment, disability, or aging groups will increase a proposal's chance of selection.

Applicants should consider including other groups in the proposal process, including:

i. Employers, workforce development and training agencies, etc.

ii. Independent living/aging organizations (e.g., Centers for Independent Living, Senior Centers, Aging and Disability Resource Centers)

iii. Local political officials

e. Applicants may also provide documentation and/or descriptions of any additional partners who participated in the planning and development of their proposal, if applicable.

f. Communities must include a letter of endorsement from the nearest VA Medical Center Director in order for the VA Medical healthcare network to receive supplemental VA-sponsored technical assistance and support.

2. Readiness Justification

Address all of the following points in the Project Readiness Justification:

a. Indicate the timeframe for implementation of the project and obligation of funds. If the timeline for either is expected to take more than 18 months, please mark ''18 Months'' and indicate the expected timeline in the ''Project Readiness Justification'' section.

b. Please indicate the short-term, mid-range and long-term goals for the project.

c. Indicate prior experience or involvement in regional coordinated transportation and human services planning, including indicating:

i. When was the most recent coordinated public transit-human services transportation plan (''coordinated plan'') developed?

ii. Have the applicant and any proposed subrecipients previously been involved in developing their community's coordinated plan?

d. Indicate prior work on veterans/military family mobility issues, including addressing the following questions:

i. Has the community taken steps prior to the VTCLI to address the mobility needs of local veterans and military families?

ii. Have veterans/military family needs previously been addressed in the coordinated plan?

iii. If not, is there a commitment to develop a component to address current veterans/military needs in the current or new coordinated plan or an alternative mechanism if there is no coordinated plan in the community?

e. Indicate prior work on One-Call/One-Click Centers, including addressing the following questions:

i. Does the community have an existing transportation One-Call/One-Click Center?

ii. If not, has the community identified the need for a One-Call/One-Click Center in its local coordinated public transit/human services transportation plan?

iii. If so, has the existing One-Call/One-Click Center employed any veterans or military family members?

iv. Have you conducted any outreach or programs for staffing the One-Call/One-Click Center?

v. Does the community have any capacity of using a shared-space to house the One-Call/One-Click Center?

3. Technical, Legal & Financial Capacity

Address all of the following points in the justification:

a. *Technical capacity: Demonstrated commitment to coordination*—Applicants who are willing to undertake further coordination tasks under their VTCLI proposals will have an increased chance of selection. Indicators of this commitment include:

i. Proposal elements to address the mobility and transportation challenges of veterans and military families through additional coordinated transportation strategies, such as mobility management, community transportation gap assessment, etc.

ii. Applicants should identify local technical assistance needs in order to effectively implement One-Call/One-Click Centers and further address veterans and/or military families' mobility needs in the coordinated public transit/human services transportation plan.

iii. Applicant proposes to update SAFETEA–LU required Coordination Plan as part of VTCLI implementation.

b. *Legal capacity:* Applicants must indicate that there are no legal issues which would prevent acceptance of FTA funds, their eligibility and authority to apply.

c. *Financial capacity: Leveraging other funds*—Proposals that leverage additional FTA, other federal, state, or local funds beyond the required local match will be scored favorably. Indicate the following:

i. Local match—As a Section 5309 grant program, the VTCLI will require a 20% local match. This match can be cash or in-kind;

ii. Additional FTA program funding identified—Mobility management, vehicle purchases, and vehicle modifications will not be eligible expenses under the VTCLI. Applicants in communities that have a need for accessible vehicles or mobility management resources are encouraged to update their coordinated plan and identify funds from other FTA grant programs, such as Section 5310, 5316 or 5317, to meet these needs;

iii. Additional Federal resources Aging and Disability Resource Center/Area Agencies on Aging (ADRC/AAA), One-Stop employment, VA, DoD, HHS funds, Vocational Rehabilitation/RSA) to be leveraged;

iv. Other non-Federal funding above and beyond local match (State funding, private donations, etc.); and

v. Identification of funding and plan for long-term sustainability, including the operation of the One Call Center.

4. Demonstration of Need

Applicants should leave the ''Age of Asset'' field blank and address the following points indicating the need for VTCLI funds in the justification field. State the size of the local veteran and military population and identify transportation and mobility needs of these populations. When available, provide quantitative support; otherwise narrative description of challenges and needs will suffice.

a. Questions to be addressed include:

i How large are the veterans/military communities in the project area to be served by the project?

ii. What are the specific transportation barriers and other challenges facing veterans and military families in the project's area?

iii. What portion of the veterans/military population in the project's area are people with disabilities?

iv. Where are the nearest veterans and military support services that support the project's area?

v. Identify the community's existing public, non-profit and private transportation providers.

vi. Demonstrate how the One-Call/One-Click Center will address the mobility needs of the above identified populations.

vii. Describe how veterans, especially disabled veterans, will be engaged in the development and operation of the project.

B. Submission Dates and Time

All proposals must be submitted electronically via GRANTS.GOV no later than September 16, 2011.

C. Funding Restrictions

Proposals must be submitted by FTA recipients eligible to receive FTA Section 5309 funds. Due to funding limitations, applicants that are selected for funding may receive less than the amount originally requested.

D. Proposal Selection and Notification Process

Proposals will first be screened by the FTA staff members. Following this initial review, eligible proposals will be submitted for a national review process and coordinated with representatives of VA, DoD, DOL and HHS. Proposals will be screened and ranked by an interagency review panel representing the above members of the Veterans Transportation and Community Living Initiative. Final decisions and allocation of FTA funds will be made by the FTA Administrator. Selected projects will be announced in November 2011.

VI. Award Administration

A. Award Notices

FTA will announce project selections in a **Federal Register** Notice and will post the **Federal Register** Notices on the Web. FTA regional offices will contact successful applicants. After receipt of a complete application, FTA will award grants for the selected projects to the proposer through the FTA Transportation Electronic Award Management System (TEAM). These grants will be administered and managed by the FTA regional offices in accordance with the Federal requirements of the Section 5309 bus program. At the time the project selections are announced, FTA will extend pre-award authority for the selected projects. There is no blanket pre-award authority for these projects prior to announcement.

B. Administrative and National Policy Requirements

1. *Grant Requirements.* If selected, applicants will apply for a grant through TEAM and adhere to the customary FTA grant requirements of the Section 5309 Bus and Bus Facilities program, including those of FTA C 9300.1A Circular and C 5010.1C and Section 5333(b) labor protections. Discretionary grants greater than $500,000 will go through Congressional Notification and Release Process. Technical assistance regarding these requirements is available from each FTA regional office.

2. *Planning.* Applicants are encouraged to notify the appropriate State Departments of Transportation and MPO in areas likely to be served by the project funds made available under this program. Incorporation of funded projects in the long range plans and transportation improvement programs of States and metropolitan areas is required of all funded projects.

3. *Standard Assurances.* The Applicant assures that it will comply with all applicable Federal statutes,

regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any project supported by the FTA grant. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant agreement issued for its project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and that modifications may affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise. The Applicant must submit the Certifications and Assurances before receiving a grant if it does not have current Certifications on file.

C. Reporting

Post-award reporting requirements include submission of Financial Status Reports and Milestone reports in TEAM on a quarterly basis for all projects. Documentation is required for payment. In addition, grants which include innovative technologies may be required to report on the performance of these technologies. Additional reporting may be required specific to the VTCLI and recipients may be expected to participate in events or peer networks related to the Initiative.

VIII. Agency Contacts

For general program information, as well as proposal-specific questions, please send an e-mail to *VeteransTransportation@dot.gov* or contact Doug Birnie, (202) 366–1666, or, Pamela Brown, (202) 493–2503. A TDD is available at 1–800–877–8339 (TDD/FIRS).

Applicants may also visit *fta.dot.gov/veterans* for frequently asked questions and answers.

Issued in Washington, DC, this 21st day of July 2011.

Peter Rogoff,

Administrator.

APPENDIX—FTA REGIONAL AND METROPOLITAN OFFICES

Mary Beth Mello,
Regional Administrator,
Region 1–Boston,
Kendall Square,
55 Broadway, Suite 920,
Cambridge, MA 02142–1093,
Tel. 617–494–2055.
States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Letitia Thompson,
Regional Administrator,
Region 3–Philadelphia,
1760 Market Street, Suite 500,
Philadelphia, PA 19103–4124,
Tel. 215–656–7100.
States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia.

Philadelphia Metropolitan Office,
Region 3–Philadelphia,
1760 Market Street, Suite 500,
Philadelphia, PA 19103–4124,
Tel. 215–656–7070.

Washington, DC Metropolitan Office,
1990 K Street, NW.,
Room 510,
Washington, DC 20006,
Tel. 202–219–3562.

Marisol Simon,
Regional Administrator,
Region 5–Chicago,
200 West Adams Street, Suite 320,
Chicago, IL 60606,
Tel. 312–353–2789.
States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Chicago Metropolitan Office,
Region 5–Chicago,
200 West Adams Street, Suite 320,
Chicago, IL 60606,
Tel. 312–353–2789.

Brigid Hynes-Cherin,
Regional Administrator,
Region 2–New York,
One Bowling Green, Room 429,
New York, NY 10004–1415,
Tel. 212–668–2170.

States served: New Jersey, New York.

New York Metropolitan Office,
Region 2–New York,
One Bowling Green, Room 428,
New York, NY 10004–1415,
Tel. 212–668–2202.

Yvette Taylor,
Regional Administrator,
Region 4–Atlanta,
230 Peachtree Street, NW., Suite 800,
Atlanta, GA 30303,
Tel. 404–865–5600.
States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands.

Robert C. Patrick,
Regional Administrator,
Region 6–Ft. Worth,
819 Taylor Street, Room 8A36,
Ft. Worth, TX 76102,
Tel. 817–978–0550.
States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas.

APPENDIX—FTA REGIONAL AND METROPOLITAN OFFICES—Continued

Mokhtee Ahmad,
Regional Administrator,
Region 7–Kansas City, MO,
901 Locust Street, Room 404,
Kansas City, MO 64106,
Tel. 816–329–3920.
States served: Iowa, Kansas, Missouri, and Nebraska.

Leslie T. Rogers,
Regional Administrator,
Region 9–San Francisco,
201 Mission Street, Room 1650,
San Francisco, CA 94105–1926,
Tel. 415–744–3133.

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands
Los Angeles Metropolitan Office,
Region 9–Los Angeles,
888 S. Figueroa Street, Suite 1850,
Los Angeles, CA 90017–1850,
Tel. 213–202–3952.

Terry Rosapep,
Regional Administrator,
Region 8–Denver,
12300 West Dakota Ave., Suite 310,
Lakewood, CO 80228–2583,
Tel. 720–963–3300.
States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.
Rick Krochalis,
Regional Administrator,
Region 10–Seattle,
Jackson Federal Building,
915 Second Avenue, Suite 3142,
Seattle, WA 98174–1002,
Tel. 206–220–7954.
States served: Alaska, Idaho, Oregon, and Washington.

[FR Doc. 2011–18928 Filed 7–26–11; 8:45 am]
BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0177]

Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by Flooding

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice; Issuance of Advisory Bulletin.

SUMMARY: PHMSA is issuing this advisory bulletin to all owners and operators of gas and hazardous liquid pipelines to communicate the potential for damage to pipeline facilities caused by severe flooding. This advisory includes actions that operators should consider taking to ensure the integrity of pipelines in case of flooding.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety home page at: *http://ops.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Operators of pipelines subject to regulation by PHMSA should contact the appropriate PHMSA Regional Office. The PHMSA Regional Offices and their contact information are as follows:

- Eastern Region: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, call 609–989–2171.
- Southern Region: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee, call 404–832–1140.
- Central Region: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin, call 816–329–3800.
- Southwest Region: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, call 713–272–2859.
- Western Region: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, call 720–963–3160.

Intrastate pipeline operators should contact the appropriate State pipeline safety authority. A list of State pipeline safety authorities is provided at: *http://www.napsr.org/managers/napsr_state_program_managers2.htm.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 192.613(a) of the Pipeline Safety Regulations (49 CFR parts 190–199) states that ''[e]ach operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.'' Section 192.613(b) further states that ''[i]f a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with § 192.619 (a) and (b).''

Likewise, § 195.401(b)(1) of the Pipeline Safety Regulations states that ''[w]henever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.'' Section 195.401(b)(2) further states that ''[w]hen an operator discovers a condition on a pipeline covered under [the integrity management requirements in] § 195.452, the operator must correct the condition as prescribed in § 195.452(h).''

Severe flooding is the kind of unusual operating condition that can adversely affect the safe operation of a pipeline and require corrective action under §§ 192.613(a) and 195.401(b). In October 1994, major flooding along the San Jacinto River near Houston, Texas, resulted in eight pipeline failures and compromised the integrity of several other pipelines. Similar flooding has occurred along the Yellowstone River in the past few months. While the cause of the accident is still under investigation, ExxonMobil Pipeline Company experienced a pipeline failure near

Laurel, Montana, on July 1, 2011, resulting in the release of crude oil into the Yellowstone River.

Severe flooding and other conditions that can adversely affect the safe operation of a pipeline may also trigger the reporting requirements in Part 191 and Part 195 or applicable state reporting requirements. PHMSA requires operators to submit telephonic and written reports when natural gas or hazardous liquid releases occur that exceed certain threshold requirements. PHMSA also requires operators to submit reports of safety-related conditions involving potentially unsafe conditions on natural gas and hazardous liquid pipelines (§§ 191.23 and 195.55).

Advisory Bulletin (ADB–11–04)

To: Owners and operators of gas and hazardous liquid pipeline systems.

Subject: Potential for damage to pipeline facilities caused by severe flooding.

Advisory: Severe flooding can adversely affect the safe operation of a pipeline. Operators need to direct their resources in a manner that will enable them to determine the potential effects of flooding on their pipeline systems. Operators are urged to take the following actions to prevent and mitigate damage to pipeline facilities and ensure public and environmental safety in areas affected by flooding:

1. Evaluate the accessibility of pipeline facilities that may be in jeopardy, such as valve settings, which are needed to isolate water crossings or other sections of a pipeline.

2. Extend regulator vents and relief stacks above the level of anticipated flooding, as appropriate.

3. Coordinate with emergency and spill responders on pipeline location and condition. Provide maps and other relevant information to such responders.

4. Coordinate with other pipeline operators in the flood area and establish emergency response centers to act as a liaison for pipeline problems and solutions.

5. Deploy personnel so that they will be in position to take emergency actions, such as shut down, isolation, or containment.

6. Determine if facilities that are normally above ground (e.g., valves, regulators, relief sets, etc.) have become submerged and are in danger of being struck by vessels or debris; if possible, such facilities should be marked with an appropriate buoy with Coast Guard approval.

7. Perform frequent patrols, including appropriate overflights, to evaluate right-of-way conditions at water crossings during flooding and after waters subside. Determine if flooding has exposed or undermined pipelines as a result of new river channels cut by the flooding or by erosion or scouring.

8. Perform surveys to determine the depth of cover over pipelines and the condition of any exposed pipelines, such as those crossing scour holes. Where appropriate, surveys of underwater pipe should include the use of visual inspection by divers or instrumented detection. Information gathered by these surveys should be shared with affected landowners. Agricultural agencies may help to inform farmers of the potential hazard from reduced cover over pipelines.

9. Ensure that line markers are still in place or replaced in a timely manner. Notify contractors, highway departments, and others involved in post-flood restoration activities of the presence of pipelines and the risks posed by reduced cover.

If a pipeline has suffered damage, is shut-in, or is being operated at a reduced pressure as a precautionary measure as a result of flooding, the operator should advise the appropriate PHMSA Regional Office or State pipeline safety authority before returning the line to service, increasing its operating pressure, or otherwise changing its operating status. PHMSA or the State will review all available information and advise the operator, on a case-by-case basis, whether and to what extent a line can safely be returned to full service.

Issued in Washington, DC, on July 22, 2011.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2011–19029 Filed 7–26–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1071]

Stewartstown Railroad Company; Adverse Abandonment; In York County, PA

On July 7, 2011, the Estate of George M. Hart (Estate), filed an application under 49 U.S.C. 10903, requesting that the Surface Transportation Board (Board) authorize the third-party or adverse abandonment of an approximately 7.4-mile line of railroad (Line) in York County, Pa., extending from milepost 0.0 at New Freedom, Pa., to milepost 7.4 at Stewartstown, Pa. The Line is owned by the Stewartstown Railroad Company (SRC), and traverses United States Postal Service Zip Codes 17349, 17361, and 17363. There are 2 rail stations on the Line. The application is available on the Board's Web site at *http://www.stb.dot.gov,* or a copy can be secured from applicant's counsel, whose name and address appear below.

The Estate asserts that it seeks abandonment so that it may facilitate the sale of the Line through the Board's Offers of Financial Assistance (OFA) procedures, or, barring that, foreclose upon SRC's assets to satisfy SRC's debt obligations, subject to any appropriate processes of state law. To support its abandonment application, the Estate asserts that the Line is dilapidated, cannot safely handle train operations in its current state, and continues to deteriorate due to a lack of funds needed for rail line maintenance. Further, the Estate maintains that there have been no freight operations over the Line for nearly 20 years, that there is no foreseeable need for rail service, and that there are no ''significant users'' of the Line as defined in 49 CFR 1152.2(l).

In a decision served in this proceeding on March 10, 2011 (March decision), the Estate was granted exemptions from several statutory provisions as well as waivers of certain Board regulations at 49 CFR part 1152 that were not relevant to its adverse abandonment application or that sought information not available to it. Specifically, the Estate was granted waivers of and exemptions from the notice requirements at 49 CFR 1152.20(a)(3), 49 U.S.C. 10903(a)(3)(B), 49 CFR 1152.20(a)(2)(i), 49 U.S.C. 10903(a)(3)(D) (except that the Estate must mail a copy of its notice of intent to former shippers of the Line), 49 CFR 1152.20(a)(2)(xii), and 49 CFR 1152.21; waivers of and exemptions from the application requirements of 49 CFR 1152.10–14, 49 CFR 1152.22(a)(5), 49 U.S.C. 10903(c), 49 CFR 1152.22(c), 49 CFR 1152.22(d), 49 CFR 1152.24(e)(1), and 49 CFR 1152.29(e)(2); partial waiver of and exemption from the offer of financial assistance (OFA) procedures at 49 CFR 1152.27 and 49 U.S.C. 10904; and waiver of portions of the **Federal Register** notice language requirements at 49 CFR 1152.22(i).

According to the Estate, the Line does not contain Federally granted rights-of-way. Any documentation in the Estate's possession will be made available promptly to those requesting it. The Estate asserts that it filed its entire case for adverse abandonment with its application.

The interests of affected railroad employees, if there are any, will be protected by the conditions set forth in

Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

Any interested person may file written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by August 22, 2011. Persons who may oppose the proposed adverse abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments. Persons opposing the proposed adverse abandonment who wish to participate actively and fully in the process should file a protest, observing the filing, service, and content requirements in 49 CFR 1152.25. Any OFA under 49 CFR 1152.27 to acquire the lines for continued rail service must be filed by no later than 10 days after service of a decision granting the application.[1] In accordance with the Board's March decision, the Board will not consider OFAs to subsidize continued rail service. Because this is an adverse abandonment proceeding, public use requests are not appropriate and will not be entertained. The Estate's reply is due by September 6, 2011.

The Board has not yet had occasion to decide whether the issuance of a certificate of interim trail use in an adverse abandonment would be consistent with the grant of such an application. Accordingly, any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by August 22, 2011, and should address that issue. Each trail use request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1071 and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; (2) Keith G. O'Brien (representing the Estate), Baker & Miller PLLC, 2401 Pennsylvania Avenue, NW., Ste. 300, Washington, DC 20037; and (3) Alex E. Snyder (representing SRC), Barley Snyder LLC, 100 East Market Street, P.O. Box 15012, York, PA 17405–7012.

Filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the ''e-filing'' link. Any person submitting a filing in the traditional paper format should send the original and 10 copies of the filing to the Board with a certificate of service. Except as otherwise set forth in 49 CFR part 1152, every document filed with the Board must be served on all parties to this adverse abandonment proceeding. 49 CFR 1104.12(a).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by the Board's Office of Environmental Analysis (OEA) will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact OEA by phone at the number listed below. EAs in these abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238 or refer to the full abandonment/discontinuance regulations at 49 CFR pt. 1152. Questions concerning environmental issues may be directed to OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: July 22, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–18961 Filed 7–26–11; 8:45 am]

BILLING CODE 4915–01–P

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, the FDIC, and the OTS (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On June 17, 2011, OMB approved the agencies' emergency clearance requests to implement assessment-related reporting revisions to the Consolidated Reports of Condition and Income (Call Report) for banks, the Thrift Financial Report (TFR) for savings associations, the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002), and the Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S), all of which currently are approved collections of information, effective as of the June 30, 2011, report date. Because the assessment-related reporting revisions will need to remain in effect beyond the limited approval period associated with an emergency clearance request, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), are requesting public comment on a proposal to extend, with revision, the collections of information identified above. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to

which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before September 26, 2011.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies. However, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), which was signed into law on July 21, 2010,[1] abolishes the OTS, provides for its integration with the OCC effective as of July 21, 2011, and transfers the OTS's functions to the OCC, the Board, and the FDIC. Hence, comments submitted in response to this proposal on or after July 21, 2011, should be addressed to any or all of the agencies other than the OTS.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, *Attention*: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income (FFIEC 031 and 041)'' or ''Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002) and Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank (FFIEC 002S),'' by any of the following methods:

- *Agency Web Site*: *http://www.federalreserve.gov*. Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail*: *regs.comments@federalreserve.gov*. Include reporting form number in the subject line of the message.
- *FAX*: (202) 452–3819 or (202) 452–3102.
- *Mail*: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *Agency Web Site*: *http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail*: *comments@FDIC.gov*. Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail*: Gary A. Kuiper, (202) 898–3877, Counsel, *Attn*: Comments, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery*: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

OTS: You may submit comments, identified by ''1550–0023 (*TFR*: Schedule DI Revisions),'' by any of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail address: infocollection.comments@ots.treas.gov*. Please include ''1550–0023 (TFR: Schedule DI Revisions)'' in the subject line of the message and include your name and telephone number in the message.
- *Mail*: Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, *Attention*: ''1550–0023 (TFR: Schedule DI Revisions).''
- *Hand Delivery/Courier*: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, *Attention*: ''1550–0023 (TFR: Schedule DI Revisions).''

Instructions: All submissions received must include the agency name and OMB Control Number for this information collection.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of the Call Report, FFIEC 002, and FFIEC 002S forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*). Copies of the TFR can be obtained from the OTS's Web site (*http://www.ots.treas.gov/main.cfm?catNumber=2&catParent=0*).

OCC: Mary Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Cynthia Ayouch, Acting Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Gary A. Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Ira L. Mills, OTS Clearance Officer, at *Ira.Mills@ots.treas.gov,* (202) 906–6531, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

[1] Public Law 111–203, 124 Stat. 1376 (July 21, 2010).

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, the TFR, the FFIEC 002, and the FFIEC 002S, which currently are approved collections of information.[2]

1. *Report Title*: Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,427 national banks.

Estimated Time per Response: 53.38 burden hours.

Estimated Total Annual Burden: 304,693 burden hours.

Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 826 state member banks.

Estimated Time per Response: 55.47 burden hours.

Estimated Total Annual Burden: 183,273 burden hours.

FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 4,687 insured state nonmember banks.

Estimated Time per Response: 40.47 burden hours.

Estimated Total Annual Burden: 758,732 burden hours.

The estimated times per response shown above for the Call Report represent the estimated ongoing reporting burden associated with the preparation of this report after institutions make the necessary recordkeeping and systems changes to enable them to generate the data required to be reported in the assessment-related data items that are the subject of this proposal. The estimated time per response is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (e.g., size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). These factors determine the specific Call Report data items in which an individual institution will have data it must report. The average ongoing reporting burden for the Call Report is estimated to range from 17 to 700 hours per quarter, depending on an individual institution's circumstances.

2. *Report Title*: Thrift Financial Report (TFR).

Form Number: OTS 1313 (for savings associations).

Frequency of Response: Quarterly; Annually.

Affected Public: Business or other for-profit.

OTS:

OMB Number: 1550–0023.

Estimated Number of Respondents: 724 savings associations.

Estimated Time per Response: 60.3 hours average for quarterly schedules and 1.6 hours average for schedules required only annually plus recordkeeping of an average of one hour per quarter.

Estimated Total Annual Burden: 182,166 burden hours.

3. *Report Titles*: Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks; Report of Assets and Liabilities of a Non-U.S. Branch that is Managed or Controlled by a U.S. Branch or Agency of a Foreign (Non-U.S.) Bank

Form Numbers: FFIEC 002; FFIEC 002S

Board:

OMB Number: 7100–0032

Frequency of Response: Quarterly

Affected Public: U.S. branches and agencies of foreign banks

Estimated Number of Respondents: FFIEC 002–236; FFIEC 002S–57

Estimated Time per Response: FFIEC 002–25.43 hours; FFIEC 002S–6 hours

Estimated Total Annual Burden: FFIEC 002–24,003 hours; FFIEC 002S–1,368 hours

As previously stated with respect to the Call Report, the burden estimates shown above are for the quarterly filings of the Call Report, the TFR, and the FFIEC 002/002S reports. The initial burden arising from implementing recordkeeping and systems changes to enable insured depository institutions to report the applicable assessment-related data items that have been added to these regulatory reports will vary significantly. For the vast majority of the nearly 7,600 insured depository institutions, including the smallest institutions, this initial burden will be nominal because only three of the new data items will be relevant to them and the amounts to be reported can be carried over from amounts reported elsewhere in the report.

At the other end of the spectrum, many of the new data items are applicable only to about 110 large and highly complex institutions (as defined in the FDIC's assessment regulations). To achieve consistency in reporting across this group of institutions, the instructions for these new data items, which are drawn directly from definitions contained in the FDIC's assessment regulations (as amended in February 2011), are prescriptive. Transition guidance has been provided for the two categories of higher-risk assets (subprime and leveraged loans) for which large and highly complex institutions have indicated that their data systems do not currently enable them to identify individual assets meeting the FDIC's definitions that will be used for assessment purposes only. The transition guidance provides time for large and highly complex institutions to revise their data systems to support the identification and reporting of assets in these two categories on a going-forward basis. The guidance also permits these institutions to use existing internal methodologies developed for supervisory purposes to identify existing assets (and, in general, assets acquired during the transition period) that would be reportable in these higher-risk asset categories on an ongoing basis.

Before the agencies submitted emergency clearance requests to OMB for approval of the assessment-related reporting revisions that are the subject to this notice, the agencies had published an initial PRA notice on March 16, 2011, requesting comment on these revisions. Comments submitted in response to the agencies' initial PRA notice that addressed the initial burden that large and highly complex institutions would incur to identify assets meeting the definitions of subprime and leveraged loans in the FDIC's assessment regulations were written in the context of applying these definitions to all existing loans. The transition guidance created for these loans is intended to mitigate the initial data capture and systems burden that institutions would otherwise incur. Thus, the initial burden associated with implementing the recordkeeping and systems changes necessary to identify assets reportable in these two higher-risk asset categories will be significant for the approximately 110 large and highly complex institutions, but the agencies are currently unable to estimate the amount of this initial burden. Large and highly complex institutions will also experience additional initial burden in connection with implementing systems changes to support their ability to report the other new assessment-related items applicable

[2] The proposed changes to the Call Report, the TFR, and the FFIEC 002/002S that are the subject of this notice have been approved by OMB on an emergency clearance basis and took effect June 30, 2011. OMB's emergency approval for these reports expires December 31, 2011. The agencies have also proposed to require savings associations currently filing the TFR to convert to filing the Call Report beginning as of the March 31, 2012, report date (76 FR 39981, July 7, 2011).

to such institutions. However, given their focus on subprime and leveraged loans, respondents to the agencies' initial PRA notice offered limited comments about the burden of the other new items for large and highly complex institutions.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (for savings associations), and 12 U.S.C. 3105(c)(2), 1817(a), and 3102(b) (for U.S. branches and agencies of foreign banks). Except for selected data items, including several of the new data items for large and highly complex institutions that are part of this proposal, the Call Report, the TFR, and the FFIEC 002 are not given confidential treatment. The FFIEC 002S is given confidential treatment [5 U.S.C. 552(b)(4)].

Abstracts

Call Report and TFR: Institutions submit Call Report and TFR data to the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. Call Report and TFR data provide the most current statistical data available for evaluating institutions' corporate applications, identifying areas of focus for both on-site and off-site examinations, and monetary and other public policy purposes. The agencies use Call Report and TFR data in evaluating interstate merger and acquisition applications to determine, as required by law, whether the resulting institution would control more than ten percent of the total amount of deposits of insured depository institutions in the United States. Call Report and TFR data also are used to calculate all institutions' deposit insurance and Financing Corporation assessments, national banks' semiannual assessment fees, and the OTS's assessments on savings associations.

FFIEC 002 and FFIEC 002S: On a quarterly basis, all U.S. branches and agencies of foreign banks are required to file the FFIEC 002, which is a detailed report of condition with a variety of supporting schedules. This information is used to fulfill the supervisory and regulatory requirements of the International Banking Act of 1978. The data also are used to augment the bank credit, loan, and deposit information needed for monetary policy and other public policy purposes. The FFIEC 002S is a supplement to the FFIEC 002 that collects information on assets and liabilities of any non-U.S. branch that is managed or controlled by a U.S. branch or agency of the foreign bank. Managed or controlled means that a majority of the responsibility for business decisions (including, but not limited to, decisions with regard to lending or asset management or funding or liability management) or the responsibility for recordkeeping in respect of assets or liabilities for that foreign branch resides at the U.S. branch or agency. A separate FFIEC 002S must be completed for each managed or controlled non-U.S. branch. The FFIEC 002S must be filed quarterly along with the U.S. branch or agency's FFIEC 002. The data from both reports are used for: (1) Monitoring deposit and credit transactions of U.S. residents; (2) monitoring the impact of policy changes; (3) analyzing structural issues concerning foreign bank activity in U.S. markets; (4) understanding flows of banking funds and indebtedness of developing countries in connection with data collected by the International Monetary Fund and the Bank for International Settlements that are used in economic analysis; and (5) assisting in the supervision of U.S. offices of foreign banks. The Federal Reserve System collects and processes these reports on behalf of the OCC, the Board, and the FDIC.

Type of Review: Revision and extension of currently approved collections of information.

Current Actions

I. Overview

Section 331(b) of the Dodd-Frank Act, which was signed into law on July 21, 2010, required the FDIC to amend its regulations to redefine the assessment base used for calculating deposit insurance assessments as average consolidated total assets minus average tangible equity. Under prior law, the assessment base has been defined as domestic deposits minus certain allowable exclusions, such as pass-through reserve balances. In general, the intent of Congress in changing the assessment base was to shift a greater percentage of overall total assessments away from community banks and toward the largest institutions, which rely less on domestic deposits for their funding than do smaller institutions.

In May 2010, prior to the enactment of the Dodd-Frank Act, the FDIC published a Notice of Proposed Rulemaking (NPR) to revise the assessment system applicable to large insured depository institutions.[3] The proposed amendments to the FDIC's assessment regulations (12 CFR part 327) were designed to better differentiate large institutions by taking a more forward-looking view of risk and better take into account the losses that the FDIC will incur if an institution fails. The comment period for the May 2010 NPR ended July 2, 2010, and most commenters requested that the FDIC delay the implementation of the rulemaking until the effects of the then pending Dodd-Frank legislation were known.

On November 9, 2010, the FDIC Board approved the publication of two NPRs, one that proposed to redefine the assessment base as prescribed by the Dodd-Frank Act[4] and another that proposed revisions to the large institution assessment system while also factoring in the proposed redefinition of the assessment base as well as comments received on the May 2010 NPR.[5] After revising the proposals where appropriate in response to the comments received on the two November 2010 NPRs, the FDIC Board adopted a final rule on February 7, 2011, amending the FDIC's assessment regulations to redefine the assessment base used for calculating deposit insurance assessments for all 7,500 insured depository institutions and revise the assessment system for approximately 110 large institutions.[6] This final rule took effect for the quarter beginning April 1, 2011, and will be reflected for the first time in the invoices for deposit insurance assessments due September 30, 2011, using data reported in the Call Reports, the TFRs, and the FFIEC 002/002S reports for June 30, 2011.

The FDIC further notes that the definitions of subprime loans, leveraged loans, and nontraditional mortgage loans in its February 2011 final rule (the FDIC assessment definitions) are applicable only for purposes of deposit insurance assessments. The FDIC assessment definitions are not identical to the definitions included in existing supervisory guidance pertaining to these types of loans.[7] Rather, the FDIC

[3] See 75 FR 23516, May 3, 2010, at *http://www.fdic.gov/regulations/laws/federal/2010/10proposead57.pdf.*

[4] See 75 FR 72582, November 24, 2010, at *http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66.pdf.*

[5] See 75 FR 72612, November 24, 2010, at *http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66LargeBank.pdf.*

[6] See 76 FR 10672, February 25, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf.*

[7] Interagency Expanded Guidance for Subprime Lending Programs, issued in January 2001 (*http://*

assessment definitions are more prescriptive and less subjective than those contained in the applicable supervisory guidance. The final rule includes prescriptive definitions to ensure that large and highly complex institutions apply a uniform and consistent approach to the identification of loans to be reported as higher-risk assets for assessment purposes and to be used as inputs to the scorecards that determine these institutions' initial base assessment rates.

Given the specific and limited purpose for which the definitions of subprime loans, leveraged loans, and nontraditional mortgage loans in the FDIC's final rule on assessments will be used, these definitions will not be applied for supervisory purposes. Therefore, the definitions of these three types of loans in the FDIC's final rule on assessments do not override or supersede any existing interagency or individual agency guidance and interpretations pertaining to subprime lending, leveraged loans, and nontraditional mortgage loans that have been issued for supervisory purposes or for any other purpose other than deposit insurance assessments. In this regard, the addition of data items to the Call Report and TFR deposit insurance assessment schedules for these three higher-risk asset categories, the definitions for which are taken directly from the FDIC's final rule (subject to the transition guidance discussed in Section II below), represents the outcome of decisions by the FDIC in its assessment rulemaking process rather than a collective decision of the agencies through interagency supervisory policy development activities.

On March 16, 2011, the agencies published an initial PRA **Federal Register** notice under normal PRA clearance procedures in which they requested comment on proposed revisions to the Call Reports, the TFRs, and the FFIEC 002/002S reports that would provide the data needed by the FDIC to implement the provisions of its February 2011 final rule beginning with the June 30, 2011, report date.[8] The new data items proposed in the initial PRA notice were linked to specific requirements in the FDIC's assessment regulations as amended by the final rule. The draft instructions for these proposed new items incorporated the definitions in and other provisions of the FDIC's amended assessment regulations. Accordingly, the FDIC did not anticipate receiving material comments on the reporting changes proposed in the March 2011 initial PRA notice because the FDIC's February 2011 final rule on assessments had taken into account the comments received on the two November 2010 NPRs as well as the earlier May 2010 NPR. Thus, the agencies expected to continue following normal PRA clearance procedures and publish a final PRA **Federal Register** notice for the proposed reporting changes and submit these changes to OMB for review soon after the close of the comment period for the initial PRA notice on May 16, 2011.

The agencies collectively received comments from 19 respondents on their initial PRA notice on the proposed assessment-related reporting changes published on March 16, 2011. Of these 19 respondents, 17 addressed the new data items for subprime and leveraged loans that are inputs to the revised assessment system for large institutions.[9] More specifically, these commenters stated that institutions generally do not maintain data on these loans in the manner in which these two loan categories are defined for assessment purposes in the FDIC's final rule or do not have the ability to capture the prescribed data to enable them to identify these loans in time to file their regulatory reports for the June 30, 2011, report date. These data availability concerns, particularly as they related to institutions' existing loan portfolios, had not been raised as an issue during the rulemaking process for the revised large institution assessment system, which included the FDIC's publication of two NPRs in 2010.[10]

This unanticipated outcome at the end of the public comment process for the agencies' March 2011 initial PRA notice required the FDIC to consider possible reporting approaches that would address institutions' concerns about their ability to identify loans meeting the subprime and leveraged loan definitions in the FDIC's assessments final rule while also meeting the objectives of the revised large institution assessment system. However, as a consequence of the unexpected need to develop and reach agreement on a workable transition approach for identifying loans that are to be reported as subprime or leveraged for assessment purposes,[11] the agencies concluded that they should follow emergency rather than normal PRA clearance procedures to request approval from OMB for the assessment-related reporting changes to the Call Report, the TFR, and the FFIEC 002/002S reports. The use of emergency clearance procedures was intended to provide certainty to institutions on a timely basis concerning the initial collection of the new assessment data items as of the June 30, 2011, report date as called for under the FDIC's final rule.

On June 17, 2011, OMB approved the agencies' emergency clearance requests to implement the assessment-related reporting revisions to the Call Report, the TFR, and the FFIEC 002/002S reports effective as of the June 30, 2011, report date. Because the assessment-related reporting revisions will need to remain in effect beyond the limited approval period associated with an emergency clearance request, the agencies, under the auspices of the FFIEC, are beginning normal PRA clearance procedures anew and are requesting public comment on the assessment-related reporting revisions to the Call Report, the TFR, and the FFIEC 002/002S reports that took effect June 30, 2011.

II. March 2011 Initial PRA Federal Register Notice

On March 16, 2011, the agencies published an initial PRA **Federal Register** notice in which they requested comment on proposed revisions to their regulatory reports: the Call Report, the

www.fdic.gov/news/news/press/2001/pr0901a.html); Comptroller's Handbook: Leveraged Loans, issued in February 2008 (*http://www.occ.gov/static/publications/handbook/leveragedlending.pdf*); and Interagency Guidance on Nontraditional Mortgage Product Risks, issued in October 2006 (*http://www.fdic.gov/regulations/laws/federal/2006/06NoticeFINAL.html*).

[8] See 76 FR 14460, March 16, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf*.

[9] In contrast, only four respondents commented on other aspects of the overall reporting proposal.

[10] In response to the November 2010 NPR on the revised large institution assessment system, the FDIC received a number of comments recommending changes to the definitions of subprime and leveraged loans, which the FDIC addressed in its February 2011 final rule amending its assessment regulations. For example, several commenters on the November 2010 NPR indicated that regular (quarterly) updating of data to evaluate loans for subprime or leveraged status would be burdensome and costly and, for certain types of retail loans, would not be possible because existing loan agreements do not require borrowers to routinely provide updated financial information. In response to these comments, the FDIC's February 2011 final rule stated that large institutions should evaluate loans for subprime or leveraged status upon origination, refinance, or renewal. However, no comments were received on the November 2010 NPR indicating that large institutions would not be able to identify and report subprime or leveraged loans in accordance with the definitions proposed for assessment purposes in their Call Reports and TFRs beginning as of June 30, 2011. These data availability concerns were first expressed in comments on the March 2011 initial PRA notice.

[11] The FDIC presented this transition approach to large institutions during a conference call on June 7, 2011, that all large institutions had been invited to attend. Several institutions offered favorable comments about the transition approach during this call.

TFR, the FFIEC 002/002S reports.[12] The agencies proposed to implement certain changes to these reports as of June 30, 2011, to provide data needed by the FDIC to implement amendments to its assessment regulations (12 CFR part 327) that were adopted by the FDIC Board of Directors in a final rule on February 7, 2011.[13] The final rule took effect for the quarter beginning April 1, 2011, and will be reflected for the first time in the invoices for assessments due September 30, 2011, using data reported in institutions' regulatory reports for June 30, 2011. The assessment-related reporting changes were designed to enable the FDIC to calculate (1) the assessment bases for insured depository institutions as redefined in accordance with section 331(b) of the Dodd-Frank Act and the FDIC's final rule, and (2) the assessment rates for ''large institutions'' and ''highly complex institutions'' using a scorecard set forth in the final rule that combines CAMELS ratings and certain forward-looking financial measures to assess the risk such institutions pose to the Deposit Insurance Fund (DIF).

The assessment-related reporting revisions proposed in the March 2011 initial PRA notice included the deletion of existing data items for the total daily averages of deposit liabilities before exclusions, allowable exclusions, and foreign deposits and the addition of new items, which are summarized as follows:

- Average consolidated total assets, generally as defined for Call Report Schedule RC–K, Quarterly Averages, and calculated using a daily averaging method. Institutions with less than $1 billion in assets (other than newly insured institutions) may report using a weekly averaging method unless they opt to report daily averages on a permanent basis. Institutions would report the averaging method used, i.e., daily or weekly.
- Average tangible equity capital, with tangible equity capital defined as Tier 1 capital (or for insured branches, generally defined as eligible assets less liabilities), and calculated as a monthly average. Institutions with less than $1 billion in assets (other than newly insured institutions) may report the quarter-end amount of Tier 1 capital unless they opt to report monthly averages on a permanent basis.
- For qualifying banker's banks and qualifying custodial banks, as defined in the FDIC's final rule, assessment base deductions for certain low-risk assets and deduction limits derived from certain balance sheet amounts calculated on a daily or weekly average basis.
- The amount of the reporting institution's holdings of long-term unsecured debt issued by other insured depository institutions. In general, unsecured debt would be considered long-term if it has a remaining maturity of at least one year.
- For large and highly complex institutions, other real estate owned and certain categories of loans wholly or partially guaranteed by the U.S. Government (excluding other real estate and loans covered by FDIC loss-sharing agreements), unfunded real estate construction and development loans, and nonbrokered time deposits of more than $250,000.
- For both large and highly complex institutions, ''nontraditional mortgage loans,'' ''subprime consumer loans,'' and ''leveraged loans,'' all as defined for assessment purposes only in the FDIC's regulations, as well as criticized and classified items, all of which would be accorded confidential treatment.
- For highly complex institutions only, the top 20 counterparty exposures and the largest counterparty exposure, both of which would be accorded confidential treatment.
- New TFR data items for savings associations that are large institutions (or report $10 billion or more in total assets in their June 30, 2011, or a subsequent TFR) that would provide data used in the scorecards for large institutions that are not currently reported in the TFR by savings associations, but are reported in the Call Report by banks.

The agencies also proposed an instructional change to the existing Call Report and TFR data items for ''Unsecured 'Other borrowings' '' and ''Subordinated notes and debentures'' with a remaining maturity of one year or less, which would require debt instruments redeemable at the holder's option within one year to be included in these data items.

For a more detailed discussion of the proposed reporting revisions associated with the redefined deposit insurance assessment base, see pages 14463–14465 of the agencies' March 2011 initial PRA notice.[14] For a more detailed discussion of the proposed reporting revisions associated with the revised large institutions assessment system, see pages 14466–14470 of the agencies' March 2011 initial PRA notice.[15] These assessment-related reporting revisions, as modified in response to the comments received on the agencies' initial PRA notice (which are discussed hereafter in this notice), were approved by OMB under emergency clearance procedures on June 17, 2011, and took effect in the Call Report, the TFR, and the FFIEC 002/002S reports effective as of the June 30, 2011, report date. Accordingly, the purpose of this notice is to enable the agencies to undertake normal clearance procedures under the PRA and request comment on the assessment-related reporting revisions that are now in effect as a result of OMB's emergency approval.

The agencies collectively received comments from 19 respondents on their initial PRA notice on the proposed assessment-related reporting requirements published on March 16, 2011. Comments were received from fourteen depository institutions, four bankers' organizations, and one government agency. Three of the bankers' organizations commented on certain aspects of the proposed reporting requirements associated with the redefined assessment base, with one of these organizations welcoming the proposed reporting changes and deeming them ''reasonable and practical.'' Seventeen of the 19 respondents (all of the depository institutions and three of the bankers' organizations) addressed the reporting requirements proposed for large institutions, with specific concerns raised by all 17 about the definitions of subprime consumer loans and leveraged loans in the FDIC's final rule, which were carried directly into the draft reporting instructions for these two proposed data items, and large institutions' ability to report the amount of subprime consumer loans and leveraged loans in accordance with the final rule's definitions, particularly beginning as of the June 30, 2011, report date. The comments the agencies received about the reporting of subprime consumer loans and leveraged loans are more fully discussed later in this notice. Nevertheless, a number of respondents expressed support for the concept of applying risk-based evaluation tools in the determination of deposit insurance assessments, which is an objective of the large institution assessment system under the FDIC's final rule.

[12] See 76 FR 14460, March 16, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf.*

[13] See 76 FR 10672, February 25, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf.*

[14] See 76 FR 14463–14465, March 16, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf.*

[15] See 76 FR 14466–14470, March 16, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11noticeMar16.pdf.*

One bankers' organization offered a general comment about the draft instructions for the proposed new assessment-related data items, recommending that these items ''should include references to other related Call Report [, TFR, and FFIEC 002] schedule items, as appropriate'' to assist ''banks with the edit checks'' for the report. Although many of the proposed new data items include such references, others did not. The agencies have reviewed the draft instructions and added relevant references to data items in other schedules.

The following two sections of this notice describe the proposed reporting changes related to the redefined assessment base and the revised large institution assessment system, respectively, and discuss the agencies' evaluation of the comments received on the changes proposed in their March 2011 initial PRA notice. The following sections also explain the modifications that the agencies made to the March 2011 reporting proposal in response to these comments, which were incorporated into the agencies' June 16, 2011, emergency clearance requests to OMB for approval to implement the assessment-related reporting revisions as of the June 30, 2011, report date.

In this regard, as mentioned above, 17 of the 19 respondents on the March 2011 initial PRA notice raised data availability concerns about the proposed new data items in which large and highly complex institutions would report the amounts of their subprime consumer loans and leveraged loans in accordance with the FDIC's assessment definitions. Accordingly, in recognition of these concerns, the agencies decided to provide transition guidance for reporting subprime consumer and leveraged loans originated or purchased prior to October 1, 2011, and securities where the underlying loans were originated predominantly prior to October 1, 2011. This transition guidance was an integral part of the agencies' emergency clearance requests that were submitted to OMB on June 16, 2011.

The transition guidance provides that for such pre-October 1, 2011, loans and securities, if a large or highly complex institution does not have within its data systems the information necessary to determine subprime consumer or leveraged status in accordance with the definitions of these two higher-risk asset categories set forth in the FDIC's final rule, the institution may use its existing internal methodology for identifying subprime consumer or leveraged loans and securities as the basis for reporting these assets for deposit insurance assessment purposes in its Call Reports or TFRs. Institutions that do not have an existing internal methodology in place to identify subprime consumer or leveraged loans [16] may, as an alternative to applying the definitions in the FDIC's final rule to pre-October 1, 2011, loans and securities, apply existing guidance provided by their primary federal regulator, the agencies' 2001 Expanded Guidance for Subprime Lending Programs,[17] or the February 2008 Comptroller's Handbook on Leveraged Lending [18] for purposes of identifying subprime consumer and leveraged loans originated or purchased prior to October 1, 2011, and subprime consumer and leveraged securities where the underlying loans were originated predominantly prior to October 1, 2011. All loans originated on or after October 1, 2011, and all securities where the underlying loans were originated predominantly on or after October 1, 2011, must be reported as subprime consumer or leveraged loans and securities according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.[19]

Large and highly complex institutions may need to revise their data systems to support the reporting of newly originated or purchased subprime consumer and leveraged loans and securities in accordance with the FDIC's assessment definitions on a going-forward basis beginning no later than October 1, 2011. Large and highly complex institutions relying on the transition guidance described above for reporting pre-October 1, 2011, subprime consumer and leveraged loans and securities will be expected to provide the FDIC qualitative descriptions of how the characteristics of the assets reported using their existing internal methodologies for identifying loans and securities in these higher-risk asset categories differ from those specified in the subprime consumer and leveraged loan definitions in the FDIC's final rule, including the principal areas of difference between these two approaches for each higher-risk asset category. The FDIC may review these descriptions of differences and assess the extent to which institutions' existing internal methodologies align with the applicable supervisory policy guidance for categorizing these loans. Any departures from such supervisory policy guidance discovered in these reviews, as well as institutions' progress in planning and implementing necessary data systems changes, will be considered when forming supervisory strategies for remedying departures from existing supervisory policy guidance and exercising deposit insurance pricing discretion for individual large and highly complex institutions.

III. Redefined Assessment Base

As mentioned above in Section I, on February 7, 2011, the FDIC Board of Directors adopted a final rule that implements the requirements of section 331(b) of the Dodd-Frank Act by amending part 327 of the FDIC's regulations to redefine the assessment base used for calculating deposit insurance assessments effective April 1, 2011.[20] In general, the FDIC's final rule defines the assessment base as average consolidated total assets during the assessment period less average tangible equity capital during the assessment period. Under the final rule, average consolidated total assets are defined in accordance with the Call Report instructions for Schedule RC–K, Quarterly Averages, and are measured using a daily averaging method. However, institutions with less than $1 billion in assets (other than newly insured institutions) may use a weekly averaging method for average consolidated total assets unless they opt to report daily averages on a permanent basis. Tangible equity capital is defined in the final rule as Tier 1 capital [21] and average tangible equity will be calculated using a monthly averaging method, but institutions with less than $1 billion in assets (other than newly insured institutions) may report on an end-of-quarter basis unless they opt to report monthly averages on a permanent basis. Institutions that are parents of

[16] A large or highly complex institution may not have an existing internal methodology in place because it is not required to report on these exposures to its primary federal regulator for examination or other supervisory purposes or did not measure and monitor loans and securities with these characteristics for internal risk management purposes.

[17] *http://www.fdic.gov/news/news/press/2001/pr0901a.html.*

[18] *http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf.*

[19] For loans purchased on or after October 1, 2011, large and highly complex institutions may apply the transition guidance to loans originated prior to that date. Loans purchased on or after October 1, 2011, that also were originated on or after that date must be reported as subprime or leveraged according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.

[20] See 76 FR 10672, February 25, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf.*

[21] For an insured branch, tangible equity is defined as eligible assets (determined in accordance with section 347.210 of the FDIC's regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries).

other insured institutions will make certain adjustments when measuring average consolidated total assets and average tangible equity separately from their subsidiary institutions. For banker's banks and custodial banks, as defined in the final rule, the FDIC will deduct the average amount of certain low-risk liquid assets from their assessment base. All insured institutions are potentially subject to an increase in assessment rates for their holdings of long-term unsecured debt issued by another insured institution.

Proposed Regulatory Reporting Changes for the Redefined Assessment Base

The implementation of the redefined assessment base requires the collection of some information from insured institutions that was not collected on the Call Report, the TFR, or the FFIEC 002 report prior to June 30, 2011. Following OMB's approval of the agencies' emergency clearance requests on June 17, 2011, these reporting changes took effect as of the June 30, 2011, report date, which was the first quarter-end report date after the April 1, 2011, effective date of the FDIC's final rule amending its assessment regulations. However, the burden of requiring these new data items has been partly offset by the elimination of some assessment data items that had been collected in these regulatory reports for report dates prior to June 30, 2011.

The agencies received no comments specifically addressing the following assessment-base-related revisions, which were implemented in the Call Report, the TFR, and the FFIEC 002 effective June 30, 2011, as proposed in the March 2011 initial PRA notice:

- The proposed deletion of the existing data items for the total daily averages of deposit liabilities before exclusions, allowable exclusions, and foreign deposits.[22]
- The proposed addition of a new data item for reporting average consolidated total assets, which should be calculated using the institution's total assets, as defined for Call Report balance sheet (Schedule RC) purposes, except that the calculation should incorporate all debt securities (not held for trading) at amortized cost, equity securities with readily determinable fair values at the lower of cost or fair value, and equity securities without readily determinable fair values at historical cost.[23]
- The proposed addition of a new data item for reporting average tangible equity, which is defined as Tier 1 capital.[24]
- The proposed adjustments to the calculation of average consolidated total assets and average tangible equity for insured depository institutions with consolidated insured depository subsidiaries and for insured depository institutions involved in mergers and consolidations during the quarter.
- The proposed addition of a yes/no banker's bank certification question to Call Report Schedule RC–O and TFR Schedule DI and, for a qualifying banker's bank, new data items for reporting the average amounts of its banker's bank assessment base deduction (i.e., the sum of the averages of its balances due from the Federal Reserve and its federal funds sold) and its banker's bank deduction limit (i.e., the sum of the averages of its deposit balances due to commercial banks and other depository institutions in the United States and its federal funds purchased).
- The proposed addition of a yes/no custodial bank certification question to Call Report Schedule RC–O and TFR Schedule DI and, for a qualifying custodial bank, a new data item for reporting the average amount of its custodial bank assessment base deduction (i.e., the average portion of its cash and balances due from depository institutions, held-to-maturity securities, available-for-sale securities, federal funds sold, and securities purchased under agreements to resell that have a zero percent risk weight for risk-based capital purposes plus 50 percent of the portion of these same five types of assets that have a 20 percent risk weight[25]).
- The proposed instructional change to the existing Call Report and TFR data items for ''Unsecured 'Other borrowings' '' and ''Subordinated notes and debentures'' with a remaining maturity of one year or less,[26] which would require debt instruments redeemable at the holder's option within one year to be included in these data items, which are used in the determination of the unsecured debt adjustment when calculating an insured institution's assessment rate.

In response to their March 2011 initial PRA notice, the agencies received comments on the following four matters pertaining to the proposed changes to the Call Report, the TFR, and the FFIEC 002 associated with the redefined assessment base: The averaging method to be used for reporting average consolidated total assets, the measurement of tangible equity at month-ends other than quarter-end, the types of assets reportable as long-term unsecured debt issued by other insured depository institutions, and the types of deposit accounts included in the custodial bank deduction limit. These comments are discussed in Sections III.A through III.D below.

A. Averaging Method for Average Consolidated Total Assets—The FDIC's final rule requires average consolidated total assets to be calculated on a daily average basis by institutions with $1 billion or more in total assets, all newly insured institutions, and institutions with less than $1 billion in total assets that elect to do so. Institutions with less than $1 billion in total assets (that are not newly insured) that do not elect to measure average consolidated total assets on a daily average basis must calculate the average on a weekly average basis.[27] To determine the averaging method used by an institution and its appropriateness under the final rule, the agencies proposed to add a new data item to Call Report Schedule RC–O, TFR Schedule DI, and FFIEC 002 Schedule O in which institutions would report the averaging method used to measure average consolidated total assets, i.e., daily or weekly.

[22] The specific items being deleted were, in the Call Report, existing items 4, 5, and 6 in Schedule RC–O—Other Data for Deposit Insurance and FICO Assessments; in the TFR, existing line items DI540, DI550, and DI560 in Schedule DI—Consolidated Deposit Information; and in the FFIEC 002 report, existing items 4, 5, and 6 in Schedule O—Other Data for Deposit Insurance Assessments.

[23] For an insured branch, average consolidated total assets is calculated using the total assets of the branch (including net due from related depository institutions), as defined for purposes of Schedule RAL—Assets and Liabilities of the FFIEC 002 report, but with debt and equity securities measured in the same manner as for other insured institutions.

[24] For an insured branch, tangible equity is defined as eligible assets (determined in accordance with section 347.210 of the FDIC's regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries).

[25] For all insured institutions, the definitions of these five types of assets are found in the instructions for Call Report Schedule RC—Balance Sheet, items 1, 2.a, 2.b, 3.a, and 3.b. In the Call Report, these types of assets are included, as of quarter-end, in items 34 through 37, columns C (zero percent risk weight) and D (20 percent risk weight), of Schedule RC–R—Regulatory Capital. In the TFR, these types of assets are included, as of quarter-end, in line items CCR400, CCR405, CCR409, and CCR 415 (zero percent risk weight) and in line items CCR430, CCR435, CCR440, CCR445, and CCR450 (20 percent risk weight) of Schedule CCR—Consolidated Capital Requirement.

[26] In the Call Report, Schedule RC–O, items 7.a and 8.a, respectively. In the TFR, Schedule DI, line items DI645 and DI655, respectively.

[27] Under the FDIC's final rule, banker's banks and custodial banks must calculate their respective assessment base deductions and deduction limits using the same averaging method, daily or weekly, used to calculate average consolidated total assets. Thus, the discussion of averaging methods also applies to these deductions and deduction limits.

Under the FDIC's final rule, average consolidated total assets is defined for all insured institutions in accordance with the instructions for item 9, ''Total assets,'' of Call Report Schedule RC–K—Quarterly Averages. These instructions provide that the averages reported in Schedule RC–K, including the average for consolidated total assets, must be calculated as daily or weekly averages. Similarly, the instructions for reporting quarterly averages in FFIEC 002 Schedule K require daily or weekly average calculations. In contrast, the instructions for reporting quarterly averages in TFR Schedule SI—Supplemental Information, including the average for consolidated total assets, permit the use of month-end averaging as an alternative to daily or weekly averaging when reporting average total assets in line item SI870.

One bankers' organization recommended in its comment letter that insured institutions with less than $1 billion in total assets be permitted to report average consolidated total assets as a monthly average as an alternative to daily or weekly averaging. The organization stated that this would minimize the burden placed on some institutions and accommodate institutions with information systems capable of generating only monthly average balances. The agencies note that the averaging method prescribed in the proposed revised assessment-related reporting requirements is driven by the FDIC's final rule under which monthly average reporting is not permissible for institutions with less than $1 billion in total assets.[28] In addition, as mentioned above, all insured commercial banks, state-chartered savings banks, and U.S. branches of foreign banks are currently required to calculate quarterly averages for regulatory reporting purposes on a daily or weekly average basis. Only insured savings associations, which constitute less than 10 percent of insured institutions with less than $1 billion in total assets, have the option to calculate averages on a monthly, weekly, or daily basis for regulatory reporting purposes. Given the constraints of the FDIC's final rule, the agencies retained the daily and weekly averaging methods for reporting average consolidated total assets for assessment purposes for institutions (that are not newly insured) with less than $1 billion in total assets and also implemented as of June 30, 2011, the proposed new item in which an institution would report the averaging method it has used.

B. Measurement of Average Tangible Equity—Under the FDIC's final rule, tangible equity is defined as Tier 1 capital.[29] Because the final rule redefines the deposit insurance assessment base as average consolidated total assets minus average tangible equity, the agencies proposed to add a new item to Call Report Schedule RC–O, TFR Schedule DI, and FFIEC 002 Schedule O for average tangible equity. The final rule requires average tangible equity to be calculated on a monthly average basis by institutions with $1 billion or more in total assets, all newly insured institutions, and institutions with less than $1 billion in total assets that elect to do so. For institutions with less than $1 billion in total assets (that are not newly insured) that do not elect to calculate average tangible equity on a monthly average basis, ''average'' tangible equity would be based on quarter-end Tier 1 capital.

One bankers' organization commented that although it ''believes it is industry practice for many banks to calculate their risk-based capital numbers on a monthly basis, we do not believe it is industry practice for banks to update their provision/allowance and deferred tax calculations more than quarterly.'' It observed that ''these two items are potentially significant drivers'' of the calculation of Tier 1 capital and recommended that ''the agencies clarify that they accept that these two drivers may not be updated for the interim monthly capital calculations, and that a quarter-end calculation is acceptable.''

The regulatory reports for insured depository institutions, which include regulatory capital data, are prepared as of each calendar quarter-end date during the year. Other than at year-end, these reports would be regarded as interim financial information that is prepared for external reporting purposes. For recognition and measurement purposes, the agencies' regulatory reporting requirements conform to U.S. generally accepted accounting principles (GAAP). According to Accounting Standards Codification paragraph 270–10–45–2, ''[i]n general, the results for each interim period shall be based on the accounting principles and practices used by an entity in the preparation of its latest annual financial statements.'' Thus, institutions are expected to follow this concept when preparing their quarterly regulatory reports, including the determination of the allowance for loan and leases losses and related provision expense and the measurement of current and deferred income taxes.

Month-end averaging for tangible equity in the FDIC's final rule was not intended to impose a fully GAAP-compliant requirement for monthly updating of loan loss allowances and deferred tax calculations for months other than quarter-end. However, the agencies believe that it is a sound practice to accrue provision for loan and lease losses expense and income tax expense on some reasonable basis during the first two months of a quarter and then ''true-up'' these expenses for the quarter on a GAAP-compliant basis at quarter-end, rather than ignoring these expenses until the final month of the quarter. Therefore, although the agencies acknowledge that institutions' ''provision/allowance and deferred tax calculations'' may not be updated at month-ends prior to quarter-end by recording amounts determined in full compliance with GAAP, it would not be acceptable to recognize no provision or income tax expense in the months before quarter-end when an institution reasonably expects that some amount will need to be recognized for the quarter.

C. Long-Term Unsecured Debt Issued by Other Insured Depository Institutions—As an input to the new Depository Institution Debt Adjustment created in the FDIC's final rule, the agencies proposed to add an item to Call Report Schedule RC–O, TFR Schedule DI, and FFIEC 002 Schedule O in which institutions would report the amount of their holdings of long-term unsecured debt issued by other insured depository institutions (as reported on the balance sheet). Debt would be considered long-term if it has a remaining maturity of at least one year, except if the holder has the option to redeem the debt within the next 12 months. Unsecured debt includes senior unsecured liabilities and subordinated debt. Senior unsecured liabilities are unsecured liabilities that are reportable as ''Other borrowings'' by the issuing insured depository institution on its quarterly regulatory report, excluding any such liabilities that the FDIC has guaranteed under the Temporary Liquidity Guarantee Program (12 CFR part 370). Subordinated debt includes subordinated notes and debentures and limited-life preferred stock.

One bankers' organization requested that the agencies confirm and clarify that long-term unsecured debt issued by other insured depository institutions

[28] See 76 FR 10676–10678, February 25, 2011, for the FDIC's discussion of average consolidated total assets for purposes of the final rule.

[29] For an insured branch, tangible equity would be defined as eligible assets (determined in accordance with section 347.210 of the FDIC's regulations) less the book value of liabilities (exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly owned subsidiaries).

includes only debt securities reported in certain specific Call Report items (and, presumably, in certain specific items in the TFR and the FFIEC 002). The bankers' organization stated that such long-term unsecured debt ''generally is not separately identified in bank systems'' and that ''banks would need to retrospectively identify these assets at the instrument level for holdings currently in the systems and put processes in place to ensure that future holdings are identifiable.''

The agencies note that the FDIC received a few comments on the proposed Depository Institution Debt Adjustment aspect of its November 2010 NPR on the redefined assessment base that stated that this adjustment ''will result in a reporting burden for insured depository institutions.'' The FDIC considered these comments in adopting the final rule and acknowledged that although ''some reporting modifications may have to be made at some institutions, the FDIC believes those changes can be accomplished at minimal time and cost.'' [30]

Holdings of long-term unsecured debt issued by other insured depository institutions are not limited to debt securities; rather, such debt also may be included in an institution's loans. From a Call Report perspective, loans to depository institutions (unless held for trading) are separately identifiable in bank systems because they have long been a specific category of loans in the loan schedule (Schedule RC–C, part I), although loans that meet the definition of long-term unsecured debt are not reported separately from other loans in this category. For institutions that file Call Reports, depending on the form of the debt and the intent for which it is held, holdings of long-term unsecured debt issued by other insured depository institutions would be included in Schedule RC–B, item 6.a, ''Other domestic debt securities''; Schedule RC–C, part I, item 2, ''Loans to depository institutions and acceptances of other banks''; Schedule RC–D, item 5.b, ''All other debt securities''; and Schedule RC–D, item 6.d, ''Other loans.'' [31] For institutions that file TFRs, holdings of long-term unsecured debt issued by other depository institutions would be included in Schedule SC, line item SC185, ''Other Investment Securities,'' and Schedule SC, line item SC303, Commercial Loans: ''Unsecured.'' For institutions that file the FFIEC 002, holdings of long-term unsecured debt issued by other depository institutions would be included in Schedule RAL, item 1.c.(4), ''All other'' bonds, notes, and debentures; Schedule RAL, item 1.f.(4), ''Other trading assets''; and Schedule C, item 2, ''Loans to depository institutions and acceptances of other banks.'' In response to this comment, the agencies have clarified the instructions for the new item for holdings of long-term unsecured debt issued by other insured depository institutions by referencing the other items elsewhere in the report where these debt holdings are included.

D. Custodial Bank Deduction Limit—Consistent with the FDIC's final rule, an institution that is a custodial bank is permitted to report the average amount of certain low-risk assets, which the FDIC will deduct from the custodial bank's assessment base up to a specified limit. For an institution that is a qualifying custodial bank, the agencies proposed that the institution would report the average amount of (1) qualifying low-risk assets and (2) transaction account deposit liabilities identified by the institution as being directly linked to a fiduciary, custody, or safekeeping account at the institution, which is the limit for the assessment base deduction.

As defined in Federal Reserve Regulation D, a ''transaction account'' is defined in general as a domestic office deposit or account from which the depositor or account holder is permitted to make transfers or withdrawals by negotiable or transferable instruments, payment orders of withdrawal, telephone transfers, or other similar devices for the purpose of making payments or transfers to third persons or others or from which the depositor may make third party payments at an automated teller machine, a remote service unit, or another electronic device, including by debit card. For purposes of determining and reporting the custodial bank deduction limit, a foreign office deposit liability with the preceding characteristics also would be treated as a transaction account. For a transaction account to fall within the scope of the custodial bank deduction limit, the titling of the transaction account or specific references in the deposit account documents should clearly demonstrate the link between the transaction account and a fiduciary, custodial, or safekeeping account.

Two bankers' organizations commented on the scope of the custodial bank deduction limit. The agencies proposed that a qualifying custodial bank's deduction limit should include foreign office deposit liabilities with the characteristics of a transaction account, as defined in Regulation D, that are linked to a fiduciary, custody, or safekeeping account when reporting the deduction limit. Both bankers' organizations recommended that the foreign office deposits eligible for inclusion in the deduction limit be expanded to include ''short-term time deposit accounts (usually 1–7 days)'' that are used on occasion in lieu of transaction accounts to ''provide cash management features for the client and are not part of a wealth management strategy.'' In addition, both organizations recommended that the agencies permit escrow accounts, Interest on Lawyers Trust Accounts (IOLTAs),[32] and other trust and custody-related accounts, which may be held in transaction accounts or short-term time deposit accounts, to be included in the deduction limit because they are operational in nature and not related to wealth management.

In adopting the final rule, the FDIC considered whether the custodial bank deduction limit should encompass all deposits or just transaction accounts linked to a fiduciary, custody, or safekeeping account and decided that the limit should be confined to transaction accounts. Furthermore, in describing the nature of the transaction accounts upon which the deduction limit should be based, the FDIC stated that the accounts should be those used for payments and clearing purposes in connection with fiduciary, custody, and safekeeping accounts. This would include, for example, transaction accounts used to pay for securities or other assets purchased for such accounts. Accordingly, the agencies concluded that, consistent with the FDIC's final rule, deposits reported in the new item for the deduction limit beginning June 30, 2011, should exclude short-term time deposits. Similarly, given the constraints of the FDIC's final rule, escrow accounts, IOLTAs, and other trust and custody-related deposit accounts related to commercial bank services, or otherwise offered outside a custodial bank's fiduciary business unit or another distinct business unit devoted to institutional custodial services, cannot be included in the accounts falling within the scope of the custodial bank deduction limit.

[30] 76 FR 10682, February 25, 2011.

[31] For an institution that files a Call Report but does not complete Schedule RC–D—Trading Assets and Liabilities, long-term unsecured debt issued by other insured depository institutions that is held for trading is included in Schedule RC, item 5, ''Trading assets.''

[32] An IOLTA is an interest-bearing account maintained by a lawyer or law firm for clients. The interest from these accounts is not paid to the law firm or its clients, but rather is used to support law-related public service programs, such as providing legal aid to the poor. See 73 FR 72256, November 26, 2008.

IV. Risk-Based Assessment System for Large Insured Depository Institutions

The final rule adopted by the FDIC Board of Directors on February 7, 2011, also amended the assessment system applicable to large insured depository institutions to better capture risk at the time the institution assumes the risk, better differentiate risk among large institutions during periods of good economic and banking conditions based on how they would fare during periods of stress or economic downturns, and better take into account the losses that the FDIC may incur if a large institution fails.[33] As previously stated, the final rule took effect for the quarter beginning April 1, 2011, and will be reflected for the first time in the invoices for assessments due September 30, 2011, using data reported in institutions' regulatory reports for June 30, 2011.

Under the FDIC's final rule, assessment rates for large institutions will be calculated using a scorecard that combines CAMELS ratings and certain forward-looking financial measures to assess the risk a large institution poses to the DIF. One scorecard will apply to most large institutions and another scorecard will apply to a subset of large institutions that are structurally and operationally complex or pose unique challenges and risk in the case of failure (highly complex institutions). In general terms, a large institution is an insured depository institution with total assets of $10 billion or more whereas a highly complex institution is an insured depository institution (other than a credit card bank [34]) with total assets of $50 billion or more that is controlled by a U.S. holding company that has total assets of $500 billion or more or an insured depository institution that is a processing bank or trust company.[35]

The scorecard for large institutions (other than highly complex institutions) produces two scores—a performance score and a loss severity score—that are converted into a total score. The performance score, which measures a large institution's financial performance and its ability to withstand stress, is a weighted average of the scores for three components: (1) Weighted average CAMELS rating score; (2) ability to withstand asset-related stress score, which is itself a weighted average of the scores for four measures; and (3) ability to withstand funding-related stress score, which is a weighted average of the scores for two measures. The loss severity score measures the relative magnitude of potential losses to the FDIC in the event of a large institution's failure by applying a standardized set of assumptions (based on recent failures) regarding liability runoffs and the recovery value of asset categories.

For highly complex institutions, there is a different scorecard with measures tailored to the risks these institutions pose. However, the structure and much of the scorecard for a highly complex institution are similar to the scorecard for other large institutions because it contains both a performance score and a loss severity score. The performance score for highly complex institutions is the weighted average of the scores for the same three components as for large institutions: (1) Weighted average CAMELS rating score; (2) ability to withstand asset-related stress score; and (3) ability to withstand funding-related stress score. However, the measures contained in the latter two components for highly complex institutions differ from those for large institutions. For highly complex institutions, the score for the ability to withstand asset-related stress is the weighted average of the scores for four measures, two of which differ from those used to calculate large institutions' asset-related stress score, and the score for the ability to withstand funding-related stress is the weighted average of the scores for three measures, the first two of which also are used to calculate large institutions' funding-related stress score.

The method for calculating the total score for large institutions and highly complex institutions is the same. Once the performance and loss severity scores are calculated for a large or highly complex institution, these scores are converted to a total score. Each institution's total score is calculated by multiplying its performance score by a loss severity factor derived from its loss severity score. The total score is then used to determine the initial base assessment rate for each large institution and highly complex institution.

For complete details on the scorecards for large institutions and highly complex institutions, including the measures used in the calculation of performance scores and loss severity scores, see the FDIC's final rule.[36]

Proposed Regulatory Reporting Changes for the Revised Risk-Based Assessment System for Large Institutions and Highly Complex Institutions

Most of the data used as inputs to the scorecard measures for large institutions and highly complex institutions are available from the Call Reports and TFRs filed quarterly by these institutions, but the data items needed to compute scorecard measures for criticized and classified items, higher-risk assets (as defined in accordance with the FDIC's final rule on assessments), top 20 counterparty exposures, and the largest counterparty exposure are not available from the Call Reports and TFRs. With the revised risk-based assessment system for these institutions under the FDIC's final rule taking effect in the second quarter of 2011, the agencies proposed in their March 2011 initial PRA notice that large and highly complex institutions begin to report the new data items needed as inputs to their respective scorecards in their Call Reports and TFRs beginning June 30, 2011.[37] In addition, certain other data items that will be used in the scorecards for large institutions are not currently reported in the TFR by savings associations. Thus, the agencies also proposed in their March 2011 initial PRA notice to add these data items to the TFR as of June 30, 2011, and to require these data items to be reported by savings associations that are large institutions or have $10 billion or more in total assets as of that date or a subsequent quarter-end date. Currently, there are about 110 insured depository institutions with $10 billion or more in total assets that would be affected by some or all of the additional reporting requirements, of which about 20 are savings associations.

The agencies received no comments specifically addressing the following proposed data items that would support the revised risk-based assessment system for large institutions and highly complex institutions, which were implemented in the Call Report and the

[33] See 76 FR 10688, February 25, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf*, for the FDIC's overview of the final rule's amendments to the assessment system applicable to large insured depository institutions.

[34] As defined in the FDIC's final rule, a credit card bank is an IDI for which credit card receivables plus securitized receivables exceed 50 percent of assets plus securitized receivables.

[35] See sections 327.8(f), (g), and (s) of the FDIC's regulations for the full definitions of the terms ''large institution,'' ''highly complex institution,'' and ''processing bank or trust company,'' respectively. Under both the FDIC's final rule and the FDIC's assessment regulations in effect before April 1, 2011, an insured U.S. branch of a foreign bank is a ''small institution'' regardless of its total assets.

[36] See 76 FR 10688–10703, February 25, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf*.

[37] No savings associations are expected to meet the definition of a highly complex institution. Accordingly, the agencies proposed to add the new data items for highly complex institutions only to the Call Report and not to the TFR. If a savings association were to become a highly complex institution before its proposed conversion from filing TFRs to filing Call Reports effective March 31, 2012 (see 76 FR 39981, July 7, 2011), the FDIC would collect the necessary data directly from the savings association.

TFR effective June 30, 2011, as proposed in the March 2011 initial PRA notice:

- For seven categories of funded loans, new data items to be completed by large institutions for the portion of the balance sheet amount that is guaranteed or insured by the U.S. government, including its agencies and its government-sponsored agencies, other than by the FDIC under loss-sharing agreements.[38]
- New data items for large and highly complex institutions for the unused portion of commitments to fund construction, land development, and other land loans secured by real estate (in domestic offices) and for the portion of these unfunded commitments that is guaranteed or insured by the U.S. government, including by the FDIC.
- A new data item for large and highly complex institutions for the amount of other real estate owned (ORE) that is recoverable from the U.S. government, including its agencies and its government-sponsored agencies, under guarantee or insurance provisions, excluding any ORE covered under FDIC loss-sharing agreements.
- A new data item for large and highly complex institutions for the amount of their nonbrokered time deposits of more than $250,000.
- New TFR data items for savings associations that are large institutions (or report $10 billion or more in total assets in their June 30, 2011, or a subsequent TFR) that would provide data used in the scorecards for large institutions that are not currently reported in the TFR by savings associations, but are reported in the Call Report by banks, including the fair value of trading assets and liabilities included in various balance sheet asset and liability categories reported in TFR Schedule SC as well as data on certain securities, loans, deposits, borrowings, and loan commitments.[39]

In contrast, as mentioned above, all 14 of the depository institutions and three of the bankers' organizations that commented on the proposed assessment-related reporting changes for large and highly complex institutions in the agencies' March 2011 initial PRA notice raised concerns about the reporting requirements for subprime consumer loans and leveraged loans. In addition, one depository institution and two bankers' organizations offered comments on other aspects of the proposed reporting requirements for large and highly complex institutions. These comments are discussed in Sections IV.A through IV.F below.

As stated earlier in this notice, the FDIC previously provided the banking industry opportunities to comment on all of the measures and definitions of the measures used within the scorecard for large insured depository institution pricing purposes through the publication of two separate NPRs in May and November 2010.[40] During the 2010–2011 rulemaking process, the FDIC received numerous recommendations to refine and clarify scorecard measures and definitions. The FDIC staff considered all of these recommendations and finalized the definitions that were included in the final rule redefining the assessment base and revising the assessment system for large insured depository institutions that was approved by the FDIC Board on February 7, 2011.[41] With the exception of some of the data availability issues discussed below, most of the comments received in response to the agencies' March 2011 initial PRA notice were not new recommendations and had already been considered by the FDIC during the 2010–2011 rulemaking process prior to issuance of the final rule.

As previously noted, the definitions of subprime loans, leveraged loans, and nontraditional mortgage loans in the FDIC's February 2011 final rule are applicable only for purposes of deposit insurance assessments. Given the specific and limited purpose for which these definitions will be used, they will not be applied for supervisory purposes.

A. Data Availability for Reporting Subprime Consumer Loans and Leveraged Loans—In their March 2011 initial PRA notice, the agencies proposed that two new items be added to the Call Report and the TFR for the amount of subprime consumer loans and leveraged loans. The definitions to be used for these two asset categories for regulatory reporting purposes were taken from Appendix C of the FDIC's final rule.[42] These two new items are to be completed by large institutions and highly complex institutions.

According to Appendix C of the FDIC's final rule, which applies for assessment purposes only, subprime loans include:

> loans made to borrowers that display one or more of the following credit risk characteristics (excluding subprime loans that are previously included as nontraditional mortgage loans) at origination or upon refinancing, whichever is more recent.
>
> - Two or more 30-day delinquencies in the last 12 months, or one or more 60-day delinquencies in the last 24 months;
> - Judgment, foreclosure, repossession, or charge-off in the prior 24 months;
> - Bankruptcy in the last 5 years; or
> - Debt service-to-income ratio of 50 percent or greater, or otherwise limited ability to cover family living expenses after deducting total monthly debt-service requirements from monthly income.[11]
>
> Subprime loans also include loans identified by an insured depository institution as subprime loans based upon similar borrower characteristics and securitizations where more than 50 percent of assets backing the securitization meet one or more of the preceding criteria for subprime loans, excluding those securities classified as trading book.

The amount to be reported for subprime loans would include purchased credit impaired loans[43] that meet the definition of a subprime loan in the FDIC's final rule, but would exclude amounts recoverable on subprime loans from the U.S. government, its agencies, or its government-sponsored agencies under guarantee or insurance provisions. The final rule defines subprime loans as those that meet the criteria for being subprime at origination or upon refinancing, whichever is more recent, and excludes loans that have deteriorated subsequent to origination or refinancing.

As described in Appendix C of the FDIC's final rule, which applies for

[38] The seven loan categories are (1) construction, land development, and other land loans secured by real estate (in domestic offices), (2) loans secured by multifamily residential and nonfarm nonresidential properties (in domestic offices), (3) closed-end first lien 1–4 family residential mortgages (in domestic offices) and non-agency residential mortgage-backed securities, (4) closed-end junior lien 1–4 family residential mortgages and home equity lines of credit (in domestic offices), (5) commercial and industrial loans, (6) credit card loans to individuals for household, family, and other personal expenditures, and (7) other consumer loans. Highly complex institutions would report the new item for the portion of the balance sheet amount of construction, land development, and other land loans secured by real estate (in domestic offices) that is guaranteed or insured by the U.S. government, other than by the FDIC.

[39] For further information on these new TFR data items, see 76 FR 14469–14470, March 16, 2011.

[40] See 75 FR 23516, May 3, 2010, at *http://www.fdic.gov/regulations/laws/federal/2010/10proposead57.pdf,* and 75 FR 72612, November 24, 2010, at *http://www.fdic.gov/regulations/laws/federal/2010/10proposeAD66LargeBank.pdf.*

[41] See 76 FR 10672, February 25, 2011, at *http://www.fdic.gov/regulations/laws/federal/2011/11FinalFeb25.pdf.*

[42] See 76 FR 10722–10724, February 25, 2011.

[43] The definition of purchased credit impaired loans is found in Financial Accounting Standards Board Accounting Standards Codification Subtopic 310–30, Receivables—Loans and Debt Securities Acquired with Deteriorated Credit Quality (formerly AICPA Statement of Position 03–3, ''Accounting for Certain Loans or Debt Securities Acquired in a Transfer'').

[11] *http://www.fdic.gov/news/news/press/2001/pr0901a.html;* however, the definition in the text above excludes any reference to FICO or other credit bureau scores.

assessment purposes only, leveraged loans include:

(1) all commercial loans (funded and unfunded) with an original amount greater than $1 million that meet any one of the conditions below at either origination or renewal, except real estate loans; (2) securities issued by commercial borrowers that meet any one of the conditions below at either origination or renewal, except securities classified as trading book; and (3) securitizations that are more than 50 percent collateralized by assets that meet any one of the conditions below at either origination or renewal, except securities classified as trading book.[4] [5]

• Loans or securities where borrower's total or senior debt to trailing twelve-month EBITDA'' [6] (i.e. operating leverage ratio) is greater than 4 or 3 times, respectively. For purposes of this calculation, the only permitted EBITDA adjustments are those adjustments specifically permitted for that borrower in its credit agreement; or

• Loans or securities that are designated as highly leveraged transactions (HLT) by syndication agent.[7]

[4] The following guidelines should be used to determine the ''original amount'' of a loan:

(1) For loans drawn down under lines of credit or loan commitments, the ''original amount'' of the loan is the size of the line of credit or loan commitment when the line of credit or loan commitment was most recently approved, extended, or renewed prior to the report date. However, if the amount currently outstanding as of the report date exceeds this size, the ''original amount'' is the amount currently outstanding on the report date.

(2) For loan participations and syndications, the ''original amount'' of the loan participation or syndication is the entire amount of the credit originated by the lead lender.

(3) For all other loans, the ''original amount'' is the total amount of the loan at origination or the amount currently outstanding as of the report date, whichever is larger.

[5] Leveraged loans criteria are consistent with guidance issued by the Office of the Comptroller of the Currency in its Comptroller's Handbook, *http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf,* but do not include all of the criteria in the handbook.

[6] Earnings before interest, taxes, depreciation, and amortization.

[7] http://www.fdic.gov/news/news/press/2001/pr2801.html.

Large and highly complex institutions are to report the balance sheet amount of leveraged loans that have been funded. Unfunded amounts include the unused portions of irrevocable and revocable commitments to make or purchase leveraged loans. The amount to be reported for leveraged loans would include purchased credit impaired loans, but would exclude amounts recoverable on leveraged loans from the U.S. government, its agencies, or its government-sponsored agencies under guarantee or insurance provisions. Under the FDIC's final rule, a commercial loan will be considered leveraged for assessment purposes only if it meets one of two conditions at origination or renewal, but excludes loans that have deteriorated subsequent to origination or renewal.

In their comments on the proposed reporting requirements for large institutions and highly complex institutions, 14 depository institutions and three bankers' organizations stated that institutions do not have data on subprime and leveraged loans in the manner in which these categories of loans are defined in the FDIC's final rule or do not have the ability to capture the prescribed data on subprime and leveraged loans in time to file their June 2011 regulatory reports and attest to the correctness of the reports. Some of these commenters recommended that the agencies allow large and highly complex institutions to delay the initial reporting of subprime and leveraged loans until the industry and other agencies can work with the FDIC to revise the definitions contained in the FDIC's assessment regulations. Other commenters recommended that large and highly complex institutions be allowed to use their own internal methodologies for identifying subprime and leveraged loans, arguing that these methodologies have been reviewed by regulatory agencies as part of the examination process.

In presenting their views on the definitions of subprime and leveraged loans contained in the FDIC's final rule that were carried forward into the draft reporting instructions for these data items, commenters cited various aspects of the definitions that they found troublesome, made a number of recommendations regarding the definitions, and suggested that large and highly complex institutions be permitted to use their own internal methodologies for identifying such loans rather than the definitions in the final rule.

With respect to the subprime consumer loan definition in the FDIC's final rule, several commenters stated that the FDIC's departure from the subprime definition in the agencies' 2001 Expanded Guidance for Subprime Lending Programs (2001 Guidance) is problematic because it changed the process for identifying subprime loans from one that allowed flexibility to one in which a list of specific characteristics must be considered. Thus, the final rule's definition mandates the credit quality characteristics that must be considered, whereas the 2001 Guidance provides that these same characteristics ''may'' be considered in identifying loans as subprime. Some commenters stated that the definition does not allow for limited exceptions for prime borrowers with minor or isolated credit issues. Several commenters, including one bankers' organization, requested that large and highly complex institutions be allowed to determine their subprime exposures by using a credit scoring algorithm or system (developed either internally or by a vendor) that measures a borrower's probability of default. One commenter stated that loans should only be identified as subprime when they are originated, not when they are refinanced. In addition, one commenter requested that the agencies clarify the scope of the exclusion from reporting for amounts recoverable on subprime loans from the U.S. government, its agencies, or its government-sponsored agencies under guarantee or insurance provisions.[44]

The agencies note that the FDIC issued two NPRs in 2010 that gave institutions and the industry opportunities to comment twice on the subprime definition. Compared to the definition of subprime in its May 2010 NPR, the FDIC removed the word ''may'' from this definition and made the definition more prescriptive when it issued the November 2010 NPR to ensure uniformity and consistency in the identification of loans to be reported as subprime for deposit insurance assessment purposes. The publication of the November 2010 NPR provided an opportunity for institutions and the industry to comment on the FDIC's more prescriptive subprime loan definition, but the FDIC received no comments regarding the removal of the word ''may'' from the subprime loan definition. The FDIC believes that a prescriptive definition is necessary for purposes of setting assessment rates for large and highly complex institutions. When developing the subprime loan definition that would apply to the scorecards for large and highly complex institutions in the final rule, the FDIC used certain elements of the existing supervisory guidance, but it modified the definition proposed for assessment purposes in the November 2010 NPR in response to industry comments. As explained in the preamble for the final rule,[45] the FDIC decided to remove the credit score threshold from the list of potential credit risk characteristics of a

[44] Although this comment was made only with respect to subprime consumer loans, this exclusion is also applicable to certain other proposed new items for large and highly complex institutions.

[45] See 76 FR 10692, February 25, 2011.

subprime borrower because there may be differences among various models that the credit rating bureaus use. In addition, the FDIC viewed reliance on credit scoring models that are controlled by credit rating bureaus as undesirable because these models may be changed at the discretion of the credit rating bureaus. The FDIC concluded in its rulemaking that the credit risk characteristics included in the final rule's subprime loan definition represent information an institution should be able to capture during the loan underwriting process, which would therefore enable the institution to identify consumer loans as subprime based on the specified characteristics.

As mentioned above, one commenter requested clarification—in the context of subprime loans—of the exclusion from reporting for amounts recoverable from the U.S. government, its agencies, or its government-sponsored agencies under guarantee or insurance provisions. The FDIC's final rule includes this exclusion not just for subprime loans, but for each loan concentration category. To clarify the scope of this exclusion, examples include guarantees or insurance (or reinsurance) provided by the Department of Veterans Affairs, the Federal Housing Administration, the Small Business Administration (SBA), the Department of Agriculture Rural Development Loan Program, and the Department of Education for individual loans as well as coverage provided by the FDIC under loss-sharing agreements. For loan securitizations and securities, examples include those guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as SBA Guaranteed Loan Pool Certificates and securities covered by FDIC loss-sharing agreements. However, if an institution holds securities backed by mortgages it has transferred to Fannie Mae or Freddie Mac with recourse or other transferor-provided enhancements, these securities should not be considered guaranteed to the extent of the institution's maximum contractual credit exposure arising from the enhancements.

With respect to the proposed data item for leveraged loans, several commenters recommended that the definition be modified so that it only applies to loans where the proceeds are used for buyouts, acquisitions, and recapitalizations. A number of commenters also objected to the FDIC's prescription in the final rule of one specific ''bright-line'' financial metric—debt to EBITDA—to determine whether a loan is leveraged, arguing that a single financial metric is too simplistic and does not consider the risk characteristics of borrowers in different industries. One commenter suggested collateral protection be considered in the definition. Another commenter suggested that securities and securitizations backed by leveraged loans should be excluded from the leveraged loan definition. This commenter also questioned the proposed instructional language stating that undrawn credit lines should be considered fully drawn when calculating debt to EBITDA ratios because this treatment penalizes borrower leverage, especially because undrawn commitments are often not drawn.

The FDIC's definition of leveraged loans in the final rule for large and highly complex institution deposit insurance pricing purposes is the result of several modifications to the original definition proposed by the FDIC in the NPRs published by the FDIC in May 2010 and November 2010. The FDIC's final rule includes modifications to the proposed definition that were made in response to comments received from the industry during the comment periods on the two NPRs. Commenters on the November 2010 notice recommended that the purpose of a loan should not be used as an independent condition for identifying the loan as leveraged, stating that a loan that is made ''for buyout, acquisition, and recapitalization'' is not implicitly risky and ignores the current financial condition of the borrower. As it prepared the leveraged loan definition for inclusion in the final rule, the FDIC agreed, in part, with this assessment and concluded that the amount of borrower leverage, rather than the purpose of a loan, should dictate whether or not the loan is leveraged and thus possesses higher risk. The higher-risk asset concentration measure in the scorecards for large and highly complex institutions is designed to capture this elevated risk. As further noted in the preamble for the final rule,[46] the FDIC believes that some bright-line metrics are necessary to ensure that institutions take a uniform approach to identifying loans to be reported as leveraged for assessment purposes. The FDIC used the metrics outlined in the February 2008 Comptroller's Handbook on Leveraged Lending (Handbook) [47] as the initial basis for its definition; however, to ensure consistency among institutions, the leveraged loan definition in the FDIC's final rule is more prescriptive than the Handbook guidance. However, the FDIC and the agencies considered the comment opposing the inclusion of undrawn credit lines in the debt to EBITDA metrics and are removing this provision from the draft instructions for reporting leveraged loans. Finally, for purposes of the final rule's definition of leveraged loans, the FDIC concluded that the inclusion of securities and securitizations within the definition of leveraged lending is consistent with the concept of a comprehensive concentration measure, which should include the total exposure arising from assets that share a particular set of characteristics.

The agencies acknowledged commenters' concerns about the definitions of subprime consumer loans and leveraged loans in the FDIC's final rule and the inability of large and highly complex institutions to report the amounts of these two categories of higher-risk assets in accordance with the final rule's definitions, particularly beginning with the June 30, 2011, report date. In consideration of these concerns, the agencies agreed to provide transition guidance for the reporting of subprime consumer loans and leveraged loans. As more fully explained in Section II above, for loans originated or purchased prior to October 1, 2011, and securities where the underlying loans were originated predominantly prior to October 1, 2011, for which a large or highly complex institution does not have within its data systems the information necessary to determine subprime consumer or leveraged status in accordance with the definitions of these two higher-risk asset categories in the FDIC's final rule, the institution may use its existing internal methodology for identifying subprime consumer or leveraged loans for purposes of reporting these assets in its Call Reports or TFRs. Institutions that do not have an existing internal methodology in place to identify subprime consumer or leveraged loans may, as an alternative to applying the definitions in the FDIC's final rule to pre-October 1, 2011, loans and securities, apply existing guidance provided by their primary federal regulator, the agencies' 2001 Expanded Guidance for Subprime Lending Programs,[48] or the February 2008 Comptroller's Handbook on Leveraged Lending [49] for purposes of identifying subprime consumer and leveraged loans

[46] See 76 FR 10692, February 25, 2011.

[47] *http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf.*

[48] *http://www.fdic.gov/news/news/press/2001/pr0901a.html.*

[49] *http://www.occ.gov/static/publications/handbook/LeveragedLending.pdf.*

originated or purchased prior to October 1, 2011, and subprime consumer and leveraged securities where the underlying loans were originated predominantly prior to October 1, 2011. All loans originated on or after October 1, 2011, and all securities where the underlying loans were originated predominantly on or after October 1, 2011, must be reported as subprime consumer or leveraged loans and securities according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.[50]

B. Criticized and Classified Items—The agencies proposed to add separate data items to the Call Report for the amount of items designated Special Mention, Substandard, Doubtful, and Loss.[51] These four data items are to be completed by large institutions and highly complex institutions and would cover both on- and off-balance sheet items that are criticized and classified. These data items were already being collected on a confidential basis from all savings associations on the TFR in Schedule VA—Consolidated Valuation Allowances and Related Data in line items VA960, VA965, VA970, and VA975.

According to Appendix A of the FDIC's final rule:

> Criticized and classified items include items an institution or its primary federal regulator have graded ''Special Mention'' or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments.[2] Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. government, its agencies, or government-sponsored agencies, under guarantee or insurance provisions.

[2] A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA [52] plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

Saving associations that are large or highly complex institutions would complete existing line items VA960, VA965, VA970, and VA975 in accordance with the preceding Appendix A guidance rather than the existing TFR instructions for these four line items. All other savings associations would continue to follow the existing TFR instructions for these four line items.

Comments were received from one depository institution and two bankers' organizations on the reporting of criticized and classified items proposed in the agencies' March 2011 initial PRA notice. One commenter expressed concerns about the comparability of criticized and classified totals that would be reported by different institutions, stating that some institutions may be conservative and ''over-report'' the amount of criticized and classified items while other institutions may be willing to take on more risk and ''under-report'' the amount of such items. This commenter requested assurances that items will be judged similarly across all institutions. This commenter also requested that the agencies clarify the meaning of ''unfunded loans'' as used in the definition of criticized and classified items. Another commenter requested that the phrase ''less credit valuation adjustments'' be removed from the definition to ensure consistency with information on criticized and classified items currently reported to the OCC by many institutions. The third commenter similarly recommended that institutions report the same data in the new items for criticized and classified items that they currently submit to their primary federal regulator. In this regard, both of these commenters cited the ''Fast Data Reporting Form'' used for this purpose by OCC-regulated institutions.

The agencies have developed uniform definitions for criticized and classified items and these definitions have been utilized for many years.[53] Additionally, the agencies expect the classifications or grades assigned to an institution's credit exposures to be subject to review and validation as part of the institution's internal control processes and by the institution's primary federal regulator as part of an ongoing supervisory program. In this regard, an institution that maintains a credit grading system that differs from the agencies' framework for criticized and classified items is expected to maintain documentation that translates the institution's system into the framework used by the agencies. This documentation should be sufficient to enable examiners to reconcile the totals for the various credit grades under the institution's system to the agencies' categories of criticized and classified items. Thus, the agencies believe that there is comparability across institutions in designating items as criticized or classified. Nevertheless, the FDIC will consider the effectiveness of an institution's internal credit grading system, generally as determined by the institution's primary federal regulator, when making adjustments to an institution's total score for purposes of setting assessment rates for large and highly complex institutions.

As used in the definition of criticized and classified items, the term ''unfunded loans'' represents the amount that the borrower is entitled to draw upon as of the quarter-end report date, i.e., the unused commitment as defined in the instructions to Call Report Schedule RC–L, item 1. The agencies have clarified the instructions for reporting criticized and classified items accordingly.

Lastly, for purposes of measuring the actual risk exposure to a large or highly complex institution from a criticized and classified marked-to-market counterparty position under its final rule, the FDIC concluded that it is appropriate to reduce the counterparty position by any applicable credit valuation adjustment. Not requiring an institution to apply credit valuation adjustments to its marked-to-market counterparty positions could potentially result in over-reporting the amount of criticized and classified items. However, a large or highly complex institution that has not previously measured its marked-to-market counterparty positions net of any applicable credit valuation adjustments for purposes of reporting criticized and classified items internally and to its primary federal regulator may report these positions in this same manner for deposit insurance assessment purposes in the Call Report or TFR, particularly if the institution concludes that updating its reporting systems to net these adjustments would impose an undue burden on the institution.

[50] For loans purchased on or after October 1, 2011, large and highly complex institutions may apply the transition guidance to loans originated prior to that date. Loans purchased on or after October 1, 2011, that also were originated on or after that date must be reported as subprime or leveraged according to the definitions of these higher-risk asset categories set forth in the FDIC's final rule.

[51] Loss items would include any items graded Loss that have not yet been written off against the allowance for loan and leases losses (or another valuation allowance) or charged directly to earnings, as appropriate.

[52] Credit Support Annex.

[53] See the Uniform Agreement on the Classification of Assets and Appraisal of Securities Held by Banks and Thrifts issued by the OCC, the Board, the FDIC, and the OTS in June 2004 at *http://www.fdic.gov/news/news/financial/2004/fil7004.html*. The 2004 agreement replaced an interagency agreement with the same title that was issued in 1979 and had its origins in interagency guidance issued in 1938.

C. Nontraditional Mortgage Loans—The agencies proposed to add a data item to the Call Report and the TFR for the balance sheet amount of nontraditional 1–4 family residential mortgage loans, including certain securitizations of such mortgages. The data item is to be completed by large and highly complex institutions. As described in Appendix C of the FDIC's final rule, which applies for assessment purposes only, nontraditional mortgage loans include all:

> residential loan products that allow the borrower to defer repayment of principal or interest and includes all interest-only products, teaser rate mortgages, and negative amortizing mortgages, with the exception of home equity lines of credit (HELOCs) or reverse mortgages.[8] [9] [10]
>
> For purposes of the higher-risk concentration ratio, nontraditional mortgage loans include securitizations where more than 50 percent of the assets backing the securitization meet one or more of the preceding criteria for nontraditional mortgage loans, with the exception of those securities classified as trading book.

[8] For purposes of this rule making, a teaser-rate mortgage loan is defined as a mortgage with a discounted initial rate where the lender offers a lower rate and lower payments for part of the mortgage term.

[9] *http://www.fdic.gov/regulations/laws/federal/2006/06noticeFINAL.html.*

[10] A mortgage loan is no longer considered a nontraditional mortgage once the teaser rate has expired. An interest only loan is no longer considered nontraditional once the loan begins to amortize.

The amount to be reported for nontraditional mortgage loans for deposit insurance assessment purposes would include purchased credit impaired loans, but would exclude amounts recoverable on nontraditional mortgage loans from the U.S. government, its agencies, or its government-sponsored agencies under guarantee or insurance provisions.

One depository institution and two bankers' organizations requested certain clarifications of the scope of the nontraditional mortgage loan data item. More specifically, these commenters asked whether nontraditional mortgages include conventional amortizing adjustable rate mortgages (ARMs) and residential construction loans on which the borrower is required to make only interest payments during the construction period and whether nontraditional mortgages can be reclassified as traditional loans when they begin to fully amortize. One commenter requested clarification of the term ''discounted initial rate'' as used in the nontraditional mortgage loan definition. This commenter also asked whether the teaser-rate mortgage loan definition applied to all ARMs or only to those that permit negative amortization. Another commenter recommended either removing the reference to teaser rates from the nontraditional mortgage loan definition or changing the definition to be consistent with existing regulatory definitions. This commenter cited the description of teaser rates in the OTS's 2011 Examination Handbook.[54]

Although the FDIC used the October 2006 Interagency Guidance on Nontraditional Mortgage Product Risks [55] as the starting point for the definition of nontraditional mortgage loans in its final rule, the final rule's definition for assessment purposes only differs from the Interagency Guidance in some respects. Therefore, in response to the comments, the agencies agreed that certain clarifications of the final rule's definition would be appropriate to assist institutions in properly reporting the amount of nontraditional mortgage loans in the Call Report and TFR. Accordingly, the agencies have revised the reporting instructions to state that nontraditional mortgage loans do not include residential construction loans on which the borrower is required to pay only interest or conventional fully amortizing ARMs that do not have a teaser rate. However, ARMs that have a teaser rate that has not expired would be considered nontraditional mortgage loans for deposit insurance assessment purposes. In addition, the reporting instructions have been clarified to state that nontraditional mortgages can be reclassified as traditional loans once they become fully amortizing loans, provided they do not have a teaser rate. Finally, the reporting instructions now indicate that a loan has a teaser rate, i.e., a discounted initial rate, when the loan's effective interest rate at the time of origination or refinancing is less than the rate the bank is willing to accept for an otherwise similar extension of credit with comparable risk.

D. Counterparty Exposures—The agencies proposed to add new items to the Call Report for the total amount of an institution's 20 largest counterparty exposures and the amount of the institution's largest counterparty exposure, which would be completed only by highly complex institutions. According to Appendix A of the FDIC's final rule:

> Counterparty exposure is equal to the sum of Exposure at Default (EAD) associated with derivatives trading and Securities Financing Transactions (SFTs) and the gross lending exposure (including all unfunded commitments) for each counterparty or borrower at the consolidated entity level [of the counterparty].[1]

[1] EAD and SFTs are defined and described in the compilation issued by the Basel Committee on Banking Supervision in its June 2006 document, ''International Convergence of Capital Measurement and Capital Standards.'' The definitions are described in detail in Annex 4 of the document. Any updates to the Basel II capital treatment of counterparty credit risk would be implemented as they are adopted. *http://www.bis.org/publ/bcbs128.pdf.*

When measuring counterparty exposure for deposit insurance pricing purposes, highly complex institutions should exclude exposure amounts arising from due from accounts, federal funds sold, investments in debt and equity securities, and credit protection purchased or sold where the counterparty under consideration is the reference entity.

Two bankers' organizations requested that, for purposes of the two counterparty exposure data items, highly complex institutions be permitted to use the same EAD amounts for derivatives and SFTs as reported in the schedules of Form FFIEC 101, Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework, produced for their Basel II ''parallel run.'' These organizations argued that a requirement to produce EADs under a different methodology would be burdensome and inconsistent with the risk associated with these exposures. One bankers' organization suggested that a second-best alternative to using the EAD amounts reported in the Form FFIEC 101 would be to use the asset amounts reported on an institution's balance sheet.

In order for a highly complex institution to adopt an Internal Models Methodology (IMM) to calculate EAD, the agencies believe that the institution must receive approval from its primary federal regulator in accordance with the risk-based capital standards issued by its regulator. In this regard, an institution supervised by the FDIC should follow the methodology prescribed by 12 CFR Part 325, Appendix D, Section 32; an institution supervised by the Office of the Comptroller of the Currency should follow the methodology prescribed by 12 CFR Part 3, Appendix C, Section 32; and an institution supervised by the Federal Reserve should follow the methodology prescribed by 12 CFR Part 208, Appendix F, Section 32. If a highly complex institution has not received regulatory approval to adopt an IMM,

[54] *http://www.ots.treas.gov/?p=ExaminationHandbook.*

[55] See 71 FR 58609, October 4, 2006.

then it may calculate EAD using the current exposure methodology in accordance with the risk-based capital standards issued by its primary federal regulator. As an alternative, an institution without approval to adopt the IMM or not adopting an IMM may report the credit equivalent amount for each counterparty's derivative exposures as calculated in accordance with the instructions for Call Report Schedule RC–R, item 54, ''Derivative contracts.'' The agencies have incorporated this guidance into the reporting instructions for counterparty exposure data items.

E. Treatment of Loans Held for Trading When Reporting Higher-Risk Asset Categories—One bankers' organization noted that ''for several new reporting items (e.g. nontraditional mortgage loans, subprime consumer loans, and leveraged loans) * * * securities included in the definition of higher-risk assets exclude those securities held for trading purposes.'' The organization recommended that loans held for trading also be excluded from these higher-risk asset items, consistent with the treatment of securities held for trading.

The agencies agree that there should be a consistent treatment of securities and loans held for trading for deposit insurance pricing purposes. Therefore, a large or highly complex institution should exclude loans that would otherwise fall within the scope of the definitions of nontraditional mortgage loans, subprime consumer loans, and leveraged loans, but are reported as trading assets in its Call Report or TFR, from the amounts reported for these higher-risk asset categories. The agencies have revised the instructions for these three data items accordingly.

F. Confidential Treatment for Certain Data Items for Large Institutions and Highly Complex Institutions—The proposed data items for criticized and classified items, nontraditional mortgage loans, subprime consumer loans, leveraged loans, top 20 counterparty exposures, and largest counterparty exposure have been gathered for the FDIC's use through examination processes at large and highly complex institutions and are treated as confidential examination information. The agencies proposed to obtain these data items directly from each large or highly complex institution in its regular quarterly regulatory report (Call Report or TFR) and use the reported data as inputs to scorecard measures. Because the agencies continue to regard these items as examination information, the information would continue to be accorded confidential treatment when collected via the Call Report and TFR.

The agencies received comments from two bankers' organizations supporting the confidential treatment of the proposed examination-related data items identified above. However, they recommended that the agencies collect these data items on a new Call Report Schedule RC–O, part II, rather than within the Memorandum section of Schedule RC–O, which also contains data items that are not accorded confidential treatment, and in a similarly segregated section of the TFR. According to these organizations, the suggested reformatting of these data items would more efficiently facilitate the agencies' ability to remove the examination-related data items from the Call Report and the TFR before making the reports available to the public. In addition, one bankers' organization requested confirmation from the agencies that any change to the confidential treatment of these data items would be published in the **Federal Register.**

The agencies currently accord confidential treatment to selected data items in the Call Report and the TFR. These data items are located in various schedules within these two reports and, except for two TFR schedules that in their entirety receive confidential treatment, these data items are not segregated from other data items that are publicly available. Data items designated as confidential, regardless of their location within the Call Report or the TFR, are flagged as such within the agencies' data systems that generate the versions of the Call Report and the TFR that are made available to the public on the Internet at *https://cdr.ffiec.gov/public/ManageFacsimiles.aspx.* Accordingly, based on their experience with existing confidential items in the Call Report and the TFR, the agencies do not believe it is necessary to move the examination-related data items to a new Call Report Schedule RC–O, part II, or a similarly segregated section of the TFR to ensure that the agencies do not make the information reported in these data items available to the public.

The agencies confirm that if they decide at a future date to begin making any of the examination-related data items publicly available, such a proposed change will be published for public comment in the **Federal Register.** The agencies have followed this practice in the past when changing the status of a data item from confidential to publicly available.

One bankers' organization requested that the FDIC restrict access to the Assessment Rate Calculator on the FDIC's Web site,[56] which is publicly available, ''to persons authorized by the institution to calculate its own assessment rates.'' The organization recommended this action because ''the spreadsheet is automatically populated by data from a bank's Call Report, providing the user [who enters a bank's FDIC certificate number] with an estimate of the bank's assessment rate.'' The organization expressed concern that the new data items used as inputs to the scorecards for large and highly complex institutions that would be accorded confidential treatment under the agencies' proposal ''would be able to be viewed by the public if they have access to the certificate number of a bank.''

Restricting access to the Assessment Rate Calculator to authorized personnel at individual institutions is not necessary. Inputs to the calculator that are designated as confidential Call Report and TFR data items are not downloaded into the calculator when a user enters an institution's FDIC Certificate Number into the calculator's data entry worksheet. Only those data items that are publicly available are automatically downloaded into the calculator. All confidential data items must be manually entered into the appropriate worksheet cells by the user in order for the calculator to work.

Request for Comment

As previously stated, the assessment-related reporting revisions to the Call Report, the TFR, and the FFIEC 002/002S reports that are the subject of this notice were approved by OMB under emergency clearance procedures on June 17, 2011; took effect as of the June 30, 2011, report date; and incorporate modifications made in response to the comments received on the agencies' March 2011 initial PRA notice. Because these revisions will need to remain in effect beyond the limited period associated with OMB's emergency approval, the agencies are publishing this notice to begin normal PRA clearance procedures anew for these revisions.

Accordingly, public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the proposed revisions to the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are

[56] See *http://www.fdic.gov/deposit/insurance/calculator.html.*

proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(d) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: July 20, 2011.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, July 21, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated at Washington, DC, this 20th day of July, 2011.

Federal Deposit Insurance Corporation.

Ralph E. Frable,

Counsel.

Dated: July 20, 2011.

Ira L. Mills,

Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.

[FR Doc. 2011–19021 Filed 7–26–11; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714– 01–P; 7720–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 27, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Project Committee will be held Tuesday, September 27, 2011 at 2 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19018 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Alabama, Georgia, Florida, Louisiana, Mississippi, Tennessee, and Puerto Rico

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 7, 2011.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 3 Taxpayer Advocacy Panel will be held Wednesday, September 7, 2011, at 3:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19003 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance Project Committee will be held Tuesday, September 13, 2011, 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19025 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Notice Improvement Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 1, 2011.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Notice Improvement Project Committee will be held Thursday, September 1, 2011, 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19023 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 15, 2011.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1–888–912–1227 or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 7 Taxpayer Advocacy Panel will be held Thursday, September 15, 2011, at 2 p.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Janice Spinks. For more information please contact Ms. Spinks at 1–888–912–1227 or 206–220–6098, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19009 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Idaho, Iowa, Minnesota, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 7, 2011.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Wednesday, September 7, 2011, at 11 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19007 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 5 Taxpayer Advocacy Panel (including the states of Arizona, Arkansas, Colorado, Kansas, New Mexico, Missouri, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 15, 2011.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Thursday, September 15, 2011, at 11:30 a.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19006 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, September 20, 2011, at 1 p.m. Central Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006 MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19005 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 21, 2011.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, September 21, 2011, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Audrey Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19001 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 22, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, September 22, 2011, 2 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or *write:* TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19028 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, September 26, 2011.

FOR FURTHER INFORMATION CONTACT: Marianne Ayala at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Project Committee will be held Monday, September 26, 2011, at 3 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Ayala. For more information please contact Ms. Ayala at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19022 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Tuesday, September 13, 2011, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–19024 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, New Jersey, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, September 13, 2011, at 10 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marisa Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 20, 2011.

Shawn Collins,

Director, Taxpayer Advocacy Panel.

[FR Doc. 2011–18998 Filed 7–26–11; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities. Request for public comment.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the United States Sentencing Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2012.

DATES: Public comment should be received on or before August 26, 2011.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs—Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and Public Affairs, 202–502–4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for Federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2012. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all of its identified priorities by the statutory deadline of May 1, 2012. Accordingly, it may be necessary to continue work on any or all of these issues beyond the amendment cycle ending on May 1, 2012.

As so prefaced, the Commission has identified the following tentative priorities:

(1) Continuation of its work on statutory mandatory minimum penalties, including (A) its study of and, pursuant to the directive in section 4713 of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009, Public Law 111B84, report to Congress on statutory mandatory minimum penalties, including a review of the operation of the ''safety valve'' provision at 18 U.S.C. 3553(e); and (B) its study of and, pursuant to the directive in section 107(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111B195, report to Congress regarding violations of section 5(a) of the United Nations Participation Act of 1945 (22 U.S.C. 287c(a)), sections 38, 39, and 40 of the Arms Export Control Act (22 U.S.C. 2778, 2779, and 2780), and the Trading with the Enemy Act (50 U.S.C. App. 1 *et seq.*).

(2) Continuation of its work on implementation of the directives in section 1079A of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111B203, regarding securities fraud offenses and fraud offenses relating to financial institutions or Federally related mortgage loans; and implementation of any other crime legislation enacted during the 111th or 112th Congress warranting a Commission response.

(3) Continuation of its work with the congressional, executive, and judicial branches of government, and other interested parties, to study the manner in which *United States* v. *Booker,* 543 U.S. 220 (2005), and subsequent Supreme Court decisions have affected Federal sentencing practices, the appellate review of those practices, and the role of the Federal sentencing guidelines. The Commission anticipates that it will issue a report with respect to its findings, possibly including (A) An evaluation of the impact of those decisions on the Federal sentencing guideline system; (B) development of recommendations for legislation regarding Federal sentencing policy; (C) an evaluation of the appellate standard of review applicable to post-*Booker* Federal sentencing decisions; and (D) possible consideration of amendments to the Federal sentencing guidelines.

(4) Continuation of its multi-year review of § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and possible consideration of amendments to the Federal sentencing guidelines for drug offenses.

(5) Continuation of its review of child pornography offenses and report to Congress as a result of such review. It is anticipated that any such report would include (A) A review of the incidence of, and reasons for, departures and variances from the guideline sentence; (B) a compilation of studies on, and analysis of, recidivism by child pornography offenders; and (C) possible recommendations to Congress on any statutory changes that may be appropriate.

(6) Continuation of its multi-year study of the statutory and guideline definitions of ''crime of violence'', ''aggravated felony'', ''violent felony'', and ''drug trafficking offense'', including (A) Possible consideration of an amendment to specify the types of documents to be considered under the ''categorical approach'', *see Taylor* v. *United States,* 495 U.S. 575 (1990); *Shepard* v. *United States,* 544 U.S. 13 (2005), for determining the applicability of guideline enhancements; (B) an examination of relevant circuit conflicts regarding whether any offense is categorically a ''crime of violence'', ''aggravated felony'', ''violent felony'', or ''drug trafficking offense'' for purposes of triggering an enhanced sentence under certain Federal statutes and guidelines; and (C) possible report to Congress making recommendations on any statutory changes that may be appropriate to relevant statutes, such as 8 U.S.C. 1326.

(7) Continuation of its review of departures within the guidelines, including provisions in Parts H and K of Chapter Five of the *Guidelines Manual,* and the extent to which pertinent statutory provisions prohibit, discourage, or encourage certain factors as forming the basis for departure from the guideline sentence.

(8) Continuation of its multi-year review of the guidelines and their application to human rights offenses, including genocide under 18 U.S.C. 1091, war crimes under 18 U.S.C. 2441, torture and maiming to commit torture under 18 U.S.C. 2340A and 114, respectively, and child soldier offenses under 18 U.S.C. 2442, and possible promulgation of guidelines or guideline amendments with respect to these offenses.

(9) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the Federal courts.

(10) Consideration of (A) § 5K2.19 (Post-Sentencing Rehabilitative Efforts) (Policy Statement) in light of *Pepper* v. *United States,* 131 S.Ct. 1229 (March 2, 2011); (B) whether to provide a specific reference for N-Benzylpiperazine (BZP) in the Drug Quantity Table in § 2D1.1; and (C) any other miscellaneous guideline application issues coming to the Commission's attention from case law and other sources.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2012. To the extent practicable, public comment should include the following: (1) A statement of the issue, including, where appropriate, the scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Patti B. Saris,

Chair.

[FR Doc. 2011–18931 Filed 7–26–11; 8:45 am]

BILLING CODE 2210–40–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New; DBQs—Group 4]

Proposed Information Collection (Disability Benefits Questionnaires—Group 4) Activity: Comment Request

AGENCY: . Department of Veterans Affairs, Veterans Benefits Administration

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to obtain medical

evidence to adjudicate a claim for disability benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 26, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–New (DBQs—Group 4)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Cranial Nerves Diseases Disability Benefits Questionnaire, VA Form 21–0960C3.

b. Narcolepsy Disability Benefits Questionnaire, VA Form 21–0960C6.

c. Fibromyalgia Disability Benefits Questionnaire, VA Form 21–0960C7.

d. Seizure Disorders (Epilepsy) Disability Benefits Questionnaire, VA Form 21–0960C11.

e. Oral and Dental including Mouth, Lips, and Tongue (other than Temporomandibular Joint Conditions) Disability Benefits Questionnaire, VA Form 21–0960D1.

f. Endocrine Diseases (other than Thyroid, Parathyroid or Diabetes Mellitus) Disability Benefits Questionnaire, VA Form 21–0960–E–2.

g. Thyroid & Parathyroid Conditions Disability Benefits Questionnaire, VA Form 21–0960–E–3.

h. Abdominal, Inguinal, and Femoral Hernias Disability Benefits Questionnaire, VA Form 21–0960–H–1.

i. HIV-Related Illnesses Disability Benefits Questionnaire, VA Form 21–0960–I–2 .

j. Infectious Diseases Other Than HIV-Related Illness, Chronic Fatigue Syndrome, and Tuberculosis Disability Benefits Questionnaire, VA Form 21–0960–I–3.

k. Systemic Lupus Erytematous (SLE) and Other Immune Disorders (except HIV) and Other Autoimmune Diseases (other than HIV and Diabetes Mellitus Type I) Disability Benefits Questionnaire, VA Form 21–0960–I–4.

l. Nutritional Deficiencies Disability Benefits Questionnaire, VA Form 21–0960–I–5.

m. Urinary Tract (including Bladder & Urethra) Conditions (excluding Male Reproductive System) Disability Benefits Questionnaire, VA Form 21–0960–J–4.

n. Respiratory Conditions (other than Tuberculosis and Sleep Apnea) Disability Benefits Questionnaire, VA Form 21–0960–L–1.

o. Loss of Sense of Smell and/or Taste Disability Benefits Questionnaire, VA Form 21–0960–N–3.

p. Sinusitis/Rhinitis and Other Conditions of the Nose, Throat, Larynx, and Pharynx Disability Benefits Questionnaire, VA Form 21–0960–N–4.

q. Chronic Fatigue Syndrome Disability Benefits Questionnaire, VA Form 21–0960–Q–1.

OMB Control Number: 2900–New (DBQs—Group 4).

Type of Review: New collection.

Abstract: Data collected on VA Form 21–0960 series will be used to obtain information from claimants treating physician that is necessary to adjudicate a claim for disability benefits.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VAF 21–0960–C–3—5,000.
b. VAF 21–0960–C–6—1,250.
c. VAF 21–0960–C–7—1,250.
d. VAF 21–0960–C–11—1,250.
e. VAF 21–0960–D–1—1,250.
f. VAF 21–0960–E–2—2,500.
g. VAF 21–0960–E–3—2,500.
h. VAF 21–0960–H–1—3,750.
i. VAF 21–0960–I–2—1,250.
j. VAF 21–0960–I–3—2,500.
k. VAF 21–0960–I–4—2,500.
l. VAF 21–0960–I–5—1,250.
m. VAF 21–0960–J–4—3,750.
n. VAF 21–0960–L–1—10,000.
o. VAF 21–0960–N–3—1,250.
p. VAF 21–0960–N–4—10,000.
q. VAF 21–0960–Q–1—2,500.

Estimated Average Burden per Respondent:

a. VAF 21–0960–C–3—30 minutes.
b. VAF 21–0960–C–6—15 minutes.
c. VAF 21–0960–C–7—15 minutes.
d. VAF 21–0960–C–11—15 minutes.
e. VAF 21–0960–D–1—15 minutes.
f. VAF 21–0960–E–2—15 minutes.
g. VAF 21–0960–E–3—15 minutes.
h. VAF 21–0960–H–1—15 minutes.
i. VAF 21–0960–I–2—15 minutes.
j. VAF 21–0960–I–3—15 minutes.
k. VAF 21–0960–I–4—30 minutes.
l. VAF 21–0960–I–5—15 minutes.
m. VAF 21–0960–J–4—15 minutes.
n. VAF 21–0960–L–1—30 minutes.
o. VAF 21–0960–N–3—15 minutes.
p. VAF 21–0960–N–4—30 minutes.
q. VAF 21–0960–Q–1—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VAF 21–0960–C–3—10,000.
b. VAF 21–0960–C–6—5,000.
c. VAF 21–0960–C–7—5,000.
d. VAF 21–0960–C–11—5,000.
e. VAF 21–0960–D–1—5,000.
f. VAF 21–0960–E–2—10,000.
g. VAF 21–0960–E–3—10,000.
h. VAF 21–0960–H–1—15,000.
i. VAF 21–0960–I–2—5,000.
j. VAF 21–0960–I–3—10,000.
k. VAF 21–0960–I–4—5,000.
l. VAF 21–0960–I–5—5,000.
m. VAF 21–0960–J–4—15,000.
n. VAF 21–0960–L–1—20,000.
o. VAF 21–0960–N–3—5,000.
p. VAF 21–0960–N–4—20,000.
q. VAF 21–0960–Q–1—10,000.

Dated: July 22, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18958 Filed 7–26–11; 8:45 am]

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Part II

Environmental Protection Agency

40 CFR Parts 87 and 1068
Control of Air Pollution From Aircraft and Aircraft Engines; Proposed Emission Standards and Test Procedures; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 87 and 1068

[EPA–HQ–OAR–2010–0687; FRL–9437–2]

RIN 2060–AO70

Control of Air Pollution From Aircraft and Aircraft Engines; Proposed Emission Standards and Test Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes several new NO_X emission standards, compliance flexibilities, and other regulatory requirements for aircraft turbofan or turbojet engines with rated thrusts greater than 26.7 kilonewtons (kN). We also are proposing certain other requirements for gas turbine engines that are subject to exhaust emission standards. First, we are proposing to clarify when the emission characteristics of a new turbofan or turbojet engine model have become different enough from its existing parent engine design that it must conform to the most current emission standards. Second, we are proposing a new reporting requirement for manufacturers of gas turbine engines that are subject to any exhaust emission standard to provide us with timely and consistent emission-related information. Third, and finally, we are proposing amendments to aircraft engine test and emissions measurement procedures. EPA actively participated in the United Nation's International Civil Aviation Organization (ICAO) proceedings in which most of these proposed requirements were first developed. These proposed regulatory requirements have largely been adopted or are actively under consideration by its member states. By adopting such similar standards, therefore, the United States will maintain consistency with these international efforts.

DATES: Comments must be received on or before September 26, 2011.

Hearing: The public hearing will be held on August 11, 2011 at the Sheraton Chicago O'Hare Airport Hotel, 6501 North Mannheim Road, Rosemont, IL 60018. Telephone (847)699–6300. See section VII for more information about public hearings.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2010–0687, by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

- *E-mail: A-and-R–Docket@epamail.epa.gov.*
- *Fax:* 202–566–9744.

Mail: EPA Docket center, EPA West (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2010–0687, Mailcode: Mail Code 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**). Please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2010–0687. 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 e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail 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 EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is 202–566–1742

FOR FURTHER INFORMATION CONTACT: Richard Wilcox, Office of Transportation and Air Quality, Office of Air and Radiation, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4390; fax number: (734) 214–4816; e-mail address: *wilcox.rich@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially regulated by this action are those that manufacture and sell aircraft engines and aircraft in the United States. Regulated categories include:

Category	NAICS [a] Codes	SIC Codes [b]	Examples of potentially affected entities
Industry	336412	3724	Manufacturers of new aircraft engines.
Industry	336411	3721	Manufacturers of new aircraft.

[a] North American Industry Classification System (NAICS)
[b] Standard Industrial Classification (SIC) system code

This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities are regulated by this

action, you should carefully examine the applicability criteria in 40 CFR 87.1 (part 87). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Overview and Background

This section summarizes the major provisions of the proposed rule for aircraft gas turbine engines. It also contains background on the EPA's standard setting authority and responsibilities under the Clean Air Act, the connection between our emission standards and those of the international community, and a brief regulatory history for this source of emissions.

A. Summary of the Proposal

We are proposing several new emission standards and other regulatory requirements for aircraft turbofan and turbojet engines [1] with rated thrusts greater than 26.7 kilonewtons (kN). First, we are proposing two new tiers of more stringent emission standards for oxides of nitrogen (NO_X). The proposed standards would apply differently to two classes of these engines, *i.e.,* ''newly-certified engines'' and ''newly-manufactured engines.'' The newly-certified engine standards would apply to aircraft engines that have received a new type certificate and have never been manufactured prior to the effective date of the new emission standards. Requirements for newly-manufactured engines would apply to aircraft engines that were previously certified and manufactured in compliance with preexisting standards, and would require manufacturers to either comply with the newer standards by a specified future date or cease production. Newly-manufactured engine standards are also sometimes referred to as ''production cutoff'' standards. Second, we are proposing certain time-limited flexibilities, *i.e.,* the potential for exemptions or exceptions as defined in the regulations for newly-manufactured engines that may not be able to comply with the first tier of the proposed NO_X standards because of specific technical or economic reasons.

We are also proposing a number of additional changes that would apply to a wider range of aircraft gas turbine engines [2] than those that would be subject to the proposed new emission standards. First, we are proposing to define a derivative engine for emissions certification purposes. The intent of this definition is to distinguish when the emission characteristics of a new turbofan engine model vary sufficiently from its existing parent engine design, and must show compliance with the emission standard for a newly-certificated engine. Second, we are proposing new reporting requirements for manufacturers that produce gas turbine engines subject to any exhaust emission standard. This would provide us with timely and consistent emission data and other information that is necessary to conduct emission analyses and develop appropriate public policy for the aviation sector. Specifically, reports would be required for turbofan engines with rated thrusts greater than 26.7 kN, which are subject to gaseous emission and smoke standards, in addition to turbofans less than or equal to 26.7 kN, and all turboprop engines, that are only subject to smoke standards. Third, we are proposing amendments to the test and measurement procedures for aircraft engines. Finally, as described in section IV., we are proposing minor amendments to provisions addressing definitions, acronyms and abbreviations, general applicability and

[1] Turbofan and turbojet engines will be collectively referred to as turbofan engines hereafter for convenience.

[2] The term gas turbine engine includes turbofan, turbojet, and turboprop engines designs. The rated output for turbofan and turbojet engines is normally expressed as kilonewtons (kN) thrust. The rated output for turboprop engines is normally expressed as shaft horsepower (hp) or shaft kilowatt (kW).

requirements, exemptions, and incorporation by reference.

Most of these proposed regulatory requirements have already been adopted or are actively under consideration by the United Nation's International Civil Aviation Organization (ICAO). The proposed requirements would bring the United States into alignment with the international standards and recommended practices.

B. EPA's Authority and Responsibilities Under the Clean Air Act

Section 231(a)(2)(A) of the Clean Air Act (CAA) directs the Administrator of EPA to, from time to time, propose aircraft engine emission standards applicable to the emission of any air pollutant from classes of aircraft engines which in her judgment causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. (See 42 U.S.C. 7571(a)(2)(A).) Section 231(a)(2)(B) directs EPA to consult with the Administrator of the Federal Aviation Administration (FAA) on such standards, and prohibits EPA from changing aircraft emission standards if such a change would significantly increase noise and adversely affect safety. 42 U.S.C. 7571(a)(2)(B)(i)–(ii). Section 231(a)(3) provides that after we propose standards, the Administrator shall issue such standards ''with such modifications as he deems appropriate.'' 42 U.S.C. 7571(a)(3). The U.S. Court of Appeals for the DC Circuit has held that this provision confers an unusually broad degree of discretion on EPA to adopt aircraft engine emission standards as the Agency determines are reasonable. *NACAA* v. *EPA,* 489 F.3d 1221 (DC Cir. 2007).

In addition, under CAA section 231(b) EPA is required to ensure, in consultation with the U.S. Department of Transportation (DOT), that the effective date of any standard provides the necessary time to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance. 42 U.S.C. 7571(b). Section 232 then directs the FAA to prescribe regulations to insure compliance with EPA's standards. 42 U.S.C. 7572. Finally, section 233 of the CAA vests the authority to promulgate emission standards for aircraft or aircraft engines only in EPA. States are preempted from adopting or enforcing any standard respecting aircraft engine emissions unless such standard is identical to EPA's standards. 42 U.S.C. 7573. Section VI. of today's proposal further discusses our coordination with DOT through the FAA.[3] It also describes DOT's responsibility under the CAA to enforce the aircraft emission standards established by EPA.

C. Interaction With the International Community

We began regulating the emissions from aircraft engines in 1973. Since that time, we have worked with the FAA and later with the International Civil Aviation Organization (ICAO) to develop international standards and other recommended practices pertaining to aircraft engine emissions. ICAO was established in 1944 by the United Nations (by the Convention on International Civil Aviation, the ''Chicago Convention'') ''* * * in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.'' [4] ICAO's responsibilities include developing aircraft technical and operating standards, recommending practices, and generally fostering the growth of international civil aviation. The United States is currently one of 190 participating member States of ICAO.[5] [6]

In the interests of global harmonization and international air commerce, the Chicago Convention urges a high degree of uniformity by its member States. Nonetheless, the Convention also recognizes that member States may adopt their own unique airworthiness standards and that some may adopt standards that are more stringent than those agreed upon by ICAO.

The Convention has a number of other features that govern international commerce. First, States that wish to use aircraft in international transportation must adopt emission standards and other recommended practices that are at least as stringent as ICAO's standards. States may ban the use of any aircraft within their airspace that does not meet ICAO standards.[7] Second, States are required to recognize the airworthiness certificates of any State whose standards are at least as stringent as ICAO's standards, thereby assuring that aircraft of any member State will be permitted to operate in any other member State.[8] Third, and finally, to ensure that international commerce is not unreasonably constrained, a participating nation which elects to adopt more stringent standards is obligated to notify ICAO of the differences between its standards and ICAO standards.[9] However, if a nation sets tighter standards than ICAO, air carriers not based in that nation (foreign-flagged carriers) would only be required to comply with ICAO standards or more stringent standards imposed by their own nations, if applicable.

ICAO Council's Committee on Aviation Environmental Protection (CAEP) undertakes ICAO's technical work in the environmental field. The Committee is responsible for evaluating, researching, and recommending measures to the ICAO Council that address the environmental impact of international civil aviation. CAEP is composed of various task groups, work groups, and other contributing committees whose contributing members include atmospheric, economic, aviation, environmental, and other professionals. At CAEP meetings, the United States is represented by the FAA, which plays an active role at these meetings. EPA has historically been a principal participant in the development of U.S. policy in various ICAO/CAEP working groups and other international venues, assisting and advising FAA on aviation emissions, technology, and policy matters. If ICAO adopts a CAEP proposal for a new environmental standard, it then becomes part of ICAO standards and recommended practices (Annex 16 to the Chicago Convention).[10]

[3] The functions of the Secretary of Transportation under part B of title II of the Clean Air Act (§§ 231–234, 42 U.S.C. 7571–7574) have been delegated to the Administrator of the FAA. 49 CFR 1.47(g).

[4] International Civil Aviation Organization (ICAO), ''Convention on International Civil Aviation,'' Ninth Edition, Document 7300/9, 2006. Copies of this document can be obtained from the ICAO Web site located at *http://www.icao.int.*

[5] Members of ICAO's Assembly are generally termed member States or contracting States. These terms are used interchangeably throughout this preamble.

[6] There are currently 190 Contracting States according to ICAO website located at *http://www.icao.int.*

[7] ICAO, ''Convention on International Civil Aviation,'' Article 87, Ninth Edition, Document 7300/9, 2006. Copies of this document can be obtained from the ICAO website located at *http://www.icao.int/icaonet/arch/doc/7300/7300_9ed.pdf.*

[8] ICAO, ''Convention on International Civil Aviation,'' Article 33, Ninth Edition, Document 7300/9, 2006. Copies of this document can be obtained from the ICAO Web site located at *http://www.icao.int/icaonet/arch/doc/7300/7300_9ed.pdf.*

[9] ICAO, ''Convention on International Civil Aviation,'' Articles 38, Ninth Edition, Document 7300/9, 2006. Copies of this document can be obtained from the ICAO Web site located at *http://www.icao.int/icaonet/arch/doc/7300/7300_9ed.pdf.*

[10] ICAO, ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Second Edition, July 2008. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

D. Brief History of EPA's Regulation of Aircraft Engine Emissions

As mentioned above, we initially regulated gaseous exhaust emissions, smoke, and fuel venting from aircraft engines in 1973.[11] Since that time, we have occasionally revised those regulations. Two of these revisions are most pertinent to today's proposal. First, in a 1997 rulemaking, we made our emission standards and test procedures more consistent with those of ICAO for turbofan engines used in commercial aviation with rated thrusts greater than 26.7kN.[12] These ICAO requirements are generally referred to as CAEP/2 standards. (The numbering nomenclature for CAEP requirements is discussed in the next section.) That action included new NO_X emission standards for newly-manufactured commercial turbofan engines (those engines built after the effective date of the regulations that were already certified to pre-existing standards) [13] and for newly-certified commercial turbofan engines (those engine models that received their initial type certificate after the effective date of the regulations). It also included a CO emission standard for newly-manufactured commercial turbofan engines. Second, in our most recent rulemaking in 2005, we promulgated more stringent NO_X emission standards for newly-certified commercial turbofan engines.[14] That final rule brought the U.S. standards closer to alignment with ICAO CAEP/4 requirements that were effective in 2004. In ruling on a petition for judicial review of the 2005 rule filed by the National Association of Clean Air Agencies (NACAA), the U.S. Court of Appeals held that EPA's approach of tracking the ICAO standards was reasonable and permissible under the CAA. *NACAA* v. *EPA,* 489 F.3d 1221, 1230–32 (DC Cir. 2007).

E. Brief History of ICAO Regulation of Aircraft Engine Emissions

The first international standards and recommended practices for aircraft engine emissions was recommended by CAEP's predecessor, the Committee on Aircraft Engine Emissions (CAEE), and adopted by ICAO in 1981.[15] These standards limited aircraft engine emissions of HC, CO, and NO_X. In 1994, ICAO adopted a CAEP/2 proposal to tighten the original NO_X standard by 20 percent and amend the test procedures.[16] At the next CAEP meeting (CAEP/3) in 1995, the Committee recommended a further tightening of 16 percent and additional test procedure amendments, but in 1997 the ICAO Council rejected this stringency proposal and approved only the test procedure amendments. At the CAEP/4 meeting in 1998, the Committee adopted a similar 16 percent NO_X reduction proposal, which ICAO approved on 1998. The CAEP/4 standards applied only to new engine designs certified after December 31, 2003 (*i.e.,* the requirements did not also apply to newly-manufactured engines unlike the CAEP/2 standards). In 2004, CAEP/6 recommended a 12 percent NO_X reduction, which ICAO approved in 2005.[17] [18] The CAEP/6 standards applied to newly-certified engine models beginning after December 31, 2007. At the most recent meeting, CAEP/8 recommended a further tightening of the NO_X standards by 15 percent for newly-certified engines.[19] [20] The Committee also recommended that the CAEP/6 standards be applied to newly-manufactured engines. ICAO is currently considering the CAEP/8 recommendations. We expect final ICAO action regarding the CAEP/8 recommendations in 2011.

II. Why is EPA taking this action?

As mentioned above, section 231(a)(2)(A) of the CAA authorizes the EPA Administrator to ''from time to time, issue proposed emission standards applicable to the emission of any air pollution from any class or classes of aircraft or aircraft engines which in his judgment causes, or contributes to air pollution which may reasonably be anticipated to endanger public health or welfare.'' 42 U.S.C. 7571(a)(2)(A).

One of the principal components of aircraft exhaust emissions is NO_X. NO_X is a precursor to the formation of tropospheric ozone.[21] Many commercial airports are located in urban areas and many of these areas have ambient pollutant levels above the National Ambient Air Quality Standards (NAAQS) for ozone and fine particulate matter ($PM_{2.5}$) (*i.e.,* they are in nonattainment for ozone and $PM_{2.5}$). This section discusses the contribution of aircraft engines used in commercial service with rated thrusts greater than 26.7kN to the national NO_X emissions inventory and to NO_X emission inventories in selected ozone nonattainment areas, the potential effect of NO_X emissions in the upper atmosphere on ground level $PM_{2.5}$ in addition to the health and welfare impacts of NO_X and PM emissions.

A. Inventory Contribution

In contrast to all other mobile sources, whose emissions occur completely at ground level, the emissions from aircraft and aircraft engines can be divided into two flight regimes. The first regime includes the emissions that are released in the lower layer of the atmosphere and directly affect local and regional ambient air quality. These emissions generally occur at or below 3,000 feet above ground level, *i.e.,* during the landing and takeoff (LTO) cycle. The aircraft operations that comprise an LTO cycle are: engine idle at the terminal gate (and sometimes during ground delays while holding for the active runway); taxiing between the terminal and the runway; take-off; climb-out; and approach to the airport. The second regime includes emissions that occur above 3,000 feet above ground level,

[11] U.S. EPA, ''Emission Standards and Test Procedures for Aircraft;'' Final Rule, 38 FR 19088, July 17, 1973.

[12] U.S. EPA, ''Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures;'' Final Rule, 62 FR 25356, May 8, 1997. While ICAO's standards were not limited to ''commercial'' aircraft engines, our 1997 standards were explicitly limited to commercial engines, as our finding that NO_X and CO emissions from aircraft engines cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare was so limited, See 62 FR 25358. As explained later in today's notice, we are proposing to expand the scope of that finding and of our standards to include such emissions from both commercial and non-commercial aircraft engines, in order to bring our standards into full alignment with ICAO's.

[13] This does not mean that in 2005 we promulgated requirements for the re-certification or retrofit of existing in-use engines.

[14] U.S. EPA, ''Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures;'' Final Rule, 70 FR 2521, November 17, 2005.

[15] ICAO, Foreword of ''Aircraft Engine Emissions,'' International Standards and Recommended Practices, Environmental Protection, Annex 16, Volume II, Third Edition, July 2008. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[16] CAEP conducts its work over a period of years. Each work cycle is numbered sequentially and that identifier is used to differentiate the results from one CAEP to another by convention. The first technical meeting on aircraft emission standards was CAEP's successor, *i.e.,* CAEE. The first meeting of CAEP, therefore, is referred to as CAEP/2.

[17] CAEP/5 did not address new aircraft engine emission standards.

[18] ICAO, ''Aircraft Engine Emissions,'' Annex 16, Volume II, Third Edition, July 2008, Amendment 4 effective on July 20, 2008. Copies of this document can be obtained from the ICAO Web site at *http://www.icao.int.*

[19] CAEP/7 did not address new aircraft engine emission standards.

[20] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Report of the Eighth Meeting, Montreal, February 1–12, 2010,'' CAEP/8–WP/80. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[21] Ground-level ozone, the main ingredient in smog, is formed by complex chemical reactions of volatile organic compounds (VOC) and NO_X in the presence of heat and sunlight. Standards that reduce NO_X emissions will help address ambient ozone levels. They can also help reduce particulate matter (PM) levels as NO_X emissions can also be part of the secondary formation of PM. See Section II.B below.

known as non-LTO emissions. Collectively, the emissions associated with all ground and flight operations are generally referred to as full flight emissions.

The aircraft engine NO_X emission inventories for the LTO and non-LTO flight regimes described above are discussed separately in the following sections.

1. Landing and Takeoff Emissions

In this section, we will discuss NO_X emission inventories for commercial turbine-engine aircraft, both nationally and for selected ozone nonattainment areas (NAAs). These inventories reflect emissions during the landing and takeoff cycle only. The most recent comprehensive analysis of historical and current LTO emissions from aircraft engines comes from a study undertaken for us by Eastern Research Group (ERG).[22] The study analyzed the national emissions of commercial aircraft operations in the United States, and showed that in the most recent year studied (2008), such aircraft operations contributed about 97 thousand tons to the national NO_X inventory. A summary of the national inventory of LTO NO_X emissions is shown in Table 1.

When these nationwide LTO emissions are compared to the total U.S. mobile source inventory for 2009, they account for less than one percent of the total. However, such a comparison may be a bit misleading, as it only includes those aircraft emissions that occur below 3,000 feet altitude, while comparing them to the entirety of other mobile source emissions. In the U.S., LTO emissions account for only about ten percent of full flight NO_X emissions. When considering full flight aircraft emissions (*i.e.,* including both LTO and non-LTO emissions), the contribution of aircraft to the total mobile source NO_X inventory is approximately 7.7 percent.[23]

TABLE 1—CURRENT NATIONAL NO_X EMISSIONS FROM COMMERCIAL AIRCRAFT

Aircraft category	2008 total NO_X (thousand tons)
Air Carrier	86
Commuter/Air Taxi	11
Total Commercial	97

In addition, it is important to assess the contribution of commercial aircraft LTO NO_X emissions on a local level, especially in areas containing or adjacent to airports. The historical analysis conducted by ERG also included an assessment of selected ozone nonattainment areas (NAAs). The NAAs selected for study were chosen as follows. First, the 25 ozone NAAs with airports which had high commercial traffic volumes were identified. Second, the 25 ozone NAAs with the largest population were identified. These lists were combined. However, there was some overlap, and this led to a total of 41 NAAs being identified for the study. These 41 NAAs collectively include 200 airports, accounting for about 70 percent of commercial air traffic operations. Although 41 NAAs were studied, the non-aircraft emissions data source that the aircraft emissions were compared to for this analysis did not distinguish between the Boston NAA in Massachusetts and the greater Boston NAA in New Hampshire. Thus, aircraft emissions from those two NAAs were combined into a single NAA for the purpose of this analysis, yielding 40 NAAs for study. Current (2008) and projected (2020) NO_X emissions for these 40 NAAs, as well as the percent contribution of aircraft to total mobile source inventories (as compared to 2005 and 2020 mobile source inventories), are shown in Table 2.[24] [25] The relative contribution of aircraft in any given NAA varies based on activity in other transportation and industrial sectors. As can be seen from this table, expected growth in aircraft operations in many of these areas combined with anticipated reductions in NO_X emissions from other mobile source categories results in the growth of the relative contribution of aircraft LTO emissions to mobile source NO_X emissions in NAAs.

TABLE 2—CURRENT NO_X EMISSIONS IN SELECTED OZONE NONATTAINMENT AREAS

Nonattainment area	2008 total NO_X (tons)	2008 aircraft percent of mobile source NO_X	2020 aircraft percent of mobile source NO_X
Albuquerque, NM	380	1.6	4.3
Anchorage, AK	2,538	23.4	49.3
Aspen	16	2.0	6.6
Atlanta, GA	5,808	2.6	8.2
Baltimore, MD	1,148	1.3	4.4
Boston—including MA and NH NAAs	2,032	1.0	2.7
Charlotte-Gastonia-Rock Hill, NC-SC	1,917	2.6	10.0
Chicago-Gary-Lake County, IL-IN	6,007	1.8	5.0
Cincinnati-Hamilton, OH-KY-IN	1,287	1.5	3.3
Cleveland-Akron-Lorain, OH	680	0.5	1.3
Dallas-Fort Worth, TX	3,880	1.7	6.9
Denver-Boulder-Greeley-Fort Collins-Loveland, CO	2,649	2.5	7.1
Detroit-Ann Arbor, MI	2,312	1.1	3.0
El Paso, TX	223	0.9	1.1
Greater Connecticut, CT	405	0.8	2.4
Houston-Galveston-Brazoria, TX	3,045	1.3	3.4
Indianapolis, IN	1,089	1.4	3.0

[22] ''Historical Assessment of Aircraft Landing and Take-off Emissions (1986–2008),'' Eastern Research Group, May 2011. A copy of this document can be found in public docket EPA–HQ–OAR–2010–0687.

[23] U.S. EPA, ''Comparison of Aircraft LTO and Full Flight NO_X Emissions to Total Mobile Source NO_X Emissions,'' memorandum from John Mueller, Assessment and Standards Division, Office of Transportation and Air Quality, to docket EPA–HQ–OAR–2010–0687, May 10, 2011.

[24] U.S. EPA, ''Relative Contribution of Aircraft to Total Mobile Source NO_X Emissions in Selected Ozone Nonattainment Areas,'' memorandum from John Mueller, Assessment and Standards Division, Office of Transportation and Air Quality, to docket EPA–HQ–OAR–2010–0687, May 10, 2011.

[25] U.S. EPA, ''Addendum to ''Relative Contribution of Aircraft to Total Mobile Source NO_X Emissions in Selected Ozone Nonattainment Areas,'''' memorandum from John Mueller, Assessment and Standards Division, Office of Transportation and Air Quality, to docket EPA–HQ–OAR–2010–0687, May 17, 2011.

TABLE 2—CURRENT NO_X EMISSIONS IN SELECTED OZONE NONATTAINMENT AREAS—Continued

Nonattainment area	2008 total NO_X (tons)	2008 aircraft percent of mobile source NO_X	2020 aircraft percent of mobile source NO_X
Las Vegas, NV	2,308	6.0	15.8
Los Angeles South Coast Air Basin, CA	6,479	1.5	4.5
Louisville, KY-IN	1,211	1.9	6.2
Memphis, TN-AR	2,988	6.3	16.8
Milwaukee-Racine, WI	557	0.9	3.2
Minneapolis-St Paul, MN	2,154	1.0	5.1
New York-N. New Jersey-Long Island, NY-NJ-CT	10,093	2.3	6.3
Philadelphia-Wilmington-Atlantic City, PA-NY-MD-DE	2,308	1.0	2.8
Phoenix-Mesa, AZ	2,298	1.4	3.3
Pittsburgh-Beaver Valley, PA	480	0.5	1.1
Providence (entire State), RI	232	1.0	2.3
Raleigh-Durham-Chapel Hill, NC	565	1.0	3.2
Reno, NV	246	1.9	4.4
Riverside County (Coachella Valley), CA	70	0.2	0.5
Sacramento Metro, CA	603	1.0	2.0
Salt Lake City, UT	1,235	4.4	14.1
San Diego, CA	1,035	1.4	3.4
San Francisco Bay Area, CA	4,405	2.7	6.7
San Joaquin Valley, CA	74	0.0	0.1
Seattle-Tacoma, WA	1,958	1.4	3.9
St. Louis, MO-IL	810	0.6	1.6
Syracuse, NY	139	0.8	1.9
Washington, DC-MD-VA	2,983	2.0	6.2

Table 3 shows how commercial aircraft operations are projected to rise in the future on a nationwide basis. As operations increase, the inventory impact of these aircraft on national and local NO_X inventories will also increase, as was seen in Table 2.

TABLE 3—CURRENT AND PROJECTED COMMERCIAL AIRCRAFT OPERATIONS

Year	Air carrier operations (millions)	Commuter/air taxi operations (millions)	Total commercial operations (millions)	Total increase in commercial operations over 2008 (percent)
2008	14.1	13.8	27.9	.....
2020	16.5	14.1	30.5	9
2030	20.6	16.0	36.6	31

Source: December 2010 FAA TAF, which is located at *http://aspm.faa.gov/main/taf.asp*.

2. Non-LTO Emissions

Historically, emphasis has been placed on evaluating emissions during LTO operations given their obvious impact on local air quality. Less emphasis has been placed on evaluating emissions from non-LTO operations (emissions at altitudes greater than 3,000 feet above ground level) based on the assumption that such emissions have a lesser impact on local air quality. However, modeling by Barrett *et al.* (2010) finds that these upper atmosphere emissions may adversely affect public health more than was previously thought.[26] Based on the data and methodology of the authors, this effect is caused primarily by two pathways:

The formation of fine particulate matter, *i.e.,* $PM_{2.5}$, from emission of gaseous precursors of PM (NO_X and SO_2) in the upper atmosphere that are then transported to the lower atmosphere. (The formation of secondary $PM_{2.5}$ from NO_X is discussed further in section II.B.1.b).

Aviation NO_X emissions promote ozone formation throughout the troposphere and hence increase hydroxyl radical (OH) concentrations. This increases the oxidation of non-aviation SO_2 (such as that emitted from power stations) in the gas phase relative to aqueous oxidation and dry deposition thereby increasing atmospheric sulfate (a type of $PM_{2.5}$) concentrations.

The authors of this work estimated that full flight emissions cause almost 10,000 premature mortalities (their central estimate) per year worldwide, with over 450 per year in the U.S. The pollutants emitted during cruise operations were estimated to be about 80 percent of the population-weighed $PM_{2.5}$ from aviation, with the remainder being associated with LTO operations (although they note the LTO portion may be under-estimated). The study asserts that over 380 premature mortalities per year in the U.S. can be attributed to secondary $PM_{2.5}$ associated with non-LTO operations. We request comments on the results of these studies and the existence of other research into this area.

B. Health, Environmental and Air Quality Impacts

NO_X emissions from aircraft and other mobile and stationary sources contribute to the formation of ozone. In addition, NO_X emissions at low altitude

[26] Barrett, S. R. H., R. E. Britter and I. A. Waitz, 2010. Global mortality attributable to aircraft cruise emissions. *Environmental Science & Technology* 44 (19), pp. 7736–7742. DOI: 10.1021/es101325r.

also react in the atmosphere to form secondary fine particulate matter ($PM_{2.5}$), particularly ammonium nitrate. In the following sections we discuss the adverse health and welfare effects associated with NO_X emissions, in addition to the current and projected levels of ozone and PM across the country. The ICAO NO_X standards with which we are proposing to align will help reduce ambient ozone and secondary PM levels and thus will help areas with airports achieve or maintain compliance with the National Ambient Air Quality Standards (NAAQS).[27]

1. Background on Ozone, PM and NO_X

a. What is ozone?

Ground-level ozone pollution is typically formed by the reaction of VOC and NO_X in the lower atmosphere in the presence of sunlight. These pollutants, often referred to as ozone precursors, are emitted by many types of pollution sources, such as highway and nonroad motor vehicles and engines, power plants, chemical plants, refineries, makers of consumer and commercial products, industrial facilities, and smaller area sources.

The science of ozone formation, transport, and accumulation is complex.[28] Ground-level ozone is produced and destroyed in a cyclical set of chemical reactions, many of which are sensitive to temperature and sunlight. When ambient temperatures and sunlight levels remain high for several days and the air is relatively stagnant, ozone and its precursors can build up and result in more ozone than typically occurs on a single high-temperature day. Ozone can be transported hundreds of miles downwind from the sources of precursor emissions, resulting in elevated ozone levels even in areas with low local VOC or NO_X emissions.

b. What is particulate matter?

The discussion includes $PM_{2.5}$ because the NO_X emitted by aircraft engines can react in the atmosphere to form nitrate, a component of $PM_{2.5}$. Particulate matter is a generic term for a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. Since 1987, EPA has delineated that subset of inhalable particles small enough to penetrate to the thoracic region (including the tracheobronchial and alveolar regions) of the respiratory tract (referred to as thoracic particles). Current NAAQS use $PM_{2.5}$ as the indicator for fine particles (with $PM_{2.5}$ referring to particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm), and use PM_{10} as the indicator for purposes of regulating the coarse fraction of PM_{10} (referred to as thoracic coarse particles or coarse-fraction particles; generally including particles with a nominal mean aerodynamic diameter greater than 2.5 μm and less than or equal to 10 μm, or $PM_{10-2.5}$). Ultrafine particles are a subset of fine particles, generally less than 100 nanometers (0.1 μm) in aerodynamic diameter.

Fine particles are produced primarily by combustion processes and by transformations of gaseous emissions (*e.g.,* SO_X, NO_X and VOC) in the atmosphere. The chemical and physical properties of $PM_{2.5}$ may vary greatly with time, region, meteorology, and source category. Thus, $PM_{2.5}$ may include a complex mixture of different pollutants including sulfates, nitrates, organic compounds, elemental carbon and metal compounds. These particles can remain in the atmosphere for days to weeks and travel hundreds to thousands of kilometers.

c. What is NO_X?

Nitrogen dioxide (NO_2) is a member of the NO_X family of gases. Most NO_2 is formed in the air from the oxidation of nitric oxide (NO) emitted when fuel is burned at a high temperature. NO_2 can dissolve in water vapor and further oxidize to form nitric acid which reacts with ammonia to form nitrates, an important component of ambient PM. NO_X along with non-methane hydrocarbon (NMHC) are the two major precursors of ozone. The health effects of ozone, ambient PM and NO_X are covered in section II.B.2.

2. Health Effects Associated With Exposure to Ozone, PM and NO_X

a. What are the health effects of ozone?

The health and welfare effects of ozone are well documented and are assessed in EPA's 2006 Air Quality Criteria Document (ozone AQCD) and 2007 Staff Paper.[29] [30] People who are more susceptible to effects associated with exposure to ozone can include children, the elderly, and individuals with respiratory disease such as asthma. Those with greater exposures to ozone, for instance due to time spent outdoors (*e.g.,* children and outdoor workers), are of particular concern. Ozone can irritate the respiratory system, causing coughing, throat irritation, and breathing discomfort. Ozone can reduce lung function and cause pulmonary inflammation in healthy individuals. Ozone can also aggravate asthma, leading to more asthma attacks that require medical attention and/or the use of additional medication. Thus, ambient ozone may cause both healthy and asthmatic individuals to limit their outdoor activities. In addition, there is suggestive evidence of a contribution of ozone to cardiovascular-related morbidity and highly suggestive evidence that short-term ozone exposure directly or indirectly contributes to non-accidental and cardiopulmonary-related mortality, but additional research is needed to clarify the underlying mechanisms causing these effects. In a recent report on the estimation of ozone-related premature mortality published by the National Research Council (NRC), a panel of experts and reviewers concluded that short-term exposure to ambient ozone is likely to contribute to premature deaths and that ozone-related mortality should be included in estimates of the health benefits of reducing ozone exposure.[31] Animal toxicological evidence indicates that with repeated exposure, ozone can

[27] The discussion of PM health and welfare effects throughout this notice relates exclusively to the effects of the proposed NO_X emission standards on the formation of secondary PM from nitrate formation in the atmosphere. Presently, there are no emission standards for PM emitted directly from aircraft turbine engines. The current and planned future work programs for CAEP/ICAO are developing PM test procedures and information to characterize the amount and type of these emissions from aircraft engines that are in production. Ultimately, this information will be used to assess the need for an aircraft turbine engine PM standard (*i.e.,* whether PM emissions from aircraft cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare), with standard setting as appropriate.

[28] U.S. EPA Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final). U.S. Environmental Protection Agency, Washington, DC, EPA 600/R–05/004aF–cF, 2006. This document is available in Docket EPA–HQ–OAR–2010–0687. This document may be accessed electronically at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_cd.html.*

[29] U.S. EPA Air Quality Criteria for Ozone and Related Photochemical Oxidants (Final). U.S. Environmental Protection Agency, Washington, DC, EPA 600/R–05/004aF–cF, 2006. This document is available in Docket EPA–HQ–OAR–2010–0687. This document may be accessed electronically at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_cd.html.*

[30] U.S. EPA (2007) Review of the National Ambient Air Quality Standards for Ozone, Policy Assessment of Scientific and Technical Information. OAQPS Staff Paper.EPA–452/R–07–003. This document is available in Docket EPA–HQ–OAR–2010–0687. This document is available electronically at: *http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_cr_sp.html.*

[31] National Research Council (NRC), 2008. *Estimating Mortality Risk Reduction and Economic Benefits from Controlling Ozone Air Pollution.* The National Academies Press: Washington, DC. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

inflame and damage the lining of the lungs, which may lead to permanent changes in lung tissue and irreversible reductions in lung function. The respiratory effects observed in controlled human exposure studies and animal studies are coherent with the evidence from epidemiologic studies supporting a causal relationship between acute ambient ozone exposures and increased respiratory-related emergency room visits and hospitalizations in the warm season. In addition, there is suggestive evidence of a contribution of ozone to cardiovascular-related morbidity and non-accidental and cardiopulmonary mortality.

b. What are the health effects of PM?

Scientific studies show ambient PM is associated with a series of adverse health effects. These health effects are discussed in detail in EPA's Integrated Science Assessment for Particulate Matter (ISA).[32] The ISA summarizes evidence associated with $PM_{2.5}$, $PM_{10–2.5}$, and ultrafine particles (UFPs), and concludes the following.

The ISA concludes that health effects associated with short-term exposures (hours to days) to ambient $PM_{2.5}$ include mortality, cardiovascular effects, such as altered vasomotor function and hospital admissions and emergency department visits for ischemic heart disease and congestive heart failure, and respiratory effects, such as exacerbation of asthma symptoms in children and hospital admissions and emergency department visits for chronic obstructive pulmonary disease (COPD) and respiratory infections.[33] The ISA notes that long-term exposure to $PM_{2.5}$ (months to years) is associated with the development/progression of cardiovascular disease, premature mortality, and respiratory effects, including reduced lung function growth, increased respiratory symptoms, and asthma development.[34] The ISA concludes that the currently available scientific evidence from epidemiologic, controlled human exposure, and toxicological studies supports a causal association between short- and long-term exposures to $PM_{2.5}$ and cardiovascular effects and mortality. Furthermore, the ISA concludes that the collective evidence supports likely causal associations between short- and long-term $PM_{2.5}$ exposures and respiratory effects. The ISA also concludes that the scientific evidence is suggestive of a causal association for reproductive and developmental effects and cancer, mutagenicity, and genotoxicity and long-term exposure to $PM_{2.5}$.[35]

For $PM_{10–2.5}$, the ISA concludes that the current evidence is suggestive of a causal relationship between short-term exposures and cardiovascular effects, such as hospitalization for ischemic heart disease. There is also suggestive evidence of a causal relationship between short-term $PM_{10–2.5}$ exposure and mortality and respiratory effects. Data are inadequate to draw conclusions regarding the health effects associated with long-term exposure to $PM_{10–2.5}$.

For ultrafine particulates (UFPs), the ISA further concludes that there is suggestive evidence of a causal relationship between short-term exposures and cardiovascular effects, such as changes in heart rhythm and blood vessel function. It also concludes that there is suggestive evidence of association between short-term exposure to UFPs and respiratory effects. Data are inadequate to draw conclusions regarding the health effects associated with long-term exposure to UFP's.

c. What are the health effects of NO_X?

Information on the health effects of NO_2 can be found in the EPA Integrated Science Assessment (ISA) for Nitrogen Oxides.[36] The EPA has concluded that the findings of epidemiologic, controlled human exposure, and animal toxicological studies provide evidence that is sufficient to infer a likely causal relationship between respiratory effects and short-term NO_2 exposure. The ISA concludes that the strongest evidence for such a relationship comes from epidemiologic studies of respiratory effects including symptoms, emergency department visits, and hospital admissions. The ISA also draws two broad conclusions regarding airway responsiveness following NO_2 exposure. First, the ISA concludes that NO_2 exposure may enhance the sensitivity to allergen-induced decrements in lung function and increase the allergen-induced airway inflammatory response following 30-minute exposures of asthmatics to NO_2 concentrations as low as 0.26 ppm. In addition, small but significant increases in non-specific airway hyper-responsiveness were reported following 1-hour exposures of asthmatics to 0.1 ppm NO_2. Second, exposure to NO_2 has been found to enhance the inherent responsiveness of the airway to subsequent nonspecific challenges in controlled human exposure studies of asthmatic subjects. Enhanced airway responsiveness could have important clinical implications for asthmatics since transient increases in airway responsiveness following NO_2 exposure have the potential to increase symptoms and worsen asthma control. Together, the epidemiologic and experimental data sets form a plausible, consistent, and coherent description of a relationship between NO_2 exposures and an array of adverse health effects that range from the onset of respiratory symptoms to hospital admission.

Although the weight of evidence supporting a causal relationship is somewhat less certain than that associated with respiratory morbidity, NO_2 has also been linked to other health endpoints. These include all-cause (non-accidental) mortality, hospital admissions or emergency department visits for cardiovascular disease, and decrements in lung function growth associated with chronic exposure.

3. Environmental Effects Associated With Exposure to Ozone, PM and NO_X

a. Deposition of Nitrogen

Emissions of NO_X from aircraft engines contribute to atmospheric deposition of nitrogen in the U.S. Atmospheric deposition of nitrogen contributes to acidification, altering biogeochemistry and affecting animal and plant life in terrestrial and aquatic ecosystems across the U.S. The sensitivity of terrestrial and aquatic ecosystems to acidification from nitrogen deposition is predominantly governed by geology. Prolonged exposure to excess nitrogen deposition in sensitive areas acidifies lakes, rivers and soils. Increased acidity in surface waters creates inhospitable conditions for biota and affects the abundance and nutritional value of preferred prey species, threatening biodiversity and ecosystem function. Over time, acidifying deposition also removes essential nutrients from forest soils, depleting the capacity of soils to neutralize future acid loadings and

[32] U.S. EPA (2009) Integrated Science Assessment for Particulate Matter, EPA 600/R–08/139F. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[33] U.S. EPA (2009). Integrated Science Assessment for Particulate Matter (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–08/139F, 2009. Section 2.3.1.1.

[34] U.S. EPA (2009). Integrated Science Assessment for Particulate Matter (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–08/139F, 2009. page 2–12, Sections 7.3.1.1 and 7.3.2.1.

[35] U.S. EPA (2009). Integrated Science Assessment for Particulate Matter (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–08/139F, 2009. Section 2.3.2.

[36] U.S. EPA (2008). *Integrated Science Assessment for Oxides of Nitrogen—Health Criteria (Final Report).* EPA/600/R–08/071. Washington, DC: U.S. EPA. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

negatively affecting forest sustainability. Major effects include a decline in sensitive forest tree species, such as red spruce (*Picea rubens*) and sugar maple (*Acer saccharum*); and a loss of biodiversity of fishes, zooplankton, and macro invertebrates.

In addition to the role nitrogen deposition plays in acidification, nitrogen deposition also leads to nutrient enrichment and altered biogeochemical cycling. In aquatic systems increased nitrogen can alter species assemblages and cause eutrophication. In terrestrial systems nitrogen loading can lead to loss of nitrogen sensitive lichen species, decreased biodiversity of grasslands, meadows and other sensitive habitats, and increased potential for invasive species.

Adverse impacts on soil chemistry and plant life have been observed for areas heavily influenced by atmospheric deposition of nutrients, metals and acid species, resulting in species shifts, loss of biodiversity, forest decline and damage to forest productivity. Across the U.S. there are many terrestrial and aquatic ecosystems that have been identified as particularly sensitive to nitrogen deposition. The most extreme effects resulting from nitrogen deposition on aquatic ecosystems are due to nitrogen enrichment which contributes to ''hypoxic'' zones devoid of life. Three hypoxia zones of special concern in the U.S. are the zones located in the Gulf of Mexico, the Chesapeake Bay in the mid-Atlantic region, and Long Island Sound, in the northeast U.S.[37]

The deposition of airborne particles can reduce the aesthetic appeal of buildings and culturally important articles through soiling, and can contribute directly (or in conjunction with other pollutants) to structural damage by means of corrosion or erosion.[38] Particles affect materials principally by promoting and accelerating the corrosion of metals, by degrading paints, and by deteriorating building materials such as concrete and limestone. Particles contribute to these effects because of their electrolytic, hygroscopic, and acidic properties, and their ability to adsorb corrosive gases (principally sulfur dioxide).

b. Visibility Effects

NO_X emissions contribute to visibility impairment in the U.S. through the formation of secondary $PM_{2.5}$.[39] Visibility impairment is caused by light scattering and absorption by suspended particles and gases. Visibility is important because it has direct significance to people's enjoyment of daily activities in all parts of the country. Individuals value good visibility for the well-being it provides them directly, where they live and work, and in places where they enjoy recreational opportunities. Visibility is also highly valued in significant natural areas, such as national parks and wilderness areas, and special emphasis is given to protecting visibility in these areas. For more information on visibility see the final 2009 PM ISA.[40]

c. Plant and Ecosystem Effects of Ozone

Elevated ozone levels contribute to environmental effects, with impacts to plants and ecosystems being of most concern. Ozone can produce both acute and chronic injury in sensitive species depending on the concentration level and the duration of the exposure. Ozone effects also tend to accumulate over the growing season of the plant, so that even low concentrations experienced for a longer duration have the potential to create chronic stress on vegetation. Ozone damage to plants includes visible injury to leaves and impaired photosynthesis, both of which can lead to reduced plant growth and reproduction, resulting in reduced crop yields, forestry production, and use of sensitive ornamentals in landscaping. In addition, the impairment of photosynthesis, the process by which the plant makes carbohydrates (its source of energy and food), can lead to a subsequent reduction in root growth and carbohydrate storage below ground, resulting in other, more subtle plant and ecosystems impacts. These latter impacts include increased susceptibility of plants to insect attack, disease, harsh weather, interspecies competition and overall decreased plant vigor. The adverse effects of ozone on forest and other natural vegetation can potentially lead to species shifts and loss from the affected ecosystems, resulting in a loss or reduction in associated ecosystem goods and services. Lastly, visible ozone injury to leaves can result in a loss of aesthetic value in areas of special scenic significance like national parks and wilderness areas. The final 2006 Ozone Air Quality Criteria Document presents more detailed information on ozone effects on vegetation and ecosystems.

4. Impacts on Ambient Air Quality

The aircraft NO_X emission standards we are proposing would impact ambient concentrations of air pollutants. Nationally, levels of $PM_{2.5}$, ozone, and NO_X are declining.[41] However as of 2008, approximately 127 million people lived in counties that exceeded any NAAQS.[42] These numbers do not include the people living in areas where there is a future risk of failing to maintain or attain the NAAQS.

States with nonattainment areas are required to take action to bring those areas into compliance in the future. Based on the final rule designating and classifying 8-hour ozone nonattainment areas for the 1997 standard (69 FR 23951, April 30, 2004), most 8-hour ozone nonattainment areas will be required to attain the ozone NAAQS in the 2007 to 2013 time frame and then maintain the NAAQS thereafter. EPA is reconsidering the 2008 ozone NAAQS. If EPA promulgates different ozone NAAQS as a result of the reconsideration, these standards would replace the 2008 ozone NAAQS and EPA would subsequently designate nonattainment areas for the revised primary ozone NAAQS. The attainment dates for areas designated nonattainment for a revised primary ozone NAAQS could range from 2015 to 2032, depending on the severity of the problem.[43]

Areas designated as not attaining the 1997 $PM_{2.5}$ NAAQS will need to attain the 1997 standards in the 2010 to 2015 time frame, and then maintain them thereafter. The 2006 24-hour $PM_{2.5}$

[37] U.S. EPA (2008). *Nitrogen Dioxide/Sulfur Dioxide Secondary NAAQS Review: Integrated Science Assessment (ISA).* Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=180903.*

[38] U.S. EPA (2005). Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information, OAQPS Staff Paper. Retrieved on April 9, 2009 from *http://www.epa.gov/ttn/naaqs/standards/pm/data/pmstaffpaper_20051221.pdf.*

[39] U.S. EPA (2004). *Air Quality Criteria for Particulate Matter (AQCD).* Volume I Document No. EPA600/P–99/002aF and Volume II Document No. EPA600/P–99/002bF. Washington, DC: U.S. Environmental Protection Agency. Retrieved on March 18, 2009 from *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=87903.*

[40] U.S. EPA (2009). Integrated Science Assessment for Particulate Matter (Final Report). U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–08/139F, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[41] U.S. EPA (2010). Our Nation's Air: Status and Trends through 2008. Office of Air Quality Planning and Standards, Research Triangle Park, NC. Publication No. EPA 454/R–09–002. This document can be accessed electronically at: *http://www.epa.gov/airtrends/2010/.*

[42] U.S. EPA (2010). Our Nation's Air: Status and Trends through 2008. Office of Air Quality Planning and Standards, Research Triangle Park, NC. Publication No. EPA 454/R–09–002. This document can be accessed electronically at *http://www.epa.gov/airtrends/2010/.*

[43] U.S. EPA (2010). Fact Sheet Revisions to Ozone Standards. This document can be accessed electronically at: *http://www.epa.gov/groundlevelozone/pdfs/fs20100106std.pdf.*

nonattainment areas will be required to attain the 2006 24-hour $PM_{2.5}$ NAAQS in the 2014 to 2019 time frame and then be required to maintain the 2006 24-hour $PM_{2.5}$ NAAQS thereafter.

The aircraft engine emission standards being proposed today were approved by ICAO/CAEP and would have an implementation date of 2013. Therefore, the aircraft engine emission reductions that are being proposed today should be useful to states in attaining or maintaining the ozone and $PM_{2.5}$ NAAQS.

EPA has already adopted many emission control programs that are expected to reduce ambient ozone and $PM_{2.5}$ levels and which will assist in reducing the number of areas that fail to achieve the NAAQS. Even so, our air quality modeling projects that in 2030 as many as 16 counties with a population of almost 35 million may not attain the 2008 ozone standard of 0.075 ppm (75 ppb).[44] In addition, our air quality modeling projects that in 2030 at least 9 counties with a population of almost 28 million may not attain the 1997 annual $PM_{2.5}$ standard of 15 $\mu g/m^3$ and 26 counties with a population of over 41 million may not attain the 2006 24-hour $PM_{2.5}$ standard of 35 $\mu g/m^3$.[45] These numbers do not account for those areas that are close to (*e.g.,* within 10 percent of) the standards. These areas, although not violating the standards, would also benefit from any reductions in NO_X ensuring long-term maintenance of the NAAQS.

There are currently no NO_2 nonattainment areas. However, the NO_2 standards were recently revised and a new 1-hour NO_2 standard was promulgated.[46] Nonattainment area designations for the 1-hour NO_2 standard are expected to be finalized in 2012. These proposed aircraft NO_X reductions would be useful to states in attaining or maintaining the NO_2 standards.

III. Details of the Proposed Rule

We are proposing two different levels or tiers of increasingly more stringent NO_X emission standards for gas turbofan engines with maximum rated thrusts greater than 26.7 kilonewtons (kN).[47] Each of the tiers would potentially apply to newly-certified engines. Newly-certified aircraft engines are those that would receive a new type certificate after the effective date of the applicable standards. Such engine types or models would not have begun production prior to the effective date of the new requirement.[48]

We are also proposing to apply the first tier of the two tiers of standards to newly-manufactured engines. Newly-manufactured aircraft engines are those that have been previously certified and manufactured in compliance with preexisting standards, and will continue to be produced after the effective date of a new applicable standard. Normally, these newly-manufactured engines would need to comply with the same NO_X limits as newly-certified engines, but at a later date or cease production.[49] The end of this ''phase-in'' period for the newly-manufactured engine standards is sometimes referred to a ''production cutoff,'' for obvious reasons. Again, we are proposing only the first of the two new tiers of NO_X standards for newly-manufactured engines. These provisions are described in detail below.

Five other regulatory features are being proposed in today's action. First, we are proposing to revise provisions addressing certain time-limited flexibilities, *i.e.,* potential exemptions, for newly-manufactured engines that may not be able to comply with the first tier of the proposed new NO_X standards because of specific technical or economic reasons.[50] Similarly, the proposal includes exception provisions for spare engines. Second, we are proposing to define a derivative engine for emissions certification purposes. The intent of this definition is to distinguish when the emission characteristics of a new turbofan engine model vary substantially from its existing parent engine design, and must show compliance with the emission standards for a newly-certificated engine. Third, we are proposing new CO and NO_X standards for turbofan engines that are used to propel supersonic aircraft. These standards were adopted by ICAO in the 1980s, but were not previously added to our HC emission standard for these engines. The proposed standards would meet our treaty obligation under the Convention on International Civil Aviation as previously described in section I.B. Fourth, we are proposing several amendments to the emission testing and measurement procedures in our regulations that are intended to implement ICAO's Annex 16 and to incorporate the entire annex in our regulations by reference. Finally, as described in section IV., we are proposing amendments to current regulatory provisions addressing definitions, acronyms and abbreviations, general applicability and requirements, exemptions, and incorporation by reference. These amendments are intended to clarify requirements, make them more consistent with other parts of the program, update the text to be consistent with current standard language conventions, or remove obsolete provisions.

As discussed further below, with the exception of the annual reporting requirement described in section III.D., the proposed amendments reflect those changes that were previously adopted by ICAO or that CAEP has recommended for adoption by ICAO in the near future. In this latter case, we are proposing these standards and recommended practices at this time rather than wait until ICAO takes final action to help ensure that our standards, and the FAA's implementing regulations, are adopted in a timely manner once ICAO completes its process. We anticipate that our final standards would generally conform to ICAO's final standards, once adopted.

[44] U.S. EPA (2010). Regulatory Impact Analysis: Final Rulemaking To Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards. Chapter 7: Environmental and Health Impacts. EPA420–R–10–009.

[45] U.S. EPA (2010). Regulatory Impact Analysis: Final Rulemaking To Establish Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards. Chapter 7: Environmental and Health Impacts. EPA 420–R–10–009.

[46] U.S. EPA, ''Primary National Ambient Air Quality Standards for Nitrogen Dioxide;'' Final Rule, 75 FR 6474, February 9, 2010.

[47] The proposed standards would apply to engines used in commercial and noncommercial aviation for which the FAA issues airworthiness certificates, *e.g.,* non-revenue, general aviation service. The vast majority of these engines are used in commercial applications. See section IV.A.2. for more information regarding noncommercial applications.

[48] ICAO standards describe newly-certified engines as ''* * * engines of a type or model for which the date of manufacture of the first individual production model was after * * *.'' the effective date of the emission standards. See ICAO, ''Aircraft Engine Emissions,'' Annex 16, Volume II, Third Edition, July 2008, Amendment 4 effective on July 20, 2008. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[49] The standards for newly-manufactured engines are described in general regulatory terms as the date that the type or model was first certified and produced in conformance with specific emission standards, and the date beyond which an individual engine meeting those same requirements cannot be made. So ICAO standards describe newly-manufactured engines as ''* * * engines of a type or model for which the date of manufacture of the first individual production model was after * * *.'' the effective date of the applicable standards, and ''* * * for which the date of manufacture of the individual engine was on or before * * *'' a specific date that is later than the first effective date of the standards. See ICAO, ''Aircraft Engine Emissions,'' Annex 16, Volume II, Third Edition, July 2008, Amendment 4 effective on July 20, 2008. Copies of this document can be obtained from the ICAO Web site at *http://www.icao.int.*

[50] These apply only to the Tier 6 NO_X standards. We are not yet proposing a production cutoff for the Tier 8 NO_X standard.

This would better enable the regulated industry to respond to new, globally harmonized requirements in an orderly manner, which is important given the international nature of the market for the aircraft engines that would be affected by today's proposed rule. It would also avoid continuing the significant lag time that has sometimes occurred between ICAO's adoption of international standards and our adoption of corresponding standards under U.S. law. To the extent ICAO adopts standards that differ from those recommended by CAEP before we issue our final rule, we would then consider whether to make conforming amendments in our final standards, or to issue a supplemental proposal reflecting the amended ICAO standards, if appropriate.

This proposal also is consistent with our authority and obligations under the CAA as described in section I.B. More specifically, the technical feasibility and cost of the proposed emission standards were well documented by our own analyses and CAEP as described later in this section and in section V., Technical Feasibility, Costs, and Emission Benefits. We think that the proposal would provide adequate lead time for the development and application of the requisite technology with appropriate consideration to the cost of compliance. We have consulted with the Department of Transportation through the FAA regarding lead time, noise, safety, and the technical feasibility of the proposed standards. Today's proposal is also consistent with U.S. treaty obligations under the Chicago Convention as described in section I.C., because the proposed requirements are consistent with current ICAO standards or those that we expect ICAO to adopt prior to the promulgation of any final rule.

Except to the extent needed to make our standards conform to ICAO's standards by making them applicable to both commercial and non-commercial engines, we are not proposing revised exhaust emission standards for HC, CO, or smoke, which would remain in effect as currently promulgated. All engines subject to the proposed new NO_X standards would also continue to be subject to the existing HC, CO, and smoke standards. It is worth emphasizing that although we are proposing to include these existing HC, CO, and smoke standards in a new section 87.23, which would also contain the proposed Tier 6 and Tier 8 NO_X standards, we are not actually proposing new standards, since under the current form of part 87 these HC, CO and smoke standards would already continue to apply to new engine types subject to future revised NO_X standards.

We are proposing to adopt a new naming convention in this preamble and the regulatory text to more easily distinguish between the proposed tiers of increasingly more stringent NO_X emission standards. This convention is also consistent with the numeric identifier that CAEP uses to differentiate the CAEP work cycle that produces new NO_X standards. (The CAEP naming convention is described in section I.E.) As a result, the first tier of proposed NO_X standards, which are consistent with CAEP/6, will be referred to as Tier 6 in the remainder of today's notice. The second tier of proposed standards will be referred to as Tier 8, which is consistent with CAEP/8. We are also incorporating the new naming convention in the regulations for the existing NO_X emission standards, *i.e.,* Tier 0, Tier 2, and Tier 4. There is no material change to the existing NO_X standards themselves, except to the extent that upon the effectiveness of a final rule reflecting today's proposal the existing NO_X standards would be superseded by Tier 6 standards.

We acknowledge that this new naming convention is a change from the past practice of not describing aircraft engine emission standards as tiers. However, we believe the new naming scheme is a valuable tool that makes referring to individual NO_X standards much easier. It is also similar to the terminology we use for other mobile source sectors that are subject to environmental regulation and for which standards have become more stringent or have otherwise been amended over time.

A. NO_X Standards for Newly-Certified Engines

We are proposing two different tiers of increasingly stringent NO_X standards. These standards would apply for all for newly-certified turbofan aircraft engines with maximum rated thrusts greater than 26.7 kN.[51] (See section III.B. for a discussion of how these standards would apply for newly-manufactured engines that are not considered to be newly certified.) The numerical value of the applicable standard for an individual engine model is defined by the engine's thrust level and pressure ratio. Simply stated, the pressure ratio is a ratio of the air pressure entering the engine to the air pressure at the entrance to the combustor, *i.e.,* after the air has passed through the compressor section of the engine. Each of the proposed tiers is described separately below.

1. Tier 6 NO_X Standards for Newly-Certified Engines

This first tier of proposed standards is equivalent to the CAEP/6 NO_X limits that were already adopted by ICAO and became internationally effective after December 31, 2007. Given that aircraft turbofan engines are international commodities, engine manufacturers have already introduced engine models after that date that demonstrate compliance with these international standards, or are already planning to do so for upcoming engine designs. Based on this, and on our evaluation of the necessary lead time, we are proposing that this tier of standards take effect immediately upon the effective date of our final regulations.

The basic form of the NO_X standards for turbofan engines is different for higher- and lower-rated thrust engines. Higher output engines are defined as having rated thrusts equal to or greater than 89 kN, while lower output engines are defined as having rated thrusts less than 89 kN but greater than 26.7 kN. The proposed Tier 6 NO_X standards for each of these power grouping are described separately below.

a. Numerical Emission Limits for Higher Thrust Engines

The proposed Tier 6 NO_X standards for newly-certified gas turbine engines with rated thrusts of 89 kN or more are differentiated by pressure ratio as shown below.

- For engines with a pressure ratio of 30 or less: g/kN rated output = 16.72 + (1.4080 * engine pressure ratio).
- For engines with a pressure ratio of more than 30 but less than 82.6: g/kN rated output = −1.04 + (2.0 * engine pressure ratio).
- For engines with a pressure ratio of 82.6 or more: g/kN rated output = 32 + (1.6 * engine pressure ratio).

The corresponding CAEP/6 standards were derived by CAEP using the following methodology:

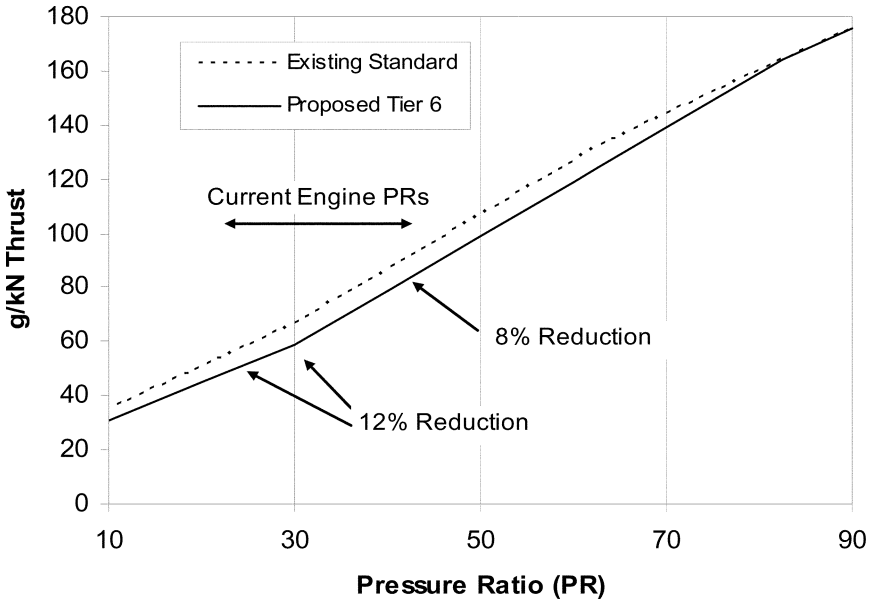
- Make the CAEP/6 standard 12 percent more stringent than the CAEP/4 requirement at a pressure ratio of 30;
- Retain the same percent reduction, *i.e.,* 12 percent, for pressure ratios below 30;
- Retain the slope of the CAEP/4 standard for pressure ratios of 30 to 62.5 for the CAEP/6 pressure ratios of 30 to 82.6;
- Retain the slope of the CAEP/4 standard for pressure ratios equal to or

[51] There are no gaseous emission standards, *e.g.,* NO_X, for gas turbine engines with maximum rated thrusts equal to or less than 26.7 kN. These engines are, however, subject to smoke and fuel venting standards.

greater than 62.5 for the CAEP/6 pressure ratios at or above 82.6.[52]

The resulting proposed Tier 6 NO_X standards for these higher thrust engines are presented in Figure 1 along with the most recently adopted existing EPA NO_X standards, which were based on CAEP/4, for comparison.

Figure 1: Proposed Tier 6 NOx Standards for Higher Thrust Engines



As a matter of convention, the relative stringency from one CAEP standard to another is expressed relative to a pressure ratio of 30, because the percentage reduction is usually inconsistent across all of the possible pressure ratios, which otherwise makes a simple comparison difficult. Using that convention, the proposed Tier 6 standards (CAEP/6) are referred to as being 12 percent more stringent than the existing EPA NO_X Tier 4 standards (CAEP/4). The relative stringency can also be illustrated at other pressure ratios. At pressure ratios less than 30 the reductions are also 12 percent. At pressure ratios above 30, however, the percent reduction decreases as the pressure ratio is increased. Based on the figure, the percent reduction for current technology engines ranges from about 8 to 12 percent.

b. Numerical Emission Limits for Lower Thrust Engines

The proposed Tier 6 NO_X standards for newly-certified gas turbine engines with rated thrusts between 26.7 and less than 89.0 kN are differentiated by both pressure ratio and rated thrust as shown below.

- For engines with a pressure ratio of 30 or less:

g/kN rated output = 38.5486 + (1.6823 * engine pressure ratio) − (0.2453 * kN rated thrust) − (0.00308 * engine pressure ratio * kN rated thrust).

- For engines with a pressure ratio of more than 30 but less than 82.6:

g/kN rated output = 46.1504 + (1.4285 * engine pressure ratio) − (0.5298 * kN rated thrust) + (0.00642 * engine pressure ratio * kN rated thrust).

In developing the corresponding NO_X standards for low thrust engines, CAEP recognized the technical challenges that physically smaller-sized engines represent relative to incorporating some of the lowest NO_X technology, which is otherwise available to their larger counterparts. These technical difficulties are well documented and increase progressively as size is reduced (from around 89 kN).[53] For example, the relatively small combustor[54] space and section height of these engines creates constraints on the use of low NO_X fuel-staged combustor concepts which inherently require the availability of greater flow path cross-sectional area than conventional combustors. Also, fuel-staged combustors need more fuel injectors, and this need is not compatible with the relatively smaller total fuel flows of lower thrust engines. (Reductions in fuel flow per nozzle are difficult to attain without having clogging problems due to the small sizes of the fuel metering ports.) In addition, lower thrust engine combustors have an inherently greater liner surface-to-combustion volume ratio, and this requires increased wall cooling air flow. Thus, less air will be available to obtain acceptable turbine inlet temperature distribution and for emissions control.[55] With these technological constraints in mind, CAEP fashioned the CAEP/6 NO_X standards across the range of thrusts represented by low-thrust engines to become comparatively less stringent,

[52] Reverting to the CAEP/4 slope at a pressure ratio of 82.6 prevents the CAEP/6 standard from otherwise intersecting the older CAEP/2 standard at this point and thereby actually making CAEP/6 less stringent than CAEP/2. It has no practical effect because current engines or anticipated engine designs do not utilize such high pressure ratios. Presently, there are no current engines with pressure ratios above approximately 42.

[53] ICAO/CAEP, ''Report of Third Meeting, Montreal, Quebec, December 5–15, 1995,'' Document 9675, CAEP/3. A copy of this paper can be found in Docket EPA–HQ–OAR–2010–0687.

[54] The combustor is a chamber where a mixture of fuel and air is burned to form very hot, expanding gases. As these gases move through the combustion chamber, the walls of the combustor are cooled with dilution air to prevent thermal damage. Dilution air is also used to tailor the gas' temperature profile as it exits the combustor so that the final temperatures will not exceed the allowable limit at the turbine inlet.

[55] ICAO, ''Combined Report of the Certification and Technology Subgroups,'' section 2.3.6.1, CAEP Working Group 3 (Emissions). Presented by the Chairman of the Technology Subgroup, Third Meeting, Bonn, Germany, June 1995. A copy of this paper can be found in Docket EPA–HQ–OAR–2010–0687.

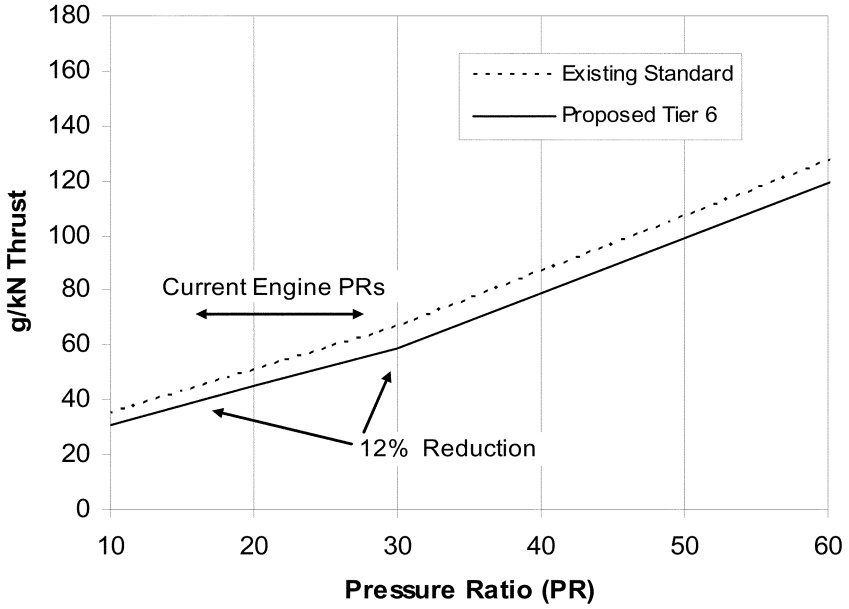
i.e., CAEP/6 relative to CAEP/4, as the rated output and physical size of the engines decrease. We agree with this approach.

As mentioned, the proposed Tier 6 standards depend on an individual engine's rated thrust and pressure ratio. With two variables in the calculation, the standards cannot be represented in a simple figure, *i.e.,* no single line graph showing the standards for all engines within the thrust range is possible as it was for higher thrust engines. Regardless of this complexity, however, some general observations are useful to characterize the proposed Tier 6 NO_X standards for lower thrust engines based on the engine size versus technological challenge described in the previous paragraph.

Comparing the proposed lower and higher thrust standards at 89 kN, which is the demarcation point between the two sets of standards, shows that the standards for lower thrust engines are numerically equivalent to the limit for higher thrust engines at each pressure ratio. This is as expected because the engine sizes and ability to incorporate low-NO_X technologies are the same at 89.0 kN delineation point.

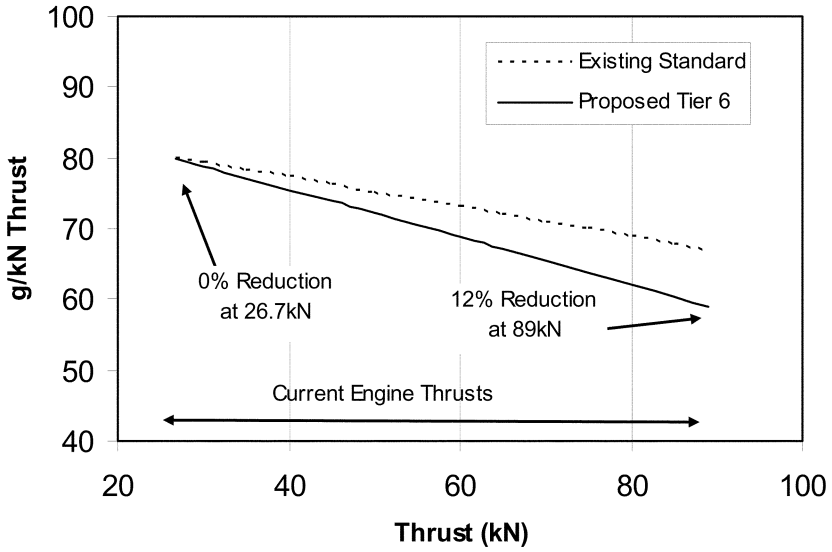
Again focusing only on 89 kN engines, the proposed Tier 6 standards represent a 12 percent reduction from the existing EPA Tier 4 (CAEP/4 based standards) for pressure ratios of 30 or less as shown below in Figure 2. This includes the region represented by almost all current engine designs. At higher pressure ratios, the relative numerical reduction is progressively less because the slope of the two standards is essentially the same.

Figure 2: Proposed Tier 6 NOx Standards for Lower Thrust Engines Rated at 89.0 kN



At other thrust ratings the percent reduction between the proposed Tier 6 and existing EPA NO_X standards at any pressure ratio becomes progressively smaller as thrust decreases. This is illustrated in Figure 3 for a pressure ratio of 30. This pressure ratio was chosen for the example because, as before, the relative stringency of CAEP NO_X standards is generally compared at this point as a matter of convention. As shown in the figure for current engines, the reduction ranges from 12 percent at the upper end of the thrust range to 0 percent at the lower end of the range. The pattern is similar for the other pressure ratios. Only the actual numerical value for percentage reduction at 89 kN, as shown on the far right of the figure, may vary by pressure ratio, as described at the beginning of this paragraph. However, in the region of pressure ratios represented by today's engines, the results are identical to those shown in the figure, *i.e.,* a 12 percent reduction at 89 kN decreasing to 0 percent at 26.7 kN.

Figure 3: Proposed Tier 6 NOx Standards for Lower Thrust Engines At Pressure Ratio 30



2. Tier 8 NO_X Standards for Newly-Certified Engines

The second tier of proposed standards, *i.e.,* Tier 8, are equivalent to the NO_X limits that were most recently recommended at CAEP/8 in February 2010 for adoption by ICAO.[56] The CAEP/8 recommended standards have a recommended effective date after December 31, 2013. As discussed further in section V. of today's notice, we agree with CAEP that this provides engine manufacturers with adequate lead time to respond to these more stringent NO_X standards considering the technical feasibility and cost associated with the requirements. Therefore, we are proposing that this tier of proposed standards would take effect on January 1, 2014, provided ICAO adopts CAEP/8's recommended standards and effective date. If ICAO adopts different standards or a different effective date, we would evaluate whether to similarly adopt correspondingly different standards and effective dates, or seek further public comment before doing so.

As with the Tier 6 NO_X standards, the basic form of the Tier 8 standards for turbofan engines is different for higher- and lower-rated thrust engines. Higher output engines are defined as having rated thrusts equal to or greater than 89 kN, while lower output engines are defined as having rated thrusts less than 89 kN but greater than 26.7 kN. The longer-term standards for each of these power grouping are described separately below.

a. Numerical Emission Limits for Higher Thrust Engines

The proposed Tier 8 NO_X standards for newly-certified turbofan engines with rated thrusts of 89 N or more are differentiated by pressure ratio as shown below.

- For engines with a pressure ratio of 30 or less: g/kN rated output = 7.88 + (1.4080* engine pressure ratio).
- For engines with a pressure ratio of more than 30 but less than 104.7: g/kN rated output = − 9.88+ (2.0 * engine pressure ratio).
- For engines with a pressure ratio of 104.7 or more: g/kN rated output = 32 + (1.6 * engine pressure ratio).

The corresponding CAEP/8 standards were derived by CAEP using the following methodology:

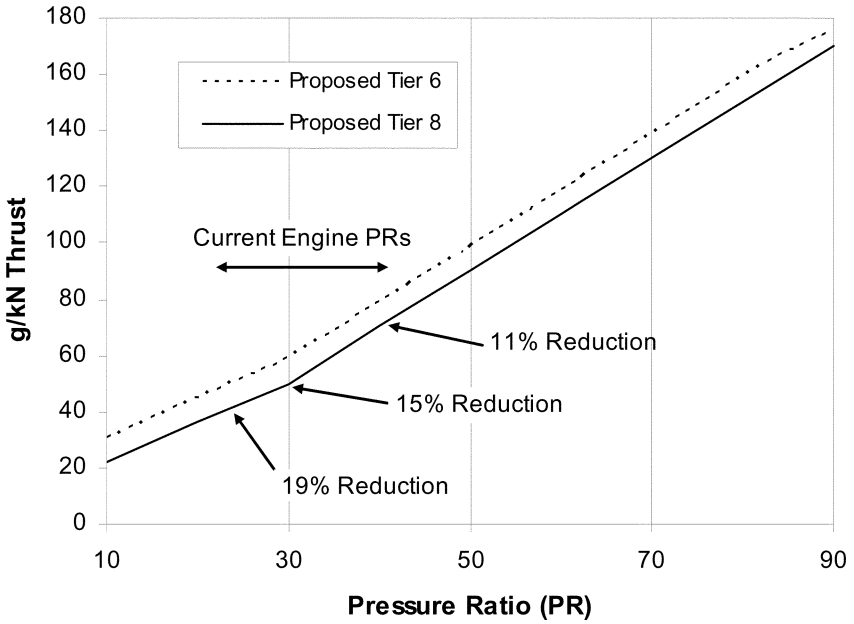
- Make the CAEP/8 standard 15 percent more stringent than the CAEP/6 requirement at a pressure ratio of 30;
- Retain the slope of the CAEP/6 standard for pressure ratios below 30;
- Retain the slope of the CAEP/6 standard for pressure ratios of 30 to 82.6 for the CAEP/8 pressure ratios of 30 to 104.7;
- Retain the slope of the CAEP/6 standard for pressure ratios above 82.6 for the CAEP/8 pressure ratios equal to or greater than 104.7.[57]

The resulting proposed Tier 8 NO_X standards for these higher thrust engines are presented in Figure 4 along with the proposed Tier 6 standards for comparison.

[56] CAEP/7 did not adopt new aircraft engine NO_X standards.

[57] Reverting to the CAEP/6 slope at a pressure ratio of 104.7 prevents the CAEP/8 standard from otherwise intersecting the older CAEP/2 standard at this point and thereby actually making CAEP/8 less stringent than CAEP/2. It has no practical value because current engines or anticipated engine designs do not utilize such high pressure ratios. Presently, there are no current engines with pressure ratios above approximately 42.

Figure 4: Proposed Tier 8 NOx Standards for Higher Thrust Engines



As noted previously, as a matter of convention the relative stringency from one CAEP standard to another is generally expressed relative to a pressure ratio of 30. Using that convention, the proposed Tier 8 standards (CAEP/8) are referred to as being 15 percent more stringent than the proposed Tier 6 NO_X standards (CAEP/6). The relative stringency can also be illustrated at other pressure ratios. At pressure ratios less than 30 the reductions increase. At pressure ratios above 30, however, the percent reduction decreases. Based on the figure, the percent reduction for current technology engines ranges from about 11 to 19 percent.

b. Numerical Emission Limits for Lower Thrust Engines

The proposed Tier 8 NO_X standards for newly-certified gas turbine engines with rated thrusts between 26.7 but less than 89.0 kN are differentiated by both pressure ratio and rated thrust as shown below.

- For engines with a pressure ratio of 30 or less:

g/kN rated output = 40.052 + (1.5681 * engine pressure ratio) − (0.3615 * kN rated thrust) − (0.0018 * engine pressure ratio * kN rated thrust).

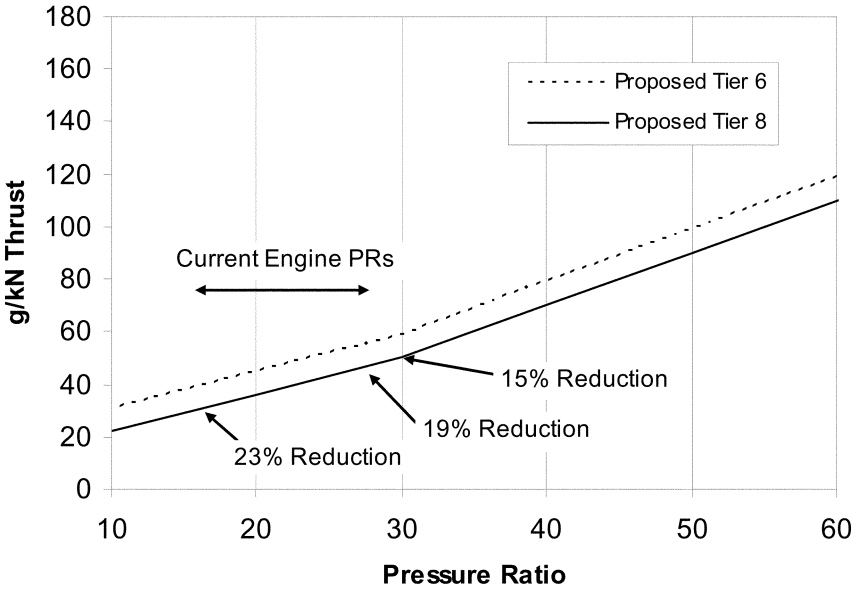
- For engines with a pressure ratio of more than 30 but less than 104.7:

g/kN rated output = 41.9435 + (1.505 * engine pressure ratio) − (0.55823 * kN rated thrust) + (0.005562 * engine pressure ratio * kN rated thrust).

In developing the corresponding CAEP/8 NO_X standards for low thrust engines, CAEP recognized the technical challenges that physically smaller-sized engines represent relative to incorporating some of the lowest NO_X technology, which is otherwise available to their larger counterparts. These technical difficulties were described in the previous section for the proposed Tier 6 low-thrust engine standards.

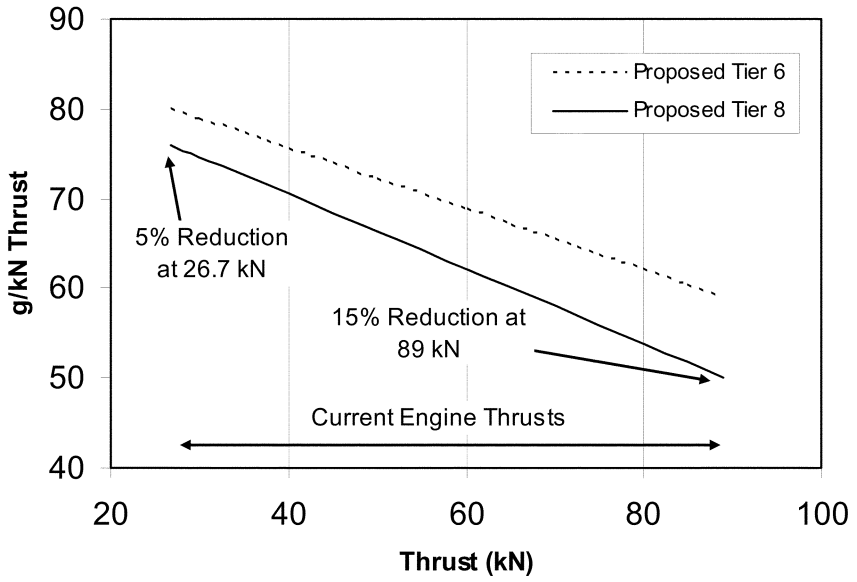
Also as previously described, no single line graph showing the standards for all engines within the thrust range is possible as it was for higher thrust engines, because the equations have two variables. However, some general observations are useful to characterize the proposed Tier 8 NO_X standards for lower thrust engines based on the engine size versus technological challenge described in the previous paragraph. First, the proposed Tier 8 NO_X standards for lower thrust engines are numerically equivalent to the limit for higher thrust engines across all pressure ratios at the highest rating of 89 kN, where the engine sizes and ability to incorporated low-NO_X technologies are comparable. This same characteristic was observed for the proposed Tier 6 standards. Second, as shown below in Figure 5 for 89 kN engines, at this thrust rating the proposed Tier 8 standards represents a 15 percent reduction from the proposed Tier 6 standards for a pressure ratio of 30. However, within the region of pressure ratios for all current engine designs, the reductions range from 19 to 23 percent.

Figure 5: Proposed Tier 8 NOx Standards for Lower Thrust Engines Rated at 89.0 kN



Third, at other thrust ratings the percent reduction between the proposed Tier 6 and Tier 8 standards at any pressure ratio becomes progressively smaller as thrust decreases. This is illustrated in Figure 6 for a pressure ratio of 30, following the convention described above. Also as shown in the figure for current engines, the reduction ranges from 15 percent at the upper end of the thrust range to 5 percent at the lower end of the range. While not depicted in a figure, the pattern is similar for the other pressure ratios. However, the actual numerical values for percentage reductions at both ends of the thrust range, *i.e.,* 26.7 to 89 kN, may vary by pressure ratio. In the region of pressure ratios represented by today's engines, the results are identical to those shown in Figure 6 at 26.7 kN, *i.e.,* a 5 percent reduction at all pressure ratios for that thrust rating. However, percent reductions increase linearly up to a maximum 23 percent reduction for 89 kN engines with pressure ratios of about 15.

Figure 6: Proposed Tier 8 NOx Standards for Lower Thrust Engines at Pressure Ratio 30



B. Application of the Tier 6 NO_X Standards to Newly-Manufactured Engines

This section describes our proposal to apply the proposed Tier 6 NO_X standards to newly-manufactured engines, and our proposed amended temporary flexibilities for newly-manufactured engines that may have significant problems complying with these requirements. Also, consistent with CAEP/8, we are not proposing to apply the Tier 8 NO_X standards to newly-manufactured engines at this time. This section concludes with a description of future efforts to examine such a possibility.

1. Phase-In of the Tier 6 NO_X Standards for Newly-Manufactured Engines

As described above, the proposed Tier 6 NO_X standards would apply to all engine types or models that receive a *new* type certificate after the effective date of the final rule. We are also proposing to phase-in these same NO_X limits for newly-manufactured engines for engine models (and their derivatives for emissions certification purposes) that were originally certified to less stringent requirements (*i.e.,* Tier 2 or Tier 4) and were already being produced for installation on new aircraft prior to the effective date of the final rule.[58] As a result, manufacturers would need to bring newly-manufactured engines of these previously certified models into compliance with the applicable Tier 6 standards by a future date or cease production of those engine models.[59] As we discussed and described in our analysis of the need for a CAEP 6 production cutoff during the CAEP process, establishing a date certain for compliance with any emission standard is foundational to its basic design and purpose and helps to ensure that the full benefits of newer, more stringent requirements will be achieved in a reasonable time.[60] We are, however, proposing certain limited flexibilities for engines that cannot be made compliant because of specific technical or economic reasons, as discussed later in this section.

The proposed effective date of January 1, 2013[61] for the newly-manufactured engine standards is consistent with the expected market demand for these previously certified engine types. Historically, engine manufacturers have often responded to the adoption of more stringent NO_X standards by bringing older engine types into compliance with the newer requirements well before the required date in anticipation of the likely market demand, or planning for the orderly withdrawal of these engines from the marketplace. Information developed during the ICAO process in 2008 and 2009[62] [63] [64] and our more recent discussions with manufacturers indicate that: (1) All but a few models are already compliant with CAEP/6 standards, (2) nearly without exception, all current production models will meet the CAEP/6 requirements by the 2011 time frame, and (3) any noncompliant models will be phased out of production because of low market demand.

We think that the proposed five-year phase-in period from ICAO's effective date of the CAEP/6 standards (corresponding to our proposed Tier 6 NO_X standards) for newly-certified engines is adequate for manufacturers and their customers to respond to the new requirements without disrupting their future planning and purchasing decisions.[65] [66] This phase-in period for applying the Tier 6 NO_X standards to newly-manufactured engines is identical to the date for this same requirement that CAEP/8 has recommended to ICAO for adoption.[67] Therefore, we are proposing that all engines newly-manufactured after December 31, 2012 must comply with the Tier 6 NO_X standards. Again, if ICAO ultimately adopts a production cutoff date that differs from this proposed date, we would evaluate whether to adopt a correspondingly different date in the final rule or to seek further public comment on the change.

2. Exemption and Exceptions From the Tier 6 Production Cutoff

In conjunction with the implementation of the proposed Tier 6 NO_X standards, we are proposing provisions which would allow engine manufacturers to request an exemption exception from meeting the Tier 6 NO_X standards for newly-manufactured engines. These proposed provisions would replace existing provisions addressing exemptions, currently promulgated in section 87.7 of our aircraft engine regulations. (Any exemptions previously issued under section 87.7 would not be affected by the proposed revisions.) This section of the preamble describes these proposed exemption and exception provisions, *i.e.,* exemptions for engines installed in new aircraft and exceptions for spare engines used in existing aircraft for maintenance purposes. These provisions have largely been crafted to be consistent with exemption provisions in the ICAO Environmental Technical Manual (ETM).[68] [69] The provisions of the ETM guidance were developed in the context of the CAEP/6 NO_X

[58] The requirement that newly-manufactured engines must meet the CAEP 6 NO_X standard by a date certain applies only to engines that are intended to be installed on all new airframes. It would not apply to engines produced as ''spares,'' which are intended to be installed on existing airframes as replacements for maintenance or other reasons. See section III.B.2. for more information about new and spare engines.

[59] After this date the production of any noncompliant engines would cease because the FAA would discontinue issuing an airworthiness approval tag (FAA Form 8130–3) to these engines.

[60] ICAO, Committee on Aviation Environmental Protection (CAEP), Eight Meeting, Montreal, 1 to 12 February 2010, Agenda 2: Review of Technical Proposals Relating to Aircraft Engine Emissions, Adoption of Production Cutoff for Emission Standards, WP/56, Presented by the United States, December 12, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[61] The proposed regulatory text specifies that engine models certified at or below the Tier 4 NO_X standards may be produced through December 31, 2012 without meeting the Tier 6 NO_X standards. Therefore, the effective date of the proposed standards for newly-manufactured engines is effectively January 1, 2013.

[62] ICAO, Committee on Aviation Environmental Protection (CAEP), Steering Group Meeting, Salvador, Brazil, 22 to 26 June 2009, Agenda 6: Emissions Technical-WG3, Production Cutoffs and Associated Flexibilities for ICAO Engine Emission Standards, WP/39, Presented by U.S. Representative, August 6, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[63] ICAO, Committee on Aviation Environmental Protection (CAEP), Steering Group Meeting, Salvador, Brazil, 22 to 26 June 2009, Agenda Item 3: Forecasting and Economic Analysis Support Group (FESG), CAEP/6 NO_X Production Cutoff Cost Analysis, WP/39, Presented by the FESG NO_X Stringency Task Group, February 6, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[64] ICAO, Committee on Aviation Environmental Protection (CAEP), Steering Group Meeting, Seattle, 22 to 26 September 2008, Agenda Item 3: Forecasting and Economic Analysis Support Group (FESG), Production Cutoff for NO_X Standards, WP/6, Presented by the FESG Rapporteurs, April 9, 2008. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[65] The ICAO CAEP/6 NO_X standards became effective after December 31, 2007.

[66] This period of time is also consistent with the phase-in period associated with previous ICAO standards. CAEP's predecessor, the Committee on Aircraft Engines Emissions, established the first international emission standards with an effective date four years after adoption, *i.e.,* effectively a four year phase-in. CAEP2 included a phase-in period of 4 years for newly-manufactured engines.

[67] We expect that ICAO will formally adopt the CAEP/8 recommendations with an effective date in November 2011, which is well before the projected effective date of our final rule.

[68] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Report of the Eighth Meeting, Montreal, February 1–12, 2010,'' CAEP/8–WP/80. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[69] Note that EPA has submitted a paper to amend the exemption provisions included in this ETM to be consistent with this proposed rule. See ICAO, ''Newly Produced Engine Exemptions for CAEP/6 NO_X Production Cutoff,'' CAEP9_WG3–CTG–2_IP01, September 23, 2010. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

production cutoff deliberations leading up to the CAEP/8 meeting in February 2010.

While we are proposing to revise our regulations, the process for evaluating any request for an exemption, *i.e.,* petition, and any final decision on its disposition would be unchanged. In this regard, the FAA is the process owner under its enforcement authority contained in section 232 of the Clean Air Act.[70] The FAA must consult with EPA in evaluating the merits of the request, and the EPA must formally concur with any decision regarding the granting or denial of the request.

Under the existing regulations, the FAA, with EPA concurrence, may exempt low-production volume engines from being fully compliant with the emission standards. Several such short-term exemptions were granted in the 1980s when emission standards were first applied. These exemptions have since expired, and requests for new exemptions under those provisions have not been submitted. We have determined that these provisions, which were adopted in conjunction with revised emission standards in 1982, are no longer of any utility.[71] Therefore, we are proposing to delete these provisions to avoid confusion.

We are also proposing to delete the existing provisions for temporary exemptions based on flights for short durations and infrequent intervals. These provisions are not necessary because our standards apply to aircraft certificated by the FAA, and the FAA does not address in the certification process whether an aircraft will be used for short durations or infrequent intervals. Hence, the provisions are of no utility.

The current regulations also provide for permanent exemptions based on consideration of the certain factors specified in section 87.7(c). We are proposing to replace these provisions with new regulatory text consistent with the ETM that would provide for two separate types of permanent exemptions: Exceptions for spare engines and exemptions for engines on new aircraft. These are summarized below. (See § 87.50 of the proposed regulations for additional details on these exemptions.)

[70] EPA formally transferred the responsibility and authority for the evaluation of requests for exemptions from the emission standards to the Secretary of Transportation (DOT). See ''Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures;'' Final Rule, 47 FR 58462, December 30, 1982.

[71] U.S.EPA, ''Control of Air Pollution from Aircraft and Aircraft Engines; Emission Standards and Test Procedures,'' Final Rule, 47 FR 58462, December 30, 1982.

Finally, we are deleting the time-limited exemption provisions for in-use engines that are contained in section 87.7(d). These provisions, which were intended for when the standards of sections 87.11(a), 87.31(a), and 87.31(c) first took effect, are now obsolete.

a. New Provisions for Spare Engines

This proposed allowance, which is an exception to the standards as described below, is intended to allow the production and sale of a newly-manufactured engine for installation on an in-service aircraft, *i.e.,* a ''spare engine.'' It would *not* allow for installing such an engine on a new aircraft. Spare engines are produced from time to time in order to keep an aircraft in revenue service when the existing in-service engine must be removed for maintenance or replacement purposes as needed. Otherwise removing these aircraft from active service would be very expensive and logistically difficult. Also, under our proposed regulations, there would be no adverse environmental effect from allowing the use of a spare engine as a direct replacement for an existing engine, because a spare could be used only when the emissions of the spare engine are equal to or lower than those of the engine it is replacing, for all pollutants. Manufacturers would not be required to obtain FAA or EPA approval before producing spare engines. However, they would have to submit information about the production of spare engines in an annual report to the EPA. Because manufacturers would not be required to seek or obtain formal approval to produce spare engines, this allowance is being referred to as an ''exception'' rather than an ''exemption''. This terminology would be consistent with current FAA regulations. The permanent record for each engine excepted under this provision would need to indicate that the engine is an excepted spare engine and the engine itself would need to be labeled as ''EXCEPTED SPARE.'' in accordance with FAA marking requirements of 14 CFR.

Exceptions for spare engines are not addressed in the existing regulations because there is no production cutoff for the current Tier 4 NO_X standards. Thus manufacturers have been allowed to continue production of older engine designs under type certificates first issued before the Tier 4 standards took effect (*e.g.,* Tier 2). However, our proposal to apply a Tier 6 NO_X production cutoff to all newly-manufactured engines means that if we did not also propose this exception process, manufacturers would be prohibited from producing Tier 4 spare engines under the existing type certificates. We see no reason to change our policy of allowing manufacturers to produce new engines for use as spares. The proposed regulatory provisions would allow this practice to continue.

Under the proposed regulations, engines meeting the requirements for spare engines could be produced and enter into commerce without prior approval from EPA or FAA. (This allowance would also need to be promulgated by the FAA.) It is important to note that while spare engines would be excepted from the Tier 6 NO_X standards being proposed today, they would still need to be produced under an FAA type certificate. (This FAA oversight would serve the same role as the exemption approval step envisioned by ICAO in its ETM language for spare engines.) We would expect little or no additional burden for manufacturers, since we are not proposing new restrictions, monitoring, recordkeeping, or reporting requirements other than the end of year report. When combined with the proposed prohibition against using spare engines to replace lower emitting engines, this program will ensure that using a spare engine would not increase emissions, but would at the same time allow the availability of spares for maintenance or replacement as needed.

b. New Provisions for Engines Installed in New Aircraft

The primary purpose of allowing limited continued production of Tier 4 engines is to provide for an orderly implementation of the Tier 6 NO_X production cutoff. It addresses engines reaching the end of their production cycles in the time frame when new emission standards take effect. The typical production cycle would have annual production volumes ramp up quickly, remain at relatively large volumes for several or many years, and then fall off over a few more years. When new emission standards are adopted in the middle of a production cycle to take effect a few years later, manufacturers generally devote technical resources to bring into compliance those engine models expected to be produced in large numbers in the time frame when the new standards are in effect. In contrast, they may plan not to invest in upgrading the emissions of engine models that would be very near the end of their normal production cycles when compliance with the new standards becomes required. The actual length and shape of this tail of production volumes can be affected by factors not fully

within the engine manufacturers' control, *e.g.,* unexpected market demand. Thus, exemptions may be justified if a manufacturer does not complete the production cycle before the production cutoff date and projected production volumes are not adequate to justify investing the necessary resources to reduce emissions or there are other technological issues.

Furthermore, in certain exceptional circumstances exemptions may also be appropriate. These are ''hardship'' situations that may arise as a result of unforeseen technical or economic circumstances or events beyond control of the manufacturer. For example, this could vary from unexpected problems with technology upgrade programs to labor disruptions or natural events disrupting production or parts availability.

Our regulations currently address these kinds of situations in section 87.7(c), entitled ''Exemptions for New Engines in Other Categories.'' Today's proposed amendments would replace this provision with a new set of provisions addressing exemptions for new engines. We invite public comment on any other ways to address the need for flexibilities in the above circumstances.

i. Time Frame and Scope

The proposed regulations would allow manufacturers to request an exemption for engines not meeting the Tier 6 NO_X standards so they may be installed in new aircraft. If granted, the exemption would allow manufacturers to produce a limited number of newly-manufactured engines, in a time period beginning after December 31, 2012 and going through December 31, 2016. The time period for any given approved exemption could be shorter depending on the specifics of the application but could not be longer. This exemption would be limited to NO_X emissions from engines that are covered by a valid type certificate issued by FAA. The engines would be required to meet all other applicable requirements. More specifically, an engine exempted from the Tier 6 NO_X standards would need to be covered by a previously issued type certificate showing compliance with the Tier 4 NO_X standards,[72] as well as the current HC, CO, fuel venting, and smoke standards.

ii. Production Limit

In the proposed new regulatory language for exemptions, we are proposing to use the general exemption language for exhaust emission standards contained in part 87.7(c) of the current regulations. That language states that the Secretary of the Department of Transportation determines, with the EPA Administrator's concurrence, when the emission standards do not apply to engines based on a number of specific considerations such as adverse economic impact on the engine manufacturer, aircraft manufacturer, or airline industry; in addition to the effects on public health and welfare. We are also proposing to make this language applicable only to the Tier 6 production cutoff, which is consistent with the ETM guidance. No need has been identified to apply such exemption language to the other regulated exhaust pollutants, *i.e.,* hydrocarbons and carbon monoxide. The emission standards for those pollutant species have remained unchanged for nearly three decades and present no technical issues for modern turbofan engines.[73] If new emission standards for these pollutants are considered in the future, the potential need for exemption provisions will also be assessed at that time.

Each request for exemption would be evaluated on a case-by-case basis, using the information provided by the applicant and any other relevant information that is available to FAA and EPA at the time. Any approved exemption would include a specific limit on the number of such engines based on that information and is not defined on a basis such as type certificate. (See section III.B.b.iii. for a description of what the request must contain.) The intent, of course, would be to exempt the minimum number of engines that can be clearly justified, including a consideration of the public health and welfare effects associated with the exemptions.

We acknowledge that our proposal differs from the language contained in the current ICAO ETM guidance, which would nominally allow up to 75 engines per type certificate.[74] To understand why we find that a deviation from the ETM is appropriate in this instance, the following explanation regarding the historical perspective on the development of the ETM provision is helpful.

Prior to the CAEP/8 meeting in February 2010, ICAO had no specific provisions regarding exemptions. The only language regarding exemptions was contained in Annex 16 Volume II section 2.1.1 which rather generically stated that:

> In considering exemptions, certificating authorities should take into account the probable number of such engines that will be produced and their impact on the environment. When such an exemption is granted, the certificating authority should consider imposing a time limit on the production of such engines for installation on new aircraft or on existing aircraft as spares.

When ICAO/CAEP began considering a production cut-off for the CAEP/6 NO_X standard, there was a consensus among the participants in the technical working group that more specific provisions were needed with respect to potential exemptions from that requirement.[75] The provisions would help support an orderly transition in the implementation of the production cut-off. Toward that end, the group consulted periodically over several months to craft provisions addressing number, time limit, and emission levels (impact on the environment). The deliberations were complicated by the fact that the language in Annex 16 simultaneously addressed both engines for new production aircraft and spare engines for existing aircraft.[76]

For new production engines, agreement was reached relatively quickly that exemptions should be available for up to four years after the production cut-off becomes effective, and that any engine model for which an exemption was requested should at a minimum comply with the emission standards for all other regulated pollutants, including the CAEP/4 NO_X requirements. Similarly, it was readily agreed in the technical working group that there would be no limit on the number of spare engines because these units would essentially be installed in

[72] Engines certified only for compliance with earlier NO_X standards would not be eligible for exemptions. This is also consistent with the exemption language in the ICAO ETM. Note that where such engines have emissions actually meeting the Tier 4 NO_X standard, they may be recertified to the Tier 4 standards, but only before the effective date of the proposed regulations.

[73] For example, the hydrocarbon exhaust emission standards were adopted on December 30, 1982. See 47 FR 58462.

[74] CAEP/8—WP/18, *Environmental Technical Manual (ETM), Vol II on the Use of Procedures in the Emission Certification of Aircraft Engines,* Appendix ''ICAO Emissions Environmental Technical Manual''.

[75] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Report of the 6th Meeting,'' CAEP/8–WG3–WP7–03, Presented by the Rapporteurs, London, UK, April 1–3, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[76] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Draft Minutes of ETM/Annex 16 Ad-Hoc Group Telecon,'' May 26, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

place of in-use engines that are removed for maintenance or other reasons.[77]

However, discussions and deliberations were more difficult with regard to the number of potential exemptions for engines for new production aircraft. This difficulty stemmed from the fact that the ICAO Emissions Data Bank identified 20 unique engine models/sub models that could have been affected by the production cutoff. Those models had valid type certificates and, therefore, were considered to be ''in production.'' [78] During further discussions the engine manufacturers clarified that most of these 20 were not in active production because the airlines normally purchase new aircraft with engines meeting the latest emission standards. Nonetheless, it was stated that if the demand existed, 14 of these 20 models could potentially be produced under the exemption provisions since they had valid type certificates and met the previously mentioned exemption emission requirements.[79] [80] [81] [82] After much deliberation, the technical working group settled on a value of 75 engines per type certificate over the four years for the ICAO ETM guidance based on the information available at the time.[83]

This value and the maximum number of engines it could represent were of immediate concern to EPA. First, in a hypothetical worst case, it represented the potential for over 1000 exempt engines (500 aircraft) to enter the fleet over this time period based on the information above. Assuming two engines per aircraft, this is essentially equivalent to the number of civil aircraft shipped in a single year.[84] Second, it was unclear to us if that number of potential exemptions, *i.e.,* 75 per type certificate, was necessary. Third, from a broader perspective, while EPA regulations normally include hardship type provisions, it is not normal for EPA to include specific transitional exemptions of this magnitude in our regulations.

As we continued efforts to identify how many exemptions might potentially be needed for the CAEP/6 production cutoff, three new pieces of information became available during the development of this proposed rule that were not considered during the deliberations leading up to the ICAO decision for the ETM guidance. First, a review of previously unavailable information on past exemption requests to FAA under the previous less specific ICAO language indicated that of the eight requests were granted since 1983, only three involved exemptions during standards transition (two related to smoke for turboprop engines and one related to NO_X for a turbofan engine). These three exemption petitions in combination ultimately affected less than 50 engines.[85] Second, engine manufacturers indicated individually that the potential need for exemptions was not as large as EPA understood during the technical working group deliberations, and that absent unforeseen events, a much smaller value was workable on a per manufacturer basis as opposed to a per type certificate basis.[86] [87] [88] Third, our most recent discussions with the engine manufacturers that are directly affected by the proposed Tier 6 NO_X standards, *i.e.,* CAEP/6 standards, concluded that only one or two engine models may be candidates for exemptions. Those discussions also concluded that the likely potential number of justifiable exemptions would be less than 75 in total.[89] Considering all of these factors and the basic intent of the CAEP ETM exemption provisions, we are proposing to adopt in our new regulatory text addressing exemptions, language that reflects the essence of the general exemption language for exhaust emission standards that is embodied in current section 87.7(c) of the regulations. That provision generally states that the FAA, with EPA's concurrence, may grant exemptions to exhaust emission standards based on factors such as adverse economic impact on the engine manufacturer, aircraft manufacturer, or airline industry; in addition to the effects on public health and welfare. We are also proposing include in this new regulatory provision the key elements of the current 87.7(c) and additional facets of the ETM language not captured in existing 87.7(c). Like the ETM, we are proposing to apply this provision only to the Tier 6 production cutoff for four years, but importantly we are not proposing a specific basis for the exemption, *i.e.,* type certification or type certificate holder, or numerical limit. We believe the proposed approach addresses the intent of the ICAO guidance in addition to the potential needs of the engine manufacturers, while minimizing the potential for adverse environmental impacts from exemptions and aligning with EPA's general approach with regard to exemptions and hardship provisions.

We acknowledge that our proposal in this respect differs from the ETM guidance and that this, on its face, may be of concern to some. To the extent this may occur, we point out that the ETM is guidance material; not an ICAO standard or regulation of any type. So as a general matter, consistency is not compelled when a deviation is justified, and we are comfortable with our proposed exemption provision for those reasons.

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[77] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Report of the Eighth Meeting, Montreal, February 1–12, 2010,'' CAEP/8–WP/80. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[78] U.S. EPA, ''Simplified Working Copy of ICAO EDB, Issue 16A,'' memorandum from Glenn Passavant, Assessment and Standards Division, Office of Air Quality and Transportation, March 25, 2010. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[79] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Response to EPA Paper 14 and 16,'' WG–3 Flimsy 6–2, ICCAIA, London, UK, April 13, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[80] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Production Cut-Off for Engine NO_X Standards,'' CAEP–SG/20082–WP/6, Presented by FESG, September 4, 2008. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[81] ICAO, ''Committee on Aviation Environmental Protection (CAEP), CAEP/6 NO_X Productin Cut-Off Analysis,'' CAEP–SB/20093–IP/19, Presented by FESG NO_X Stringency Task Group, June 2, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[82] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Production Cut-Off and Associated Flexibilities for ICAO Engine Emission Standards,'' CAEP–SG/20093–WP/39, U.S. EPA, June 8, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[83] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Report of the Eighth Meeting, Montreal, February 1–12, 2010,'' CAEP/8–WP–80, Appendix B. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[84] See Table 5 of the most recent AIA statistical report available at *http://www.aia-aerospace.org/assets/Table* 5.pdf.

[85] U.S. EPA, ''Historical Exemptions from Gas Turbine Aircraft Emission Standards,'' memorandum from Glenn Passavant, Assessment and Standards Division, Office of Air Quality and Transportation, March 28, 2011. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[86] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Response to EPA Paper 14 and 16,'' WG–3 Flimsy 6–2, ICCAIA, London, UK, April 13, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[87] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Production Cut-Off for Engine NO_X Standards,'' CAEP–SG/20082–WP/6, Presented by FESG, September 4, 2008. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[88] ICAO, ''Committee on Aviation Environmental Protection (CAEP), CAEP/6 NO_X Production Cut-Off Analysis,'' CAEP–SB/20093–IP/19, Presented by FESG NO_X Stringency Task Group, June 2, 2009. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[89] U.S. EPA, ''Results of Discussions with Aviation Gas Turbine Manufactures on the Potential Number of Exemptions from the Tier 6 Production Cutoff for the Proposed Rulemaking on Aircraft Engine Emission Standards,'' memorandum from Richard S. Wilcox, Assessment and Standards Division, Office of Air Quality and Transportation, May 19, 2011. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

Even if the ETM guidance were wrongly considered an ICAO standard of some kind, a justified deviation from such a provision is allowable under the Chicago Convention (the basis of ICAO) and the World Trade Organization's (WTO) Technical Barriers to Trade Agreement, Annex 3.[90, 91] The Chicago Convention allows nations to adopt their own unique standards that differ from the language in ICAO Annex 16, Standards and Recommended Practices, as previously described in section I.C. The WTO Annex 3 also allows for exceptions '' * * * where such international standards or relevant parts would be ineffective or inappropriate, for instance, because of an insufficient level of protection * * *.'' We believe our proposed deviation from the ETM, assuming for argument's sake that it is a deviation from international standards as contemplated by ICAO and the WTO Annex 3, is justified for the reasons explained above.

We also note that the proposed exemption provision has no cost associated with it for the government or industry, and there is no difference in potential cost savings under either approach. Both are designed to provide manufacturers with an opportunity to reduce costs or other adverse effects should the need for exemptions arise.

Finally, we believe the current ETM guidance provision should be revised to align with our proposed approach, and we will work through the ICAO/CAEP process to amend the ETM guidance as appropriate.

iii. Exemption Requests

We are proposing a process for requesting exemptions (for engines used on new aircraft) that would be more formal and structured than the current process. We are proposing that manufacturers be required to submit their request to the FAA, as currently required. The FAA will then share the submittal with EPA and execute the consultation process.

To ensure that we have the information necessary to evaluate exemption requests in this specific manner, the requests would need to include the following details to describe the specific engine model for which the manufacturer is requesting the exemption. The proposed provisions contained in § 87.50, which are summarized below, are consistent with and in some areas expand on the provisions in the ETM:

General Information

- Corporate name and an authorized representative's contact information (including a signed statement verifying the information);
- Description of the engines for which you are requesting the exemption, including the engine model and sub-model names;
- The number of engines that you would produce under the exemption and the period during which you would produce them;
- Identify the authorizing type certificate (type certificate number and date);
- Information about the aircraft in which the engines will be installed, including the airframe models and expected first purchasers/users of the aircraft, and the countries in which you expect the aircraft to be registered (including an estimate of how many will be registered in the U.S.); and
- List of other certificating authorities from which you have requested (or expect to request) exemptions, and a summary of each request.

Justification and Impacts Assessment

- A detailed description and assessment of the environmental impact of granting the exemption;
- Technical issues, from an environmental and airworthiness perspective, which may have caused a delay in compliance with a production cutoff, if any;
- Any economic impacts on the manufacturer, operator(s), and aviation industry at large; and
- Projected future production volumes and plans for producing a compliant version of the engine model in question.

Other Factors

- Hardship: Impact of unforeseen technical circumstances, business events, or other natural or manmade calamities beyond your control, and
- Equity issues in administering the production cutoff among economically competing parties.

It is important that any action on a potential exemption request be in the public interest; the fairly comprehensive list of application information in the proposed regulations is intended to gather the information needed for this assessment. We would expect to take a broad perspective in evaluating what is or is not in the public interest. This is why the manufacturer justifications would need to include a quantified description of the environmental effects of granting the exemption, as well as discussion of economic and technical issues related to bringing the engine into compliance. The analysis of environmental impacts would need to specify by how much the exempted engines would exceed the standards, the in-use effects in terms of lifetime tons of NO_X, and estimate the emissions rates of engines/aircraft that could potentially be used if the exemption was not granted. Since exemptions granted under the proposed regulations would apply only for NO_X emissions, the analysis could also include possible benefits regarding noise levels or reduced emissions of pollutants other than NO_X. Relevant economic impacts could include effects on the engine manufacturer, airframe manufacturer, airline(s), and the general public.

In the past, some manufacturers have requested exemptions based on the largest number of engines they hoped to continue producing without knowing how many they would actually be able to produce or who would purchase them. The new exemption language calls for manufacturers to target their requests more specifically based on likely production needs and time periods. At any time before approval, manufacturers could revise their requests to justify covering additional engines. We would then review the revised request. For exemptions that have already been approved, manufacturers could also request that additional engines be added after providing the justification for the increase. Manufacturers also would be required to notify the FAA if they determine after submitting a request that the information is not accurate, either from an error or from changing circumstances.

While we expect a manufacturer to have this specific information when they submit a request, the regulations would allow us to process exemption requests with somewhat less specific information. However, we would expect this to apply only for unusual circumstances.

If, after consulting with FAA, we determine that the exemption request is fully documented and approval would be in the public interest, we would concur with approving the request if the FAA also concluded that the request should be granted. Note that we could approve the exemption for a smaller number of engines than the manufacturer requested, or we could include certain other conditions.

In order to allow us to oversee these exempted engines, manufacturers would

[90] ICAO, ''Convention on International Civil Aviation,'' Article 38, Ninth Edition, Document 7300/9, 2006. Copies of this document can be obtained from the ICAO Web site located at *http://www.icao.int/icaonet/arch/doc/7300/7300_9ed.pdf.*

[91] WTO, ''Agreement on Technical Barriers to Trade,'' Uruguay Round of Multilateral Trade Negotiations, April 15, 1994, pp. 117–137. Copies of this document can be obtained from the WTO Web site located at *http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm.*

also be required to provide an annual report to EPA on exempt engines similar to the information about spare exempt engines. The permanent record for each engine exempted under this provision would need to indicate that the engine is an exempted engine and the engine itself would need to be labeled as ''EXEMPT NEW'' in accordance with FAA marking requirements of 14 CFR.

iv. Coordination of Exemption Requests

The limit on the number of potentially exempt engines as described in the ETM is intended to apply to overall worldwide production. Toward that end, the ETM envisions collaboration and consultation among certificating authorities and member states whenever any authority receives an exemption request. Specifically, the ETM states:

> Exemptions for new engines should be processed and approved by the competent authorities for both the manufacture of the exempted engines and the initial operator of the aircraft to which they are to be fitted. Given the international nature of the aviation enterprise, civil aviation authorities of member states should attempt to collaborate and consult on the details of exemptions. In the case where engine type certification is done through a reciprocity agreement between or among member states, the states involved should coordinate on the processing of exemptions and concur before approval is granted.[92]

Working with the FAA, we would expect to conduct such collaboration and consultation among the competent authorities whenever we receive an exemption request. This would include consultation with other certificating authorities as well as coordination with the competent civil aviation authority of any country where the aircraft with the exempted engines will be registered.

To facilitate this consultation and coordination we are proposing that manufacturers also include in their requests a list of countries in which the aircraft are expected to be registered. While not specifically listed in the ETM, we believe that this information is consistent with the ETM as it would be necessary to ensure proper coordination. The ETM appears to presume that each member country will recognize exemptions granted by other countries. This presumption seems reasonable assuming that the exemption being granted is generally consistent with the guidelines of the ETM and that the collaboration, consultation and coordination called for in the ETM were conducted in good faith. However, there should be no presumption that EPA would agree to an exemption for an engine model if the aforementioned collaboration, consultation, and coordination were not conducted. The Clean Air Act (which provides EPA with its authority to establish emission standards) includes no provisions that would allow any foreign country or other certificating authority to exempt subject aircraft engines, over the objection of FAA and EPA, from the applicable standards EPA promulgates. Nevertheless, because our proposed exemptions provisions are generally consistent with the procedures called for in the ETM, assuming appropriate consultation and coordination in accordance with the ETM and absent unforeseen complications, it is reasonable to believe that FAA and EPA would not object to exemptions for engines properly exempted by other countries under those procedures. The FAA would still need to take the certification action as called out in 14 CFR 91.203 and 14 CFR 21.183.

This, however, raises the question as to how we would respond to an exemption request when another certificating authority did not consult or coordinate on a previous request for the same engine model. A related concern arises if a type certificate is sought under a reciprocity agreement and the original exemption was not coordinated with the United States. Such requests would likely be viewed as new exemption requests if the anticipated collaboration, consultation, and coordination had not occurred.

Thus to avoid these issues, in most cases, manufacturers may want to work with all relevant certificating authorities at the same time as well as the civil aviation authority of nation(s) where the aircraft will be initially registered or operated if that nation requires a type certificate issued under its own regulations to operate in its air space consistent with international agreements.

c. Voluntary Emission Offsets

We are requesting comment on establishing a voluntary EPA program by which manufacturers could receive emission credits for producing cleaner engines, which they could use to offset higher emissions from exempted engines. An example of such a program is summarized in a memorandum to the docket,[93] and a basic overview of how credits might be generated is presented in the following paragraph. The types of programs being considered would be developed, promulgated, and administered solely by EPA.

We would expect manufacturers to be interested in generating offsets for one of three purposes. First, manufacturers might choose to generate offsets as part of their justifications for exemptions. For example, where we determine that an exemption would not be in the public interest because it would have an undue adverse effect on air quality, a manufacturer might use offsets so that the combination of the exemption and offsets would be more emission neutral. Second, manufacturers might choose to generate offsets as part of a justification for being allowed to exceed the numerical limit that FAA and EPA are willing to approve in an exemption request. We are asking for comment on this option, and could include it in the final rule based on the comments and our assessment of the inputs and issues. Third, provided a standard is promulgated to allow this, a manufacturer might also be interested in generating offsets to bank for use for exemptions of engines to be produced after the credit generating engines are produced, or possibly against a future production cutoff. This would also require a change to the proposed regulations, as well as record support for such banking being appropriate under the relevant standard.

Under this approach, generation of offsets would be voluntary and would be open to all certifying engine manufacturers. One concept would be to allow credits to be generated only from engine models that are introduced after this rule and that had characteristic levels significantly below the otherwise applicable standard (*e.g.,* at least 10 percent below). It is a separate question, however, how to calculate the credit. If we adopted a 10 percent threshold for eligibility, we would probably also allow credits only to the degree which the NO_X characteristic level was more than 10 percent below the standard. For example, an engine that was 15 percent below the standard would generate credits equivalent to 5 percent of the standard. This would ensure a net improvement in emissions. If we were to finalize such a program, we could reserve the right to restrict the use of credits so that they were used in a manner that ensured there was no net adverse impact on air quality. Such a program would need to ensure that

[92] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Eighth Meeting, Montreal, 1 to 12 February 2010,'' CAEP/8–WP/80, Agenda Item 2: Review of Technical Proposals Relating to Aircraft Emissions, April 2, 2010. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[93] U.S. EPA, ''Draft Regulatory Text for Voluntary Offset Program,'' Memorandum from Charles Moulis, Assessment and Standards Division, Office of Air Quality and Transportation, June 2011. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

emission benefits from one aircraft model truly offset the higher emissions from another model. For example, emissions from regional aircraft may not be directly equivalent to emissions from aircraft designed for longer cross-country or international flights. Equivalency factors could be developed to account for differences in the number of LTOs per year, the lifetime of the aircraft, and the number of LTOs per mile. These factors could be developed based on the operation characteristics from existing sources of information and would not require the collection new operational data. Commenters are encouraged to review additional information contained in the memorandum to the public docket and provide input on the ideas, concepts, and options presented therein in addition to those discussed above.

3. Potential Phase-In of New Tier 8 NO_X Standards for Newly-Manufactured Engines

We are not proposing to phase-in the proposed Tier 8 NO_X standards for newly-manufactured engines at this time, since such a feature is not included in the CAEP/8 recommendation to ICAO. This means that engine manufacturers may continue to produce Tier 6 compliant engines within already certified models after the proposed Tier 8 standards become effective for newly-certified engine models. As noted elsewhere, EPA is working within the ICAO/CAEP framework to develop harmonized international standards for aircraft turbine engines. At the February 2010 meeting of CAEP, where the CAEP/8 NO_X standards were approved for recommendation to ICAO, the committee decided to continue considering a related newly-manufactured engine standard as a future work item at CAEP, pending new information on technology and market responses.

We will continue our efforts to evaluate a newly-manufactured engine standard as a complement to the Tier 8 NO_X standards as part of the future CAEP work programs. We believe that such a requirement is a necessary component of any effective NO_X control strategy for aircraft turbine engines. It provides an orderly, stable transition between emission requirements that is helpful for product planning by engine and airframe manufacturers, and in making purchasing decisions by their customers. It also ensures compliance with any new emission standard in a reasonable period of time, thereby providing the public with all the environmental benefits that a new emission standard can provide. However, in order to maximize consistency with the CAEP/8 NO_X standard as currently recommended to ICAO, our proposed Tier 8 standard does not contain a production cutoff.

Assuming a CAEP/8 production cutoff is adopted at some time in the future, we will re-examine the permanent exemption provisions to ensure a timely and orderly phase-out of engine models that do not meet the CAEP/8 NO_X standards. We would expect this to be done as part of future CAEP deliberations and through a notice and comment rulemaking process to amend our own regulations.

C. Application of Standards for Derivative Engines

It is very common for a manufacturer to make changes to an originally type certificated engine model that is in production while keeping the same basic engine core and combustor design. In some cases these modifications may affect emissions. As a result, the certificating authority must decide whether the emission characteristics of the modified design were significant enough from the parent engine's certification basis that a demonstration of compliance with newer emission standards is necessary, or if the changes were minor relative to the parent engine's emission certification basis so that it is considered a derivative version of the original model with no emissions changes. This may be further complicated because of the common practice of making iterative changes over time, that leaves open the question as to when the cumulative changes reach a point where a new demonstration of compliance is warranted.

In the past, these determinations were made for turbofan engines by an engineering evaluation that was performed by the engine manufacturer and then approved by the FAA. As part of the ICAO/CAEP deliberations leading up to the February 2010 CAEP/8 meeting, a new standardized guidance was agreed upon as described in the ETM. The guidance, which the U.S. fully supported, includes specific criteria that can be used to determine when a design modification requires a new demonstration of compliance with newer emission standards, or when a modification was simple enough to be considered a no emissions change.

We are proposing to include the ETM language in our regulations. This addresses a longstanding need to provide consistent standards for the decision process regarding derivative engines and applicable emission standards. The definition of ''derivative engines for emissions certification purposes,'' along with the criteria for making this determination, will provide engine manufacturers and the regulators with more certainty regarding emission standard requirements for future modifications made to certificated models. Finally, it will make the decision criteria enforceable. To ensure that the numerical decision criteria can be administered to allow for the consideration of unusual circumstances or special information, we are also proposing that the FAA have some flexibility to make adjustments to the specific criteria based on good engineering judgment. In summary, if the FAA determines that an engine model is sufficiently similar to its parent engine so as to meet the criteria established in the proposed part 87.48, the manufacturer may demonstrate certification compliance and continue production of the engine model to the same extent as allowed for the original engine model. However, if the FAA determines that an engine model is not a derivative for emission certification purposes, the manufacturer would be required to demonstrate compliance with the most recent emissions standards. This determination will be made using numerical criteria consistent with ICAO provisions, and will apply to modified engine models if it is: (1) Derived from an original engine that had received a U.S. certification, (2) the original engine was certified under title 14 of the CFR, and (3) one of the following conditions is met:

(1) The FAA determined that a safety issue exists that requires an engine modification; or

(2) Emissions from the derivative engines are equivalent to or lower than the original engine.

The proposed regulations specify that to show emissions equivalency, the engine manufacturer must demonstrate that the difference between emission rates of a derivative engine and the original engine are within the following allowable ranges, unless otherwise adjusted using good engineering judgment as determined by the FAA:

$\pm$ 3.0 g/kN for NO_X.
$\pm$ 1.0 g/kN for HC.
$\pm$ 5.0 g/kN for CO.
$\pm$ 2.0 SN for smoke.

Engine models represented by characteristic levels at least five percent below all applicable standards would be allowed to demonstrate equivalency by engineering analysis. In all other cases, the manufacturer would be required to test the new engine model to show that its emissions met the equivalency criteria.

D. Annual Reporting Requirements

In May of 1980, ICAO's Committee on Aircraft Engine Emissions (CAEE) recognized that certain information relating to environmental aspects of aviation should be organized into one document. This document became ICAO's ''Annex 16 to the Convention on International Civil Aviation, International Standards and Recommended Practices, Environmental Protection'' and was split into two volumes—*Volume I* addressing Aircraft Noise topics and *Volume II* addressing Aircraft Engine Emissions. Annex 16 has continued to grow and today Annex 16 *Volume II* includes a list of mandatory requirements to be satisfied in order for an aircraft engine to meet the ICAO emission standards.[94] These requirements include information relating to engine identification and characteristics, fuel usage, data from engine testing, data analysis, and the results derived from the test data. Additionally, this list of aircraft engine requirements is supplemented with voluntarily reported information which has been assembled into an electronic spreadsheet entitled ''Emissions Databank'' (EDB)[95] for turbofan engines with maximum thrust ratings greater than 26.7 kN in order to aid with emission calculations and analysis as well as help inform the general public.

In order to understand how current gaseous emission standards are affecting the current fleet, we need to have access to timely, representative emissions data of the engine fleet at the requisite model level. The EDB is a useful tool for providing a general overview of the aircraft fleet, as it contains information on engine exhaust emissions and performance tests. However, it is not updated on a consistent basis, it contains a varying amount of voluntarily reported data from each manufacturer, and it does not specifically list every engine sub-model.[96] It also does not contain information on smaller thrust category turbofans or turboprops, and contains no information on past or recent engine production volumes. We need this data to conduct accurate emission inventories and develop appropriate policy. Accordingly, we do not consider the EBD to be a sufficient tool upon which to base policy decisions or adopt future standards. Furthermore, in the context of EPA's standards-setting role under the Clean Air Act with regard to aircraft engine emissions, it is consistent with our policy and practice to ask for timely and reasonable reporting of emission certification testing and other information that is relevant to our mission.[97] Under the Clean Air Act, we are authorized to require manufacturers to establish and maintain necessary records, make reports, and provide such other information as we may reasonably require discharge our functions under the Act. (See 42 U.S.C. 7414(a)(1).)

Therefore, we are proposing to require that any engine manufacturer submit a production report directly to EPA[98] with specific information for each individual engine sub-model that: (1) Is designed to propel subsonic aircraft, (2) is subject to our exhaust emission standards, and (3) has received a U.S. type certificate. More specifically, the scope of the proposed production report would include turbofan engines as described above with maximum rated thrusts greater than 26.7 kN, *i.e.,* those subject to gaseous emission and smoke standards. In addition, it would include turbofans with maximum rated thrusts less than or equal to 26.7 kN and all turboprop engines, *i.e.,* those only subject to smoke standards. We are also proposing that this specific exhaust emission related information be reported to us in a timely manner, which will allow us to conduct proper emissions inventory analyses of the existing fleet and to ensure that any public policy we create based on this information will be well informed.

We are proposing to have each affected engine manufacturer report a reduced number of specific data elements to us as compared to those already reported voluntarily and periodically by most engine manufacturers to the EDB. We feel that this minimizes the reporting burden for each manufacturer while still providing us with sufficient information to perform our job. All of the specific reporting items we are proposing are the same as requested for the EDB, with the exception of total annual engine production volumes, information on type certificates, and the emission standards to which the engine sub-model was certified.

This information will be used in conjunction with the NO_X and CO_2 emission data already required to be submitted to us under part 87.64 for purposes of greenhouse gas (GHG) reporting to establish our own independent engine exhaust emissions database. We would expect most manufacturers generally to add the proposed information items to the annual GHG report. We want to clarify, however, that comments are invited only on the proposed incremental data reporting elements that comprise the production report. No changes are being proposed to the contents of the GHG report.

The proposed incremental reporting elements for each affected gas turbine engine sub-model are listed below. The reporting elements of the existing GHG report are also identified for completeness.

- Company corporate name as listed on the engine type certificate (GHG);
- Calendar year for which reporting (GHG);
- Complete sub-model name (This will generally include the model name and the sub-model identifier, but may also include an engine type certificate family identifier) (GHG);
- The type certificate number, as issued by the FAA (Specify if the sub-model also has a type certificate issued by a certificating authority other than the FAA) (GHG);
- Date of issue of type certificate and/or exemption, *i.e.* month and year (GHG);
- Emission standards to which the engine is certified, *i.e.,* the specific Annex 16, Volume II, edition number and publication date in which the numerical standards first appeared.
- If this is a derivative engine for emissions certification purposes, identify the original certificated engine model.
- Engine sub-model that received the original type certificate for the engine type certificate family;
- Production volume of the sub-model for the previous calendar year, or if zero, state that the engine model is not in production and list the date of manufacture (month and year) of the last engine produced;
- Regarding the above production volume report, specify (if known) the number of engines that are intended for use on new aircraft and the number

[94] ICAO, ''Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume II, Aircraft Engine Emissions,'' Part III, Chapter 2, Section 2.4. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[95] United Kingdom, Civil Aviation Authority, ''ICAO Emissions Databank.'' Available at the Civil Aviation Authority Web site *http://www.caa.co.uk/default.aspx?catid=702.*

[96] Under the proposed regulations, a grouping of engines with an essentially identical emission-related design would be defined to be an ''engine sub-model''. Engines with slightly different designs would be defined to be an ''engine model''.

[97] The FAA already requires much of the information EPA is seeking through the certification process, but is unable to share it because of confidentiality agreements with engine manufacturers. Also, that information is part of a much larger submission, making it difficult to extract the specific reporting elements for EPA.

[98] The proposed report would be submitted only to EPA. No separate submission or communication of any kind is required for the FAA.

intended for use as certified (non-exempt) spare engines on in-use aircraft;

- Reference pressure ratio (GHG);
- Combustor description (type of combustor where more than one type available on an engine);
- Engine maximum rated thrust output, in kilonewtons (kN)) or kilowatts (kW) (depending on engine type) (GHG);
- Unburned hydrocarbon (HC) mass (g) total (weighted) and over each segment of the Landing and Take-off Cycle (LTO), *i.e.* Take-off, Climb, Approach, Taxi/Ground Idle; [99]
- Unburned hydrocarbon (HC) characteristic level (*i.e.* mass of hydrocarbons over LTO cycle/Rated Thrust (Dp/Foo)); [100]
- Carbon monoxide (CO) mass (g) total (weighted) and over each segment of the entire Landing and Take-off Cycle (LTO) (*i.e.* Take-off, Climb, Approach, Taxi/Ground Idle);
- Carbon monoxide (CO) characteristic level (*i.e.* mass of CO over LTO cycle/Rated Thrust (Dp/Foo));
- Nitrogen oxides (NO_X) mass (g) total (weighted) and over each segment of the entire Landing and Take-off Cycle (LTO) (*i.e.* Take-off, Climb, Approach, Taxi/Ground Idle) (GHG);
- Nitrogen oxides (NO_X) characteristic level (*i.e.* mass of NO_X over LTO cycle/Rated Thrust (Dp/Foo)) (GHG);
- Smoke number total and over each segment of the entire Landing and Take-off Cycle (LTO) (*i.e.* Take-off, Climb, Approach, Taxi/Ground Idle);
- Smoke number characteristic level;
- Carbon dioxide (CO_2) mass (g) total (weighted) and over each segment of the entire Landing and Take-off Cycle (LTO), (*i.e.* Take-off, Climb, Approach, Taxi/Ground Idle (GHG));
- Number of tests run per sub-model (GHG);
- Number of engines tested per sub-model (GHG);
- Fuel flow (grams/second) total (weighted) and over each segment of the Landing and Take-off Cycle (LTO) (*i.e.* Take-off, Climb, Approach, Taxi/Ground Idle) (GHG); and
- Any additional remarks to the EPA.

The proposed annual report would be submitted for each calendar year in which a manufacturer produces any turbofan engine subject to emission standards as previously described. These reports would be due by February 28 of each year, starting with the 2014 calendar year, and cover the previous calendar year. This report would be sent to the Designated EPA Program Officer. Where information provided for any previous year remains valid and complete, the engine manufacturer may report the production figures and state that there are no changes instead of resubmitting the original information. To facilitate and standardize reporting, we expect to specify a particular format for this reporting in the form of a spreadsheet or database template that we provide to each manufacturer. As noted previously, we intend to use the proposed reports to help inform any further public policy approaches regarding aircraft engine emissions that we consider, including possible future emissions standards, as well as help provide transparency to the general public. Subject to the applicable requirements of 42 U.S.C. 7414(c), 18 U.S.C. 1905, and 40 CFR part 2, all data received by the Administrator that is not confidential business information may be posted on our Web site and would be updated annually. By collecting and publically posting this information on EPA's Web site, we will be able to calculate turbine exhaust emission rates and demonstrate to the public how the fleet meets the current emission requirements. We believe that this information will also be useful to the general public to help inform public knowledge regarding aircraft exhaust emissions. We ask for comment on our proposed plan to post this information on our Web site and whether any of it should be omitted as confidential business information. Such confidential information would be retained by EPA. For guidance on how to preserve a claim of confidentiality and on how EPA would treat submitted information covered by such a claim, please see our earlier discussion in section VII. of this notice regarding how a public commenter on the proposed rule should submit information that the submitter considers to be confidential business information. We have assessed the potential reporting burden associated with the proposed annual reporting requirement. That assessment is presented in sections V. and IX.B. of this notice.

E. Proposed Standards for Supersonic Aircraft Turbine Engines

We are proposing CO and NO_X emission standards for turbine engines that are used to propel aircraft at sustained supersonic speeds, *i.e.,* supersonic aircraft to complement our existing HC standard for these engines. These proposed standards were originally adopted by ICAO in the 1980s, and our adoption of NO_X and CO standards for commercial engines in 1997 omitted coverage of these pollutants for supersonic commercial engines that were then in use. The lack of EPA CO and NO_X standards for engines used by supersonic aircraft has had no practical effect, because no such engines have been certified by the FAA. Also, none of the engines used on these aircraft are currently in production. (See section III.G. for a brief discussion of potential revised emission standards for future engine designs that may be used on supersonic aircraft.) However, to meet U.S. treaty obligations under the Convention on International Civil Aviation as previously described in section I.C., we believe it is necessary and appropriate to propose these conforming standards. Therefore, the proposed standard simply aligns EPA standards with the rest of the world.

F. Amendments to Test and Measurement Procedures

We are proposing to incorporate by reference into the 40 CFR 87.60 regulatory text, amendments to ICAO's International Standards and Recommended Practices for aircraft engine emissions testing and certification. These amendments to Annex 16, Volume II are mainly intended to ensure that the provisions reflect current certification practices. The amendments make clarifications or add flexibilities for engine manufacturers. They are described separately below for the amendments that have already been adopted by ICAO [101] [102] and those that have been recommended by CAEP for adoption by ICAO.[103]

The amendments that have already been adopted by ICAO are:

- Standardizing of the terminology relating to engine thrust/power;

[99] See Regulation Part 87-*Control of Air Pollution from Aircraft and Aircraft Engines,* Subpart E, § 87.42 *Certification report to EPA* for definitions.

[100] Dp/Foo: total gross emissions of each gaseous pollutant (mass)/rated thrust (g/kN).

[101] A strikeout and highlighted version of the amendments is contained in Attachment A to ICAO state letter AN 1/61.2, AN 1/62.2–07/32 entitled, ''Proposed Amendment to International Standards and Recommended Practices, Environmental Protection, Annex 16 to the Convention on International Civil Aviation, Volume II Aircraft Engine Emissions, May 27, 2007. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[102] ICAO, ''International Standards and Recommended Practices, Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume II Aircraft Engine Emissions,'' Third Edition, July 2008, International Civil Aviation Organization. This document contains the full text of ICAO standards and practices and is in docket number EPA–HQ–OAR–2010–0687.

[103] ICAO, ''Committee on Aviation Environmental Protection (CAEP), Report of the Eighth Meeting, Montreal, February 1–12, 2010,'' CAEP/8–WP/80. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

• Clarifying the need to correct measured results to standard reference day and reference engine conditions;
• Allowing a certificating authority to approve the use of test fuels other than those specified during certification testing;
• Allowing materials other than stainless steel in the sample collection equipment; and
• Clarifying the appropriate value of fuel flow to be used at each LTO test point.

The amendments that have been recommended for adoption by ICAO are:
• Clarifying exhaust nozzle terminology for exhaust emissions sampling; and
• Allowing an equivalent procedure for gaseous emission and smoke measurement if approved by the certificating authority.

The test procedure amendments that ICAO has already adopted became applicable on November 20, 2008. The amendments that have been recommended to ICAO are expected to be adopted prior to the date of the final action on today's proposed rule. Manufacturers are either already voluntarily complying with these changes or will be even in the absence of a final rule. Our adoption of these test procedure amendments is, therefore, unlikely to require new action by manufacturers beyond what they are already undertaking to meet ICAO's adopted and recommended amendments.

G. Possible Future Revisions to Emission Standards for New Technology Turbine Engines and Supersonic Aircraft Turbine Engines

As a general matter, emission standards not only apply to all conventional turbofan aircraft engines greater than 26.7 kNs, but also to all aircraft engines designed for applications that otherwise would have been fulfilled by turbofan aircraft engines. The high price of jet fuel, current emphasis on fuel economy, and need to reduce emissions have renewed interest in open rotor propulsion designs for future aircraft gas turbine engines. Essentially, the fan of an open rotor engine is not contained within an engine nacelle as it is with a conventional turbofan engine. This design has also been referred to as an unducted fan, propfan, or ultra-high bypass engine. At least two engine manufacturers are actively pursuing such designs for certification in the later part of this decade.

It now appears that certain aspects of EPA's gas turbine engine emission standards may be incompatible with these new designs. For example, the current landing and takeoff cycle for emissions certification is based on conventional engine designs where a significant amount of thrust is generated by an idling engine. Specifically, idle emissions are measured and calculated at seven percent of the engine's rated thrust. However, the fan/prop blades of an open rotor engine may be variable in pitch and this may allow the blades to be ''feathered'' at idle. In that position, the blades are rotated so very little thrust is generated as the engine idles and generates emissions. Also, future aircraft using these engine designs may fly at somewhat slower speeds. This might affect the time these aircraft spend during the climbout mode of the landing and takeoff cycle. Therefore, the traditional landing and takeoff cycle used in turbofan engine emissions certification may need to be revised in the future to accommodate open rotor engines.

We will be working within CAEP to evaluate the differences between conventional turbine engine and open rotor engine technologies, and to revise the emission standards and test procedures as appropriate for these latter engines. If any changes are required, EPA will undertake rulemaking to revise our regulations accordingly.

There may also be changes in the emission standards and test procedures for engines used to power future supersonic transport aircraft designs. The emission standards for these engines were originally developed in the early 1970s in response to the Aerospatiale-BAC Concorde. Since that time, there have been varying levels of interest in developing a new generation of supersonic transport. As a result, the current CAEP work program is evaluating the status of supersonic aircraft engine development and the potential need for new emission standards and test procedures.[104] Our recent discussions with engine manufacturers indicate that no substantive work is being undertaken at this time, however. We will continue to work within CAEP on this issue and undertake rulemaking to revise the regulations for supersonic aircraft engines as appropriate.

We request comments on the status and timing of open rotor and future engine designs for supersonic aircraft, and how the aircraft engine emission standards and test procedures may need to be modified to accommodate these types of engines.

IV. Description of Other Revisions to the Regulatory Text

In addition to the proposed changes discussed above, we are proposing a number of other changes to the regulatory program. Most of these changes are designed to bring the program into conformity with current technology and current technical or policy practice. Each of these is discussed below.

A. Applicability Issues

This section discusses how the proposed rule relates to engines used in military and noncommercial civilian aircraft. We do not believe the proposed changes would have practical significance for current engine models because the changes align with manufacturers' current practice in certifying their engines.

1. Military Engines

We do not intend our proposal to have any impact on engines installed on military aircraft. Military aircraft are not required to have FAA standard airworthiness certificates and our 1997 endangerment finding for NO_X and CO emissions and resulting standards did not cover military aircraft (see 62 FR at 25359). As such, engines used in military aircraft are not required to meet EPA emission standards, since our current regulations define ''aircraft'' subject to our rules as any airplane for which a U.S. standard airworthiness certificate (or foreign equivalent) is issued. (See 40 CFR 87.1(a) of the existing regulations.) Currently, manufacturers certificate some engine models used in military aircraft with the FAA (with respect to emissions), because these engine models also have commercial applications and have to be certificated for such use. Our proposed new standards and requirements would continue to apply only to engines for which standard airworthiness certificates are issued, and it is not our intent to interfere with current practice with regard to engine models with joint commercial/military applications to the extent such engines are used in military aircraft. Although civilian aircraft applications of all such engines would be subject to the new standards and production cutoff, we are proposing to include a statement in the regulations to clarify that the proposed production

[104] The CAEP Working Group 3 has taken the position that engine development programs for future supersonic aircraft applications should be focused on achieving the emission standards that are applicable to subsonic aircraft engines. Past supersonic aircraft engines required the use of afterburner technology to achieve supersonic speeds. Future supersonic aircraft are expected to use engines without that technology, making them more similar to their subsonic counterparts.

cutoff would not apply for previously certificated engines that are installed and used in military aircraft.

2. Noncommercial Engines

The current section 87.21(d) specifies that gaseous emission standards apply to engines used in commercial applications with rated thrusts greater than 26.7 kN. These are engines intended for use by an air carrier or a commercial operator as defined in the Chapter I, Title 49 of the United States Code and Title 14 of the Code of Federal Regulations. Therefore, engines of equivalent thrust ratings that are used in aircraft certificated by the FAA that are used in non-revenue, general aviation service are not required to comply with our current HC, CO, and NO_X exhaust emission standards in § 87.21(d). They are subject, however, to the current standards for smoke and fuel venting.

We are proposing to apply the proposed gaseous emission standards for commercial engines to their noncommercial civilian counterparts that are required to obtain standard airworthiness certificates. There are a couple of reasons for this proposed action. First, the ICAO Annex 16 standards and recommended practices apply equally to commercial and noncommercial engines, and our rules' current failure to reflect this means that our requirements do not fully conform to ICAO's standards. Second, manufacturers already emissions certify engines that are used in non-revenue, general aviation service to these standards. Therefore, this proposal simply incorporates the status quo.

In order to make EPA standards conform to ICAO's, we need to, in addition to promulgating the necessary regulatory amendments, update the underlying finding regarding the need to limit gaseous emissions from commercial and non-commercial civilian aircraft, pursuant to CAA section 231(a)(2)(A). In 1997, our analysis and finding, and hence our regulations, were limited to commercial aircraft emissions. (See 62 FR at 25358.) Today, we are proposing to expand that analysis and finding to include gaseous emissions from both commercial and non-commercial civilian aircraft engines with rated thrusts greater than 26.7 kN.

These noncommercial and commercial engines have a great deal in common. First, they each use the same thermodynamic engine cycle (*i.e.,* a gas (air) compressor, fuel combustor, and expansion turbine), engine design, and technology. That means they emit the same pollutants, *i.e.,* HC, CO, and NO_X. Second, they are each used in the same manner, *i.e.,* landing and takeoff operations from airports in the U.S., including commercial airports in ozone and CO nonattainment areas. That means their emissions are geographically, spatially, and temporally similar, and that they collectively contribute to ozone and CO air pollution in nonattainment areas and are projected to continue to do so. Third, noncommercial engines are usually the same engine model and sometimes sub-model as engines used in commercial operations, which makes distinguishing between commercial and noncommercial engines somewhat artificial. These attributes, taken together, demonstrate that engines used in noncommercial service have the same effect on the environment as their commercial counterparts. Therefore, the Administrator is proposing to find that commercial and noncommercial applications for turbofan and turbojet engines with rated thrusts greater than 26.7 kN collectively cause or contribute to the same air pollution as their commercial counterparts. Our emissions assessment supporting this conclusion is contained in the docket for this proposed rulemaking.[105]

B. Non-Substantive Revisions

We are also taking the opportunity to revisit the clarity of other regulatory provisions in part 87. Many of these provisions were first written 30 or 40 years ago with little or no change since then. We are proposing changes to the text related to some of these provisions to better organize, clarify, and update the regulations. Our goal is to revise the regulations in part 87 to properly organize the content of the regulation, use clearer language to describe the applicable requirements, clarify some definitions, and clear up a variety of terms and current practices that have not been adequately addressed.

Except as discussed in previous sections, the proposed changes to part 87 are not intended to significantly change the certification and compliance program. We are not reopening for comment the substance of any part of the program that remains unchanged substantively. Specifically, for those instances where we propose to move a provision to a different section or reword a provision in clearer language, we do not consider those changes to be substantive. It is also important to note that the changes to the regulation apply starting with the date that the final rule takes effect.

In particular, it is worth emphasizing that while we are restating the HC, CO, and smoke standards, as they would apply to Tier 6 and later NO_X standard-subject engines, in a new part 87.23, we are not proposing them as new standards or otherwise reopening them for comment. The HC, CO, and smoke standards in the proposed part 87.23 are identical to the existing standards of part 87.21 and are being copied into the new section merely for clarity to readers.

The proposed rule includes the following definitions and other minor changes in addition to those changes described earlier in this section or in section III.:

The definition of the term ''aircraft'' is being revised to be consistent with its meaning under FAA regulations in 14 CFR 1.1. The existing part 87 definition limits ''aircraft'' to be only those craft issued an airworthiness certificate. This was done as a way to specify the applicability of the standards. However, this can cause confusion in a variety of ways. For example, this departs from the plain meaning of ''aircraft,'' as well as from the meaning given under the Clean Air Act and Title 49 of the United States Code. The proposed definition aligns with these statutory definitions. The changed wording is intended to clarify the existing policy without changing it.

Text specifying general applicability is being added to part 87.3 to be consistent with the new definition of ''aircraft'' and maintain the effective applicability of the existing regulations, which uses narrow definitions to limit applicability. For example, the existing regulations limit the applicability of the standards by defining ''aircraft'' to only include fixed-wing airplanes with airworthiness certificates. They exclude non-propulsion engines from the definition of ''aircraft engine'' and turboshaft engines from the definition of ''aircraft gas turbine engine.'' We believe it is more appropriate to explicitly exclude these engines in an applicability section than to rely on readers finding these exclusions in the definitions section. We are also renaming part 87.3 as ''General applicability and requirements'' and reorganizing the content for clarity. Finally, we are replacing the existing regulatory text related to Federal preemption for exempted engines in part 87.7(f) with a codification of the statutory preemption language in part 87.3 and an explanatory note that the statutory preemption applies to

[105] U.S. EPA, ''Proposed Finding for Commercial and Noncommercial Turbofan and Turbojet Aircraft Emissions,'' memorandum from John Mueller, Assessment and Standards Division, Office of Transportation and Air Quality, May 2011. A copy of this document is in docket EPA–HQ–OAR–2010–0687.

exempted engines because they are certified to prior-tier standards.

ICAO Annex 16 is being incorporated by reference for test procedures. This involves a broader reference to Annex 16, with less content repeated in part 87. However, this does not substantively change the test procedures that apply since the existing procedures are based directly on Annex 16. As part of this change, we are adding the ICAO definition of ''characteristic level'' to properly describe how manufacturers demonstrate that they meet applicable standards.

Definitions are being added for ''date of introduction,'' ''date of manufacture,'' and ''derivative engine for emissions certification purposes,'' and the definition of ''engine model'' is being revised, to more carefully describe when new emission standards apply to specific aircraft engines. These definitions are generally consistent with the most common understandings of these terms by industry and FAA, and with the CAEP/8 recommendation for adoption by ICAO. Except for engines subject to exemptions, there will be no more engines required to be certified to the standards specified in part 87.21, so changing the definition of ''engine model'' will not change the requirements for engines certified to the Tier 4 or earlier standards. For the benefit of the reader, we are also reprinting the following definitions that remain unchanged, without requesting comment on those definitions:

- Aircraft engine
- Aircraft gas turbine engine
- Class TP
- Class TF
- Class T3
- Class T8
- Class TSS
- Commercial aircraft gas turbine engine
- Fuel venting emissions

Specific provisions are being added to define and require the use of ''good engineering judgment.'' This applies for instances where the regulation cannot spell out every technical detail of how a manufacturer should comply with the regulation. For example, the proposed regulations would rely on good engineering judgment being used on the engineering analysis of emissions equivalency for derivative engines (part 87.48(b)(2)), and for applying the turbofan test procedures to turboprop engines (part 87.60(a)). The general approach for implementing good engineering judgment is to allow manufacturers to exercise well substantiated and explained technical judgment subject to potential EPA and FAA review (as appropriate). The consequences of disagreements with a manufacturer's decision would depend on whether we believe the manufacturer made the decision in good faith. Where the manufacturer makes its decision in good faith, EPA or FAA could require a different approach for future work if we believe it would represent better engineering judgment. We believe these provisions reflect the spirit of the approach being used today to interpret the applicable regulations.

Provisions are being added specifying rounding practices for rated output, rated pressure ratio, and calculated emission standards; generally specifying that they be expressed to at least three significant figures. These specifications are consistent with how manufacturers are generally certifying engines today. Defining how to round these values would prevent manufacturers in the future from effecting small changes in the level of the emission standards to which they certify their engines. This is because standards are calculated using the numerical values of the rated output and rated pressure ratio. Without these specifications, manufacturers could subject themselves to a slightly less stringent standard by selectively rounding or truncating an engine model's rated output to be low and its rated pressure ratio to be high, or by strategically rounding the calculated standard itself. While this has not been an issue in the past, it is important to maintain a level playing field for all manufacturers as standards become more stringent. We do not expect any more engines type-certificated to the standards specified in part 87.21, so the specified procedures for rounding these values will not change the requirements for engines certified to the Tier 4 or earlier standards.

Definitions are being added for ''turbofan engine,'' ''turbojet engine,'' ''turboprop engine,'' ''turboshaft engine,'' ''supersonic,'' and ''subsonic'' to avoid any uncertainty about how the standards apply to different types of engines. The proposed definitions are intended to reflect the plain meaning of these terms.

The proposed regulations include the following additional amendments:

Regulation cite	Description of amendment	Notes
87.1	Add definition of ''characteristic level''.	The characteristic level is established by ICAO Annex 16 as a means of calculating a statistical adjustment to measured emission results to take into account the level of uncertainty corresponding to the number of tests run for a given pollutant.
87.1	Remove definitions for ''emission measurement system'', ''power setting'', ''sample system'', ''shaft power'', ''taxi/idle (in)'', and ''taxi/idle (out)''.	These terms will no longer be used in part 87. There will be no more engines certified to the standards specified in § 87.21, so removing these definitions will not change the requirements for engines certified to the Tier 4 or earlier standards.
87.1	Revise definition of ''exhaust emissions'' and ''smoke''.	The new language references the emission testing procedures, since that is the practical meaning of these terms in part 87. This clarifies, for example, that emissions from the nozzle of an aircraft or aircraft engine count as exhaust emissions only if they are measured using the specified test procedures. There will be no more engines certified to the standards specified in § 87.21, so revising these definitions will not change the requirements for engines certified to the Tier 4 or earlier standards.
87.1	Define ''new'' instead of defining ''new aircraft turbine engine''.	The regulations also refer to new turboprop engines and new engines used for supersonic aircraft, so it is appropriate to define the adjective as it relates to these different kinds of engines. This approach does not change the meaning of the applicable terms and therefore has no bearing on the requirements that applied under the standards specified in § 87.21.

Regulation cite	Description of amendment	Notes
87.1	Revise the definition of ''standard day condition'': (1) remove the reference to the 1976 U.S. Standard Atmosphere, (2) correct a typographical error in the humidity specification, and (3) change the atmospheric pressure units from Pa to kPa.	The editorial changes do not involve any substantive change in the specified conditions.
87.2	Remove FAA from the list of acronyms in § 87.2 and add it to the set of defined terms in § 87.1.	This is intended to not involve a change in emission standards or implementation.
87.3	Add provisions describing the scope of applicability of part 87.	The broad statement in § 87.3 is not intended to conflict with the applicability statements in individual subparts, since those additional statements indicate that certain requirements in part 87 apply more narrowly. All applicability statements in the proposed rule are intended to be consistent with current policy.
87.3	Remove the provision related to preemption of state standards for exempted aircraft and replace it with the preemption provision in the Clean Air Act.	This change more carefully tracks the statutory provisions related to preemption.
87.5	Move the provisions related to special test procedures to § 87.60.	This provision, and the similar provision from § 87.3(a), should be described together in the context of the testing requirements in subpart G.
87.21	Identify the specific date when the smoke standard started to apply for turbofan engines with rated output less than 26.7 kilonewtons.	This corrects a typographical error from the FEDERAL REGISTER.
87.21	Revise paragraph (f) to correctly reference the regulatory sections that describe the applicable test procedures.	This change is strictly editorial.
87.60	Revise the description of test procedures to rely broadly on the procedures specified in ICAO Annex 16. This includes a variety of recent changes to the Annex 16 procedures.	There will be no more engines certified to the standards specified in § 87.21, so any changes to the test procedures will not change the requirements for engines certified to the Tier 4 or earlier standards. Moreover, engine manufacturers are expected to perform all their testing based on the current test procedures from ICAO Annex 16, regardless of the standards that apply.

C. Clarifying Language for Regulatory Text

The proposed regulations incorporate the changes described in this preamble. The following table highlights and clarifies several provisions that may not be obvious to the reader.

Regulation cite	Note
87.1, Definition of ''aircraft''	This definition would revert to the normal FAA definition of aircraft, rather than the much narrower current definition in part 87. To understand this change, the proposed definition needs to be considered along with the proposed changes to applicability in 87.3(a).
87.1, Definition of ''date of manufacture''	This is generally the same definition as given in ICAO Annex 16. However, our definition addresses certain specific circumstances that could possibly occur, but that are not addressed by the Annex. For example, our definition would provide a date of manufacture for an engine not previously documented by a manufacturer.
87.1, Definition of ''derivative engine for emissions certification purposes''.	It is important to consider this definition in combination with the definition of ''engine type certificate family''.
87.1 Definition of ''engine model''	A manufacturer or FAA may further divide an engine model into sub-models. Engines from an engine model must be contained within a single engine type certificate family. Where FAA determines that engines are not sufficiently similar to be included under a single type certificate, they will not be considered to be the same engine model for purposes of part 87.
87.1, Definition of ''military aircraft'' and 87.23(d).	In § 87.23(d) we clarify that the production cutoff does not apply for military aircraft engines (even if they have been certificated). In § 87.1, we define military aircraft to mean ''aircraft owned by, operated by, or produced for sale to the armed forces or other agency of the Federal government responsible for national security (including but not limited to the Department of Defense).'' For example, aircraft owned by the U.S. Coast Guard would be military aircraft.
87.1, Definition of ''production cutoff date''	The production cutoff date for the Tier 6 NO_X standards is December 31, 2012.
87.1, Definition of ''spare engine''	Newly manufactured spare engines may be excepted under § 87.50.
87.1, Definitions of tiers	As specified in the definitions of ''Tier 0'' through ''Tier 8'', tiers apply only for NO_X standards. Tiers do not apply for HC, CO, and smoke standards because these continue to apply, independent of the NO_X standards.
87.23(d)(2)	The allowance to continue production of Tier 6 engines after the Tier 8 standards start to apply is not necessary for engines with rated pressure ratio at or above 104.7 because the Tier 6 and Tier 8 standards are numerically identical at these thrust levels.

Regulation cite	Note
87.42(c)(1)	§ 87.42 requires that a manufacturer report the engines it produces by sub-model. The manufacturer must specify the manufacturer's unique sub-model name, which will generally include a model name and a sub-model name. It may also include a family name.
87.50	This provision specifies that EPA must provide written concurrence for exemptions.
87.50(a)(1)(iv)(F)	This provision states that manufacturers requesting exemptions should describe equity issues. As an example of equity issues related to an exemption request, a manufacturer might provide a rationale for granting the exemption when another manufacturer has a compliant engine and does not need an exemption, taking into account the implications for operator fleet composition, commonality, and related issues in the absence of the engine model in question.
87.50(a)(6)	This provision requires manufacturers to promptly notify the FAA if new or changed information could have affected approval of an exemption. For corrections to an exemption request that would not affect the approval of the exemption, manufacturers may include the updated information in the annual report described in § 87.50(e).

V. Technical Feasibility, Cost Impacts, Emission Benefits

During the CAEP process, the technical feasibility and cost of compliance of the CAEP/6 and CAEP/8 NO_X standards were thoroughly assessed and documented.[106] [107] EPA participated in these analyses and supported the results. Generally, CAEP considered certain factors as pertinent to the cost estimates of a technology level for engine changes, and these factors or technology levels are described below. The first technology level was regarded as a minor change, and it could include modeling work, minor design changes, and additional testing and re-certification of emissions. The second technology level was considered a scaled proven technology. At this level an engine manufacturer applies its best-proven, combustion technology that was already certified in at least one other engine type to another engine type. This second technology level would include substantial modeling, design, combustion rig testing, modification and testing of development engines, and flight testing. The third technology level was regarded as new technology or current industry best practice, and it was considered where a manufacturer has no proven technology that can be scaled to provide a solution and some technology acquisition activity is required. (One or more manufacturers have demonstrated the necessary technology, while the remaining manufacturers would need to acquire the technology to catch up.) Since the effective date for the CAEP/6 NO_X standard was January 1, 2008 and nearly all in-production engines currently meet this standard, we will limit our discussion below of applying these technology levels to engines that need to comply with the CAEP/8 NO_X standard.

At the time of the CAEP reports, the CAEP/8 NO_X standard for higher thrust engines, *i.e.,* 89.0 kN or more would apply to a total of 15 engine types. For these types the following technology level response was anticipated: six types would require no change, one type would need the first technology level change, five would require the second technology level, and three would need the third technology level. For lower thrust engines, *i.e.,* greater than 26.7 but less than 89.0 kN, CAEP listed a total of 13 engine types in their analysis of the CAEP/8 NO_X standard. The following technology level response was estimated for these types: 11 types would require no change, 1 type would need the first technology level change, and 1 type would require a second technology.

Regarding the costs of this specific proposal, aircraft turbofan engines are designed and built for use on aircraft that are sold and operated throughout the world. As a result, engine manufacturers respond to this market reality by designing and building engines that conform to ICAO international standards and practices. This normal business practice means that engine manufacturers are compelled to make the necessary business decisions and investments to maximize their international markets even in the absence of U.S. regulations that would otherwise codify ICAO standards and practices. Indeed, engine manufacturers have developed or are already developing improved technology in response to ICAO standards that match the standards proposed here. Also, the proposed recommended practices, *e.g.,* test procedures, needed to demonstrate compliance are being adhered to by manufacturers during current engine certification tests, or will be even in the absence a final rule. Therefore, EPA believes that today's proposed standards and practices that conform with ICAO standards and practices will impose no real additional burden on engine manufacturers. This finding regarding no incremental burden, is also consistent with past EPA rulemakings that adopted ICAO requirements. ((See 62 FR 25356 (May 8, 1997) and 70 FR 69664 (November 11, 2005)).

In fact, engine manufacturers have suggested that certain benefits accrue for compliant products when the U.S. adopts ICAO standards and practices, but have not provided detailed information regarding these benefits. Primarily, such action makes FAA certification more straightforward and transparent. That in turn is advantageous when marketing their products to potential customers, because compliance with ICAO standards is an important consideration in purchasing decisions. It simply removes any question that their engines comply with international requirements. There will be some cost, however, associated with our proposed annual reporting requirement for emission related information. (See section III.D. for a description of the proposed reports.) There are a total of 10 engine manufacturers that would be affected. Eight of these produce turbofan engines with rated thrusts greater than 26.7 kN, which are already voluntarily reported to the ICAO-related Emissions Databank (EDB). We expect the incremental reporting burden for these

[106] CAEP/6 NO_X standards: CAEP Forecasting and Economic Analysis Support Group, *Economic Analysis of NO_X Emissions Stringency Options,* CAEP/6–IP/13 (Information Paper 13), January 15, 2004. A copy of this document is in docket number EPA–HQ–OAR–2010–0687.

[107] CAEP/8 NO_X standards: CAEP Working Group 3, *NO_X Stringency Technology Response Assessment,* CAEP–SG/20082–WP/18 (Working Paper 18), September 25, 2008. CAEP Forecasting and Economic Analysis Support Group, *Economic Assessment of the NO_X Stringency Scenarios,* CAEP/8–IP/14, November 30, 2009. Modeling Task Force, *MODTF NO_X Stringency Assessment,* CAEP/8–IP/13, December 11, 2009. United States, *Aviation Environmental Portfolio Management Tool for Economics (APMT–Economics) and Its Application in the CAEP/8 NO_X Stringency Analysis,* CAEP/8–IP/29, January 6, 2010. A copy of these documents are in docket number EPA–HQ–OAR–2010–0687.

manufacturers to be very small because we: (1) Have significantly reduced the number of reporting elements from those requested in the EDB, and (2) are adding only three basic reporting categories to those already requested by the EDB. Also, four of the eight manufacturers make smaller turbofan and turboprop engines that will be reporting for the first time. This will add a small incremental burden for these four manufacturers that otherwise already voluntarily report to the EDB. There are also two engine manufacturers that only produce turbofan engines with rated thrusts less than or equal to 26.7 kN and they will be reporting for the first time. For these two manufacturers we believe that the reporting burden will be small because all of the information we are proposing to require should be readily available, and these manufacturers have a very limited number of engine models.

We have estimated the annual burden and cost to be six hours and $365 per manufacturer. With 10 manufacturers submitting reports, the total burden of this reporting requirement is estimated to be 60 hours, for a total cost of $3,646.

Turning to emission benefits, CAEP's assessments indicated that the CAEP/8 NO_X standards would provide global NO_X reductions, which would translate to emission reductions in the U.S. The global LTO NO_X reductions were estimated to be about 5.5 percent in 2026 and 7 percent in 2036 relative to the baseline.[108] According to an analysis conducted for comparable percent NO_X reductions in the U.S., it was estimated that this would translate to LTO NO_X reductions in the U.S. of about 5,200 tons in 2020 and 8,700 tons in 2030,[109] and the cumulative LTO NO_X reductions from 2014 to 2030 (2014 is the implementation date of the CAEP/8 NO_X standards) were projected to be about 100,000 NO_X tons.

VI. Coordination With FAA

The requirements contained in this action are being proposed after consultation with the Federal Aviation Administration (FAA). Section 231(a)(2)(B)(i) of the CAA requires EPA to ''consult with the Administrator of the [FAA] on aircraft engine emission standards'' 42 U.S.C. 7571(a)(2)(B)(i), and section 231(a)(2)(B)(ii) indicates that EPA ''shall not change the aircraft engine emission standards if such change would significantly increase noise. * * *'' 42 U.S.C. 7571(a)(2)(B)(ii). Section 231(b) of the CAA states that ''[a]ny regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.'' 42 U.S.C. 7571(b). Section 231(c) provides that any regulation under section 231 ''shall not apply if disapproved by the President * * * on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety.'' 42 U.S.C. 7571(c). Under section 232 of the CAA, the Department of Transportation (DOT) has the responsibility to enforce the aircraft emission standards established by EPA under section 231.[110] As in past rulemakings and pursuant to the above referenced sections of the CAA, EPA has coordinated with the FAA, *i.e.,* DOT, with respect to today's action.

Moreover, FAA is the official U.S. delegate to ICAO. FAA agreed to the amendments at ICAO's Sixth and Eighth Meetings of the Committee on Aviation Environmental Protection (CAEP/6) after advisement from EPA.[111] FAA and EPA were both members of the CAEP's Working Group 3 (among others), whose objective was to evaluate emissions technical issues and develop recommendations on such issues for CAEP/6 and CAEP/8. After assessing emissions test procedure amendments and new NO_X standards, Working Group 3 made recommendations to CAEP on these elements. These recommendations were approved by CAEP/6 meetings prior to their adoption by ICAO in 2004. Similarly, the more recent Working Group 3 recommendations were approved by CAEP/8 and subsequently recommended to ICAO for adoption.

In addition, as discussed above, FAA will have the duty to enforce today's requirements. As a part of these duties, the FAA witnesses the emission tests or delegates aspects of that responsibility to the engine manufacturer, which is then monitored by the FAA.

VII. Public Participation

We request comment on this proposal, however, we are not reopening for comment the substance of any part of the program that remains substantially unchanged as described in section IV.B. The remainder of this section describes how you can participate in this process.

How do I submit comments?

We are opening a formal comment period by publishing this document. We will accept comments during the period indicated in the **DATES** section at the beginning of this document. If you have an interest in the proposed emission control program described in this document, we encourage you to comment on any aspect of this rulemaking.

Your comments will be most useful if you include appropriate and detailed supporting rationale, data, and analysis. Commenters are especially encouraged to provide specific suggestions for any changes to any aspect of the regulations that they believe need to be modified or improved. You should send all comments, except those containing proprietary information, to our Air Docket (see **ADDRESSES** located at the beginning of this document) before the end of the comment period.

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit Confidential Business Information (CBI) or information that is otherwise protected by statute, please follow the instructions in section VIII.B.

How should I submit CBI to the agency?

Do not submit information that you consider to be CBI electronically through the electronic public docket, *http://www.regulations.gov,* or by e-mail. Send or deliver information identified as CBI only to the following address: U.S. Environmental Protection Agency, Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, MI 48105, Attention Docket ID EPA–HQ–OAR–2010–0687. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI

[108] CAEP Rapporteurs of Modeling Task Force and Forecasting and Economic Analysis Support Group, *Environmental and Economic Assessment of the NO_X Stringency Scenarios,* CAEP/8–WP/15, December 2, 2009.

[109] ''Historical Assessment of Aircraft Landing and Take-off Emissions (1986–2008),'' Eastern Research Group, May 2011. A copy of this document can be found in public docket EPA–HQ–OAR–2010–0687.

[110] The functions of the Secretary of Transportation under part B of title II of the Clean Air Act (§§ 231–234, 42 U.S.C. 7571–7574) have been delegated to the Administrator of the FAA. 49 CFR 1.47(g).

[111] The Sixth Meeting of CAEP (CAEP/6) occurred in Montreal, Quebec from February 2 through 12 in 2004.

and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this document.

Will there be a public hearing?

We will hold a public hearing on August 11, 2011. The hearing will start at 9:30 am local time and continue until everyone has had a chance to speak.

If you would like to present testimony at the public hearing, we ask that you notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** at least ten days before the hearing. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will make a tentative schedule for the order of testimony based on the notifications we receive. This schedule will be available on the morning of the hearing. In addition, we will reserve a block of time for anyone else in the audience who wants to give testimony.

We will conduct the hearing informally, and technical rules of evidence won't apply. We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow you to submit supplementary information. You may make arrangements for copies of the transcript directly with the court reporter.

Comment Period

The comment period for this rule will end on September 26, 2011.

What should I consider as I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

Explain your views as clearly as possible.

Describe any assumptions that you used.

Provide any technical information and/or data you used that support your views.

If you estimate potential burden or costs, explain how you arrived at your estimate.

Provide specific examples to illustrate your concerns.

Offer alternatives.

Make sure to submit your comments by the comment period deadline identified.

To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

VIII. Statutory Provisions and Legal Authority

The statutory authority for today's proposal is provided by sections 114, 231–234 and 301(a) of the Clean Air Act, as amended, 42 U.S.C. 7414, 7571–7574 and 7601(a). See section II. of today's rule for discussion of how EPA meets the CAA's statutory requirements.

IX. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' This action proposes the adoption of new aircraft engine emissions regulations and as such, requires consultation and coordination with the Federal Aviation Administration (FAA). OMB has determined that this action raises '' * * * novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

As discussed further in section V., we do not attribute any costs to the compliance with today's proposed regulations that conform with ICAO standards and recommended practices. Aircraft turbofan engines are international commodities. As a result, engine manufacturers respond to this market reality by designing and building engines that conform to ICAO international standards and practices. Therefore, engine manufacturers are compelled to make the necessary business decisions and investments to maximize their international markets even in the absence of U.S. action. Indeed, engine manufacturers have or are already responding, or will in the future, to ICAO requirements that match the standards and practices proposed here. Therefore, EPA believes that today's proposed requirements that conform with ICAO standards and practices will impose no real additional burden on engine manufacturers. This finding is also consistent with past EPA rulemakings that adopted ICAO requirements.

There is, nonetheless, a small burden associated with the proposed reporting requirements, as discussed in section IX.B.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR Number 2427.01.

Manufacturers keep substantial records to document their compliance with emission standards. We need to be able to access this data to conduct accurate emission inventories, understand how emission standards affect the current fleet, and develop appropriate policy in the form of future emission standards. Most manufacturers are already accustomed to reporting much of this information to ICAO. We are, therefore, proposing to require that engine manufacturers send this information to EPA on an annual basis. We also propose to require manufacturers to send us their annual production volumes, which is the only item we would treat as confidential business information. Under the Clean Air Act, we are authorized to require manufacturers to establish and maintain necessary records, make reports, and provide such other information as we may reasonably require to execute our functions under the Act. See 42 U.S.C. 7414(a)(1). We would expect most manufacturers generally to add the proposed information items to the annual report they are already required to submit with information about NO_X

and CO_2 emission levels. See section III.D. for a more complete description of the proposed annual reporting requirement.

We have estimated the total annual burden of the proposed reporting requirement to be 60 hours, and the total cost to be $3,646. The annual burden and cost per respondent is estimated to be 6 hours and $365. Burden is defined at 5 CFR 1320.3(b). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID EPA–HQ–OAR–2010–0687. Submit any comments related to the ICR to EPA and OMB. See the **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 27, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by August 26, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Analysis

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 rule on small entities, small entity is defined as: (1) A small business as defined by SBA size standards; (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. The following Table 4 provides an overview of the primary SBA small business categories potentially affected by this regulation.

TABLE 4—PRIMARY POTENTIALLY AFFECTED SBA SMALL BUSINESS CATEGORIES

Industry	NAICS [a] codes	Defined by SBA as a small business if: [b]
Manufacturers of new aircraft engines	336412	< 1,000 employees.
Manufacturers of new aircraft	336411	< 1,500 employees.

[a] North American Industry Classification System (NAICS).
[b] According to SBA's regulations (13 CFR part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Small governmental jurisdictions and small organizations as described above will not be impacted. We have determined that the estimated effect of the proposed rule's reporting requirement is to affect one small entity turbofan engine manufacturer with costs less than one percent of revenues. This one company represents all of the small businesses impacted by the proposed regulations. An analysis of the impacts of the proposed rule on small businesses has been prepared and placed in the docket for this rulemaking.[112]

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.

[112] "Small Business Impact Memo, Proposed Aircraft Engine Emission Standards—Determination of No SISNOSE," EPA memo from Solveig Irvine to Alexander Cristofaro, November, 2010.

D. Unfunded Mandates Reform Act

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. As discussed in section IV, today's proposed action will establish consistency between U.S. and existing international emission standards. The engine manufacturers are already developing the technology to meet the existing ICAO standards, and we do not believe it is appropriate to attribute the costs of that technology to this proposed action. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule 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. The provisions of this proposal apply to the manufacturers of aircraft and aircraft engines, and as such would not 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 on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As discussed earlier, section 233 of the CAA preempts states from adopting or enforcing aircraft engine emission standards that are not identical to our standards. This rule proposes to revise the Code of Federal Regulations to more accurately reflect the statutory preemption established by the Clean Air Act. This rule does not impose any new preemption of State and local law. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed action from State and local officials.

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

These rules regulate aircraft manufacturers and aircraft engine

manufacturers. We do not believe that Tribes own any of these businesses nor are there other implications for Tribes. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from Tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. See section II.B.2. for a discussion of the health impacts of NO_X emissions.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to aircraft emissions.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. These proposed aircraft engine emissions regulations are not expected to result in any changes to aircraft fuel consumption.

I. National Technology Transfer 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 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.

This proposed rulemaking involves technical standards for testing emissions for aircraft gas turbine engines. EPA proposes to use test procedures contained in ICAO's International Standards and Recommended Practices Environmental Protection, Annex 16, along with the modifications contained in this rulemaking.[113] These procedures are currently used by all manufacturers of aircraft gas turbine engines (with thrust greater than 26.7 kN) to demonstrate compliance with ICAO emissions standards.

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. EO 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.

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 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.

List of Subjects

40 CFR Part 87

Environmental protection, Air pollution control, Aircraft, Incorporation by reference.

40 CFR Part 1068

Environmental protection, Administrative practice and procedure, Confidential business information, Imports, Incorporation by reference, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

[113] ICAO International Standards and Recommended Practices Environmental Protection, Annex 16, Volume II, ''Aircraft Engine Emissions,'' Second Edition, July 1993—Amendment 3, March 20, 1997. Copies of this document can be obtained from ICAO (*http://www.icao.int*).

Dated: July 6, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 87—CONTROL OF AIR POLLUTION FROM AIRCRAFT AND AIRCRAFT ENGINES

1. The authority citation for part 87 is revised to read as follows:

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

Subpart A—[Amended]

2. Revise § 87.1 to read as follows:

§ 87.1 Definitions.

The definitions in this section apply to this part. The definitions apply to all subparts. Any terms not defined in this section have the meaning given in the Clean Air Act. The definitions follow:

Act means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq*).

Administrator means the Administrator of the Environmental Protection Agency and any other officer or employee of the Environmental Protection Agency to whom authority involved may be delegated.

Aircraft has the meaning given in 14 CFR 1.1, which defines aircraft to mean a device used or intended to be used for flight in the air. Note that under § 87.3, the requirements of this part generally apply only to propulsion engines used on certain airplanes for which U.S. airworthiness certificates are required.

Aircraft engine means a propulsion engine which is installed in or which is manufactured for installation in an aircraft.

Aircraft gas turbine engine means a turboprop, turbofan, or turbojet aircraft engine.

Characteristic level has the meaning given in Appendix 6 of ICAO Annex 16 (as of July 2008). The characteristic level is a calculated emission level for each pollutant based on a statistical assessment of measured emissions from multiple tests.

Class TP means all aircraft turboprop engines.

Class TF means all turbofan or turbojet aircraft engines or aircraft engines designed for applications that otherwise would have been fulfilled by turbojet and turbofan engines except engines of class T3, T8, and TSS.

Class T3 means all aircraft gas turbine engines of the JT3D model family.

Class T8 means all aircraft gas turbine engines of the JT8D model family.

Class TSS means all aircraft gas turbine engines employed for

propulsion of aircraft designed to operate at supersonic flight speeds.

Commercial aircraft engine means any aircraft engine used or intended for use by an ''air carrier,'' (including those engaged in ''intrastate air transportation'') or a ''commercial operator'' (including those engaged in ''intrastate air transportation'') as these terms are defined in subtitle 7 of title 49 of the United States Code and title 14 of the Code of Federal Regulations.

Commercial aircraft gas turbine engine means a turboprop, turbofan, or turbojet commercial aircraft engine.

Date of introduction or *introduction date* means the date of manufacture of the first individual production engine of a given engine model or engine type certificate family to be certificated. This does not include test engines or other engines not placed into service.

Date of manufacture means the date on which a manufacturer is issued documentation by FAA (or other competent authority for engines certificated outside the United States) attesting than the given engine conforms to all applicable requirements. This date may not be earlier that the date on which assembly of the engine is complete. Where the manufacturer does not obtain such documentation from FAA (or other competent authority for engines certificated outside the United States), *date of manufacture* means the date of final assembly of the engine.

Derivative engine for emissions certification purposes means an engine that has the same or similar emissions characteristics as an engine covered by a U.S. type certificate issued under 14 CFR part 33. These characteristics are specified in § 87.48.

Designated EPA Program Officer means the Director of the Assessment and Standards Division, 2000 Traverwood Drive, Ann Arbor, Michigan 48105.

DOT Secretary means the Secretary of the Transportation and any other officer or employee of the Department of Transportation to whom the authority involved may be delegated.

Engine means an individual engine. A group of identical engines together make up an engine model or sub-model.

Engine model means an engine manufacturer's designation for an engine grouping of engines and/or engine sub-models within a single engine type certificate family, where such engines have similar design, including being similar with respect to the core engine and combustor designs.

Engine sub-model means a designation for a grouping of engines with essentially identical design, especially with respect to the core engine and combustor designs and other emission-related features. Engines from an engine sub-model must be contained within a single engine model. For purposes of this part, an original engine model configuration is considered a sub-model. For example, if a manufacturer initially produces an engine model designated ABC and later introduces a new sub-model ABC–1, the engine model consists of two sub-models: ABC and ABC–1.

Engine type certificate family means a group of engines (comprising one or more engine models, including sub-models and derivative engines for emissions certification purposes of those engine models) determined by FAA to have a sufficiently common design to be grouped together under a type certificate.

EPA means the U.S. Environmental Protection Agency.

Except means to routinely allow engines to be produced and sold that do not meet (or do not fully meet) otherwise applicable standards. (Note that this definition applies only with respect to spare engines and that the term ''except'' has its plain meaning in other contexts.) Excepted engines must conform to regulatory conditions specified for an exception in this part and other applicable regulations. Excepted engines are deemed to be ''subject to'' the standards of this part even though they are not required to comply with the otherwise applicable requirements. Engines excepted with respect to certain standards must comply with other standards from which they are not excepted.

Exempt means to allow (through a formal case-by-case process) engines to be produced and sold that do not meet (or do not fully meet) otherwise applicable standards. Exempted engines must conform to regulatory conditions specified for an exemption in this part and other applicable regulations. Exempted engines are deemed to be ''subject to'' the standards of this part even though they are not required to comply with the otherwise applicable requirements. Engines exempted with respect to certain standards must comply with other standards as a condition of the exemption.

Exhaust emissions means substances emitted to the atmosphere from exhaust discharge nozzles, as measured by the test procedures specified in subpart G of this part.

FAA means the U.S. Department of Transportation, Federal Aviation Administration.

Fuel venting emissions means raw fuel, exclusive of hydrocarbons in the exhaust emissions, discharged from aircraft gas turbine engines during all normal ground and flight operations.

Good engineering judgment involves making decisions consistent with generally accepted scientific and engineering principles and all relevant information, subject to the provisions of 40 CFR 1068.5.

ICAO Annex 16 means Volume II of Annex 16 to the Convention on International Civil Aviation (incorporated by reference in § 87.8).

In-use aircraft gas turbine engine means an aircraft gas turbine engine which is in service.

Military aircraft means aircraft owned by, operated by, or produced for sale to the armed forces or other agency of the Federal government responsible for national security (including but not limited to the Department of Defense).

New means relating to an aircraft or aircraft engine that has never been placed into service.

Operator means any person or company that owns or operates an aircraft.

Production cutoff date or *date of the production cutoff* means the date on which interim phase-out allowances end.

Rated output (rO) means the maximum power/thrust available for takeoff at standard day conditions as approved for the engine by FAA, including reheat contribution where applicable, but excluding any contribution due to water injection, expressed in kilowatts or kilonewtons (as applicable) and rounded to at least three significant figures.

Rated pressure ratio (rPR) means the ratio between the combustor inlet pressure and the engine inlet pressure achieved by an engine operating at rated output, rounded to at least three significant figures.

Round means to round numbers according to NIST SP 811 (March 2008), unless otherwise specified.

Smoke means the matter in exhaust emissions that obscures the transmission of light, as measured by the test procedures specified in subpart G of this part.

Smoke number means a dimensionless value quantifying smoke emissions calculated in accordance with ICAO Annex 16.

Spare engine means an engine installed (or intended to be installed) on an in-service aircraft to replace an existing engine and that is excepted as described in § 87.50(c).

Standard day conditions means the following ambient conditions: temperature = 15 °C, specific humidity = 0.00 kg H_2O/kg dry air, and pressure = 101.325 kPa.

Subsonic means relating to aircraft that are not supersonic aircraft.

Supersonic means relating to aircraft that are certificated to fly faster than the speed of sound.

Tier 0 means relating to an engine that is subject to the Tier 0 NO_X standards specified in § 87.21.

Tier 2 means relating to an engine that is subject to the Tier 2 NO_X standards specified in § 87.21.

Tier 4 means relating to an engine that is subject to the Tier 4 NO_X standards specified in § 87.21.

Tier 6 means relating to an engine that is subject to the Tier 6 NO_X standards specified in § 87.23.

Tier 8 means relating to an engine that is subject to the Tier 8 NO_X standards specified in § 87.23.

Turbofan engine means a gas turbine engine designed to create its propulsion from exhaust gases and from air that bypasses the combustion process and is accelerated in a ducted space between the inner (core) engine case and the outer engine fan casing.

Turbojet engine means a gas turbine engine that is designed to create all of its propulsion from exhaust gases.

Turboprop engine means a gas turbine engine that is designed to create most of its propulsion from a propeller driven by a turbine, usually through a gearbox.

Turboshaft engine means a gas turbine engine that is designed to drive a rotor transmission system or a gas turbine engine not used for propulsion.

U.S.-registered aircraft means an aircraft that is on the U.S. Registry.

We (us, our) means the Administrator of the Environmental Protection Agency and any authorized representatives.

3. Revise § 87.2 to read as follows:

§ 87.2 Abbreviations.

The abbreviations used in this part have the following meanings:

% percent
° degree
CO carbon monoxide
CO_2 carbon dioxide
G gram
HC hydrocarbon(s)
kN kilonewton
kW kilowatt
LTO landing and takeoff
NO_X oxides of nitrogen
rO rated output
rPR rated pressure ratio
SN smoke number

4. Revise § 87.3 to read as follows:

§ 87.3 General applicability and requirements.

(a) The regulations of this part apply to engines on all aircraft that are required to be certificated by FAA under 14 CFR part 33 except as specified in this paragraph (a). These regulations do not apply to the following aircraft engines:

(1) Reciprocating engines (including engines used in ultralight aircraft).

(2) Turboshaft engines such as those used in helicopters.

(3) Engines used only in aircraft that are not airplanes. For purposes of this paragraph (a)(4), ''airplane'' means a fixed-wing aircraft that is heavier than air.

(4) Engines not used for propulsion.

(b) Under section 232 of the Act, the Secretary of Transportation issues regulations to ensure compliance with the standards and related requirements of this part (42 U.S.C. 7572).

(c) The Secretary of Transportation shall apply these regulations to aircraft of foreign registry in a manner consistent with obligations assumed by the United States in any treaty, convention or agreement between the United States and any foreign country or foreign countries.

(d) No State or political subdivision of a State may adopt or attempt to enforce any aircraft or aircraft engine standard respecting emissions unless the standard is identical to a standard applicable to such aircraft under this part (including prior-tier standards applicable to exempt engines).

§ 87.5—[Removed]

5. Remove § 87.5.

6. Revise § 87.6 to read as follows:

§ 87.6 Aircraft safety.

The provisions of this part will be revised if at any time the DOT Secretary determines that an emission standard cannot be met within the specified time without creating a hazard to aircraft safety.

§ 87.7—[Removed]

7. Remove § 87.7.

8. Revise § 87.8 to read as follows:

§ 87.8 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Environmental Protection Agency must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460, (202) 202–1744, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Civil Aviation Organization, Document Sales Unit, 999 University Street, Montreal, Quebec, Canada H3C 5H7, (514) 954–8022, *http://www.icao.int,* or *sales@icao.int.*

(1) Annex 16 to the Convention on International Civil Aviation, Environmental Protection, Volume II—Aircraft Engine Emissions, Third Edition, July 2008. [Update for CAEP8 changes]; IBR approved for §§ 87.2, 87.40, 87.42(d) and (f), and 87.60(a) and (b).

(2) [Reserved]

(c) National Institute of Standards and Technology, 100 Bureau Drive, Stop 1070, Gaithersburg, MD 20899–1070, (301) 975–6478, *http://www.nist.gov,* or *inquiries@nist.gov.* Anyone may also purchase copies of these materials from the Government Printing Office, Washington, DC 20402, (202) 512–0916, *http://www.gpo.gov,* or *prntproc@gpo.gov.*

(1) NIST Special Publication 811, 1995 Edition, Guide for the Use of the International System of Units (SI), Barry N. Taylor, Physics Laboratory; IBR approved for § 87.2.

(2) [Reserved]

Subpart C—[Amended]

9. Amend § 87.21 as follows:

a. By revising the section heading.

b. By adding introductory text.

c. By revising paragraphs (d)(1)(iii), (d)(1)(iv), (d)(1)(vi) introductory text, (e)(1), and (f).

§ 87.21 Exhaust emission standards for Tier 4 and earlier engines.

This section describes the emission standards that apply for Tier 4 and earlier engines that apply for aircraft engines manufactured before [INSERT EFFECTIVE DATE OF FINAL RULE] and certain engines exempted under § 87.50. Note that the tier of standards identified for an engine relates to NO_X emissions and that the specified standards for HC, CO, and smoke emissions apply independent of the changes to the NO_X emission standards.

(d) * * *

(1) * * *

(iii) The following Tier 0 emission standard applies for engines of a type or model of which the date of manufacture of the first individual production model

was on or before December 31, 1995 and for which the date of manufacture of the individual engine was on or before December 31, 1999.

Oxides of Nitrogen: (40 + 2(rPR)) grams/kilonewton rO.

(iv) The following Tier 2 emission standard applies for engines of a type or model of which the date of manufacture of the first individual production model was after December 31, 1995 or for which the date of manufacture of the individual engine was after December 31, 1999:

Oxides of Nitrogen: (32 + 1.6(rPR)) grams/kilonewton rO.

* * * * *

(vi) The following Tier 4 emission standards apply for engines of a type or model of which the date of manufacture of the first individual production model was after December 31, 2003:

(e) * * *

(1) Class TF of rated output less than 26.7 kilonewtons manufactured on or after August 9, 1985:

$SN = 83.6(rO)^{-0.274}$ (rO is in kilonewtons) not to exceed a maximum of SN = 50.

* * * * *

(f) The standards in this section refer to a composite emission sample measured and calculated in accordance with the procedures described in subpart G of this part.

10. Add a new § 87.23 to read as follows:

§ 87.23 Exhaust emission standards for Tier 6 and Tier 8 engines.

This section describes the emission standards that apply for Tier 6 and Tier 8 engines. The standards of this section apply for aircraft engines manufactured on or after [INSERT EFFECTIVE DATE OF FINAL RULE], except where we specify that they apply differently by year, or where the engine is exempt from one or more standards of this section. Except as specified in paragraph (d) of this section, these standards apply based on the date the engine is manufactured. Where the standard is specified by a formula, calculate and round the standard to three significant figures or to the nearest 0.1 g/kN (for standards at or above 100 g/kN). Engines comply with an applicable standard if the testing results show that the engine type certificate family's characteristic level does not exceed the numerical level of that standard, as described in § 87.60. The tier of standards identified for an engine relates to NO_X emissions and that the specified standards for HC, CO, and smoke emissions apply independent of the changes to the NO_X emission standards.

(a) New turboprop aircraft engines with rated output at or above 1,000 kilowatts must comply with a smoke standard of $187 \cdot rO^{-0.168}$.

(b) New supersonic engines must comply with the standards shown in the following table:

TABLE TO § 87.23(b)—SMOKE AND GASEOUS EMISSION STANDARDS FOR NEW SUPERSONIC ENGINES

Rated output	Smoke number	HC (g/kN rated output)	NO_X (g/kN rated output)	CO (g/kN rated output)
rO < 26.7 kN	.....	$140 \cdot 0.92^{rPR}$	36+2.42 · rPR	$4550 \cdot rPR^{-1.03}$
rO > 26.7 kN	$83.6 \cdot rO^{-0.274}$ or 50, whichever is smaller	$140 \cdot 0.92^{rPR}$	36+2.42 · rPR	$4550 \cdot rPR^{-1.03}$

(c) New turbofan or turbojet aircraft engines that are installed in subsonic aircraft must comply with the following standards:

(1) The applicable smoke, HC, and CO standards are shown in the following table:

TABLE TO § 87.23(c)(1)—SMOKE, HC, AND CO STANDARDS FOR NEW SUBSONIC TURBOFAN OR TURBOJET ENGINES

Rated output (kN)	Smoke standard	Gaseous emission standards (g/kN rated output)	
		HC	CO
rO < 26.7 kN	$83.6 \cdot rO^{-0.274}$ or 50, whichever is smaller.		
rO ≥ 260.7 kN ...	$83.6 \cdot rO^{-0.274}$ or 50, whichever is smaller	19.6	118.

(2) The Tier 6 NO_X standards apply as described in this paragraph (c)(2). See paragraph (d) of this section for provisions related to models introduced before these standards started to apply and engines determined to be derivative engines for emissions certification purposes under the requirements of this part.

TABLE TO § 87.23(c)(2)—TIER 6 NO_X STANDARDS FOR NEW SUBSONIC TURBOFAN OR TURBOJET ENGINES WITH RATED OUTPUT ABOVE 26.7 KN

If the rated pressure ratio is . . .	and the rated output (in kN) is . . .	The NO_X emission standard (in g/kN rated output) is . . .
rPR ≤ 30	26.7 < rO ≤ 89	$38.5486 + 1.6823 \cdot rPR - 0.2453 \cdot rO - 0.00308 \cdot rPR \cdot rO$
	rO > 89	$16.72 + 1.4080 \cdot rPR$
30 < rPR < 82.6	26.7 < rO ≤ 89	$46.1600 + 1.4286 \cdot rPR - 0.5303 \cdot rO + 0.00642 \cdot rPR \cdot rO$
	rO > 89	$-1.04 + 2.0 \cdot rPR$
rPR ≥ 82.6	all	$32 + 1.6 \cdot rPR$

(3) The Tier 8 NO_X standards apply as described in this paragraph (c)(3) beginning January 1, 2014. See paragraph (d) of this section for provisions related to models introduced before January 1, 2014 apply and engines determined to be derivative engines for emissions certification purposes under the requirements of this part.

TABLE TO § 87.23(c)(3)—TIER 8 NO_X STANDARDS FOR NEW SUBSONIC TURBOFAN OR TURBOJET ENGINES WITH RATED OUTPUT ABOVE 26.7 kN

If the rated pressure ratio is . . .	and the rated output (in kN) is . . .	The NO_X emission standard (in g/kN rated output) is . . .
rPR ≤ 30	26.7 < rO ≤ 89	40.052 + 1.5681 · rPR − 0.3615 · rO − 0.0018 · rPR · rO
	rO > 89	7.88 + 1.4080 · rPR
30 < rPR < 104.7	26.7 < rO ≤ 89	41.9435 + 1.505 · rPR − 0.5823 · rO + 0.005562 · rPR · rO
	rO > 89	−9.88 + 2.0 · rPR
rPR ≥ 104.7	all	32 + 1.6 · rPR

(d) This paragraph specifies phase-in provisions that allow continued production of certain engines after the Tier 6 and Tier 8 standards begin to apply.

(1) Engine type certificate families certificated with characteristic levels at or below the Tier 4 NO_X standards of § 87.21 (as applicable based on rated output and rated pressure ratio) and introduced before [INSERT EFFECTIVE DATE OF FINAL RULE] may be produced through December 31, 2012 without meeting the Tier 6 NO_X standards of paragraph (c)(2) of this section. This also applies for engines that are covered by the same type certificate and are determined to be derivative engines for emissions certification purposes under the requirements of this part. Note that after this production cutoff date for the Tier 6 NO_X standards, such engines may be produced only if they are covered by an exemption under § 87.50. This production cutoff does not apply to engines installed (or delivered for installation) on military aircraft.

(2) Engine type certificate families certificated with characteristic levels at or below the Tier 6 NO_X standards of paragraph (c)(2) of this section with an introduction date before January 1, 2014 may continue to be produced. This also applies for engines that are covered by the same type certificate and are determined to be derivative engines for emissions certification purposes under the requirements of this part.

11. Add a new subpart E containing §§ 87.40, 87.42, 87.46, and 87.48 to part 87 to read as follows:

Subpart E—Certification Provisions

Sec.

87.40 General certification requirement.
87.42 Production report to EPA.
87.46 Recordkeeping.
87.48 Derivative engines for emissions certification purposes.

§ 87.40 General certification requirement.

Manufacturers of engines subject to this part must meet the requirements of title 14 of the Code of Federal Regulations as applicable.

§ 87.42 Production report to EPA.

Engine manufacturers must submit an annual production report as specified in this section. This requirement applies for engines produced on or after January 1, 2013.

(a) You must submit the report for each calendar year in which you produce any engines subject to emission standards under this part. The report is due by February 28 of the following calendar year. If you produce exempted engines, you may submit a single report with information on both exempted and non-exempted engines.

(b) Send the report to the Designated EPA Program Officer.

(c) In the report, specify your corporate name and the year for which you are reporting. Include information as described in this section for each engine sub-model subject to emission standards under this part. List each engine sub-model produced or certificated during the calendar year, including the following information for each sub-model:

(1) The complete sub-model name, including any applicable model name, sub-model identifier, and engine type certificate family identifier.

(2) The certificate under which it was produced. Identify all the following:

(i) The type certificate number. Specify if the sub-model also has a type certificate issued by a certificating authority other than FAA.

(ii) Your corporate name as listed in the certificate.

(iii) Emission standards to which the engine is certificated.

(iv) Date of issue of type certificate (month and year).

(v) Whether or not this is a derivative engine for emissions certification purposes. If so, identify the original certificated engine model.

(vi) The engine sub-model that received the original type certificate for an engine type certificate family.

(3) The calendar-year production volume of engines from the sub-model that are covered by an FAA type certificate, or state that the engine model is no longer in production and list the date of manufacture (month and year) of the last engine produced. Specify the number of these engines that are intended for use on new aircraft and the number that are intended for use as non-exempt engines on in-use aircraft.

(4) The number of engines tested and the number of test runs for the applicable type certificate.

(5) The applicable test data and related information specified in Part III, Section 2.4 of ICAO Annex 16 (incorporated by reference in § 87.8), except as otherwise allowed by this paragraph. Include the percent of standard for the applicable standard, and for NO_X include percent of standard for all the NO_X standards specified in §§ 87.21 and 87.23. Specify thrust in kW for turboprop engines. You may omit the following items specified in Part III, Section 2.4 of ICAO Annex 16:

(i) Fuel specifications including fuel specification reference and hydrogen/carbon ratio.

(ii) Methods used for data acquisition, correcting for ambient conditions, and data analysis.

(iii) Intermediate emission indices and rates, however you may not omit the final characteristic level for each regulated pollutant in units of g/kN or g/kW.

(d) [Reserved]

(e) Include the following signed statement and endorsement by an authorized representative of your company: ''We submit this report under 40 CFR 87.42. All the information in this report is true and accurate to the best of my knowledge.

(f) Where information provided for the previous year remains valid and complete, you may report your production volumes and state that there are no changes, without resubmitting the other information specified in this section.

§ 87.46 Recordkeeping.

(a) You must keep a copy of any reports or other information you submit to us for at least three years.

(b) Store these records in any format and on any media, as long as you can promptly send us organized, written records in English if we ask for them. You must keep these records readily

available. We may review them at any time.

§ 87.48 Derivative engines for emissions certification purposes.

(a) *General.* A type certificate holder may request from the FAA a determination that an engine model is considered a derivative engine for emissions certification purposes. This would mean that the engine model is determined to be similar in design to a previously certificated engine (the ''original'' engine) for purposes of compliance with exhaust emission standards (gaseous and smoke). In order for the engine model to be considered a derivative engine for emission purposes under this part, it must have been derived from an original engine that was certificated to the requirements of 14 CFR part 33, and one of the following conditions must be met:

(1) The FAA determined that a safety issue exists that requires an engine modification.

(2) Emissions from the derivative engines are determined to be similar. In general, this means the emissions must meet the criteria specified in paragraph (b) of this section. FAA may adjust these criteria in unusual circumstances, consistent with good engineering judgment.

(b) *Emissions similarity.* (1) The type certificate holder must demonstrate that the proposed derivative engine model's emissions meet the applicable standards and differ from the original model's emission rates only within the following ranges:

(i) ± 3.0 g/kN for NO_X.

(ii) ± 1.0 g/kN for HC.

(iii) ± 5.0 g/kN for CO.

(iv) ± 2.0 SN for smoke.

(2) If the characteristic level of the original certificated engine model (or any other sub-models within the emission type certificate family tested for certification) before modification is at or above 95% of the applicable standard for any pollutant, you must measure the proposed derivative engine model's emissions for all pollutants to demonstrate that the derivative engine's resulting characteristic levels will not exceed the applicable emission standards. If the characteristic levels of the originally certificated engine model (and all other sub-models within the emission type certificate family tested for certification) are below 95% of the applicable standard for each pollutant, then, you may use engineering analysis to demonstrate that the derivative engine will not exceed the applicable emission standards, consistent with good engineering judgment. The engineering analysis must address all modifications from the original engine, including those approved for previous derivative engines.

(c) *Continued production allowance.* Where we allow continued production of an engine model after new standards begin to apply, you may also produce engine derivatives if they conform to the specifications of this section.

(d) *Non-derivative engines.* If the FAA determines that an engine model does not meet the requirements for a derivative engine for emissions certification purposes, the type certificate holder is required to demonstrate that the engine complies with the emissions standards applicable to a new engine type.

12. Add a new subpart F containing § 87.50 to part 87 to read as follows:

Subpart F—Exemptions and Exceptions

§ 87.50 Exemptions and exceptions.

This section specifies provisions related to exempting/excepting engines from some or all of the standards and requirements of this part 87. Exempted/excepted engines must conform to regulatory conditions specified for an exemption in this section and other applicable regulations. Exempted/excepted engines are deemed to be ''subject to'' the standards of this part even though they are not required to comply with the otherwise applicable requirements. Engines exempted/excepted with respect to certain standards must comply with other standards. Exemption requests under this section must be approved by the FAA, with the written concurrence of EPA, to be effective. Exceptions do not require a case-by-case FAA approval.

(a) *Engines installed in new aircraft.* Type certificate holders may request an exemption to produce a limited number of newly manufactured engines through December 31, 2016, to be installed in new aircraft as specified in this paragraph (a). This exemption is limited to NO_X emissions from engines that are covered by a valid type certificate issued by FAA.

(1) Submit your request for an exemption before producing the engines to be exempted to the FAA who will provide a copy to the Designated EPA Program Officer. Exemption by an authority outside the United States does not satisfy this requirement. All requests must include the following:

(i) Your corporate name and an authorized representative's contact information.

(ii) A description of the engines for which you are requesting the exemption including the type certificate number and date it was issued by the FAA. Include in your description the engine model and sub-model names and the types of aircraft in which the engines are expected to be installed. Specify the number of engines that you would produce under the exemption and the period during which you would produce them.

(iii) Information about the aircraft in which the engines will be installed. Specify the airframe models and expected first purchasers/users of the aircraft. Identify all countries in which you expect the aircraft to be registered. Specify how many aircraft will be registered in the United States and how many will be registered in other countries; you may estimate this if it is not known.

(iv) A justification of why the exemption is appropriate. Justifications must include a description of the environmental impact of granting the exemption. Include other relevant information such as the following.

(A) Technical issues, from an environmental and airworthiness perspective, which may have caused a delay in compliance with a production cutoff.

(B) Economic impacts on the manufacturer, operator(s), and aviation industry at large.

(C) Environmental effects. This should consider the amount of additional air pollutant emissions that will result from the exemption. This could include consideration of items such as:

(*1*) The amount that the engine model exceeds the standard, taking into account any other engine models in the engine type certificate family covered by the same type certificate and their relation to the standard.

(*2*) The amount of the applicable air pollutant that would be emitted by an alternative engine for the same application.

(*3*) The impact of changes to reduce the applicable air pollutant on other environmental factors, including emission rates of other air pollutants, community noise, and fuel consumption.

(*4*) The degree to which the adverse impact would be offset by cleaner engines produced in the same time period (unless we decide to consider earlier engines).

(D) Impact of unforeseen circumstances and hardship due to business circumstances beyond your control (such as an employee strike, supplier disruption, or calamitous events).

(E) Projected future production volumes and plans for producing a

compliant version of the engine model in question.

(F) Equity issues in administering the production cutoff among economically competing parties.

(G) List of other certificating authorities from which you have requested (or expect to request) exemptions, and a summary of the request.

(H) Any other relevant factors.

(v) A statement signed by your authorized representative attesting that all information included in the request is accurate.

(2) In consultation with the EPA, the FAA may specify additional conditions for the exemption. The FAA may also require additional information pursuant to 14 CFR Parts 11 and 34, as applicable to exemption requests made to the FAA.

(3) You must submit the annual report specified in paragraph (d) of this section.

(4) The permanent record for each engine exempted under this paragraph (a) must indicate that the engine is an exempted new engine.

(5) Engines exempted under this paragraph (a) must be labeled with the following statement: ''EXEMPT NEW''.

(6) You must notify the FAA if you determine after submitting your request that the information is not accurate, either from an error or from changing circumstances. If you believe the new or changed information could have affected approval of your exemption (including information that could have affected the number of engines we exempt), you must notify the FAA promptly. The FAA will consult with EPA as needed to address any concerns related to this new or corrected information.

(b) [Reserved]

(c) *Spare engines.* Newly manufactured engines meeting the definition of ''spare engine'' are excepted as follows:

(1) This exception allows production of a newly manufactured engine for installation on an in-service aircraft. It does not allow for installation of a spare engine on a new aircraft.

(2) Each spare engine must be identical to a sub-model previously certificated to meet all requirements applicable to Tier 4 engines or later requirements.

(3) Spare engines excepted under this paragraph (c) may be used only where the emissions of the spare engines are equal to or lower than those of the engines they are replacing, for all pollutants.

(4) No prior approval is required to produce spare engines. Engine manufacturers must include information about their production of spare engines in the annual report specified in paragraph (d) of this section

(5) The permanent record for each engine excepted under this paragraph (c) must indicate that the engine was produced as an excepted spare engine.

(6) Engines excepted under this paragraph (c) must be labeled with the following statement: ''EXCEPTED SPARE''.

(d) *Annual reports.* If you produce engines with an exemption/exception under this section, you must submit an annual report with respect to such engines.

(1) You must send the Designated EPA Program Officer a report describing your production of exempted/excepted engines for each calendar year in which you produce such engines by February 28 of the following calendar year. You may include this information in the certification report described in § 87.42. Confirm that the information in your initial request is still accurate, or describe any relevant changes.

(2) Provide the information specified in this paragraph (d)(2). For purposes of this paragraph (d), treat spare engine exceptions separate from other new engine exemptions. Include the following for each exemption/exception and each engine model and sub-model:

(i) Engine model and sub-model names.

(ii) Serial number of each engine.

(iii) Use of each engine (for example, spare or new installation).

(iv) Types of aircraft in which the engines were installed (or are intended to be installed for spare engines).

(v) Serial number of the new aircraft in which engines are installed (if known), or the name of the air carriers (or other operators) using spare engines.

(3) Include information in the report only for engines having a date of manufacture within the specific calendar year.

Subpart G—Test Procedures

13. The heading for subpart G is revised as set forth above.

14. Revise § 87.60 to read as follows:

§ 87.60 Testing engines.

(a) Use the equipment and procedures specified in Appendix 3, Appendix 5, and Appendix 6 of ICAO Annex 16 (incorporated by reference in § 87.8), as applicable, to demonstrate whether engines meet the gaseous emission standards specified in subpart C of this part. Measure the emissions of all regulated gaseous pollutants. Similarly, use the equipment and procedures specified in Appendix 2 and Appendix 6 of ICAO Annex 16 to determine whether engines meet the smoke standard specified in subpart C of this part. The compliance demonstration consists of establishing a mean value from testing some number of engines, then calculating a ''characteristic level'' by applying a set of statistical factors that take into account the number of engines tested. Round each characteristic level to the same number of decimal places as the corresponding emission standard. For turboprop engines, use the procedures specified for turbofan engines, consistent with good engineering judgment.

(b) Use a test fuel meeting the specifications described in Appendix 4 of ICAO Annex 16 (incorporated by reference in § 87.8). The test fuel must not have additives whose purpose is to suppress smoke, such as organometallic compounds.

(c) Prepare test engines by including accessories that are available with production engines if they can reasonably be expected to influence emissions. The test engine may not extract shaft power or bleed service air to provide power to auxiliary gearbox-mounted components required to drive aircraft systems.

(d) Test engines must reach a steady operating temperature before the start of emission measurements.

(e) In consultation with the EPA, the FAA may approve alternate procedures for measuring emissions as specified in this paragraph (e). This might include testing and sampling methods, analytical techniques, and equipment specifications that differ from those specified in this part. Manufacturers and operators may request this approval by sending a written request with supporting justification to the FAA and to the Designated EPA Program Officer. Such a request may be approved only if one of the following conditions is met:

(1) The engine cannot be tested using the specified procedures.

(2) The alternate procedure is shown to be equivalent to or better (*e.g.,* more accurate or precise) than the specified procedure.

(f) The following landing and take-off (LTO) cycles apply for emission testing and calculating weighted LTO values:

TABLE TO § 87.60(f)—LTO TEST CYCLES

Mode	Turboprop		Subsonic Turbofan		Supersonic Turbofan	
	Percent of rated output	Time in mode (minutes)	Percent of rated output	Time in mode (minutes)	Percent of rated output	Time in mode (minutes)
Take-off	100	0.5	100	0.7	100	1.2
Climb	90	2.5	85	2.2	65	2.0
Descent	.....	.....	.....	.....	15	1.2
Approach	30	4.5	30	4.0	34	2.3
Taxi/ground idle	7	26.0	7	26.0	5.8	26.0

(g) Engines comply with an applicable standard if the testing results show that the engine type certificate family's characteristic level does not exceed the numerical level of that standard, as described in § 87.60.

§ 87.61 [Removed]

15. Remove § 87.61

§ 87.62 [Removed]

16. Remove § 87.62.

§ 87.64 [Revised]

17. Remove and reserve paragraph (a).

§ 87.71 [Removed]

18. Remove § 87.71.

Subpart H [Removed]

19. Remove subpart H.

PART 1068—GENERAL COMPLIANCE PROVISIONS FOR ENGINE PROGRAMS

20. The authority citation for part 1068 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

21. Amend § 1068.1 by revising paragraph (b) to read as follows:

§ 1068.1 Does this part apply to me?

* * * * *

(b) This part does not apply to any of the following engine or vehicle categories:

(1) Light-duty motor vehicles (see 40 CFR part 86).

(2) Heavy-duty motor vehicles and motor vehicle engines, except as specified in 40 CFR part 86.

(3) Aircraft engines, except as specified in 40 CFR part 87.

(4) Land-based nonroad compression-ignition engines we regulate under 40 CFR part 89.

(5) Small nonroad spark-ignition engines we regulate under 40 CFR part 90.

(6) Marine spark-ignition engines we regulate under 40 CFR part 91.

(7) Locomotive engines we regulate under 40 CFR part 92.

(8) Marine compression-ignition engines we regulate under 40 CFR parts 89 or 94.

* * * * *

[FR Doc. 2011–17660 Filed 7–26–11; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Ipomopsis polyantha (Pagosa Skyrocket) and Threatened Status for Penstemon debilis (Parachute Beardtongue) and Phacelia submutica (DeBeque Phacelia); Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R6–ES–2010–0015; MO 92210–0–0008 B2]

RIN 1018—AV83

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Ipomopsis polyantha (Pagosa Skyrocket) and Threatened Status for Penstemon debilis (Parachute Beardtongue) and Phacelia submutica (DeBeque Phacelia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for *Ipomopsis polyantha* (Pagosa skyrocket), a plant species in Archuleta County, Colorado; threatened status for *Penstemon debilis* (Parachute beardtongue) in Garfield County, Colorado; and threatened status for *Phacelia submutica* (DeBeque phacelia) in Mesa and Garfield Counties, Colorado, under the Endangered Species Act of 1973, as amended (Act). Designation of critical habitat for the three species is proposed concurrently in a separate rule in this edition of the **Federal Register.**

DATES: This rule becomes effective on August 26, 2011.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov.* Comments and materials received, as well as supporting documentation used in preparing this final rule are available for public inspection, by appointment, during normal business hours, at U.S. Fish and Wildlife Service, Western Colorado Ecological Services Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946; telephone 970–243–2778; facsimile 970–245–6933.

FOR FURTHER INFORMATION CONTACT: Al Pfister, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506–3946; telephone 970–243–2778, extension 29; facsimile 970–245–6933. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Previous Federal Actions

Ipomopsis polyantha

We first identified *Ipomopsis polyantha* as a taxon under review in the 1983 Supplement to Review of Plant Taxa for Listing as Endangered or Threatened Species (48 FR 53640, November 28, 1983). In that document, we included the species as a Category 2 candidate, based on our evaluation at that time. We published our decision to discontinue candidate categories and to restrict candidate status to those taxa for which we had sufficient information to support issuance of a proposed rule on December 5, 1996 (61 FR 64481). This resulted in the deletion of *Ipomopsis polyantha* from the list of candidate taxa for listing. We added the species to the list of candidates again in the 2005 Candidate Notice of Review (CNOR) (70 FR 24870, May 11, 2005) with a listing priority number (LPN) of 2. A listing priority of 2 reflects threats that are imminent and high in magnitude, as well as the taxonomic classification of *I. polyantha* as a full species. We published a complete description of our listing priority system in the **Federal Register** (48 FR 43098, September 21, 1983).

On June 23, 2010, we proposed to list *Ipomopsis polyantha* as endangered (75 FR 35721). In the proposed rule, we found that critical habitat for the species was prudent, but not determinable at that time. A proposed rule to designate critical habitat for this species is being published concurrently with this final rule.

Penstemon debilis

We first included *Penstemon debilis* as a category 2 candidate species in the February 21, 1990, Review of Plant Taxa for Listing as Endangered or Threatened Species (55 FR 6184). When we abandoned the use of numerical category designations in 1996, we changed the status of *P. debilis* to a candidate under the current definition. We published four CNOR lists between 1996 and 2004, and *P. debilis* remained a candidate species with an LPN of 5 on each (62 FR 49398, September 19, 1997; 64 FR 57534, October 25, 1999; 66 FR 54808, October 30, 2001; 67 FR 40657, June 13, 2002). An LPN of 5 is assigned to species with non-imminent threats of a high magnitude.

In the 2005 CNOR (70 FR 24870, May 11, 2005), we changed the LPN for *Penstemon debilis* from 5 to 2 based on an increase in the intensity of energy exploration along the Roan Plateau escarpment, making the threats to the species imminent. The CNOR lists published in 2006, 2007, and 2008 maintained *P. debilis* as a candidate species with an LPN of 2 (71 FR 53756, September 12, 2006; 72 FR 69034, December 6, 2007; 73 FR 75176, December 10, 2008).

In each assessment since its recognition as a candidate species in 1996, we determined that publication of a proposed rule to list the species was precluded by our work on higher priority listing actions. In 2008, we received funding to initiate the proposal to list *Penstemon debilis.* In the 2008 notice, we announced that we had not updated our assessment for this species, as we were developing a proposed listing rule (73 FR 75227). On June 23, 2010, we proposed to list *P. debilis* as threatened (75 FR 35721). In the proposed rule, we found that critical habitat for the species was prudent, but not determinable at that time. A proposed rule to designate critical habitat for this species is being published concurrently with this final rule.

Phacelia submutica

We included *Phacelia submutica* as a category 1 candidate species in the 1980 Review of Plant Taxa for Listing as Endangered or Threatened Species (45 FR 82480, December 15, 1980). In that notice, category 1 candidates were defined as species for which the Service had ''sufficient information on hand to support the biological appropriateness of their being listed as Endangered or Threatened species.'' We changed the candidate status of *P. submutica* to category 2 on November 28, 1983 (48 FR 53640). On February 21, 1990, we again identified *P. submutica* as a category 1 candidate species (55 FR 6184). In the February 28, 1996, **Federal Register** (61 FR 7596), all category 1 candidate species became candidates under the current definition. We assigned *P. submutica* an LPN of 11. In the 2005 CNOR (70 FR 24870, May 11, 2005) we raised the LPN to 8, to reflect the increasing level of threats, which were imminent and of moderate magnitude.

On May 11, 2004, we received a petition from the Center for Biological Diversity (CBD) to list, as endangered, 225 species we previously had identified as candidates for listing, including *Phacelia submutica* (CBD 2004, p. 146). Under requirements in section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), the CNOR and the Notice of Findings on Resubmitted Petitions published by the Service on May 11, 2005 (70 FR 24870), included a finding that the immediate issuance of a proposed listing rule and the timely promulgation of a final rule for each of these petitioned species, including *P.*

submutica, was warranted but precluded by higher priority listing actions, and that expeditious progress was being made to add qualified species to the lists.

On April 28, 2005, the Center for Native Ecosystems (CNE), the Colorado Native Plant Society, and botanist Steve O'Kane, Jr., Ph.D., submitted a petition to the Service to list *Phacelia submutica* as endangered or threatened within its known historical range, and to designate critical habitat concurrent with the listing (CNE *et al.* 2005, p. 1). We considered the information in the petition when we prepared the 2006 CNOR (71 FR 53756, September 12, 2006). Section 4(b)(3)(C) of the Act requires that when we make a warranted but precluded finding on a petition, we are to treat such a petition as one that is resubmitted on the date of such a finding. We identified *P. submutica* as a species for which we made a continued warranted but precluded finding on a resubmitted petition in the **Federal Register** on December 6, 2007 (72 FR 69034), December 10, 2008 (73 FR 75176), and November 9, 2009 (74 FR 57804). We retained an LPN of 8 for the species. In the 2008 CNOR, we announced that we had not updated our assessment for this species, as we were developing a proposed listing rule (73 FR 75227). On June 23, 2010, we proposed to list *P. submutica* as threatened (75 FR 35721). In the proposed rule, we found that critical habitat for the species was prudent, but not determinable at that time. A proposed rule to designate critical habitat for this species is being published concurrently with this final rule.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed listing of *Ipomopsis polyantha, Penstemon debilis, and Phacelia submutica* during the comment period associated with the publication of the proposed rule (75 FR 35721), which opened on June 23, 2010, and closed on August 23, 2010. We did not receive any requests for a public hearing. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule during this comment period.

During the comment period, we received 13 comment letters addressing the proposed rule. All substantive information provided during the comment period has either been incorporated directly into this final determination or is addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the habitats in which the species occur, and conservation biology principles. We received responses from the three peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding the proposed listing of *Ipomopsis polyantha, Penstemon debilis, and Phacelia submutica.* The peer reviewers concurred with our analysis and conclusions, and provided additional information, clarifications, and suggestions to improve the final rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer said that population trends cannot be identified from available data for *Penstemon debilis* and *Phacelia submutica,* but noted that annual fluctuations in plant numbers for both species make them vulnerable to additional stressors such as habitat loss. Another reviewer said that the lowest total annual plant count for *P. submutica* should be zero, because the plants do not emerge at all during very dry years. An agency commenter was concerned that the zero counts might reflect inadequate survey methods.

Our Response: The low and high plant counts reported for *Phacelia submutica* are simply a record of the lowest and highest plant counts recorded during blooming season surveys at known occupied sites. Not all occurrences are visited every year. Zero counts are reported only when a site was visited, not as a default. We report the negative surveys to show that the plants really do not emerge during some years, and that the fluctuations in plant numbers make it hard to measure the population trend.

(2) *Comment:* One peer reviewer indicated the correct name for the sensitive species of blazing star associated with *Penstemon debilis* is *Mentzelia rhizomata* (Roan Cliffs blazingstar), not *Mentzelia argillosa* (Arapien blazingstar).

Our Response: We corrected the text in this final rule accordingly. This is an important distinction, because *Mentzelia rhizomata* is a Bureau of Land Management (BLM) sensitive species that will benefit from protection of *P. debilis* habitat because it only grows on the same layers of shale.

(3) *Comment:* One peer reviewer stated that the extent and imminent nature of energy development may not have been ameliorated to the extent suggested in the proposed rule. In 2010, natural gas production in the range of *Phacelia submutica* and *Penstemon debilis* was the highest in Colorado, an increase from the 2008 report that was cited in the proposal.

Our Response: We have updated this final rule with the natural gas production reports provided by the reviewer and the Colorado Oil and Gas Conservation Commission (2010, pp. 1–2).

(4) *Comment:* One peer reviewer stated the potential impact of climate change on *Penstemon debilis* may be greater than indicated in the proposal, because the species is restricted to only one layer of shale; thus, it may be impossible for this species to migrate to a more suitable climate space if the substrate it depends upon does not exist. The peer reviewer indicated that Camille Parmesan (2006, p. 649) has authored a more comprehensive and current review documenting species' distributional shifts in response to warming.

Our Response: We have incorporated Parmesan's findings into our analysis of Factor E for *Penstemon debilis.* However, the current data are not reliable enough at the local level for us to draw conclusions regarding the imminence of climate change threats to *P. debilis* or the other two species.

(5) *Comment:* One peer reviewer suggested the potential impacts of fugitive dust on *Penstemon debilis* are overstated in the proposed rule. For at least the viable population on public land, the nature of the road is prohibitive to vehicles moving at speeds that could generate much dust. *Phacelia submutica,* which is more exposed to dust, should have an evaluation of dust impacts because it occupies habitat in the vicinity of roads that can better accommodate heavy, fast moving traffic. Additionally, *Phacelia submutica* habitats are more likely to be in the vicinity of well pads and pipelines than *Penstemon debilis,* and thus inclusion of an evaluation of the threat from dust on this species is warranted.

Our Response: We consider dust effects an impact that does not rise to the level of a threat to *Penstemon debilis* or *Phacelia submutica,* because we do not have research results to assess its effect. However, we have observed heavy dust settling on at least three of the *Penstemon debilis* occurrences from

heavy equipment and truck traffic (Ewing 2009a, p. 3). Most *Phacelia submutica* occurrences are not close to dust-producing roads, but Service biologists have observed dust sources along a pipeline construction route near *Phacelia submutica* occurrences.

(6) *Comment:* One peer reviewer stated the proposed listing rule fails to include pollinator information for *Phacelia submutica* and the potential for disruption of pollinator-plant interactions due to climate variations.

Our Response: The pollination mechanism for *Phacelia submutica* remains unknown at this time. Based on the size and shape of the flowers and lack of insects observed on the flowers, we expect that *P. submutica* is self-pollinated. We have initiated a pollination study for this species, but the results are not yet available. If the species did depend on pollinators for reproduction, then climate change could disrupt this relationship because the plants are receptive for a very short time. Pollination could fail to occur if the weather factors allowing the pollinating insects to emerge were not synchronized with plant receptivity. Because we have no data to indicate that pollinators are required, we do not assess the effects of climate variations on pollinator-plant interactions.

(7) *Comment:* One peer reviewer indicated that critical habitat should be determined for these three species based on the information available at this time. Given the level of threats and the narrow distribution of all three species, it is essential to provide the protection of designated critical habitat as soon as possible.

Our Response: We are proposing to designate critical habitat for the three species concurrently with this final rule. That proposal is published elsewhere in today's **Federal Register.** Comments on the proposal will be accepted following publication.

(8) *Comment:* Peer reviewers and commenters pointed out an error on page 35733 of the proposed listing rule, where the projected average temperature warming per decade was correctly cited as 0.2 °C, but the equivalent was incorrectly shown as 32.4 °F.

Our Response: For the next 2 decades, a warming of about 0.36 °F (0.2 °C) per decade is projected. By the end of the 21st century, average global temperatures are expected to increase 1.08 to 7.2 °F (0.6 to 4 °C) (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 45). We corrected the text in this final rule accordingly.

Comments From the State of Colorado

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the State regarding the proposal to list *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* are addressed below. The Colorado Natural Areas Program (CNAP) is the State agency within Colorado State Parks that works to cooperatively monitor and protect Colorado's most significant natural features, including rare plants.

Penstemon debilis

(9) *Comment:* The CNAP is concerned that listing *Penstemon debilis* will discourage future voluntary protections by the oil and gas industry. The CNAP stated in its letter that Oxy USA, Inc. (Oxy), has implemented voluntary best management practices to avoid impacts and reduce threats to the species, and they have supported 3 years of monitoring to document the status of the species on their land. The CNAP stated that although monitoring results at Mount (Mt.) Callahan and Mt. Callahan Saddle Natural Areas show a statistically insignificant downward trend in number of plant stems per plot, this trend may be a natural variation in population size or caused by climatic or other environmental factors, not by any effects from the gas well construction. No impacts to the *P. debilis* individuals were observed that may be related to natural gas development in the Natural Areas, and the buffers instituted are believed to be adequate to protect the populations. The CNAP will continue to work with Oxy to track the trends of this species. Monitoring will be done with care to minimize negative impacts from trampling of individual plants by people collecting the data.

Our Response: The Service acknowledges that Oxy has implemented voluntary best management practices to protect two of the *Penstemon debilis* occurrences on their private land. Oxy and other energy companies are aware that their compliance with conservation measures recommended by the Service is entirely voluntary. We believe that this level of protection, while voluntary and non-binding, minimizes the threats to the species to an extent that we can list it as threatened, rather than endangered. We also must consider the cumulative threats to the species as a whole throughout its entire limited range in making our listing decision. Despite the positive conservation being implemented by Oxy, we determined that the species still meets the definition of a threatened species because of cumulative effects of a variety of threats, many not under the control of Oxy, and the threats present in the remainder of the species' range.

Phacelia submutica

(10) *Comment:* The CNAP believes that the greatest threat to *Phacelia submutica* is oil and gas development that may be allowed within occupied habitat under current Federal regulations, because some surveys in potential habitat may not indicate the presence of this ephemeral and inconsistent species. Because this species may not emerge on an annual basis, that makes potential surveys for it very challenging, and surveys could result in the unintentional leasing and development of occupied habitat.

Our Response: Our threats analysis incorporates and supports CNAP's statement regarding the primary threats to *Phacelia submutica.*

Federal Agency Comments

Penstemon debilis

(11) *Comment:* In response to our description in the proposed rule of impacts that resulted from inadequate regulation, the BLM pointed out that the Anvil Points Mine reclamation was a Superfund project that was not subject to the Act, and that section 7 consultation was not required for the communication site access because the species was only a candidate for listing. Of the 88 plants at the reclamation site that were transplanted, covered, or fenced, BLM reported 71 survivors at the end of the 2009 growing season.

Our Response: The BLM avoided and minimized impacts from the reclamation project voluntarily, with input from the Service that was comparable to a section 7 consultation. However, plants were destroyed, habitat was modified, and the ongoing issue of impacts due to communication site access remains unresolved. We believe that listing as a threatened species will provide more support for agency efforts to protect the species.

Phacelia submutica

(12) *Comment:* The U.S. Forest Service (USFS) feels that critical habitat should not be designated for *Phacelia submutica* at this time because we do not have enough information about its specific soil requirements, seed bank, reproductive biology, or minimum population size; and that new populations being discovered each year are leading to new concepts of the species' distribution and requirements.

Our Response: Designation of critical habitat for the three species is proposed concurrently in a separate rule in this edition of the **Federal Register.** The criteria for critical habitat were evaluated using the best scientific and commercial data available. Surveys in 2009–2010 increased the known sites and numbers of plants, but did not change the habitat description or extend the range boundaries. We believe that *Phacelia submutica* has a large enough range, enough populations, and enough individuals that the occupied habitat alone, if protected from threats, would be adequate for the future survival and recovery of the species. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. A critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Public Comments

(13) *Comment:* Support for listing the three plants was received from the Colorado Natural Heritage Program (CNHP), seven other non-profit environmental organizations in Colorado, and one local resident. Some of these commenters also believe that the species proposed for listing as threatened should not be subject to a 4(d) rule, which is a special regulation that can provide greater flexibility by allowing actions prohibited under section 9(a)(1) of the Act for species listed as threatened.

Our Response: We believe that the general prohibitions for threatened plants at 50 CFR 17.71 are appropriate for these two plant species. As a result, we did not develop a 4(d) rule for *Penstemon debilis* or *Phacelia submutica,* the two species we are listing as threatened.

(14) *Comment:* Several environmental groups commented that critical habitat is both prudent and determinable for all three species, and it should include all known occurrences of each species, including historical and recently extirpated and nonviable, as well as potential habitat.

Our Response: We are proposing critical habitat for each of the three species concurrently with this final listing rule. Critical habitat is defined in section 3 of the Act as: (1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features that are essential to the conservation of the species, and which may require special management considerations or protection; and (2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. All known occurrences are evaluated, and must meet the criteria to be included in proposed critical habitat.

Penstemon debilis

(15) *Comment:* Andrea Wolfe shared her unpublished results of genetic research on *Penstemon debilis* in 2009, which show that its genetic diversity is very limited and each occurrence is genetically separated from the others, which indicates inbreeding depression.

Our Response: We appreciate receiving these results, which indicate the limited ability of *Penstemon debilis* to adapt to habitat or climate changes. We included them in our assessment of other natural factors affecting the species, under Factor E.

Summary of Changes From Proposed Rule

No substantial changes have been made in the threats analysis or determinations for the three species. Field surveys in 2010 increased the recorded number of plants for each species, but did not expand their known ranges or any decrease in the level of threats.

Endangered Status for *Ipomopsis polyantha;* Threatened Status for *Penstemon debilis* and *Phacelia submutica*

Background

It is our intent to discuss below only those topics directly relevant to the listing of *Ipomopsis polyantha* as endangered, and *Penstemon debilis* and *Phacelia submutica* as threatened, in this section of the final rule. More information on these species is available in the June 23, 2010, proposed rule (75 FR 35721).

Species Information—Ipomopsis polyantha

Taxonomy and Species Description

Ipomopsis polyantha is a rare plant endemic to shale outcrops in and around the Town of Pagosa Springs in Archuleta County, Colorado. The species is in the Polemoniaceae (phlox) family and was originally described by Rydberg (1904, p. 634) as *Gilia polyantha.* Two varieties, *G. polyantha* var. *brachysiphon* and *G. polyantha* var. *whitingii,* were recognized by Kearney and Peebles (1943, p. 59). Grant (1956, p. 353) moved the species into the genus *Ipomopsis.* Currently available information indicates that *I. polyantha* is a distinct species (Porter and Johnson 2000, p. 76; Porter *et al.* 2010, pp. 195, 196, 199). It is treated as such in the PLANTS database (U.S. Department of Agriculture, Natural Resource Conservation Service (NRCS) 2003), and in the Integrated Taxonomic Information System (2001). Reports of this species occurring in Arizona and New Mexico by the PLANTS National Database and State floras actually pertain to the two species that were formerly treated as varieties of *Ipomopsis polyantha* (Anderson 2004, pp. 11, 15).

The CNHP ranks *Ipomopsis polyantha* as critically imperiled globally (G1) and in the State of Colorado (S1) (CNHP 2010b, pp. 1–5). The Nature Conservancy (TNC) and CNHP also developed a scorecard that ranks *I. polyantha* among the most threatened species in the State based on number of plants, quality of the plants and habitat, threats, and adequacy of protection (CNHP and TNC 2008, p. 102).

Ipomopsis polyantha is an herbaceous biennial 12 to 24 inches (in) (30 to 60 centimeters (cm)) tall, branched from near the base above the basal rosette of leaves. Deeply divided leaves with linear segments are scattered up the stem. Stems and flower clusters are covered with glandular hairs. Flower clusters are along the stem in the axils of the leaves as well as at the top of the stem. The white flowers are 0.4 in (1 cm) long, with short corolla tubes 0.18 to 0.26 in (0.45 to 0.65 cm) long, and flaring corolla lobes flecked with purple dots (Anderson 1988, p. 3). These dots are often so dense that they give the flower a pinkish or purplish hue. The stamens extend noticeably beyond the flower tube, and the pollen is blue (Grant 1956, p. 353), changing to yellow as it matures (Collins 1995, p. 34). Seeds form a mucilaginous (secreting sticky mucous) coat after they are wet. Seeds germinate much faster in Mancos Shale soil than in potting soil (Collins 1995, p. 72). Mature seeds germinate to form rosettes that produce flowering stalks during the next growing season, or they may persist as rosettes for a year or more until conditions are right for flowering. Plants produce abundant fruits and seeds, but have no known mechanism for long-distance dispersal (Collins 1995, pp. 111–112). After seeds are mature, the plants dry up and die. We do not know how long the seeds remain viable.

Pollination by bees is the most common means of reproduction for *Ipomopsis polyantha,* and the primary pollinators are the honey bee (*Apis*

mellifera), metallic green bee (*Augochlorella* spp.), bumble bee (*Bombus* spp.), and digger bee (*Anthophora* spp.) (Collins 1995, pp. 71–72).

Ipomopsis polyantha is limited to Pagosa-Winifred soils derived from Mancos Shale. The soil pH is nearly neutral to slightly alkaline (6.6 to 8.4). The elevation range is 6,750 to 7,775 feet (ft) (2,050 to 2,370 meters (m)) (Service 2011c, p. 1). Plants occur in discontinuous colonies as a pioneer species on open shale or as a climax species along the edge of *Pinus ponderosa* (Ponderosa pine), mixed *P. ponderosa* and *Juniperus scopulorum* (Rocky mountain juniper), or *Juniperus. osteosperma* (Utah juniper) and *Quercus gambellii* (Gambel oak) forested areas. In 1988, Anderson (p. 7) reported finding the highest densities under *P. ponderosa* forests with montane grassland understory. Now the species is found mostly on sites that are infrequently disturbed by grazing, such as road right-of-ways (ROWs) that are fenced from grazing (as opposed to open range), lightly grazed pastures, and undeveloped lots (Anderson 2004, p. 20).

The two known occurrences of *Ipomopsis polyantha* are within about 13 miles (mi) (21 kilometers (km)) of each other, and collectively occupy about 388.4 acres (ac) (157.1 hectares (ha)) of habitat within a range that includes about 6.5 square mi (16.8 square km). The Pagosa Springs occurrence is southeast of the Town of Pagosa Springs along both sides of U.S. 84. Occupied habitat extends southward on the highway ROW for 3 mi (4.8 km) from the intersection with U.S. 160, and on private lands on both sides of the highway. The Dyke occurrence is about 10 mi (16 km) west of Pagosa Springs along U.S. Highway 160. It includes 0.5 mi (0.8 km) of highway ROW on both sides of U.S. 160, adjacent private land, and a BLM parcel. Species occurrences are further described in the June 23, 2010, proposed rule to list the species (75 FR 35721). Table 1 summarizes land ownership and results of the most recent plant counts reported within the two *I. polyantha* occurrences.

TABLE 1—OCCUPIED HABITAT FOR *Ipomopsis polyantha* BY LANDOWNERSHIP (ACRES (AC) (HECTARES (HA))

[Lyon 2006a; CNAP 2007; CNAP 2008, pp. 1–5; CNHP 2008a; CNHP 2010a, pp. 1–8; Service 2011a, p. 2; Service 2011b, p. 1]

Occurrence	Land ownership	ac (ha)	Flowering	Rosettes
Pagosa Springs including Mill Creek	State ROW	27.6 (11.2)	3,029	3,083
	County ROW	5.5 (2.2)	469	403
	Town of Pagosa Springs	7.5 (3.0)	126	15
	Private	301.7 (122.1)	158,326	174,989
Subtotals		342.3 (138.5)	161,950	178,490
Dyke	State ROW	2.3 (0.9)	19	102
	BLM	9.9 (4.0)	88	164
	Private	33.9 (13.7)	163	275
Subtotals		46.1 (18.6)	270	541
Totals		388.4 (157.1)	162,220	179,031

Approximately 2.5 percent of the occupied habitat is on Federally managed BLM land, 9.1 percent on State and County highway ROWs, 86.4 percent on private lands, and 1.9 percent on Pagosa Springs town park land and county land (Service 2011a, p. 2).

In 2004, the total estimate of flowering plants throughout the entire range of the species was 2,246 to 10,526 (Anderson 2004, p. 40). Plant surveys from 2005 to 2007 documented dramatic increases in the number of flowering individuals and rosettes within the Pagosa Springs occurrence at two sites on private land and on the U.S. 84 ROW (CNAP 2007, pp. 1–2). This increase was primarily attributed to the plants surveyed in 2005 and 2006 on a 3-ac (1.2-ha) private land site in the Pagosa Springs occurrence. The rapid appearance of such a dense patch of plants illustrates the species' ability to colonize barren Mancos Shale soil, and demonstrates the reproductive success of the species; however, the sites where they grow are vulnerable to habitat destruction. Currently, the total estimate of flowering plants is 162,220 (see Table 1 above). Again, the increase from 2,426 flowering plants counted in 2004 was largely due to the discovery of previously undocumented plants during new surveys on private lands. The trend in the species' status since 1988 is one of fluctuating population size that is typical of biennial species, combined with the loss of several hundred plants due to development (see Factor A below).

Summary of Factors Affecting *Ipomopsis polyantha*

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination. Each of these factors is discussed below.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Ipomopsis polyantha is threatened with destruction of plants and habitat due to commercial, residential, municipal, and agricultural property development, and associated new utility installations and access roads. We have documented recent losses of habitat and individuals within the Pagosa Springs and Dyke occurrences of the species, as described in more detail below.

Land Use Changes

Primary land use within the range of *Ipomopsis polyantha* has historically

been livestock (horses or cattle) grazing, with homes on parcels of 35 ac (14 ha) or more. Several small businesses now occur along U.S. 84 within the Pagosa Springs occurrence. The intersection of U.S. 160 and U.S. 84 is zoned by the Town of Pagosa Springs for business, and commercially zoned land is currently available for development. Archuleta County also is considering sites in this area for new county buildings. These current and potential conversions of agricultural lands to residential and commercial development are incompatible with conservation of *I. polyantha* in the long term because the conversions cause direct mortality and permanent loss of habitat. Conversely, habitat modified by grazing may be recovered by changes in management.

Residential development is increasing in Archuleta County. The population of Archuleta County was 5,000 in 1990, increasing to 12,430 in 2009 (U.S. Census Bureau 2011). Prior to the slowing down of the real estate market over the past few years, projections for new development in Archuleta County were high. For example, all private land across the entire range of *Ipomopsis polyantha* is scheduled for development in the Archuleta County and Town of Pagosa Springs Community Plan (2000). In this plan, all areas occupied by *I. polyantha* on private land outside of the Town limits are planned for low (35 ac (14 ha)), medium (3 to 35 ac (1.2 to 14 ha)), or high (2 to 5 ac (0.81 to 2 ha)) density housing. The rate of current and proposed development is the most significant threat to the species, because development planned for the next 5 to 10 years will likely impact 86 percent of the species' habitat. This rate of land conversion puts the species at risk of extinction.

Private Development of 35 Acres (14 Hectares) or Less

Within the Pagosa Springs occurrence, a residential and agricultural development of about a dozen 35-ac (14-ha) parcels was built prior to 2005 on occupied habitat east of U.S. 84 (Archuleta County Assessor 2008, p. 1). In 2005, when most residences were new, about 782 flowering plants were counted in meadows and along the fences and access roads (Lyon 2005, pp. 1–2). By 2008, an increased number of horses were pastured in the meadows, roadsides and driveways were graded or widened, and few plants or rosettes could be found as a result (Mayo 2008b, p. 2). This information indicates that *Ipomopsis polyantha* plants are vulnerable to grazing effects and road improvements, and habitat can be modified to exclude plants in as few as 3 years. We do not know exactly what level of grazing is sufficient to eliminate the *I. polyantha* plants in a pasture. In 2006, at another location along U.S. 84, a private landowner mowed several hundred feet of occupied habitat on the highway ROW (Lyon 2006a, p. 1). No plants or rosettes were found at this site from 2006 to 2008, indicating that mowing destroys plants and halts reproduction. In 2005, dense patches of flowering plants were noted, from across the fence, in a privately owned meadow along U.S. 84. In 2007, a new home was built, and the meadow was mowed; no plants could be seen at the same site in 2008 (Mayo 2008b, p. 2), again indicating that mowing destroys flowering plants and inhibits reproduction, because the seeds cannot mature and grow into rosettes. We do not know how long the seeds remain viable in the soil.

Private and County Development of Large Parcels

In 2008, the Pagosa Springs Town Council approved annexation of the 96-ac (39-ha) private development called Blue Sky Village into the Town (Aragon 2008a, pp. 1–2). The proposed development plan was for a mixed commercial and high- to low-density residential village (Hudson 2008, p. 1). The 96-ac (39-ha) parcel is adjacent to the highest density of *Ipomopsis polyantha* plants, and includes about 2,562 ft (781 m) of habitat on U.S. 84 frontage at the center of the species' distribution (Archuleta County Assessor 2008, p. 1). Plants have been observed on the property from over the fence, but not counted. Occupied habitat also borders the southern edge of the property.

In 2010, the Blue Sky Village property went into foreclosure. The County announced that it will acquire the property. Possible uses of the land include county buildings, sports fields, and the sale of commercial lots along the highway (Hudson 2010, p. 1). Development of the Blue Sky Village/County property would significantly reduce the amount of habitat within the species' range. Location of the development between the highest density of plants and the rest of the Pagosa Springs occurrence on the east side of U.S. 84 would further fragment the habitat that has already been impacted by commercial, residential, and agricultural land uses.

Another private development that includes 47 ac (19 ha) of occupied habitat and about 1 mi (1.6 km) of frontage along the west side of U.S. 84, is being considered for annexation and development (Aragon 2008a, p. 2; Archuleta County Assessor 2008, p. 1; Hudson 2010, p. 1). Preliminary plans show home sites and open space on the 47 ac (19 ha) of currently occupied plant habitat.

The above two development proposals would cover about 42 percent of the habitat within the Pagosa Springs occurrence, which is the larger of the two occurrences and is essential to the species' continued existence. Plants and habitat along U.S. 84 ROW are likely to be disturbed or destroyed by construction of new access roads, utility installations, and acceleration and deceleration lanes built to accommodate the proposed developments. The pace of development around Pagosa Springs fluctuates with the economy, but given the direction in the County plan and the projected growth rates for the County and the Town of Pagosa Springs, it is highly likely that further development will occur along U.S. 84 within 5 to 10 years.

A third large parcel of 1,362 ac (551 ha) proposed for development, plus 2,819 ft (859 m) of U.S. 84 frontage, is another annexation to the Town of Pagosa Springs being considered within the range of *Ipomopsis polyantha.* The proposed development, called Blue Sky Ranch, would include single and multi-family residential housing, a hotel and conference center, a golf course with clubhouse, and an equestrian center with riding trails and a multi-use arena (Aragon 2008b, p. 2). The status of the proposed development is unknown at this time, because it depends on the real estate market. This area has not been surveyed for plants, and is not included in the total occupied habitat.

Utilities Installations and Maintenance

Utilities installations and construction activities that are necessary for development can eliminate habitat and destroy *Ipomopsis polyantha* plants. During 2005 and 2006, a sewer line installation on the U.S. 84 ROW resulted in the loss of about 498 plants and 541 rosettes and the modification of about 1,473 ft (449 m) of roadside habitat (Mayo 2008c, p. 8). The Colorado Department of Transportation (CDOT) and Archuleta County consulted with the Service, and agreed on avoidance measures for this project, but contractors failed to follow the protocol. Where avoidance of plants and habitat was specified, topsoil, plants, and rosettes were scraped away on the bank; where native plant seeding was specified, nonnative grasses were seeded; and where straw was prohibited, a thick layer of straw was

applied (Mayo 2008c, pp. 1–4; Peterson 2006, pp. 1–3). As a result, in 2008, the remaining 8 flowering plants and 5 rosettes at this site were found in one spot, near plants on an adjacent property not disturbed by the sewer line project (Mayo 2008c, p. 8). In 2010, the combined number of flowering plants and rosettes at the site was 167. This incident demonstrates that *I. polyantha* cannot quickly recover from soil disturbance.

Although *I. polyantha* can colonize unvegetated Mancos Shale soil near a seed source, the number of flowering plants that appear in subsequent years depends on seed production and the survival of rosettes that are not outcompeted by other species or destroyed during ground disturbance. Power line maintenance was completed within occupied habitat in the Pagosa Springs occurrence in 2007. As a result of careful planning, there was negligible damage to adult plants. However, 278 rosettes were transplanted, but did not survive to reproduce for unknown reasons. We conclude that the species is highly vulnerable to ground disturbance during development because seedlings and rosettes are destroyed and transplanting is not known to be successful.

Highway Right of Ways

The Archuleta County and Town of Pagosa Springs revised 2004 Trails Plan (2004, p. 18) calls for an 8-ft (2.4-m) wide, 2.5-mi (4-km) long, paved bike path on the highway ROW from U.S. 160 south along U.S. 84 in occupied *Ipomopsis polyantha* habitat. This route, prioritized for completion as soon as funding is available, would eliminate about 38 percent of the total occupied habitat on the highway ROWs and 4 percent of the total occupied habitat for the species (see Table 1 above). Another planned paved bike trail, parallel to U.S. 160 and through the Dyke occurrence of *I. polyantha,* is on the low priority list in the Trails Plan (Archuleta County and Town of Pagosa Springs 2004, p. 28). Development of this bike trail would eliminate the portion of the Dyke occurrence located on the south side of the highway where the trail would be located, covering about 3 percent of the total highway ROW habitat.

The distribution of *Ipomopsis polyantha* within highway ROWs makes this species susceptible to threats associated with highway activities and maintenance. Exotic grasses planted by CDOT along roadsides dominate the ROW between pavement and ditch, limiting most *I. polyantha* plants to the ROW bank between ditch and fence. This limitation to the species' habitat along roadsides is significant because so little habitat exists elsewhere for the species. *I. polyantha* plants growing within the highway ROW along U.S. 84 in 2004 were killed when the thistles growing among them were treated with herbicide (Anderson 2004, p. 36). Since that time, Archuleta County has discontinued broadcast herbicide use and mowing on ROWs within the species' range. However, the planted exotic grasses continue to limit the species' habitat.

Highway ROWs provide about 9 percent of the occupied habitat for *Ipomopsis polyantha.* All highway ROW habitat is at risk of disturbance by construction of new access roads or acceleration lanes, bike paths, and utilities installation or maintenance. Such construction results in direct loss of *I. polyantha* individuals or reduced suitability of its habitat by altering the soil characteristics (Anderson 2004, p. 36).

Summary of Factor A

We determined that the present and threatened destruction, modification, and fragmentation of *Ipomopsis polyantha* habitat from commercial, municipal, agricultural, and residential development, associated new utility installations, construction of new access roads and bike paths, competition from introduced roadside grasses, and other impacts to highway ROWs are significant and imminent threats to the species throughout its range. At this time, the species persists primarily on private lands (about 86 percent) and highway ROWs (about 9 percent). Based on the rate of current and proposed development over the entire range of the species, we estimate that 95 percent of the species' habitat could be modified or destroyed within 5 to 10 years. The plants would then be relegated to 10 ac (4 ha) of BLM land; 7.5 ac (3 ha) of Town park land; small, fragmented portions of highway ROWs; and a few, small, lightly used, private yards and pastures, thus putting the species in danger of extinction.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Activities resulting in overutilization of *Ipomopsis polyantha* plants for commercial, recreational, scientific, or educational purposes are not known to exist. Therefore, we do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the species now or in the foreseeable future.

C. Disease or Predation

Disease

Disease is not known to affect *Ipomopsis polyantha.* Therefore, we do not consider disease to be a threat to the species now or in the foreseeable future.

Predation

This species is threatened by destruction of flowering plants, rosettes, and seeds due to concentrated livestock disturbance and some herbivory. Observations of the ''fence line effect''—healthy plants outside the fence and impacted plants inside the fence—at several locations on private land used for cattle and horse grazing indicate that *Ipomopsis polyantha* does not tolerate intensive livestock grazing (Anderson 2004, p. 30). For example, grazing by horses at a residential/agricultural development within the Pagosa Springs occurrence in 2005 resulted in few *I. polyantha* plants 3 years later (Mayo 2008b, p. 2). Over-the-fence observations from seven locations (pastures) in 2009 found few or no plants in the three heavily grazed pastures and numerous plants in the adjacent pastures with light or no grazing (Glenne and Mayo 2010, pp. 1–3). We do not know whether the destruction of the plants was a result of herbivory or trampling. *I. polyantha* is not found in heavily grazed pastures, but occurrences have been observed in lightly grazed horse pastures and abandoned pastures (CNAP 2007, p. 6). Plants could possibly recolonize a pasture if livestock numbers were reduced sufficiently and the seed bank was still viable, or if there was a seed source nearby, such as on the ungrazed side of a fence. Indications are that the species may persist in areas with light grazing, but the level of impact and the threshold of species' tolerance have not been studied. Few plants persist in areas of continual grazing (Collins 1995, pp. 107, 111, 112). We determined that destruction of flowering plants, rosettes, and seeds due to heavy livestock use is a significant and ongoing threat to *I. polyantha* now and in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

Local Laws and Regulations

Town and county zoning ordinances have the potential to affect *Ipomopsis polyantha* and its habitats. We know of no town or county regulations that provide for protection or conservation of *I. polyantha* or its habitat. As discussed under Factor A above, Archuleta County road maintenance crews voluntarily

refrain from mowing or broadcast spraying ROWs within the range of *Ipomopsis polyantha;* however, there is no law, regulation, or policy requiring them to do so. New annexation of 2,018 ac (817 ha) into the Town of Pagosa Springs will change zoning from 35-ac (14-ha) residential and agricultural parcels to commercial and small lot residential, with anticipated adverse impacts to the Pagosa Springs occurrence of *I. polyantha,* as described under Factor A above. Decisions regarding annexations into the town and changes in allowable subdividing of parcels in the county are currently being made to encourage growth that will boost the local economy. Provisions for avoidance or minimization of disturbance to habitat for the plants are not included in these decisions or plans.

State Laws and Regulations

No State regulations protect rare plant species in Colorado. *Ipomopsis polyantha* is classified by CNHP as a G1 and S1 species, which means it is critically imperiled across its entire range and within the State of Colorado (CNHP 2010b, pp. 1–5). The CDOT has drafted best management practices for ROWs within *I. polyantha* habitat in collaboration with the Service (Peterson 2008, p. 1), but the agreement has not been finalized. In 2006, voluntary measures to minimize impacts to plants from a sewer line installation along U.S. 84 were recommended by CDOT and supervised by the county, but not implemented by the contractors, as described under Factor A (Mayo 2008c, pp. 1–4; Peterson 2006, pp. 1–3).

Federal Laws and Regulations

Ipomopsis polyantha is on the sensitive species lists for the USFS (2006, pp. 5, 6, 13, 15–20; USFS 2009, p. 6) and the BLM (2000, p. 3; 2008b, p. 47). Occupied habitat has not been found on USFS land, but there is nearby habitat that appears to be suitable, so the species is included in project clearance surveys on the forest. In 2006, we estimated that the Dyke occurrence extended onto 20 ac (8 ha) of BLM land (Lyon 2007b, pp. 3, 12, 13); 88 plants and 164 rosettes were found there in 2007 (CNAP 2007, p. 2). In 2010, we revised the estimated occupied BLM habitat to 9.9 ac (4.0 ha) (Service 2011a, p. 2). This BLM parcel was withdrawn from a proposed land exchange so that the plant habitat would remain under Federal management (Brinton 2009, pers. comm.; Lyon 2007b, p. 3). We believe that BLM adequately protects *Ipomopsis polyantha* on its lands pursuant to the Federal statutes and regulations that guide Federal land management. However, so little of the species' habitat occurs on BLM lands that the BLM can do little to influence the overall status of the species.

Summary of Factor D

We reviewed the suite of existing regulatory mechanisms that could potentially offer some protection to *Ipomopsis polyantha,* including the Federal Land Policy and Management Act (FLPMA)(43 U.S.C. 1701 *et seq.*), and State and local laws and determined that these existing regulatory mechanisms are inadequate to address the primary threats to the species. Ninety-seven percent of the known range of the species is on State, Town, and private lands, affording the species little to no protection on these lands. Federal statutes and regulations governing natural resource protection apply only to 2.5 percent of the occupied habitat and therefore can do little to influence the overall status of the species. The State of Colorado offers no regulatory protection to plants, which means that protection falls upon local County and Town ordinances. The planning regulations governing growth in Archuleta County and the Town of Pagosa Springs do not contain any requirements to protect rare plants, including *I. polyantha,* when siting new growth and development. In fact, the current county planning regulations contribute to the risk of extinction for the species by facilitating development in the last remaining habitat occupied by the species. Therefore, we determined that existing regulatory mechanisms do not adequately address the primary threats to the species.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Habitat and Distribution

The adaptation of *Ipomopsis polyantha* to Pagosa-Winifred soils derived from Mancos Shale limits it to about 6.5 square mi (16.8 square km) within a 13-mi (21-km) range of fragmented habitat on outcrops of Mancos Shale. The species has specific physiological requirements for germination and growth that may prevent its spread to other locations (Anderson 2004, pp. 23–24). In greenhouse trials, seeds will germinate and grow on other soils, but they grow much faster on Mancos Shale soils (Collins 1995, p. 114). Faster growth may give *I. polyantha* a competitive advantage on relatively barren Mancos shale that it lacks on other soils, where its smaller seedlings have more competition from other plants for nutrients and water. The species produces more seed when it is cross-pollinated (Anderson 2004, p. 23); therefore, existing and foreseeable fragmentation of habitat may cause gene flow to be obstructed. Pollinator-mediated pollen dispersal is typically limited to the foraging distances of pollinators, and no bee species is expected to travel more than 1 mi (1.6 km) to forage (Tepedino 2009, p. 11). Thus, it is likely that the Dyke occurrence, of about 270 plants and 541 rosettes, is genetically isolated from the Pagosa Springs occurrence 13 miles (21 kilometers) away. Spatially isolated plant populations are at higher risk of extinction due to inbreeding depression, loss of genetic heterogeneity, and reduced dispersal rates (Silvertown and Charlesworth 2001, p. 185).

Transplanting

Rosettes in the path of power pole replacements were transplanted to suitable habitat in the town park in 2007. The 278 transplants survived the winter and produced about 27 flowering plants. However, no surviving rosettes could be relocated in the fall of 2007, and no evidence of trampling or habitat destruction was found (Coe 2007, pp. 2–3). Another attempt at transplanting rosettes, to save them from destruction during utility installations in 2005, was not effective in producing new rosettes in the third year (Brinton 2007, pers. comm.). There was no evidence of trampling or habitat destruction with these transplants. Unless effective methods are developed, most plants that cannot be avoided during utility installations and construction activities are unlikely to survive and reproduce. Whether the species can survive translocation under other circumstances remains uncertain, but at this time we consider transplantation an ineffective method of mitigating the impacts of development. For this reason, we conclude that the species is highly vulnerable to development because populations cannot be successfully moved out of the way.

Fluctuating Population Size

Ipomopsis polyantha shows great differences in plant numbers from year to year, probably because the plants are biennial and grow from seed. This trait makes them more vulnerable than perennials to changes in environment, including timing and amount of moisture and length of time since disturbance. With increased time after disturbance, competition from both native and nonnative plants increases (CNAP 2008a, p. 4). As a biennial species, *I. polyantha* also may be

vulnerable to prolonged drought. During drought years, seeds may not germinate and plants may remain as rosettes without flowering or producing a new crop of seeds.

Climate Change

Habitat changes as a result of climate change could potentially impact *Ipomopsis polyantha.* Localized projections indicate the southwest United States may experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 30). A 10 to 30 percent decrease in precipitation in mid-latitude western North America is projected by the year 2050, based on an ensemble of 12 climate models (Milly *et al.* 2005, p. 1). Climate modeling at this time has not been refined to the level that we can predict the amount of temperature and precipitation change within the limited range of *I. polyantha.* Therefore, this analysis is speculative based on the data available at this time. When plant populations are impacted by reduced reproduction during drought years, they may require several years to recover. Climate change may exacerbate the frequency and intensity of droughts in this area and result in reduced species' viability as the dry years become more common. As described above, *I. polyantha* is sensitive to the timing and amount of moisture due to its biennial life history. Thus, if climate change results in local drying, the species could experience a reduction in its reproductive output.

Recent analyses of long-term data sets show accelerating rates of climate change over the past 2 or 3 decades, indicating that the extension of species' geographic range boundaries towards the poles or to higher elevations by progressive establishment of new local occurrences will become increasingly apparent in the short term (Hughes 2000, p. 60). The limited geographic range of the Mancos Shale substrate that underlies the entire *Ipomopsis polyantha* habitat likely limits the ability of the species to adapt by shifting occurrences in response to climatic conditions.

Summary of Factor E

We determined that the natural and human-caused factors of specific soil and germination requirements, fragmented habitat, effects of drought and climate change, and lack of proven methods for propagation and reintroduction present an imminent and moderate degree of threat to *Ipomopsis polyantha* across the entire range of the species. These factors make the species highly vulnerable to the development threats described under Factor A, and it is highly unlikely that the species could respond to these threats by extending its range.

Cumulative Impacts

Some of the threats discussed in this finding could work in concert with one another to cumulatively create situations that potentially impact *Ipomopsis polyantha* beyond the scope of each individual threat. For example, as discussed under Factor A, destruction and modification of habitat by clearing the ground, mowing and weed spraying, and concentrated livestock grazing could reduce the number of available pollinators for the plants by removing other species of blooming plants that attract pollinators and by destroying the ground-nesting habitat needed by bees. A reduction in bee pollinators could cause *I. polyantha* to produce fewer seeds. Such cumulative impacts from development-related activities are likely to impact the species, given the ubiquity of development within the habitat.

We have not identified other likely scenarios where the threats discussed in the five factors above have potential to interact synergistically to produce threats to *Ipomopsis polyantha* beyond those which we have analyzed.

Summary of Factors

The Pagosa Springs occurrence of *Ipomopsis polyantha* totals approximately 342 ac (138 ha) of *Ipomopsis polyantha* habitat, including 3 mi (4.8 km) of highway ROW and the private properties on either side of the highway. The smaller Dyke occurrence of about 46 ac (19 ha) includes highway ROWs, private land, and 10 ac (4 ha) of BLM land. Destruction of plants, when combined with the modification and fragmentation of habitat within this small range, results in a substantial loss to the viability of the species. Both known occurrences face ongoing, new, and foreseeable threats, including commercial, residential, agricultural, and municipal development; associated road and utility improvements and maintenance; heavy livestock use; inadequacy of existing regulatory mechanisms to address the primary threats to the species; fragmented habitat; and prolonged drought conditions. The magnitude of threat for *I. polyantha* is high due to the direct overlap of ongoing and planned land development on 95 percent of the known habitat. The overall impact of current and planned development is likely to result in extensive disturbance and destruction of the remaining habitat within the foreseeable future of 5 to 10 years, depending on economic growth in the area, thus putting the species in danger of extinction.

Species Information—Penstemon debilis

Description

Penstemon debilis is a rare plant, endemic to oil shale outcrops on the Roan Plateau escarpment in Garfield County, Colorado. This species is known by the common names Parachute beardtongue and Parachute penstemon. *P. debilis* is classified by the CNHP as a G1 and S1 species, which means it is critically imperiled across its entire range and within the State of Colorado (CNHP 2010b, pp. 6–10). Traditionally, the genus *Penstemon* was included in the Scrophulariaceae (figwort) family. However, *Penstemon* is now considered to be within the Plantaginaceae (plantain) family due to recent research using DNA sequences (Oxelman *et al.* 2005, p. 415). We recognize this placement and make the appropriate attribution in the amendments to 50 CFR 17.12(h) at the end of this document. The text includes the family name as Plantaginaceae.

Penstemon debilis was discovered in 1986, and was first described by O'Kane and Anderson in 1987 (pp. 412–416). *P. debilis* is a mat-forming perennial herb with thick, succulent, bluish leaves, each about 0.8 in. (2 cm) long and 0.4 in. (1 cm) wide. Plants produce shoots that run along underground, forming what appear as new plants at short distances away. Individual *P. debilis* plants are able to survive on the steep, unstable, shale slopes by responding with stem elongation as leaves are buried by the shifting talus. Buried stems progressively elongate down slope from the initial point of rooting to a surface sufficiently stable to allow the development of a tuft of leaves and flowers (O'Kane and Anderson 1987, pp. 414–415). The funnel-shaped flowers are white to pale lavender, and bloom during June and July. *P. debilis* plants produce a small number of seeds that are dispersed by gravity. They require cross pollination, and have many different pollinators that vary between occurrences (McMullen 1998, p. 26). None of the pollinators are specialists to *P. debilis,* nor are any of them rare (McMullen 1998, p. 31).

Genetic diversity in all populations of *P. debilis* surveyed is very limited and there is little contact among the populations, which indicates inbreeding depression (Wolfe 2010, pers. comm.). There is a close genetic relationship between the two Mount Callahan populations. The Anvil Points populations are also clustered together,

and the Mount Logan population is intermediate between the other groups (Wolfe 2010, pers. comm.).

Habitat

Penstemon debilis seems to be adapted to natural physical disturbance (McMullen 1998, p. 81). Many of the characteristics that are most similar among sites promote continual shifting of the substrate: steep slopes, unstable surface layers of broken shale rubble, and no surface soil (McMullen 1998, p. 82). The plants grow on steep, oil shale outcrop slopes of white shale talus at 8,000 to 9,000 ft (2,400 to 2,700 m) in elevation on the southern escarpment of the Roan Plateau above the Colorado River and the town of Parachute, Colorado. The Roan Plateau falls into the geologic structural basin known as the Piceance Basin. Average annual precipitation at Parachute, Colorado, is 12.75 in (32.4 cm) (IDcide 2009, p. 1), which is considered a high desert climate. *P. debilis* is found only on the Parachute Creek Member of the Green River Formation. *P. debilis* is often found growing with other species endemic to the Green River formation, including *Mentzelia rhizomata* (Roan Cliffs blazingstar) (Reveal 2002, pp.763–767), *Astragalus lutosus* (dragon milkvetch), *Festuca dasyclada* (Utah fescue), and *Thalictrum heliophilum* (sun-loving meadowrue), as well as several non-endemics (O'Kane & Anderson 1987, p. 415).

Distribution

The historical range and distribution for this species is unknown. All of the currently known occurrences occupy about 91.8 ac (37.2 ha) on the Green River geologic formation in Garfield County, Colorado. Although this formation is underground throughout most of the Piceance Basin, it is exposed on much of the southern face of the Roan Plateau, to which the plant is restricted. The total area of the plant's geographic range is about 2 mi (3 km) wide and 17 mi (27 km) long. Six occurrences of *Penstemon debilis* were found between 1986 and 2005; two of them are no longer viable (CNHP 2010a, pp. 9–23). It is likely that unknown occurrences exist, because many areas are inaccessible to surveyors due to cliff-side terrain or private land ownership or both.

Occurrences

Penstemon debilis occurrences are described in the proposed rule to list the species (75 FR 35728–35729) and summarized in Table 2.

TABLE 2—*Penstemon debilis* OCCURRENCES BY LANDOWNERSHIP (ACRES (AC) (HECTARES (HA))

[CNHP 2010a, pp. 9–23; Ewing 2008a; Ewing 2009a; DeYoung 2008a pers. comm.; DeYoung 2009b, pers. comm.; DeYoung 2009c, pers. comm.; Service 2011a, p. 4]

Occurrence	Viability	Number of plants	ac (ha)	Total plant mortality*	Trend	Land ownership
Mt. Callahan Natural Area.	Excellent	2,200	32.7 (13.2)	None	Stable to slightly downward.	Private.
Mt. Callahan Saddle Natural Area.	Good	650	3.8 (1.5)	None	Stable to slightly downward.	Private.
Smith Gulch	Fair	50	13.4 (5.4)	Unknown		BLM.
Anvil Points Mine	Good	700	5.3 (2.1)	20	Small downward	BLM.
Anvil Points Rim	Poor	2	5.7 (2.3)	250	Nearly extirpated	BLM.
Mt. Logan Mine	Fair	483 Private	24.7 (10.1) Private	30	Small downward	Private.
		50 BLM	5.8 (2.3) BLM			BLM.
Mt. Logan Road	Poor	3	0.4 (0.2)	7	Nearly extirpated	BLM.
Total		4,138	91.8 (37.1)	307		

*Total of all dead plants reported from all sources.

Two occurrences on BLM land, Anvil Points Rim and Mt. Logan Road, have lost 257 plants and are nearly extirpated. Because these two occurrences have only five plants remaining and we do not expect them to recover, we consider these occurrences nonviable, and focus our analysis of ongoing and foreseeable threats on the four viable occurrences.

The occurrences on BLM land represent about 19.4 percent of the total plants counted and approximately 33.3 percent of the occupied habitat. A new Smith Gulch location on BLM land has been added to the Mt. Callahan Saddle occurrence because it is on shale deposited at the base of the cliffs directly below the saddle (Graham 2009a, pp. 1–2). Oxy USA Inc. owns land that contains 68.9 percent of the total plants on 39.8 percent of the occupied habitat, with agreements directing management of lands under their control. The Oxy oil shale division owns land with 11.6 percent of the plants on 26.9 percent of the occupied habitat, with no management agreements.

Summary of Factors Affecting *Penstemon debilis*

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Penstemon debilis habitat is threatened by energy development and associated impacts. Of the four known viable occurrences (Mt. Callahan and Mt. Callahan Saddle Natural Areas, Anvil Points Mine, and Mt. Logan Mine), all but the Anvil Points Mine occurrence are on lands wholly or partially owned by energy development companies. All four viable occurrences face ongoing or potential threats, including oil and gas development, oil shale extraction and mine reclamation, road construction and maintenance, and vehicle access through occurrences.

Oil and Gas Development

The Mt. Callahan and Mt. Callahan Saddle Natural Area occurrences, which include approximately 68.9 percent of the total known *Penstemon debilis* plants on 39.7 percent of the occupied habitat, occur on land owned by Oxy USA Inc. (Oxy). These occurrences are behind locked gates, making them inaccessible to the public. Oxy has developed two natural gas well drilling pads within a 680–ac (275–ha) area that includes both occurrences (Webb 2008, p. 1). One pad is located 360 ft (110 m) from the nearest known *P. debilis* individual and 105 ft (32 m) uphill from its habitat (Ewing 2008a, p. 2). The other pad is located farther from the habitat, where runoff will flow down the opposite side of the ridge. Operation of these wells could potentially impact *P.*

debilis by dust generation, loss of pollinator habitat, spills of produced water or other drilling wastes, and inadvertent trampling by employees and contractors. Monitoring of the occurrences, in connection to the energy development, has resulted in trampling of individual plants by people collecting the data (Ewing 2009a, pp. 1–2).

To protect plants and habitat from potential impacts, CNAP and Oxy have agreed to best management practices and conservation measures, to include plant surveys, surface disturbance buffers, designated travel routes, handling of produced wastes, dust abatement, a monitoring plan for the plants, and weed management. Working with Oxy, CNAP designated the areas of Mt. Callahan and Mt. Callahan Saddle as State Natural Areas (Kurzel 2008, pers. comm.; CNAP 1987, pp. 1–7; CNAP 2008a, pp. 1–7; Webb 2008, p. 1). Through these designations, the landowner has agreed to develop natural gas pads in a way that will avoid or minimize impacts to the *P. debilis* occurrences (Ewing 2008a, pp. 1–2). The agreements include conservation measures such as storm water management and a noxious weeds management plan (CNAP 2008c, pp. 1–4; CNAP 2008d, pp. 1–4). The CNAP has been very successful in garnering landowner participation in conservation of rare species in Colorado. The plant habitat on the natural areas appears unmodified by the gas well pad activity. Trampling of plants during monitoring has been noted as a minor impact that will be minimized in the future by modifying the sampling methods. Natural area agreements are voluntary and can be terminated at any time by either party with a 90-day written notice. However, we believe that these natural area agreements for *P. debilis,* while voluntary and non-binding, minimize the threats to the species to an extent that we can list it as threatened, rather than endangered.

The Smith Gulch location of an estimated 50 plants was discovered on BLM lands below the Mt. Callahan occurrences at the base of the cliffs during surveys for a proposed oil and gas development project in June 2009 (Graham 2009a, p. 1). Two well pads, and corresponding roads and pipelines, were proposed for this area (Graham 2009a, p. 3; Graham 2009b, pers. comm.). Following an environmental assessment, two well pads were permitted, to be located about 800 ft (244 m) downslope from the plants. The pads have not been built as of February 2011 (DeYoung 2011b, pers. comm.). When development proceeds, we anticipate no significant impacts to the plants unless they get washed down the drainage into the gas well area, which we cannot predict. Potential minor impacts are loss of pollinator habitat, dust impacts, or inadvertent trampling.

Oil and gas exploration and development continues to increase each year on both private and BLM lands on and around the Roan Plateau, where all of the known *Penstemon debilis* populations are found. In Garfield County, 566 new wells were permitted in 2003; 796 in 2004; 1,508 in 2005 (Colorado Oil and Gas Conservation Commission (COGCC) 2006, p. 1); 1,844 in 2006; 2,550 in 2007 (COGCC 2008, p. 1); and 2,888 in 2008 (COGCC 2009, p. 1). Because of a decrease in natural gas prices, new well permits decreased in 2009 to 743 (Webb 2009, p. 1; COGCC 2009, p. 1), but increased again to 1,887 in 2010, the highest for a county in Colorado after Weld County (COGCC 2010, p. 17).

Energy exploration and development activities include construction of new unpaved roads, well pads, disposal pits, evaporation ponds, and pipeline corridors, as well as off-road travel by employees. Each of these actions has the potential to cause direct impacts to *Penstemon debilis,* such as plant removal and trampling, and indirect impacts, such as dust deposition and loss of habitat for pollinators. Because *P. debilis* was unknown as a species until 1987, and the occurrences are on private land or in remote locations on public land, the impacts may go unnoticed. For example, impacts to the Mt. Logan Mine occurrence were unknown until the occurrence was recorded in 2005. Even after the discovery, further mine-related impacts occurred because most of the plants were on oil shale company land, making it difficult for BLM to manage the occurrence (CNHP 2010a, pp. 17–18; Ewing 2009a, p. 4).

Road traffic on unpaved roads increases dust emissions on previously stable surfaces (Reynolds *et al.* 2001, p. 7126). For every vehicle traveling 1 mi (1.6 km) of unpaved roadway once a day, every day for a year, approximately 2.5 tons of dust are deposited along a 1,000-ft (305–m) corridor centered on the road (Sanders 2008, p. 20). Vascular plants can be greatly affected within the zone of maximum dust fall (*i.e.,* the first 410 ft (125 m) from the road) (Walker and Everett 1987, p. 481). Excessive dust may affect photosynthesis, affect gas and water exchange, clog plant pores, and increase leaf temperature, leading to decreased plant vigor and growth (Ferguson *et al.* 1999, p. 2; Sharifi *et al.* 1997, p. 842). Because the viable occurrences of *P. debilis* are within 300 ft (91 m) of roads, well within the zone of maximum dust fall, they are all likely to be affected by decreased ability to photosynthesize, impaired gas and water exchange, clogged pores, and decreased plant vigor and growth. However, traffic volume and speed and dust generation within 300 ft (91 m) of the plants is currently likely to be low, slow, and sporadic, because reclamation and pad/road construction within the occurrences is mostly, but not entirely, completed. Dust levels could increase at any time depending on the amount of energy development in the vicinity. We believe that dust deposition has an impact on the plants, but available information does not indicate that the impact rises to the level of a threat.

Other indirect impacts to *Penstemon debilis* can occur due to loss of pollinator habitat. *P. debilis* requires an insect pollinator to reproduce (McMullen 1998, p. iii). Prior to the energy boom, McMullen (1998) concluded that pollinators for *P. debilis* were generalists and were not limiting at that time. However, Tepedino (2009) described the ways in which the pollination biology of another Piceance Basin rare plant, *Physaria obcordata* (Dudley Bluffs twinpod), is impacted by energy development. He described that any energy development that reduces the general level of available floral vegetation has a detrimental effect on pollinators' ability to reproduce, because fewer flowers provide less nectar to feed the pollinators, subsequently resulting in fewer pollinators and reduced ability of the dependent plant, such as *P. debilis,* to produce seeds (Tepedino 2009, pp. 16–17). The degree of impact on *P. debilis* from loss of pollinator habitat due to energy development is unknown, but is not likely to rise to the level of a threat, because disturbance of vegetated areas adjacent to *P. debilis* occurrences is not nearly as extensive as the foraging distance of the pollinators.

A large parcel of land including habitat occupied by both Anvil Points occurrences was leased by the BLM for oil and gas development in August 2008 (DeYoung 2008b, pers. comm.; DeYoung 2008c, pers. comm.; BLM 2008a, p. 1). This proposed development is described in the Roan Plateau Resource Management Plan (RMP) Amendment, which is still being contested in court by environmental groups (Williams 2010). Increased energy exploration in the Anvil Points Mine area may increase maintenance and vehicle access on the unstable road that transects the *Penstemon debilis* occurrence and may increase the likelihood of impacts to *P. debilis* due to construction of additional

roads and other facilities associated with oil and gas exploration. Despite ongoing disturbances, Anvil Points Mine is the largest occurrence on Federally managed land. If impacts continue to modify or curtail this habitat, the species is likely to become in danger of extinction.

Oil Shale Extraction and Mine Reclamation

Oil shale mining has likely impacted *Penstemon debilis* occurrences. Access roads for the mines at Anvil Points and Mt. Logan were cut across cliff sides occupied by the plants, displacing the loose shale habitat and destroying plants. Oil shale extraction activities occurred on the Roan Plateau in the early 1980s and into the 1990s (COBiz 2008, pp. 3–4). Because *P. debilis* was not identified as a species until 1987, we have no record of the pre-mining occurrence status. However, we believe the plants were present at these sites prior to mining because some are still present now. The plants were likely heavily impacted by mine operations within their habitat, and we think that the occurrences are likely to have recovered to a far smaller population size on a reduced area of habitat (see Factor E for discussion of inherent risk of small population size).

Commercial oil shale extraction has not yet proven to be economically viable, and current research and development efforts no longer focus exclusively on surface mining of oil shale rock on the Roan Cliffs (COBiz 2008, pp. 3–4). In November 2008, the BLM issued its record of decision approving resource management plan (RMP) amendments to allow oil shale leasing in the Piceance Basin (BLM 2007a, p. 1). The known *Penstemon debilis* occurrences are not within the area that BLM has currently identified as available for oil shale leasing (BLM 2007a, p. 14). It is unknown when oil shale extraction will become economically viable. If commercial oil shale production does become economically viable, we expect a renewed interest in extracting shale from the cliffs of the Roan Plateau because the shale is located conveniently near the surface. Recent impacts to the Anvil Points Mine plants occurred due to energy production research and removal of core samples by an oil shale research and development company (discussed below), and at the Anvil Points Mine and Mt. Logan Mine occurrences due to mine reclamation and closure efforts (DeYoung 2009a, pers. comm.; Mayo 2006, pp. 1–4).

The BLM conducted mine reclamation actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*), commonly known as Superfund, to remove health and safety hazards from Anvil Points Mine. Actions included closing access to the passages leading into the mine and removing lead mine tailings soil on the mine bench (Goodenow 2008, pers. comm.). It is unknown whether the lead in the soil is a threat to *Penstemon debilis.* An estimated 350 plants were on the mine bench where the reclamation was done (CNHP 2010a, p. 19). Eighty-eight plants are known to have been directly impacted by Anvil Points Mine reclamation actions permitted by BLM during 2008–2009 (DeYoung 2009b, pers. comm.; Bennett 2010, pp. 1–2). Of the 88, 21 plants that would have been crushed by heavy equipment were transplanted, 56 were covered by matting intended to reduce soil disturbance (DeYoung 2009b, pers. comm.; DeYoung 2009c, pers. comm.), and 11 plants were either covered with tires or screened from human activities with construction fencing (Bennett 2010, p. 2). As of December 2009, 17 of the 88 plants were either dead or unaccounted for (Bennett 2010, p. 2). Any loss of plants at Anvil Points Mine is a threat to the species because of the small size of the entire population, but we expect less disturbance at the site now that reclamation is completed.

The BLM also allowed an oil shale research and development company to conduct research in the Anvil Points Mine, a project area containing the Anvil Points Mine occurrence (Ewing 2008a, pp. 4–6). This research consisted of taking high resolution photographs of the geologic formation visible from the sides of the mine, and removal of stored core samples. The project included vehicle trips up the road every day for 1 month and directly impacted *P. debilis* individuals growing in the road immediately outside the mine (Ewing 2008a, pp. 4–6). The roads transecting the occurrence are on shifting shale talus slopes and are frequently subject to rockslides and mudslides, which require the road to be maintained frequently. Three plants out of about 350 are known to have been destroyed by the road maintenance conducted under this permit (DeYoung 2009a, pers. comm.). The BLM believes that some additional plants may have been trampled by unauthorized access to an area that was fenced off during the research period; however, it is unclear how many plants were disturbed (DeYoung 2008c, pers. comm.). In addition to the direct impacts, the road maintenance required to allow this level of traffic made occupied *P. debilis* habitat more accessible to the public, which could result in further trampling by humans and vehicles (Ewing 2008a, pp. 4–7).

The Mt. Logan Mine occurrence of *Penstemon debilis* is primarily located on land owned by Oxy oil shale division, with a portion of the occurrence occupying BLM land. This occurrence is perched on a steep, unstable slope above a road that is used for access to an oil shale mine reclamation project and for ongoing maintenance of the site. Plants were presumably removed to construct and maintain the road during past mining operations. Several plants out of 513 total on this steep road bank were dangling by their roots in 2005 due to road widening during reclamation (Mayo 2006, pp. 1–4). The road was widened farther, and these plants were gone by 2006 (Mayo 2006, p. 1). Mine reclamation actions destroyed about 30 of the 513 plants at another portion of this occurrence by burying them in topsoil (Ewing 2009a, p. 4). This site also contains noxious weeds associated with the disturbance, but it is unknown whether the weeds will pose a threat to *P. debilis* (Ewing 2009a, p. 4). The BLM portion of this occurrence was included in an oil and gas lease parcel nominated for sale; however, BLM deferred the sale of the lease parcel until completion of their RMP revision (now scheduled for May 2013) and until the Service publishes a determination concerning the status of the species (CNE 2005, p. 1; Lincoln 2009, pers. comm.). We believe that the 513 plants counted at this occurrence are a remnant of a larger population that existed prior to mining and reclamation activities. The potential for further loss of plants at this location is an ongoing threat that could contribute to the species becoming in danger of extinction within the foreseeable future.

Road Construction and Maintenance and Vehicle Access

The Anvil Points Mine occurrence also is impacted during road stabilization work by Garfield County, which is done to maintain ongoing access to a communications transmitter tower located within occupied habitat for *Penstemon debilis* on the mine bench. We expect that continued vehicle access through the plant habitat will destroy a few plants at a time when vehicles turn around and workers walk on the shale slopes. Maintenance and use of the road prevents reclamation of the road bed, which would allow loose

shale to cover the road and reclaim the plant habitat along the mine bench.

The Mt. Logan Road occurrence, located on the ROW above a heavily traveled road near the Logan Mine occurrence, had 10 plants in 1996, of which only 3 plants were found in 2005 and again in 2010 (CNHP 2010, p. 22). This occurrence has no barriers to shield the plants from heavy dust generated by truck traffic (CNHP 2010a, p. 22; DeYoung 2009e, pers. comm.; Ewing 2009a, p. 3). As a result of these ongoing threats and the low number of plants at the site, we consider this occurrence to be nonviable.

Summary of Factor A

In summary, three of the four viable occurrences (Mt. Callahan and Mt. Callahan Saddle Natural Areas and Mt. Logan Mine) are on lands owned wholly or partially by energy development companies. Some individuals at the fourth occurrence (Anvil Points Mine), on BLM land, have been subject to transplanting or destruction as a result of a mine closure project and road maintenance. Over the past 6 years, oil and gas exploration and production has increased substantially in the area containing the habitat for *Penstemon debilis,* making it likely that the species will become in danger of extinction in the foreseeable future. The pace of new development slowed in 2009 because of a variety of factors, but increased again in 2010 (COGCC 2010, p. 17). *P. debilis* grows on steep shifting slopes, and roads through *P. debilis* habitat are unstable and require frequent maintenance, which destroys plants. Plants seem to be able to recolonize their habitat after disturbance; however, recolonization is slow, and would not be able to keep pace with rapid development. For these reasons we consider destruction and modification of the species' habitat for natural gas production, oil shale mining, mine reclamation, road maintenance, exploration activities, and associated impacts resulting from increased vehicle access to the occurrences to constitute an ongoing threat to *P. debilis* that may cause the species to become in danger of extinction within the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Activities resulting in overutilization of *Penstemon debilis* plants for commercial, recreational, scientific, or educational purposes are not known to exist. Therefore, we do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the species now or in the foreseeable future.

C. Disease or Predation

Seed predation of *Penstemon debilis* by small mammals is very low (McMullen 1998, pp. 39–40). Grazing, predation, and disease are not known to affect *P. debilis.* Therefore, we do not consider disease or predation to be a threat to the species now or in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

Local Laws and Regulations

Approximately 66.6 percent of *Penstemon debilis* occupied habitat occurs on private lands. We are not aware of any city or county ordinances or zoning that provide for protection or conservation of *P. debilis* or its habitat. Garfield County continues to maintain and enlarge a communications transmitter site within the Anvil Points Mine occurrence without a permit from BLM. Existing County ordinances fail to address appropriate placement of communications transmitters to avoid impacts to sensitive species. The impact may rise to the level of a threat if the transmitter site is allowed to remain and expand.

State Laws and Regulations

No State laws or regulations protect rare plant species in Colorado.

Federal Policy and Management

The BLM manages the habitat for about 19.4 percent of the *Penstemon debilis* plants, on 33.3 percent of the occupied habitat. Candidate species are managed by BLM as sensitive species. BLM has a policy for management of sensitive species that recommends avoidance and minimization of threats to plants and habitat, as well as habitat conservation assessments and conservation agreements (BLM 2008c, pp. 8, 36–38). No habitat conservation assessments or conservation agreements have been formalized for *P. debilis.*

The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) directs BLM, as part of the land use planning process, to ''give priority to the designation and protection of areas of critical environmental concern'' (43 U.S.C. 1712(c)(3)). The FLPMA defines areas of critical environmental concern (ACECs) as ''areas within the public lands where special management attention is required * * * to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards'' (43 U.S.C. 1702 (a)). Designation as an ACEC recognizes an area as possessing relevant and important values that would be at risk without special management attention (BLM 2006, pp. 3–110). The ACEC designation carries no protective stipulations in and of itself (BLM 2006, pp. 2–65).

Following an evaluation of the relevance and importance of the values found in potential ACECs, a determination is made as to whether special management is required to protect those values and, if so, to specify what management prescriptions would provide that special management (BLM 2006, pp. 3–111). The records of decision (RODs) for the Roan Plateau RMP Amendment were signed June 8, 2007, and March 12, 2008. The March 12, 2008, ROD designated the Anvil Points ACEC, as an area for management of sensitive resources including *Penstemon debilis* (BLM 2008b, ROD p. 4). The ROD lists as an objective for the Anvil Points ACEC to ''protect occupied habitat and the immediately adjacent ecosystem processes that support candidate plants.'' This ROD also authorizes oil and gas development in the ACECs, making the portions of these areas that are not currently leased available for lease (BLM 2008b, ROD p. 2). Anvil Points ACEC covers most of the formerly occupied occurrence area at Anvil Points Rim, and the entire Anvil Points Mine occurrence. At present, no oil and gas development activities are allowed. Implementation of the RMP amendment, including lease development, is dependent on the outcome of litigation.

In order to protect *Penstemon debilis* in the ACEC, a no surface occupancy (NSO) and no ground disturbance (NGD) stipulation was established for both Anvil Points *P. debilis* occurrences (BLM 2007b, ROD p. 26). The term NGD applies to all activities except oil and gas leasing and permitting, while the term NSO applies only to oil and gas leasing and permitting (BLM 2008b, ROD p. 6). The NSO designation prohibits long-term use or occupancy of the land surface for fluid mineral exploration or development to protect identified resource values (BLM 2006, pp. 2–3). This designation means that an area is protected from permanent structures or long-term ground-disturbing activities (*i.e.,* lasting longer than 2 years) (BLM 2006, pp. 2–3). For example, an NSO designation would preclude construction of a well pad (because it would last longer than 2 years) but not a typical pipeline (because it would be revegetated within 2 years) (BLM 2006, pp. 2–3). Also, an

NSO does not preclude the extraction of underlying fluid minerals if they can be accessed from outside the area by directional drilling (BLM 2006, pp. 2–3). Directional drilling may not disturb the overlying surface, including *Penstemon debilis* habitat. Except for specified situations, individual NSOs may include exceptions so that BLM may allow a ground-disturbing activity if it meets specific, stated criteria (BLM 2006, pp. 2–3). For example, the NSO designation for these occurrences allows the BLM to grant exceptions for short-term ground disturbing activities if a conference with the Service indicates that proposed activity would not impair maintenance or recovery of the species (BLM 2007c, pp. F6–F7).

The protections provided by the NSO/NGD provision of the ACEC designation are not adequate to provide for maintenance of the Anvil Points Mine occurrence because although BLM may and usually does discuss plans with the Service, they are not required to consult with the Service and ensure that proposed activity would not impair maintenance or recovery of the species prior to authorizing an exception to the NSO/NGD (BLM 2007a, pp. F6–F7). Consultation for a candidate or sensitive species is not mandatory. Despite NSO/NGD provisions, projects have proceeded that resulted in destruction of *Penstemon debilis* individuals. Other actions with likely impacts to *P. debilis* are still being considered by BLM (DeYoung 2010, pers. comm.). This ability to proceed with actions that cause negative impacts to the species indicates that the NSO/NGD provisions do not fully protect *P. debilis* and its habitat.

Recent examples demonstrating the use of the NSO/NGD provisions were discussed under Factor A. All of these examples refer to the Anvil Points Mine occurrence of *Penstemon debilis:*

(1) The BLM approved work under the CERCLA to remove health and safety hazards from the Anvil Points Mine occurrence. While the BLM conferred with the Service and minimized damage to the plants ''as much as was practicable,'' hazards to humans take precedence over protecting candidate plant species. This project resulted in direct impacts to at least 88 *Penstemon debilis* individuals (DeYoung 2009c, pers. comm.).

(2) Also at the Anvil Points Mine, the BLM is still considering granting permission for continued maintenance of the Garfield County transmitter tower access road (DeYoung 2009b, 2010 pers. comm.). Maintaining the existing tower access road rather than relocating it increases the likelihood of destroying *P. debilis* plants and prevents the recolonization of plants in the current road bed.

(3) The BLM has authorized oil shale research projects in the past at the Anvil Points Mine (Ewing 2008a, p. 4), which led to the destruction of *P. debilis* plants (BLM 2007c, pp. F6–F7; DeYoung 2009a, pers. comm.).

(4) The land containing the Anvil Points Mine occurrence was leased for oil and gas development under the BLM August 2008 lease sale that is still awaiting a court decision (DeYoung 2008b, p. 1; BLM 2008b, p. 1; Ewing 2008a, p. 7). Despite plant protections built into the RMP amendment that is now being challenged, increased energy exploration in the Anvil Points Mine area may increase maintenance and vehicle access and consequently increase the likelihood of destroying plants

Summary of Factor D

We found that existing regulatory mechanisms and agency policies do not address the primary threats to *Penstemon debilis* and its habitat. The species was afforded some protection on Federal lands as a candidate species; however, candidate status has not prevented impacts and threats to the species from oil and gas development and mine reclamation. Federal natural resource laws do not protect *Penstemon debilis* because they are not regulatory unless the plant is proposed or listed, and projects have occurred that have continued to directly impact the species. Furthermore, because much of the plant population occurs on non-Federal lands, *P. debilis* has no regulatory protection for approximately 81 percent of the total estimated plants. Therefore, we determined that the existing regulatory mechanisms do not adequately address the primary threats to the species.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Failure of Transplants

The Anvil Points Rim occurrence, which formerly included several hundred plants on BLM land, was reduced to zero plants in 1999 for unknown reasons (CNHP 2010a, pp. 11–12). It appears that the decline of this occurrence was a result of natural processes, including competition by surrounding native vegetation, which includes *Chrysothamnus viscidiflorus* (yellow rabbitbrush) (DeYoung 2008a, pers. comm.; CNHP 2010a, p. 12). Fifty-three *Penstemon debilis* seedlings grown off site from seeds were introduced to Anvil Points Rim in 1996. Ten survived until 2001, but all were gone by 2005. Two mature plants found in 2010 appear to be overlooked survivors from the original population (CNHP 2010a, p. 11). Monitoring failed to show a cause for the decline of this occurrence (DeYoung 2008a, pers. comm.).

Small Population Size

Penstemon debilis population sizes are small, and the smaller the population, the more likely extinction is in any given period of time (Shaffer 1987, p. 70). All occurrences of *P. debilis* grow on a 17-mi (27-km) stretch of the rim of the Roan Plateau in Garfield County, Colorado (Ewing 2008a, p. 7). The two largest occurrences are within 2 mi (3 km) of each other (Ewing 2008a, p. 7). A species with such a small range is particularly susceptible to extirpation from a stochastic event such as a rockslide or severe hail storm (McMullen 1998, p. 3). This increased susceptibility is due to the likelihood that, although stochastic events are often localized in severity, such a localized event would likely impact all occurrences of the species, rather than just a small portion of the occurrences, as may be expected for a species with a larger range. For example, the newly discovered Smith Gulch location is small (estimated 50 plants) and, because of its positioning in a drainage, has a high potential for being destroyed by a rain event (DeYoung 2009d, pers. comm.).

Habitat Fragmentation—Genetic Diversity

In addition, the fragmentation of *P. debilis* habitat by human-related activities threatens to reduce the species to mosaics of small populations occurring in isolated habitat remnants. Foraging pollinators spend more time within large populations than small populations, so sensitive plant species with small populations (fewer than 50 individuals) are more likely to have a lower seed set per individual than larger ones, and to suffer genetic problems such as genetic drift and inbreeding depression due to losses of individuals in such events such as those described under Factor A (McMullen 1998, p. 3; Ellstrand & Elam 1993, pp. 226, 228). Genetic diversity of *P. debilis* is low compared to other species of plants with similar life-history traits (Wolfe 2010, p. 1), and thus the species is more susceptible to genetic problems.

Climate Change and Drought

Climate change could potentially impact *Penstemon debilis.* The limited geographic range of the oil shale substrate that makes up the entire *Penstemon debilis* habitat could limit the ability of the species to adapt to changes in climatic conditions by progressive establishment of new populations.

Incidental disturbance by humans and stochastic events such as drought, landslides, or encroaching vegetation can impact *Penstemon debilis.* Climate change could exacerbate these factors, causing them to pose a threat to *P. debilis;* however the current data are not reliable enough at the local level for us to draw conclusions regarding the imminence of climate change threats to *P. debilis.* The collective effects of small population size, fragmented habitat, genetic isolation, inability to shift with climate changes, and failure of reintroduction efforts make the species vulnerable to destruction and modification of its habitat, to the extent that it is likely to become endangered within the foreseeable future.

Cumulative Impacts

Some of the threats discussed in this finding could work in concert with one another to cumulatively create situations that potentially impact *Penstemon debilis* beyond the scope of the combined threats we have already analyzed. Destruction and modification of habitat, and fugitive dust from truck traffic, could reduce the number of other species of blooming plants that attract pollinators and could destroy the ground-nesting habitat needed by bees. A reduction in pollinators could cause *P. debilis* to produce fewer seeds. Such cumulative impacts may lower seed production and reduce the number of plants. We do not have documentation that these cumulative impacts are currently threatening the species.

Summary of Factors

The primary factors threatening *Penstemon debilis* are the present and threatened destruction, modification, or curtailment of its habitat and range, and the inadequacy of existing regulatory mechanisms to address the primary threats to the species, exacerbated by the collective impacts described under Factor E. These factors pose imminent threats to the species because they are ongoing. The threats are moderated because 39.8 percent of the occupied habitat is protected by voluntary conservation agreements, and 33.3 percent is managed to minimize some of the threats, although 26.9 percent has no special management or protection. We believe that the two main occurrences of the species will be protected within the State Natural Areas because Oxy is implementing best management practices during development. While these actions may not prevent the species from becoming endangered when energy demands rise again, the species is not likely to become in danger of extinction within the foreseeable future.

Species Information—Phacelia submutica

Phacelia submutica is a rare annual plant endemic to clay soils derived from the Atwell Gulch and Shire members of the Wasatch Formation in Mesa and Garfield Counties, Colorado. The 9 populations and 22 known occurrences of the plant occupy a total of 625.9 ac (253.3 ha) (CNHP 2010a, pp. 24–82; Service 2011a, p. 7). All occurrences consist of small patches of plants on uniquely textured, shrink-swell clay soil separated by larger areas of similar soils that are not occupied by *P. submutica.* The estimated total number of plants ranges from 7,767 to 68,371 per year, depending on growing conditions. In some years, surveyors have failed to find any plants. The species depends on its seed bank to survive for one or many years, again depending on growing conditions.

Taxonomy

Phacelia submutica was first described by Howell based on specimens collected from the town of DeBeque, Mesa County, Colorado, in 1911 and 1912 (Howell 1944, pp. 370–371). Halse (1981, pp. 121, 129, 130) reduced it to varietal status as *P. scopulina* var. *submutica.* Halse's nomenclature has been challenged by O'Kane (1987, p. 2), who claimed Halse used inadequate collection materials and that *P. submutica* is geographically isolated from *P. scopulina* (O'Kane 1987, p. 2; 1988, p. 462). *Phacelia submutica* is the recognized species name in current floristic treatments in Weber and Wittmann (1992, p. 98; 2001, p. 203) and by the Director of the Biota of North America Program (Kartesz 2008, pers. comm.). While the Integrated Taxonomic Information System (2001) database cites John Kartesz as the expert source for this species, it is not updated with his currently accepted name for the species: *Phacelia submutica* (Kartesz 2008, pers. comm.). Because the weight of evidence indicates that *Phacelia submutica* is the appropriate species name, we are listing the species with this nomenclature. *Phacelia* is included in the Hydrophyllaceae (waterleaf) family. Recent molecular data suggest that this family should be combined in an expanded Boraginaceae (borage) family. Conflicting views exist on the configuration of this larger Boraginaceae. The lead author of the family treatment for the upcoming *Flora of North America* has chosen to retain the Hydrophyllaceae. Therefore, we will retain *Phacelia* in the Hydrophyllaceae family for this final rule.

Description

Phacelia submutica is a low-growing, herbaceous, spring annual plant with a tap root. The stems are typically 0.8 to 3 in (2 to 8 cm) long, often branched at the base and mostly lying flat on the ground as a low rosette (Howell 1944, pp. 371–372). Stems are often deep red and more or less hairy with straight and stiff hairs. Leaves are similarly hairy, reddish at maturity, 0.2 to 0.6 in (5 to 15 mm) long, egg-shaped or almost rectangular with rounded corners, with bases abruptly tapering to a wedge-shaped point. Leaf margins are smooth or toothed. The tube-shaped flowers are yellowish white, on short stems; the 5 petals are 0.16 to 0.19 in (4–5 mm) long; the stamens do not protrude beyond the petals. The style is 0.04 to 0.06 in (1 to 1.5 mm) long and nearly hairless, and the seed capsules do not have a short, sharply pointed tip (Howell 1944, pp. 371–372; Halse 1981, p. 124). The elongated egg-shaped seeds are 0.6 to 0.8 in (1.5 to 2 mm) long with 6 to 12 crosswise corrugations, and are blackish brown and somewhat iridescent (Howell 1944, p. 370; Halse 1981, p. 130; O'Kane 1987, p. 3).

Seed Bank

Phacelia submutica plants flower between late April and late June and set seed from mid-May through late June. Individuals finish their life cycle by late June to early July, after which time they dry up and disintegrate or blow away, leaving no indication that the plants were present (Burt and Spackman 1995, p. 23). The species grows in a habitat with wide temperature fluctuations, long drought periods, and erosive saline soils. Upon drying, cracks form in the shrink-swell clay soils. Seeds plant themselves by falling into the cracks that close when wetted, thus covering the seeds (O'Kane 1988, p. 20).

Phacelia submutica seeds can remain dormant for 5 years (and probably longer) until the combination and timing of temperature and precipitation are optimal for germination (CNHP 2010a, pp. 24–82). The ideal conditions required for seed germination are unknown, but it is likely that germination depends not on total

precipitation but on the temperature after the first major storm event of the season (Levine *et al.* 2008, p. 795). Rare annuals that flower every year are subject to extinction under fluctuating conditions, because they exhaust their seed reserves (Meyer *et al.* 2006, p. 901). Rare ephemeral annuals, such as *P. submutica,* that save their seed bank for the best growing conditions are more resilient to fluctuating conditions. *P. submutica* numbers at Horsethief Mountain fluctuated from 1,700 plants in 1986, to 50 in 1992, up to 1,070 in 2003, and down to only a few from 2006 to 2008 (CNHP 2010a, pp. 49–50). The fluctuation in numbers indicates that many seeds remain dormant in the seed bank during years when few plants can be found. We do not know how long the seeds can remain viable in the soil. Although plant sites differ in numbers of flowering plants each year, there are no observations of site expansion.

Habitat

Phacelia submutica is restricted to exposures of chocolate to purplish brown and dark charcoal gray alkaline clay soils derived from the Atwell Gulch and Shire members of the Wasatch Formation (Donnell 1969, pp. M13–M14; O'Kane 1987, p. 10). These expansive clay soils are found on moderately steep slopes, benches, and ridge tops adjacent to valley floors of the southern Piceance Basin in Mesa and Garfield Counties, Colorado. On these slopes and soils, *P. submutica* usually grows only on one unique small spot of ground that shows a slightly different texture, color, and crack pattern than the similar surrounding soils (Burt and Spackman 1995, p. 15). We do not have a precise scientific description of the soil features required to support this species. The natural shrink-swell cracking process creates the conditions needed for the plants and seed bank to thrive.

Distribution

The currently known occupied habitat where the plants grow occurs on about 625.9 ac (253.3 ha) (CNHP 2010a, pp. 24–82). About 80.9 percent of the occupied habitat is on lands managed by the BLM, 11.9 percent is on private lands, 6.4 percent is on lands managed by the USFS, and 0.7 percent is on lands managed by the Colorado Division of Wildlife (CDOW) (Service 2011a, pp. 6–7). A general range encompassing outlying occurrences of *Phacelia submutica* includes about 82,231 ac (34,896 ha) (Service 2011a, p. 13). The growing town of DeBeque and about 10 mi (16.4 km) of Interstate 70 and the Colorado River bisect the species' range.

Phacelia submutica is classified by the CNHP as a G2 and S2 species, which means it is imperiled across its entire range and within the State of Colorado (CNHP 2010b, p. 12). The CNHP ranks the quality of each occurrence on a scale of A to E, with A meaning an excellent occurrence that is abundant and viable; B, C, and D meaning good, fair, and poor, respectively; and E meaning the occurrence still exists, but no ranking information is available. Historical records (H rank in Table 3, below) have not been revisited for 20 years or more. Ranks are based on the viability and number of plants, the amount of anthropogenic (human) disturbance, and the amount of weed cover and intact habitat (CNHP 2010b, pp. 12–13).

No occurrences of *Phacelia submutica* have been found beyond the described habitat and range. Surveys for *P. submutica* have been conducted outward from DeBeque as far as the exposed soil members extend within the geologic formation (Burt and Spackman 1995, p. 14). Surveys in 2010 added 148 ac (60 ha) of new locations within the known range of the species.

TABLE 3—*Phacelia submutica* OCCURRENCES WITHIN POPULATIONS BY LANDOWNERSHIP (ACRES (AC) (HECTARES (HA))

(CNHP 2010a, pp. 24–82, observation dates 1982 to 2010; WestWater Engineering 2007, pp. 16, 17, 19, 27; Kirkpatrick 2011, pers. comm.; Potter 2010, Wenger 2010; Lyon 2010, pers. comm.; Service 2011a; CNHP 2010b, pp. 12–13)

Population occurrences	High counts estimates	Low counts	Habitat ac	Habitat ha	Viability rank*	Owner
SULPHUR GULCH:						
Sulphur Gulch	70	0	4.4	1.8	H	BLM.
Winter Flats Sulphur Gulch	35	25	9.7	3.9	D	BLM.
PYRAMID ROCK:						
Pyramid Rock	3,050	1	213.6	86.4	BC	BLM.
Pyramid Ridge Coon Hollow South.	1,500	2	55.4	22.4	B	BLM.
Coon Hollow/B/C	11,000	42	58.4	23.6	AB	BLM.
Mount Low West of DeBeque	10,000	300	15.9	6.4	B	BLM, Private.
Dry Fork Roan Creek	800	100	24.2	9.8	BC	BLM, Private.
Bloat Gulch Logan Wash	5,820	0	50.2	20.3	H	BLM, Private.
Coon Hollow	200	150	2.1	0.8	H	BLM.
ROAN CREEK:						
Roan Creek	195	21	5.8	2.3	C	Private.
DEBEQUE						
DeBeque West	500	0	14.8	6.0	H	BLM, Private.
DeBeque East Cemetery Road	20	0	36.2	14.6	D	BLM.
MOUNT LOGAN:						
Mount Logan	50	5	7.0	2.8	C	BLM.
ASHMEAD DRAW:						
South of DeBeque	17	0	3.9	1.6	H	BLM.
DeBeque Reservoir Ashmead Draw.	210	0	16.8	6.8	C	BLM, Private.
BAUGH RESERVOIR:						
Baugh Reservoir	1,000	0	6.1	2.5	H	BLM, Private.
HORSETHIEF MOUNTAIN:						
Jerry Gulch	300	200	3.2	1.3	C	Private.
Moffat Gulch	20	0	2.0	0.8	H	BLM.
S of Horsethief Creek	55	10	2.0	0.8	C	BLM.
Housetop Mtn. Jerry Gulch Atwell Gulch.	4,000	235	20.4	8.2	B	BLM, USFS.

TABLE 3—*Phacelia submutica* OCCURRENCES WITHIN POPULATIONS BY LANDOWNERSHIP (ACRES (AC) (HECTARES (HA))—Continued

(CNHP 2010a, pp. 24–82, observation dates 1982 to 2010; WestWater Engineering 2007, pp. 16, 17, 19, 27; Kirkpatrick 2011, pers. comm.; Potter 2010, Wenger 2010; Lyon 2010, pers. comm.; Service 2011a; CNHP 2010b, pp. 12–13)

Population occurrences	High counts estimates	Low counts	Habitat ac	Habitat ha	Viability rank*	Owner
Horsethief Mtn. NW.–SW.–WSW. Shire Gulch.	14,429	5,300	69.1	28	C	USFS, BLM, Private.
ANDERSON GULCH:						
Anderson Gulch Round Mtn.	15,100	1,376	4.5	1.8	A	Private, State.
Totals	68,371	7,767	625.9	253.3		

* An A indicates those occurrences with the highest number of individuals and best habitat, while a D represents those occurrences with the fewest individuals and degraded habitat. An H represents an occurrence that has not been re-visited in over 20 years.

Summary of Factors Affecting *Phacelia submutica*

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Phacelia submutica is threatened with destruction and modification of its seed bank and habitat due to the following issues: modification of areas for oil and natural gas exploration and production, development of the Westwide Energy Corridor, increased access to the habitat by off-road vehicles (ORVs), soil and seed disturbance by livestock and wild ungulates, and proposed water reservoir projects. All known occurrences are in the midst of the second largest natural gas-producing area in Colorado (COGCC 2010).

Natural Gas Development

About 78 percent of the habitat for the species and 67 percent of the entire range of *Phacelia submutica* are on BLM lands currently leased for oil and gas drilling (Ewing 2009, map). An additional 65 ac (26 ha) of habitat (10 percent) may be opened to natural gas development by BLM pending development of a new RMP for the Grand Junction Field Office in 2013 (Ewing 2008a; BLM 2005, p. 5). About 3 percent of the habitat is on private land owned by energy companies (Burt and Spackman 1995, p. 25). Although the sale of oil and gas leases by BLM does not directly impact rare plant habitat, it indicates the intention to continue and increase the level of development in an area that covers a large portion of the range of *P. submutica.* Likewise, the Colorado Oil and Gas Conservation Commission (COGCC) issues permits to drill that indicate imminent development at specific sites on private and Federal lands (COGCC 2009b, pp. 1–3). COGCC issued 10 new drilling permits in 2009. Within the range of *P. submutica,* there are 178 natural gas wells; 60 of these wells are located within the same 640 ac (259 ha) section as 18 of the 22 occurrences of the species (Ewing 2009b, map).

Five occurrences of *Phacelia submutica* are located on BLM land in an area called South Shale Ridge that covers more than a third of the known range for this species (BLM 2005, p. 5). Part of South Shale Ridge was recommended as an ACEC for protection of *P. submutica* in 1995, but was not designated as an ACEC (Burt and Spackman 1995, p. 36) in that area. Portions of South Shale Ridge that were withheld from leasing in the past were leased for oil and gas development in November 2005 (BLM 2005, p. 5). These leases were subsequently deferred pending development of a new RMP for the Grand Junction Field Office (Ewing 2008c, pers. comm.; BLM 2005, p. 5). The new RMP is now scheduled for May 2013, and the leases are still on hold (Ewing 2011, pers. comm.). If the BLM sells these leases, then 8 ac (3 ha) of occupied *P. submutica* habitat within about 65 ac (26 ha) of suitable habitat will be newly opened to natural gas development in a previously undeveloped area (Ewing 2009, map), with additional impacts anticipated from associated roads and related development.

Pyramid Rock is adjacent to South Shale Ridge, and the Pyramid Rock occurrence of *Phacelia submutica* is within the BLM Pyramid Rock ACEC, including an estimated 1 to 3,050 plants (depending on the year) within 214 ac (86 ha) of habitat (CNHP 2010a, p. 29; Wenger 2009, pp. 1–11; Wenger 2010, p. 3). Stipulations of no new surface occupancy or ground disturbance apply to this ACEC for protection of candidate, proposed, and listed plant species. These stipulations do not apply to sensitive species. However, due to the possibility of exceptions being granted, we cannot predict with any degree of certainty what stipulations will actually be applied to the plant or its habitat that ensure the long-term conservation of the species. The BLM installed cable fence in 2007 to deter ORVs from crossing habitat for the Federally threatened cactus *Sclerocactus glaucus* (Colorado hookless cactus) and *P. submutica.* Only a few ORVs have left tracks under the fence and across *P. submutica* habitat. The BLM excluded this ACEC from a South Shale Ridge lease sale in 2005 (BLM 2005, p. 5). *P. submutica* plants have not been directly impacted since the fence was installed, and existing pipeline and roads remain outside the fence. The ACEC has provided some protection thus far for about 4 percent of the plants (see Table 3 above).

We recommend buffers of 656 ft (200 m) for pipeline ROWs between the edge of disturbance and suitable plant habitat to protect the plants from destruction by vehicles that stray outside of the project area, runoff, erosion, dust deposition, or other indirect effects such as destruction of pollinator nesting habitat. In spite of such efforts, pipeline ROWs exist within 20 ft (6 m) and 100 ft (30 m) of known *P. submutica* occurrences (Lincoln 2008, pers. comm.).

The ongoing threats to habitat that are associated with oil and gas development include well pad and road construction; installation of pipelines; and construction of associated buildings, holding tanks, and other facilities. All of these actions would destroy the seed bank of *Phacelia submutica* and modify its habitat so that the plants could no longer grow in these areas.

Westwide Energy Corridor

The Energy Policy Act of 2005 (42 U.S.C. 15801 *et seq.*) directs the Secretaries of Agriculture, Commerce, Defense, Energy, and the Interior to designate energy transport corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities on Federal lands in certain western U.S. States. A portion of the

designated Westwide Energy Corridor crosses 16,326 ac (6,621 ha) of BLM land within the range of *Phacelia submutica.* Nine of the species' 22 occurrences are located within this energy corridor (Westwide 2009, map; Ewing 2009, map). Pipeline and transmission line routes along the energy corridor are not yet identified, but it is not feasible that all habitat for *P. submutica* will be avoided as the corridor continues to be developed.

Cumulative Impacts of Energy Development

Energy development activities described above are occurring in close proximity to *Phacelia submutica* locations (WestWater Engineering 2004, p. 11). Oil and gas pipelines, well pads, and access roads are present on 11 *P. submutica* occurrences (CNHP 2010a, pp. 24–82). Frequently travelled roads bisect and cross the edges of nine occurrences. It is likely that some of the seed bank was displaced or destroyed to build the roads and pipelines. On Federal lands, direct impacts to known plant locations are mostly being avoided by careful placement of pipelines, well pads, and associated facilities, due to the candidate status of the species.

Our concern is primarily for the cumulative impacts of energy development. When all of the oil and gas wells are connected to the system of local pipelines, roads, and pumping stations, in combination with cross-country transmission lines and pipelines, more ROWs will be necessary. Under these conditions, it is difficult to protect occupied or potential habitat for *P. submutica.* The natural shrink-swell cracking process creates the soil conditions needed for *P. submutica* and its seed bank to thrive; however, the natural soil surface structure is fragile and easily disturbed. Blading of the top few inches of soil during well pad and road construction, installation of underground pipelines, and construction of associated buildings, holding tanks, and other facilities alter the unique soil structure, especially when it is wet, and may disturb, damage, or remove seed banks that are critical to the survival of this species. Any ground disturbance that churns or compacts the soil or changes the shrink-swell crack structure is likely to have a deleterious effect on the *in situ* seed bank and, therefore, on successful plant recruitment and survival of the species in subsequent years (Meyer *et al.* 2005, p. 22).

Off-Road Vehicle Recreation

Energy development increases access to previously roadless areas, which encourages ORV traffic to drive on nearby slopes that support plant habitat. ORV use occurs on BLM lands in the general vicinity of *Phacelia submutica* and has been recorded within occupied habitat at seven occurrences (CNHP 2010a). The vehicles stray from designated roads to climb hills for recreational purposes (Mayo 2008d, photo). Substantial surface disturbance due to churning by ORV tires can alter the unique soil structure required by this species, with the same negative effects on the seed bank as described above.

Trampling

Trampling of the habitat by livestock and wildlife is documented at 14 of the 22 occurrences (CNHP 2010a, pp. 24–82). Substantial surface disturbance due to heavy trampling increases soil compaction and erosion and alters the microhabitat, such as the cracked soil surface, the species requires.

Livestock-related impacts have resulted in the loss of similar plant species in other locations. *Lepidium papilliferum* (slickspot peppergrass) is a rare ephemeral annual desert plant in Idaho (comparable to *Phacelia submutica*), which has highly specific soil requirements and which depends on its seed bank. The slickspot peppergrass population dropped from thousands of plants in 1995, to no new plants after intensive trampling when the soil was wet and seeds were germinating (Meyer *et al.* 2005, p. 22). The population has not recovered, which is believed to be due to damage and burying of seeds that prevented them from germinating. After 11 years of monitoring, researchers have clear evidence that ''any form of soil disturbance is likely to have a deleterious effect on the *in situ* seed bank,'' and that all potential habitat for such a species (such as *P. submutica*) should be managed as if it were currently occupied (Meyer *et al.* 2005, p. 22).

Water Reservoirs

Two water reservoir projects known as Roan Creek and Sulphur Gulch have been proposed in the past within occupied habitat of *Phacelia submutica.* The potential reservoir locations would have impacted two occurrences. Recently, both projects were again evaluated as potential reservoirs to provide a water supply for in-stream flows for endangered fishes in the Colorado River (Friedel 2004, p. 1; Grand River Consulting Corporation 2009, p. 3). After evaluation of numerous alternatives, the Sulphur Gulch and Roan Creek projects are no longer being considered as a water supply for endangered fishes because more practical sources were found (Bray and Drager 2008, pers. comm.; Grand River Consulting Corporation 2009, pp. 1–5). The Roan Creek reservoir project also was proposed by Chevron Shale Oil Company and Getty Oil Exploration Company to be used for development of oil shale extraction (Chevron-Getty 2002, pp. 2, 8), but the oil shale projects were not developed. These potential reservoirs could permanently destroy plants and their habitat by project construction and inundation. Because the proposals have been withdrawn, these threats are not imminent; however, the sites have been identified as potential reservoir locations that could be developed within 20 years if warranted by increased demands for water. Increased demands are likely, depending on the oil shale market, urban development in Colorado, and less precipitation due to climate change.

Summary of Factor A

We consider destruction, modification, and fragmentation of habitat to be moderate threats to *Phacelia submutica* throughout its range, due to ongoing development of oil and gas with associated pipelines, construction of new road and utility ROWs, road widening, and construction of access roads. *P. submutica* habitat also is threatened by soil modification resulting from livestock trampling and ORV tracking. These threats are of moderate magnitude because at least 14 of the 22 occurrences are being impacted to some degree by one or more of the threats, and because the plants and their seed banks occur in small, isolated patches that are easily destroyed by small-scale disturbances. If these threats increase in frequency, severity, or scope, the species is likely to become in danger of extinction within the foreseeable future.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Activities resulting in overutilization of *Phacelia submutica* plants for commercial, recreational, scientific, or educational purposes are not known to exist. Therefore, we do not consider overutilization for commercial, recreational, scientific, or educational purposes to be a threat to the species now or in the foreseeable future.

C. Disease or Predation

Disease or herbivory are not known to affect *Phacelia submutica.* Therefore, we do not consider disease or predation

to be a threat to the species now or in the foreseeable future.

D. The Inadequacy of Existing Regulatory Mechanisms

Local Laws and Regulations

County ordinances or zoning are not known to affect *Phacelia submutica* or its habitat. Therefore, we do not consider inadequacy of existing local laws and regulations to be a threat to the species now or in the foreseeable future.

State Laws and Regulations

No State regulations protect rare plant species in Colorado. The CNAP has entered into agreements with BLM to help protect the Pyramid Rock ACEC occurrence of *Phacelia submutica* by also managing it as a designated State Natural Area that is monitored by volunteer stewards. The Pyramid Rock occurrence has been adequately protected thus far, but the management agreement can be terminated with 90-day written notice by either party. Therefore, we have concluded that the State Natural Area designation alone does not constitute a regulatory mechanism to conserve *P. submutica.*

Federal Laws and Regulations

Bureau of Land Management

Candidate species are managed by BLM as sensitive species. Sensitive species designations provide policies to be carried out with the resources available, but they do not provide regulations to protect this species from losing habitat and seed banks to energy development projects. The BLM attempts to avoid disturbances that would adversely affect sensitive species' viability or trend the species toward Federal listing. This includes avoidance of suitable habitat if it can be identified as such (BLM 2008c, pp. 8, 36; BLM 2008d, pp. 5–7). However, the BLM policy of avoidance and minimization of threats to plants and habitat may not adequately protect *Phacelia submutica* because the plants can only be found for a few weeks during years when growing conditions have been favorable (Burt and Spackman 1995, p. 8). Thus, well-intentioned avoidance and minimization measures may not be implemented if no plants are seen, even in areas where subsequent timely surveys would likely demonstrate a persistent seed bank. As opposed to listed species, biological assessments or consultation with the Service are not required for BLM-designated sensitive species during the authorization process for oil and gas use on Federal lands (BLM 2008d, p. 33).

Section 365 of the Energy Policy Act of 2005 (42 U.S.C. 15801 *et seq.*) establishes a Federal Permit Streamlining Pilot Project with the intent to improve the efficiency of processing oil and gas use authorizations on Federal lands. The two BLM pilot project offices for Colorado are in the Colorado River Valley and Grand Junction Field Offices, both of which manage *Phacelia submutica* habitat. Faster processing of permits to drill increases the likelihood of ground disturbance on *P. submutica* habitat because the plants are ephemeral annuals that can only be found for about 6 weeks during favorable years, and not all of the habitat has been surveyed. When the plants are not present or previously documented, avoidance of the seed bank depends on field assessments of habitat. As a result, seed banks and habitat are increasingly likely to be disturbed or removed during the process of approving locations for new energy development projects.

U.S. Forest Service

Phacelia submutica is currently on the sensitive species list for the USFS, Region 2 (USFS 2009). The USFS manages 6.4 percent of the habitat for *P. submutica* (Service 2011a, p. 9). Trampling by mule deer and trespass cattle has damaged plants and habitat at two sites on the Grand Mesa National Forest; ORVs have impacted another site (USFS 2010; CNHP 2010a, pp. 24–82). Most of the habitat is protected from access by steep badlands and canyons. The habitat is open to oil and gas leasing with an NSO stipulation.

A Proposed Research Natural Area to protect the species on the White River National Forest has not been formally established (Proctor 2010, pers. comm.). If established, protection would include restrictions on ORV use, livestock grazing, and resource extraction. Regulatory mechanisms on USFS lands do not protect the species, because such restrictions are not in place, and the NSO stipulation can be waived in some cases.

Summary of Factor D

We have determined that existing regulatory mechanisms do not address the primary threats to *P. submutica* because the existing RMPs do not provide protection from the threat of oil and gas development. The one ACEC in place is not adequate to protect the species because it includes only 4 percent of the habitat. Sensitive species designations provide policies to be carried out with the resources available, but they do not provide regulations to protect this species from losing habitat and seed banks to energy development projects, cattle trampling, or ORV traffic over the next 10 to 20 years.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Climate Change

Climate change is likely to affect *Phacelia submutica* because seed germination, seed dormancy, and persistence of the seed bank are all directly dependent on precipitation and temperature patterns (Levine *et al.* 2008, p. 805). As described under Factor E for *Ipomopsis polyantha,* climate modeling is not currently to the level that we can predict the amount of temperature and precipitation change within the limited range of *P. submutica.*

Future changes in the timing of and temperatures associated with the first major spring rains each year may more strongly affect germination and persistence of ephemeral annual plants than changes in the amount of season-long rainfall (barring severe droughts) (Levine *et al.* 2008, p. 805). Likewise, increasing environmental variance, such as an unusually wet spring, might decrease extinction risk for rare desert ephemeral plants, because they typically rely on extremely good years to restock the persistent seed bank, while extremely bad years have little impact (Meyer *et al.* 2006, p. 901). A persistent seed bank enables the species to survive drought. However, extremely long droughts resulting from climate change, with no good years for replenishing the seed bank, would likely cause *Phacelia submutica* to become endangered. Because the soil can remain bare of *P. submutica* plants for several years, it is difficult to identify and protect the seemingly unoccupied habitat that occurs in small, isolated patches that are easily destroyed by small-scale disturbances, and can be overlooked during habitat assessments. The longer the species remains dormant, the less likely it is that we will know if an area is occupied, reducing our ability to avoid impacts to the species and protect it from becoming endangered.

We do not yet have information on the species' pollinator needs sufficient to predict the effects of climate change on pollinator-plant interactions for this species.

Summary of Factor E

While current climate change predictions are not reliable enough at the local level for us to draw conclusions about its effects on *P. submutica,* it is likely that there will be

drying trends in the future and the seeds will remain dormant for long periods. This would make it increasingly difficult to detect occupied habitat and avoid destruction of habitat, and more likely that the species will become endangered. Because its seed bank is vital to the survival of *Phacelia submutica,* the potential impacts of climate change (described above) are likely to make the species more vulnerable to the threats described under Factor A to an extent that the species may become endangered within the foreseeable future.

Summary of Factors

The current range of *Phacelia submutica* is subject to human-caused modifications from natural gas exploration and production with associated expansion of pipelines, roads, and utilities; development within the Westwide Energy Corridor; increased access to the habitat by ORVs; soil and seed disturbance by livestock and wildlife (Factor A).

The main reason that the species is vulnerable to energy development is that the plants' annual life cycle only lasts a few weeks before they dry up and blow away, and they may not appear at all for several years if growing conditions are not favorable. With such a short life cycle and unpredictable emergence, occupied habitat may not be recognized as such, so it may be inadvertently destroyed.

Protecting the seed bank in the soil depends on avoiding ground disturbance of bare patches of clay soil where nothing appears to be growing most of the time. The plants and their seed banks occur in small, isolated patches that are easily destroyed by even small-scale disturbances. The species' small geographic range, highly specific soil and germination requirements, limited seed dispersal, fragmented habitat, prolonged seed dormancy, and potential seed bank depletion by prolonged drought (Factor E) make *P. submutica* vulnerable to the threats in Factor A to an extent that the species may become endangered within the foreseeable future, depending primarily on the rate of future energy development. The plants do not disperse seeds beyond the existing patches of unique soil that are separated from one another by a few yards or several miles. Any loss of occupied habitat will be a permanent loss for the foreseeable future, and cause a decline in the status of the species.

Determination

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica.*

Ipomopsis polyantha

We find that the present and threatened destruction, modification, or curtailment of *Ipomopsis polyantha* habitat is a threat to the species' continued existence. Ongoing and planned commercial, municipal, and residential development; associated road and utility improvements and maintenance; and competition from introduced roadside grasses (as discussed under Factor A above) pose a significant threat to the species. The resulting modifications of the species' habitat will likely relegate the plants to small, fragmented portions of highway ROWs and a few small, lightly used, private pastures, within 5 to 10 years, depending on the real estate market. At that point the species would no longer be resilient or viable, indicating that the species is in danger of extinction across its entire range.

Ipomopsis polyantha also is threatened by concentrated livestock trampling of plants and soil and some herbivory (as discussed under Factor C). Livestock grazing may decrease in the future, but mowing and landscaping is likely to increase with higher density development within the next few years. Predation is an ongoing threat of moderate magnitude and severity, which, combined with the threat of habitat modification under Factor A, could cause the species to become extinct within the foreseeable future.

The existing regulatory mechanisms do not address the threats to the species or its habitat. The absence of regulatory mechanisms exacerbates the threats discussed under Factor A.

The natural and human-caused factors of specific soil and germination requirements, fragmented habitat, effects of drought and climate change, and lack of proven methods for propagation and reintroduction (as discussed under Factor E) present an ongoing and moderate degree of threat to *Ipomopsis polyantha* across the entire range of the species. This factor alone is not likely to cause the species to become extinct, but it impacts the species' ability to withstand and recover from the threats discussed under Factors A and C.

On the basis of the best available information, we are listing *Ipomopsis polyantha* as an endangered species. Endangered status reflects the vulnerability of this species to threat factors negatively affecting it and its limited and restricted habitat. This species is beyond threatened status, or beyond the point of being likely to become an endangered species within the foreseeable future. Ongoing threats to the species and its habitat (discussed under Factors A and C) are such that it is currently in danger of extinction throughout all of its range, meeting the definition of an endangered species as defined in the Act. We have determined that *I. polyantha* is in danger of extinction throughout all of its range.

Penstemon debilis

Penstemon debilis is threatened with destruction and modification of its habitat due to ongoing and foreseeable threats that include oil and gas development, oil shale extraction and mine reclamation, road construction and maintenance, and vehicle traffic throughout its habitat (as discussed under Factor A above). These threats are of high magnitude across more than half of the species' limited range. We believe that the effects of these threats are likely to cause *Penstemon debilis* to become an endangered species within the foreseeable future.

The existing regulatory mechanisms do not address the threats to the species or its habitat. The absence of regulatory mechanisms exacerbates the threats discussed under Factor A. Local or State regulations of plant species' habitats are nonexistent. Existing Federal regulatory mechanisms are only partially effective at ameliorating threats to plants and habitat (as discussed under Factor A). Stipulations for Federal protection of habitat are planned but not yet implemented (as discussed under Factor A). Private landowner agreements with the State currently protect 69 percent of the habitat, but their continuation is not guaranteed.

The natural and human-caused factors of extremely low numbers of plants and a highly restricted soil substrate and geographic range, fragmented habitat and low genetic diversity, effects of drought and climate change, and lack of proven methods for propagation and reintroduction (as discussed under Factor E) present an ongoing and moderate threat to *Penstemon debilis* across the entire range of the species. These threats in themselves are not likely to cause the species to become endangered, but they affect the species' ability to withstand and recover from the effects of the threats described under Factor A, and thus make *Penstemon debilis* likely to become endangered within the foreseeable future.

On the basis of the best available information, we are listing *Penstemon debilis* as a threatened species. Threatened status reflects the

vulnerability of this species to factors that negatively affect the species and its limited and restricted habitat. While not in immediate danger of extinction, *P. debilis* is likely to become an endangered species within the foreseeable future, depending on whether energy development escalates, draft management plans are implemented, and current conservation agreements are continued.

Phacelia submutica

The destruction, modification, and fragmentation of habitat pose moderate threats to *Phacelia submutica* throughout its range. Natural gas production with associated expansion of pipelines, roads, and utilities; development within the Westwide Energy Corridor; increased access to the habitat by ORVs; and soil and seed disturbance by livestock, wildlife and ORVs all threaten the species' habitat (as discussed under Factor A). These ongoing and potential threats are likely to cause *P. submutica* to become endangered within the foreseeable future, depending mainly on the rate of energy development.

The existing regulatory mechanisms do not address the threats to the species or its habitat. The absence of regulatory mechanisms exacerbates the threats discussed under Factor A. Local or State regulations provide no protection for the species and its habitat. Existing Federal regulatory mechanisms are only partially effective at ameliorating threats to plants and their habitat (as discussed under Factor A).

Other natural or manmade factors affecting the continued existence of *Phacelia submutica* include the species' small geographic range, highly specific soil and germination requirements, limited seed dispersal, fragmented habitat, prolonged seed dormancy, and potential seed bank depletion by prolonged drought (as discussed under Factor E). These factors make the species vulnerable to climate change and to the threats under Factor A (as described above), to an extent that the species may become endangered within the foreseeable future, depending primarily on the rate of future energy development.

On the basis of the best available information, we are listing *Phacelia submutica* as a threatened species. Threatened status reflects the vulnerability of this species to factors that negatively affect the species and its limited and restricted habitat. While not in immediate danger of extinction, *P. submutica* is likely to become an endangered species within the foreseeable future if habitat is lost and existing seed banks cannot expand to maintain the species' range.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and requires that recovery actions be carried out for all listed species. The protection measures required of Federal agencies and the prohibitions against certain activities are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agency actions within the habitat of these three species that may require conference or consultation or both as described in the preceding paragraph include the following:

- Management, leasing, permitting, and other actions that result in landscape altering activities on Federal lands administered by the BLM and USFS;
- Issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers;
- Construction and management of gas pipeline and power line ROWs by the Federal Energy Regulatory Commission and BLM;
- Construction and maintenance of roads or highways by the Federal Highway Administration; and
- Provision of Federal funds to State and private entities through Federal programs such as CDOT highway construction or improvement projects, Housing and Urban Development Tax Credit Assistance Program, the Service's Landowner Incentive Program, and the NRCS.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. It also is unlawful to violate any regulation pertaining to plant species listed as threatened or endangered (section 9(a)(2)(E) of the Act). Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies. No State regulations protect rare plant species in Colorado.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened plant species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62 for endangered plants, and at 17.72 for threatened plants. With regard to endangered plants, a permit must be issued for the following purposes: for scientific purposes or to enhance the propagation or survival of the species.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect

subsequently listed species or designated critical habitat.

Required Determinations

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Western Colorado Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this document are staff members of the Western Colorado Ecological Services Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.12(h) by adding entries for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* under FLOWERING PLANTS in the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Ipomopsis polyantha	Pagosa skyrocket ...	U.S.A (CO)	Polemoniaceae	E	.....	NA	NA
*	*	*	*	*	*	*	
Penstemon debilis ...	Parachute beardtongue.	U.S.A. (CO)	Plantaginaceae	T	.....	NA	NA
*	*	*	*	*	*	*	
Phacelia submutica	*DeBeque phacelia* ..	*U.S.A. (CO)*	*Hydrophyllaceae*	*T*	.....	*NA*	*NA*
*	*	*	*	*	*	*	

* * * * *

Dated: July 5, 2011.

Daniel M. Ashe,

Director, Fish and Wildlife Service.

[FR Doc. 2011–18429 Filed 7–26–11; 8:45 am]

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Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Ipomopsis polyantha (Pagosa skyrocket), Penstemon debilis (Parachute beardtongue), and Phacelia submutica (DeBeque phacelia); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2011–0040; MO 92210–0–0009]

RIN 1018–AX75

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Ipomopsis polyantha (Pagosa skyrocket), Penstemon debilis (Parachute beardtongue), and Phacelia submutica (DeBeque phacelia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Ipomopsis polyantha* (Pagosa skyrocket), *Penstemon debilis* (Parachute beardtongue), and *Phacelia submutica* (DeBeque phacelia) under the Endangered Species Act of 1973, as amended (Act). Approximately 9,894 acres (4,004 hectares) are being proposed for designation as critical habitat for *I. polyantha.* Approximately 19,155 acres (7,752 hectares) are being proposed for designation as critical habitat for *P. debilis.* Approximately 24,987 acres (10,112 hectares) are being proposed for designation as critical habitat for *P. submutica.* In total, approximately 54,036 acres (21,868 hectares) are being proposed for designation as critical habitat for the three species. The proposed critical habitat is located in Archuleta, Garfield, and Mesa Counties, Colorado.

DATES: We will accept comments received or postmarked on or before September 26, 2011. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by September 12, 2011.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter Docket No. FWS–R6–ES–2011–0040, which is the docket number for this rulemaking. Then, in the Search panel at the top of the screen, under the Document Type heading, check the box next to Proposed Rules to locate this document. You may submit a comment by clicking on ''Submit a Comment.''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, *Attn:* FWS–R6–ES–2011–0040; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will not accept e-mail or faxed comments. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Allan Pfister, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Western Colorado Ecological Services Office, 764 Horizon Drive, Suite B, Grand Junction, CO 81506–3946; telephone 970–243–2778; facsimile 970–245–6933. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designations of critical habitat may not be prudent;

(2) Specific information on:

(a) The amount and distribution of *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* habitat;

(b) What areas, that are occupied and that contain features essential to the conservation of these 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;

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why; and

(e) Means to quantify the amount of natural and human-caused disturbance these species prefer or can tolerate.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, especially the Mount Callahan and Mount Callahan Saddle Natural Areas for *Penstemon debilis,* 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.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Western Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica,* refer to the proposed rule published in the **Federal Register** on June 23, 2010 (75

FR 35721) or the final listing rule that is published in the Rules and Regulations section of today's **Federal Register**. See also the discussion of habitat in the ''*Physical and Biological Features''* section below. Please note that we have used scientific names for rare species, because oftentimes these names are better known than the common names; and, we have used common names for species that are better known and where the common name may be easier for the reader to understand. In this rule we used scientific names for rare species, because where a common name is less standardized, the scientific name avoids confusion.

*Ipomopsis polyanth*a is a biennial (living only 2 years) or short-lived perennial (living for more than 2 years) herb in the Polemoniaceae (phlox) family that has white flowers flecked with purple dots; it flowers only once before dying. *Penstemon debilis* is a long-lived perennial herb in the Plantaginaceae (plantain) family that grows along the ground and has purple flowers. *Phacelia submutica* is a very small annual (living only one season) herb in the Hydrophyllaceae (waterleaf) family with small white flowers that are hidden within the leaves of the plant.

Geographic Range, Habitat, and Threats

Ipomopsis polyantha is known from only two populations in Archuleta County, Colorado. A minimum convex polygon (enclosing all the points to create a convex polygon with no concave areas) around both populations encloses an area of 13,825 acres (ac) (5,595 hectares (ha)) and measures 13 miles (mi) (21 kilometers km)) in length and 3 mi (5 km) in width. The total footprint of area actually occupied by plants is 388.4 ac (157.1 ha), of which 86.4 percent is on private lands, 9.1 percent is on highway right-of-ways (ROWs), 1.9 percent is on lands managed by the Town of Pagosa Springs, and 2.5 percent is on lands managed by the Bureau of Land Management (BLM) (Service 2011a, p. 2). Between the actual occupied areas there are interspaces of unoccupied habitat, so the acreage occupied by the species including these interspaces is larger than the acres listed above. We roughly estimate there are roughly 340,000 *I. polyantha* individuals (Service 2011b, p. 1). The plant is specific to Mancos shale soils at elevations of 6,725 to 7,776 feet (ft) (2,050 to 2,370 meters (m)) () (Service 2011c, p. 1). Plants are found in sparsely vegetated areas along the margins of *Pinus ponderosa* (Ponderosa pine) forests and extending into the adjacent grassland or shrublands. The species' highly restricted soil requirements and geographic range make it particularly susceptible to extinction at any time due to commercial, municipal, and residential development; associated road and utility improvements and maintenance; heavy livestock use; inadequacy of existing regulatory mechanisms; fragmented habitat; and prolonged drought. Eighty-six percent of the species' occupied habitat is on private land with no limits on development.

Penstemon debilis is known from only six populations on the Roan Plateau escarpment in Garfield County, Colorado. A minimum convex polygon around all six populations encloses an area of 7,161 ac (2,898 ha) and measures 18 mi (29 km) in length and 1 mi (2 km) in width. The total footprint of area actually occupied by the plants is 91.8 ac (37.2 ha), of which 66.6 percent is on private lands, and 33.3 percent is on lands managed by the BLM (Service 2011a, p. 3). Between the actual occupied areas there are interspaces of unoccupied habitat, so the acreage occupied by the species including these interspaces is quite a bit larger than the acres listed above. We roughly estimate there are 4,100 *P. debilis* individuals (Service 2011b, p. 2). The plant is specific to oil shale cliffs of the Parachute Creek Member and the Lower Part of the Green River Formation at elevations of 5,600 to 9,229 ft (1,707 to 2,813 m) (Service 2011c, p. 2; Tweto 1979). Plants are found on unstable shale soils with little other vegetation. The other vegetation comprises primarily other plant species endemic (known only) to the oil shale. Extremely low numbers and a highly restricted geographic range make the species particularly susceptible to becoming endangered in the forseeable future. Threats to the species and its habitat include energy development, road maintenance, inadequacy of existing regulatory mechanisms, and stochastic events.

Phacelia submutica is known from 9 populations (and 22 occurrences) centered on the town of DeBeque in Mesa and Garfield Counties, Colorado. A minimum convex polygon around all nine populations encloses an area of 82,231 ac (34,896 ha) and measures 19 mi (30 km) in length and 11 mi (17 km) in width. The total footprint of area actually occupied by the plants is 625.9 ac (253.3 ha), of which 80.9 percent is on lands managed by the BLM, 11.9 percent is on private lands, 6.4 percent is on lands managed by the U.S. Forest Service (USFS), and 0.7 percent is on lands managed by the Colorado Division of Wildlife (CDOW) (Service 2011a, pp. 6–7). Between the actual occupied areas there are interspaces of unoccupied habitat, so the acreage occupied by the species including these interspaces is quite a bit larger than the acres listed above. We estimate there may be as many as 68,000 *P. submutica* individuals in years when climatic conditions are favorable (Service 2011b, p. 4). The plant is known only from clay soils on the Atwell and Shire members of the Wasatch Formation at elevations of 5,080 to 7,100 ft (1,548 to 2,157 m) (Service 2011c, p. 3). The plants are found on clay barrens with little other vegetation. Surrounding these barren areas is a landscape of *Juniperus* spp. (juniper), *Artemisi*a spp. (sagebrush), *Atriple*x spp. (saltbush), and nonnative invasive *Bromus tectorum* (cheatgrass). The current range of *P. submutica* is subject to human-caused modifications from natural gas exploration and production with associated expansion of pipelines, roads, and utilities; development within the Westwide Energy Corridor; increased access to the habitat by off-highway vehicles (OHVs); soil and seed disturbance by livestock and other disturbances; and the inadequacy of existing regulatory mechanisms.

Previous Federal Actions

A complete description of previous Federal actions for *Ipomopsis polyantha, Penstemon debilis,* and Phacelia submutica is included in the final listing rule published concurrently with this proposal to designate critical habitat. On June 23, 2010, we proposed to list *I. polyantha* as an endangered species and we proposed to list *P. debilis and P. submutica* as threatened species under the Act (75 FR 35721).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features.

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies insure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain physical and biological features which are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical and biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its current range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards under the Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological evaluations or National Environmental Policy Act documents, or other unpublished materials and expert opinion or personal knowledge. In this case, we do not yet have recovery plans for these species.

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). The Intergovernmental Panel on Climate Change (IPCC) was established in 1988 by the World Meteorological Organization and the United Nations Environment Program in response to growing concerns about climate change and, in particular, the effects of global warming. The IPCC has concluded that the warming of the climate system is unequivocal, as evidenced from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level (IPCC 2007, pp. 6, 30; Karl *et al.* 2009, p. 17). Changes in the global climate system during the 21st century are likely to be larger than those observed during the 20th century (IPCC 2007, p. 19). Several scenarios are virtually certain or very likely to occur in the 21st century including: (1) Over most land, there will be warmer and fewer cold days and nights, and warmer and more frequent hot days and nights; (2) areas affected by drought will increase; and (3) the frequency of warm spells and heat waves over most land areas will likely increase (IPCC 2007, pp. 13, 53).

The IPCC predicts that the resiliency of many ecosystems is likely to be exceeded this century by an unprecedented combination of climate change, associated disturbances (*e.g.,* flooding, drought, wildfire, and insects), and other global drivers (IPCC 2007, pp. 31–33). With medium confidence, IPCC predicts that approximately 20 to 30 percent of plant and animal species assessed by the IPCC so far are likely to be at an increased risk of extinction if increases in global average temperature exceed 3 to 5 °Fahrenheit (F) (1.5 to 2.5 °Celsius (C)) (IPCC 2007, p. 48). Plant species with restricted ranges that also are climatically limited may experience population declines as a result of climate change (Schwartz and Brigham 2003, p. 11).

Regional projections indicate the Southwest, including western Colorado,

may experience the greatest temperature increase of any area in the lower 48 States (IPCC 2007, p. 30). Drought probability is predicted to increase in the Southwest (Karl *et al.* 2009, pp. 129–134), with summers warming more than winters, and annual temperature increasing approximately 4 °F (2.2 °C) by 2050 (Ray *et al.* 2008, p. 29). Additionally, the number of days over 90 °F (32 °C) could double by the end of the century (Karl *et al.* 2009, p. 34). Projections also show declines in snowpack across the West with the most dramatic declines at lower elevations (below 8,200 ft (2,500 m)) (Ray *et al.* 2008, p. 29). A 10 to 30 percent decrease in precipitation in mid-latitude western North America is projected by the year 2050, based on an ensemble of 12 climate models (Milly *et al.* 2005, p. 1). Overall, future projections for the Southwest include increased temperatures; more intense and longer-lasting heat waves; and increased probability of drought exacerbated by higher temperatures, heavier downpours, increased flooding, and increased erosion (Karl *et al.* 2009, pp. 129–134).

To obtain climate projections specific to the range of the three plant species of interest, we used a statistically downscaled model from the National Center for Atmospheric Research (NCAR) for a region covering western Colorado. The resulting projections indicate that temperature could increase an average of 4.5 °F (2.5 °C) by 2050 with the following seasonal increases: Summer (July to September) + 5.0 °F (2.8 °C); fall (October to December) + 4.0 °F (2.2 °C); winter (January to March) + 4.1 °F (2.3 °C); and spring (April to June) + 4.5 °F (2.5 °C) (University Corporation of Atmospheric Research (UCAR) 2009, pp. 1–14). In western Colorado, multi-model averages show a shift toward increased winter precipitation and decreased spring and summer precipitation by the end of the century (Ray *et al.* 2008, p. 34; Karl *et al.* 2009, p. 30). Similarly, the NCAR results show the highest probability of a 7.5 percent increase in average winter precipitation; an 11.4 percent decrease in average spring precipitation; a 2.1 percent decrease in average summer precipitation; and a 1.3 percent increase in average fall precipitation with an overall very slight decrease in 2050 (UCAR 2009, pp. 1–14).

Over the past 30 years, annual average temperature in west-central Colorado has increased by 0.9 °C (1.6 °F) and in the greater Pagosa Springs area temperature has increased 1.1 °C (1.9 °F) (Ray *et al.* 2008, p. 10). In Colorado, high variability in annual precipitation (because of the extreme changes in elevation) precludes detection of long-term trends at the local levels (Ray *et al.* 2008, p. 5). Only general assumptions and predictions can be made from these data. To examine local climate trends, we gathered temperature and precipitation data from the last 100 years at five weather stations (High Plains Regional Climate Center 2011, pp. 1–34; Service 2011d, pp. 1–72) in the vicinity of the three plant species (table 1). These data appear to be consistent with local trends in temperature discussed in the models above. Change in temperature averaged across the weather stations is approximately 1.68 °F (0.93 °C); change in temperature per century averaged across the weather stations is approximately 2.06 °F (1.14 °C). As noted previously, precipitation is variable across these weather stations and trend cannot be reasonably determined.

TABLE 1—CLIMATE TRENDS AT SELECT WEATHER STATIONS

[1890s–2010].

	Altenbern	Collbran	Parachute (Grand Valley)	Palisade	Pagosa springs
Species in Vicinity	Penstemon debilis; Phacelia submutica	Phacelia submutica	Penstemon debilis; Phacelia submutica	Penstemon debilis; Phacelia submutica	Ipomopsis polyantha
TEMPERATURE (°F)					
Data Period(s)[1]	1958–2010	1900–1966; 1970–1976; 1978–1999	1904–1914; 1965–1981	1911–2010	1906–1917; 1928–1932; 1934–1998
Change in Average Annual Temperature (°F)	+1.79	+1.45	+.76	+2.9	+1.48
Approximate Change in Temperature per Century (°F)	+3.37	+1.46	+.97	+2.9	+1.59
PRECIPITATION (inches)					
Data Period(s)[1]	1947–2010	1893–1966; 1970–1976; 1978–1999	1904–1914; 1965–1981	1911–1919; 1922–2010	1906–1917; 1928–1932; 1934–1998
Change in Average Annual Precipitation (inches)	+1.76	+1.49	−4.06	+1.77	−2.59
Approximate Change in Precipitation per Century (inches)	+2.84	+1.41	−5.2	+1.77	−2.79

[1] As indicated by time periods, data gaps exist for some weather stations.

[2] Data for some years is partial (less than 12 months of data); *e.g.,* data collection may have begun in September, or weather station was non-functioning for a period of time.

Recent analyses of long-term data sets show accelerating rates of climate change over the past 2 or 3 decades, indicating that the extension of plant and animal species' geographic range boundaries towards the poles or to higher elevations by progressive establishment of new local occurrences will become increasingly apparent in the short term (Hughes 2000, p. 60). Climate change may exacerbate the frequency and intensity of droughts in this area and result in reduced species' viability as the dry years become more common. Under drought conditions, plants generally are less vigorous and less successful in reproduction and may require several years to recover following drought (Weltzin *et al.* 2003, p. 946). With small populations and their inherent risk of genetic

complications, lowered reproduction could result in reduced population viability (Newman and Pilson 1997, pp. 354–362).

Climate modeling at this time has not been refined to a level that we can predict the amount of temperature and precipitation change locally within the limited range of *Ipomopsis polyantha, Penstemon debilis,* or *Phacelia submutica.* Therefore, we generally address what could happen based on current climate predictions for the region.

The limited geographic range of the Mancos shale substrate that underlies the entire *Ipomopsis poly*antha habitat likely limits the ability of the species to adapt by shifting its range in response to climatic conditions. *I. polyantha* is sensitive to the timing and amount of moisture due to its biennial life history. Thus, if climate change results in local drying, the species could experience a reduction in its reproductive output. In the ''*Physical and Biological Features''* section below, we have conservatively adjusted to known elevations occupied by the species upward and downward 328 ft (100 m) in an attempt to account for climate change.

It is unknown how *Penstemon debilis* responds to drought; however, for most plant species that grow in arid regions, plant numbers decrease during drought years, but recover in subsequent seasons that are less dry (Lauenroth *et al.* 1987, pp. 117–124; McDowell *et al.* 2008, pp. 719–739). Drought years could result in a loss of plants. The limited geographic range of the oil shale substrate that makes up the entire *P. debilis* habitat could limit the ability of the species to adapt to changes in climatic conditions by progressive establishment of new populations. In the ''*Physical and Biological Features''* section below, we have conservatively adjusted to known elevations occupied by the species upward and downward 328 ft (100 m) in an attempt to account for climate change.

Climate change is likely to affect *Phacelia submutica* because seed germination, seed dormancy, and persistence of the seed bank are all directly dependent on precipitation and temperature patterns (Levine *et al.* 2008, p. 805). Future changes in the timing of the first major spring rains each year, and temperatures associated with these rains, may more strongly affect germination and persistence of ephemeral annual plants than changes in season-long rainfall (barring severe droughts) (Levine *et al.* 2008, p. 805). Increasing environmental variance might decrease extinction risk for rare desert ephemeral plants, because these plants typically rely on extremely good years to restock the persistent seed bank while extremely bad years have little impact (Meyer *et al.* 2006, p. 901). A persistent seed bank enables the species to survive drought. However, extremely long droughts resulting from climate change, with no good years for replenishing the seed bank, would likely cause *P. submutica* to become endangered.

Because the soil can remain bare of *Phacelia submutica* plants for several years, it is difficult to identify and protect the seemingly unoccupied habitat that occurs in small, isolated patches that are easily destroyed by small-scale disturbances, and can be overlooked during habitat assessments. The longer the species remains dormant, the less likely it is that we will know if an area is occupied, reducing our ability to avoid impacts to the species and protect it from becoming endangered. While current climate change predictions are not reliable enough at the local level for us to draw conclusions about its effects on *P. submutica,* it is likely that there will be drying trends in the future and the seeds will remain dormant for long periods. This would make it increasingly difficult to detect occupied habitat and avoid destruction of habitat. In the ''*Physical and Biological Features''* section below, we have conservatively adjusted to known elevations occupied by the species upward and downward 328 ft (100 m) in an attempt to account for climate change.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of these three species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the penalties and enforcement provisions of section 11 of the Act if the prohibitions of section 9 of the Act have been violated. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical and Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical and biological features required for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica* from studies of these species' habitat, ecology, and life history as described below. Additional information on these species' habitats, ecology, and life histories can be found in the final listing rule published in today's **Federal Register**.

Ipomopsis polyantha

We have determined that *Ipomopsis polyantha* requires the following physical and biological features:

Space for Individual and Population Growth

Plant Community and Competitive Ability—*Ipomopsis polyantha* is found on barren shales, or in the open montane grassland (primarily *Festuca arizonica* (Arizona fescue)) understory at the edges of open *Pinus ponderosa* (Ponderosa pine), *Pinus ponderosa* and *Juniperus scopulorum* (Rocky Mountain juniper), or *J. osteosperma* (Utah

juniper) and *Quercus gambellii* (oak) plant communities (Anderson 2004, p. 20). Within these plant communities, the plant is found in open or more sparsely vegetated areas where plant cover is less than 5 or 10 percent, although these interspaces can be small within the greater plant community (less than 100 ft^2 (10 m^2)). Because the plant is found in these open areas it is thought to be a poor competitor. Dense stands of nonnative invasive grasses such as *Bromus inermis* (smooth brome) appear to almost totally exclude the species (Anderson 2004, p. 36).

Complexity in *I. polyantha* plant communities is important because pollinator diversity at *I. polyantha* sites is higher at more vegetatively diverse sites (Collins 1995, p. 107). The importance of pollinators for *I. polyantha* is further discussed under ''Reproduction'' below. Therefore, based on the information above, we identify sparsely vegetated, barren shales, Ponderosa pine margins, Ponderosa pine and juniper, or juniper and oak plant communities to be a physical or biological feature for this plant. Given that much of the area where *I. polyantha* currently exists has already been altered to some degree, these plant communities may be historical. For example, the adjacent forest that would have naturally occurred in *I. polyantha* habitat may have been thinned or removed. In another example, forage species may have been planted in habitat that was once more suitable for *I. polyantha.*

Elevation—Known populations of *Ipomopsis polyantha* are found from 6,750 to 7,775 ft (2,050 to 2,370 m) (Service 2011c, p. 1). Because plants have not been identified outside of this elevation band and because growing conditions frequently change across elevation gradients, we have identified elevations from 6,400 to 8,100 ft (1,950 to 2,475 m) to be a physical or biological feature for this plant. We have extended the elevation range 328 ft (100 m) upward and downward in an attempt to provide areas where the plant could migrate, given shifting climates (Callaghan *et al.* 2004, pp. 418–435; Crimmins *et al.* 2011, pp. 324–327). We consider this 328 ft (100 m) to be a conservative allowance since studies elsewhere on climate change elevational shifts have found more dramatic changes even in the last century: 95 ft (29 m) upward per decade (Lenoir *et al.* 2008, pp. 1768–1770), or an average of 279 ft (85 m) downward since the 1930s (Crimmins *et al.* 2011, pp. 324–327). We do not have information specific to *I. polyantha* elevational shifts. The above studies were done in different areas, western Europe and California, and looking at different species. Mancos shale habitats extend into these higher and lower elevations.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Soils—*Ipomopsis polyantha* is found on Mancos shale soils from the Upper Cretaceous period. These shales comprise a heavy gray clay loam alluvium (loose, unconsolidated) derived from shale, sandstone, clay, and residuum that is unconsolidated, weathered mineral material that has accumulated as consolidated rock and disintegrated in place (Collins 1995, pp. 2–4). These shale soils do not retain soil moisture and are difficult for plant survival. *I. polyantha* seeds grow best when germinated in these Mancos shale soils (Collins 1995, p. 87). We assume the soils where *I. polyantha* are found are among the harshest local sites for plant growth because of the lack of vegetation at occupied sites, and because the soils are heavy, droughty, and deficient in nutrients. Species that occupy such sites have been called ''stress-tolerators'' (Grime 1977, p. 1196). Because *I. polyantha* plants are found only on Mancos shale soils, and because greenhouse trials have found that seedlings grow best in Mancos shale soils, we have identified these Mancos shale soils as a physical or biological feature for this plant.

Climate—Average annual rainfall in Pagosa Springs is 20 inches (in.) (51 centimeters (cm)) (Anderson 2004, p. 21). Winters are cold with snow cover commonly present throughout the winter months. Winter snow is important for preventing severe frost damage to some plants during the winter months (Bannister *et al.* 2005, pp. 250–251) and may be important for *Ipomopsis polyantha.* Freezing temperatures can occur into June and even July, indicating that *I. polyantha* can tolerate frost because it grows and blooms during this time (Anderson 2004, p. 21). May and June, when *I. polyantha* blooms, are on average the driest months of the year (Anderson 2004, p. 21; Service 2011d, p. 52). Because *I. polyantha* has evolved in these climatic conditions, we have roughly identified suitable precipitation; cold, dry springs; and winter snow as physical or biological features for this plant. These climatic conditions are influenced, in part, by elevation.

Cover or Shelter

While *Ipomopsis polyantha* seeds and seedlings certainly require ''safe sites'' for their germination and establishment, these microclimates are too small to be considered or managed here as a physical or biological feature for this plant. Safe sites are those where the appropriate conditions for seedling germination and growth exist. We believe these features are encompassed in the ''Plant Community and Competitive Ability'' and ''Soils'' sections discussed above.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Reproduction—*Ipomopsis polyantha* sets far less fruit when self-pollinated (2 to 9 percent fruit set [self-pollinated] versus 47 percent fruit set in the presence of pollinator[s]) (Collins 1995, p. 36). Also, male and female reproductive parts are separated both spatially and temporally (Collins 1995, pp. 34–35). Therefore, we conclude that pollinators are necessary for the long-term successful reproduction and conservation of the plant. Over 30 different insects have been collected visiting *I. polyantha* flowers (Collins 1995, pp. 47–74). The primary pollinators are all bee species; these include the nonnative honeybee (*Apis mellifera*) and native bees that nest in the ground or twigs including species of *Augochlorella* (a type of Halictid or sweat bee), *Anthophora* (digger bees), *Bombus* (bumblebee), *Dialictus* (another type of Halictid or sweat bee), *Megachile* (leafcutter bees), and *Lasioglossum* (another type of Halictid or sweat bee) (Collins 1995, p. 71). Most of these pollinators are solitary and do not live communally, with the exception of the honeybee. Pollinator diversity was higher at *I. polyantha* sites with more complex plant communities (Collins 1995, p. 107). Because the evidence presented above demonstrates that pollinators are necessary for pollination of *I. polyantha,* we have identified pollinators and their associated habitats as an essential biological feature for this plant.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

Disturbance Regime—The native habitat of *Ipomopsis polyantha* has been extensively modified (Anderson 2004, p. 28). The species is considered a ruderal species, which means it is one of the first plant species to colonize disturbed lands. Seeds are not thought to disperse far. Plants are able to colonize nearby disturbed areas quickly. The species is found in light to moderately disturbed areas, such as rills (small, narrow, shallow incisions in

topsoil layers caused by erosion by overland flow or surface runoffs), areas that are only occasionally disturbed, or areas with previous disturbances that have been colonized and not subsequently disturbed (*i.e.,* previously cleared areas that have had some time to recover) (Anderson 2004, p. 23; 75 FR 35724–35726). Some of these disturbances are now maintained or created by human activities (such as light grazing or the recolonization of Mancos shale substrate roads that are no longer used) that mimic the constant erosion that occurs on the highly erosive Mancos shale soils and seem to maintain *I. polyantha* at a site. *I. polyantha* sites with constant or repetitive disturbance, especially sites with constant heavy grazing or repeated mowing, have been lost (Mayo 2008, pp. 1–2). Fire also may have played a role in maintaining open habitats and disturbances for *I. polyantha* in the past (Anderson 2004, p. 22), as it historically did in all Ponderosa pine forests across the West (USFS 2000, p. 97).

Interestingly, *Ipomopsis polyantha* individuals at newly disturbed sites were slightly more likely to self-pollinate than were plants in later successional areas (Collins 1995, p. 99), demonstrating that disturbance is important enough to *I. polyantha* that it may influence reproductive success (self-pollinated individuals are less reproductively successful) and possibly genetic diversity (self-pollination leads to lowered genetic diversity). Managing for an appropriate disturbance type and/or level can be difficult since we lack research to better quantify these measures. In this document we use qualitative terms, but specifically solicit further input on methods or mechanisms that can better quantify or describe these measures. Because *I. polyantha* is found only within areas with light to moderate or discontinuous disturbances, we have identified the disturbance regime to be a physical or biological feature for this plant.

Penstemon debilis

We have determined that *Penstemon debilis* requires the following physical and biological features:

Space for Individual and Population Growth

Plant Community and Competitive Ability—*Penstemon debilis* is found on steep, constantly shifting shale cliffs with little vegetation. The decline or loss of several populations has been attributed to encroaching vegetation; therefore, it is assumed that *P. debilis* is a poor competitor (McMullen 1998, p. 72). The areas where *P. debilis* are found are characterized as ''Rocky Mountain cliff and canyon'' (Southwest Regional Gap Analysis Project 2004). The plant community where *P. debilis* is found is unique, because instead of being dominated by one or two common species as most plant communities are, it has a high diversity of uncommon species that also are oil shale endemics (McMullen 1998, p. 5). These uncommon species include *Mentzelia rhizomata* (Roan Cliffs blazingstar), *Thalictrum heliophilum* (sun-loving meadowrue), *Astragalus lutosus* (dragon milkvetch), and the somewhat more common *Lesquerella parviflora* (Piceance bladderpod), *Penstemon osterhoutii* (Osterhout's beardtongue), and *Festuca dasyclada* (Utah or oil shale fescue) (McMullen 1998, p. 5). More common species include *Holodiscus discolor* (oceanspray), *Penstemon caespitosus* (Mat penstemon), *Cercocarpus montanus* (Mountain mahogany), and *Chrysothamnus viscidiflorus* (Yellow rabbitbrush) (O'Kane & Anderson 1987, p. 415; McMullen 1998, p. 5). We consider sparse vegetation (with less than 10 percent plant cover), assembled of other oil shale specific plants and not dominated by any one species, to be a physical or biological feature for this plant.

Elevation—Known populations of *Penstemon debilis* are found from 5,600 to 9,250 ft (1,700 to 2,820 m) in elevation (Service 2011c, p. 3). Because plants have not been identified outside of this elevation band and because growing conditions frequently change across elevation gradients, we have identified elevations from 5,250 to 9,600 ft (1,600 to 2,920 m) to be a physical or biological feature for this plant. We have extended the elevation range 328 ft (100 m) upward and downward in an attempt to provide areas where the plant could migrate, given shifting climates (Callaghan *et al.* 2004, pp. 418–435; Crimmins *et al.* 2011, pp. 324–327). We consider this 328 ft (100 m) to be a conservative allowance since studies on climate change elevational shifts have found more dramatic changes even in the last century: 95 ft (29 m) upward per decade (Lenoir *et al.* 2008, pp. 1768–1770), or an average of 279 ft (85 m) downward since the 1930s (Crimmins *et al.* 2011, pp. 324–327). We do not have information specific to P. debilis elevational shifts. The above studies were done in different areas, western Europe and California, and looking at different species. Oil shale habitats extend into these higher and lower elevations.

Slope—*Penstemon debilis* is generally found only on steep slopes (mean of 37 percent slope) and between cliff bands where the oil shale is constantly shifting and moving downhill (Service 2011c, p. 2). The plant also can be found on relatively flat sites, although nearby habitats are often steep. In general, the plant is found on steep, constantly eroding slopes; therefore, we identify moderate to steep slopes, generally over 15 percent slope, to be a physical or biological feature for this plant.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Soils—*Penstemon debilis* is known only from oil shale cliffs on the Roan Plateau escarpment and was previously described as occurring only on the Parachute Creek Member of the Green River Formation (McMullen 1998, p. 57). Our mapping exercises have found that the plant also is found on the Lower Part of the Green River Formation (Tweto 1979, pp. 1, 4). Populations are generally located either directly above or below the geologic feature known as the Mahogany Ledge (McMullen 1998, p. 63). All occupied sites are similar in soil morphology (form and structure) and are characterized by a surface layer of small to moderate shale channers (small flagstones) that shift continually due to the steep slopes (McMullen 1998, p. 64). Below the channers is a weakly developed calcareous, sandy to loamy layer with 40 to 90 percent coarse material.

Toxic elements in the soil such as arsenic and selenium accumulate in the tissues of *P. debilis* (McMullen 1998, p. 65) and may allow *P. debilis* to grow in areas that are more toxic to other species thereby reducing plant competition. Toxic elements in the soil vary between populations. In a greenhouse setting, *P. debilis* plants were grown easily in potting soil. Soil may not directly influence *P. debilis*' distribution, but may instead have an indirect effect on the plant's distribution by limiting the establishment of other vegetation (McMullen 1998, p. 67). Soil morphology, rather than soil chemistry, appears to better explain the plant's distribution (McMullen 1998, p. 74). Because the plant is only found on the Parachute Creek Member and Lower Part of the Green River Formation and because of the consistent soil morphology between sites, we are identifying these geologic formations as a physical or biological feature for the plant. We also looked at soil type as discussed below in ''*Criteria Used to Identify Critical Habitat''* but do not include it here as a physical or biological feature because it is a

component of the soil characteristics already described.

Climate—The average annual precipitation in the area where Penstemon debilis is found ranges from 12 to 18 in. (30 to 46 cm) (McMullen 1998, p. 63). Winters are cold (averaging roughly 30 °F (−1 °C) with snow staying on the ground in flatter areas, and summers are warmer (averaging roughly 65 °F (18 °C). Because P. debilis has evolved under these climatic conditions, we have identified suitable precipitation and suitable temperatures as physical or biological features for this plant. These climatic conditions are likely influenced, in part, by elevation.

Cover or Shelter

While Penstemon debilis seed and seedlings certainly require ''safe sites'' for their germination and establishment, these microclimates are too small to be considered or managed here as a physical or biological feature for this plant. We believe these features are encompassed in the ''plant community and competitive ability'' and ''soils'' sections discussed above.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Reproduction—Penstemon debilis requires insect pollinators for reproduction and is twice as reproductively successful if pollen comes from another plant (McMullen 1998, pp. 25, 43). Over 40 species of pollinators have been collected from P. debilis; the primary pollinators include four *Osmia* (mason bee) species, *Atoposmia elongata* (a close relative of Osmia), several *Bombus* (bumblebee) species, and a native wasp *Pseudomasaris vespoides.* All of these pollinators are ground or twig nesting. None of these pollinators are rare, nor are they specialists on P. debilis, although some of these pollinators, such as Osmia, are specialists within the genus *Penstemon* (McMullen 1998, p. 11). The number and type of pollinators differ between P. debilis sites (McMullen 1998, p. 27). Fruit set is not limited by inadequate numbers of pollinators (McMullen 1998, p. 27). Because the evidence presented above demonstrates that pollinators are necessary for pollination of P. debilis, we have identified pollinators and their associated habitats as a physical or biological feature for this plant.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

Disturbance Regime—Penstemon debilis is found on steep oil shale slopes that are constantly shifting. The plant has underground stems (rhizomes) that are an adaptation to this constant shifting (McMullen 1998, p. 58). As the shale shifts downward, the underground stems and clusters of leaves emerge downhill. A single plant may actually appear as many different plants that are connected by these underground stems (McMullen 1998, p. 58). In sites where the soils have stabilized and vegetation has encroached, P. debilis has been extirpated (lost) (McMullen 1998, p. 72). Managing for an appropriate disturbance type and/or level can be difficult since we lack research to better quantify these measures. In this document we use qualitative terms, but specifically solicit further input on methods or mechanisms that can better quantify or describe these measures. For these reasons, we consider these unstable and slow to moderate levels of constantly shifting shale slopes to be a physical or biological feature for the species.

Phacelia submutica

We have determined that *Phacelia submutica* requires the following physical and biological features:

Space for Individual and Population Growth

Plant Community and Competitive Ability—Predominant vegetation classifications within the occupied range of *Phacelia submutica* include clay badlands, mixed salt desert scrub, and *Artemisia tridentata* (big sagebrush) shrubland, within the greater *Pinus edulis* (pinyon)–*Juniperus* spp. (juniper) woodlands type (O'Kane 1987, pp. 14–15; Ladyman 2003, pp. 14–16). Within these vegetated areas, *P. submutica* is found on sparsely vegetated barren areas with total plant cover generally less than 10 percent (Burt and Spackman 1995, p. 20). On these barren areas, *P. submutica* can be found alone or in association with other species. Associated plant species at sites occupied by *P. submutica* include: the nonnative *Bromus tectorum* (cheatgrass) and native species *Grindelia fastigiata* (pointed gumweed), *Eriogonum gordonii* (Gordon's buckwheat), *Monolepis nuttalliana* (Nuttall's povertyweed), and *Oenothera caespitosa* (tufted evening primrose) (Burt and Spackman 1995, p. 20; Ladyman 2003, pp. 15–16). Many of these associated species also are annuals (growing for only 1 year). Because of the harshness and sometimes the steepness of occupied sites, these areas are maintained in an early successional state (Ladyman, 2003, p. 18). Therefore, the species found in these habitats are regarded as pioneers that are continually colonizing these bare areas and then dying (O'Kane 1987, p. 15). Pioneer species are often assumed to be poor competitors (Grime 1977, p. 1169). For the reasons discussed above, we identify barren clay badlands with less than 20 percent cover of other plant species to be a physical or biological feature for this plant. We have adjusted the relative plant cover upwards to capture the potential plant cover in moist years when other species may be somewhat more abundant.

Elevation—Known populations of *Phacelia submutica* occur within a narrow range of elevations from about 5,000 to 7,150 ft (1,500 to 2,175 m) (Service 2011c, p. 3). Elevation is a key factor in determining the temperature and moisture microclimate of this species. Because plants have not been identified outside of this elevation band and because growing conditions frequently change across elevation gradients, we have identified elevations from 4,600 to 7,450 ft (1,400 to 2,275 m) to be a physical or biological feature for this plant. We have extended the elevation range 328 ft (100 m) upward and downward in an attempt to provide areas where the plant could migrate, given shifting climates (Callaghan *et al.* 2004, pp. 418–435; Crimmins *et al.* 2011, pp. 324–327). We consider this 100 meters to be a conservative allowance since studies on climate change elevational shifts have found more dramatic changes even in the last century: 95 ft (29 m) upward per decade (Lenoir *et al.* 2008, pp. 1768–1770), or an average of 279 ft (85 m) downward since the 1930s (Crimmins *et al.* 2011, pp. 324–327). We do not have information specific to *P. submutica* elevational shifts. The above studies were done in different areas, western Europe and California, and looking at different species. Suitable habitats extend into these higher and lower elevations.

Topography (surface shape)—*Phacelia submutica* is found on slopes ranging from almost flat to 42 degrees, with the average around 14 degrees (Service 2011c, p. 3). Plants are generally found on moderately steep slopes, benches, and ridge tops adjacent to valley floors (Ladyman 2003, p. 15). The relative position of *P. submutica* is consistent from site to site; therefore, we recognize appropriate topography (suitable slopes, benches and ridge tops, or moderately steep slopes adjacent to valley floors) as a physical or biological feature for the plant.

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Soils—*Phacelia submutica* grows only on barren clay soils derived from the Atwell Gulch and Shire members of the Eocene and Paleocene Wasatch geological formation (Donnell 1969, pp. M13–M14; O'Kane 1987, p. 10). The Atwell Gulch member is found below the bluish gray Molina member, and the Shire member is found above the Molina member (Decker *et al.* 2005, p. 3). The plant is found in unique, very small areas (from 10 to 1,000 ft^2 (1 to 100 m^2)) on colorful exposures of chocolate to purplish brown, dark charcoal gray, and tan clay soils (Burt and Spackman 1995, pp. 15, 20; Ladyman 2003, p. 15; Grauch 2011, pers. comm.). We do not fully understand why *P. submutica* is limited to the small areas where it is found, but the plant usually grows on the one unique small spot of shrink-swell clay that shows a slightly different texture and color than the similar surrounding soils (Burt and Spackman 1995, p. 15). Ongoing species-specific soil analyses have found that the alkaline soils (with specific pH ranging from 7 to 8.9) where *P. submutica* are found have higher clay content than nearby unoccupied soils, although there is some overlap (Grauch 2011, pers. comm.). The shrink-swell action of these clay soils and the cracks that are formed upon drying appear essential to maintenance of the species' seed bank since the cracks capture the seeds and maintain the seed bank on site (O'Kane 1988, p. 462; Ladyman 2003, pp 16–17). Based on the information above, we consider the small soil inclusions where *P. submutica* is found that are characterized by shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation to represent a physical or biological feature for *P. submutica.*

Climate—*Phacelia submutica* abundance varies considerably from year to year. In 1 year almost no plants may emerge at a site, and in another year at the same site, hundreds or even thousands of individuals may grow (Burt and Spackman 1995, p. 24). We do not understand what environmental factors (temperature, rainfall, or snowfall) affect these dramatic changes in abundance from 1 year to the next, but it is assumed they are climatic in nature (Burt and Spackman 1885, p. 24). Wetter years seem to produce more individuals (O'Kane 1987, p. 16). However, without the right combination of precipitation and temperature within a short window of time in the spring, the species may produce very few seedlings or mature plants, sometimes for several consecutive years. We believe it is necessary to conserve habitat across the entire range of the species to account for the variation in local weather events, to allow for plants to grow at some sites and not others on an annual basis. Because climatic factors dramatically influence the number of *P. submutica* individuals that are produced in a given year, we identify climate as a physical or biological feature for the plant; however, we recognize that we are unable to identify exactly what these climatic factors encompass except that the amount of moisture and its timing is critical. Climatic data from four weather stations (Table 1) indicate that average annual precipitation is between 10 to 16 in. (25 and 41 cm), with less precipitation generally falling in June (as well as December–February) than other months, and with cold winters (sometimes with snow cover) and warmer summers.

Cover or Shelter

While *Phacelia submutica* seed and seedlings certainly require ''safe sites'' for their germination and establishment, these microclimates are too small to be considered or managed here as a physical or biological feature for this plant. We believe these features are encompassed in the ''plant community and competitive ability'' and ''soils'' sections discussed above.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Reproduction and Seed Banks—We do not yet understand the pollination and seed dispersal mechanisms of *Phacelia submutica.* Pollinators have not been observed visiting the flowers of *P. submutica.* Currently it is believed that pollinators may not be required for reproduction because of the minute flower size, a lack of obvious pollinators, and because the reproductive parts are hidden within the petals. We also do not understand how seeds are dispersed. Seed banks are established where seeds fall into the cracks of shrink-swell clay (O'Kane 1988, p. 462). We recognize that habitat conducive for successful reproduction is a physical or biological feature for *P. submutica* but do not understand more specifically what features are important for this reproduction. In addition, seed banks are especially important for annual species that may not emerge when climatic conditions are unfavorable (Levine *et al.* 2008, pp. 795–806; Meyer *et al.* 2005, pp. 15–16, 21). For this reason, we identify boom years at regular intervals such that the seed bank is maintained as a physical or biological feature for *P. submutica.* We lack further information on how long-lived seeds are in the seed bank and at what intervals the seed bank needs to be replenished to provide specifics but are hopeful that ongoing research will assist in answering some of these questions.

Habitats Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distributions of the Species

Disturbance Regime—The steeper clay barrens where *Phacelia submutica* is sometimes found experience some erosion, and the shrinking and swelling of clay soils creates a continuous disturbance (Ladyman 2003, p. 16). *Phacelia submutica* has adapted to these light to moderate disturbances, although occasionally plants are pushed out of the shrinking or swelling soils and die (O'Kane 1987, p. 20). Clay soils are relatively stable when dry but are extremely vulnerable to disturbances when wet (Rengasmy *et al.* 1984, p. 63). *P. submutica* has evolved with some light natural disturbances, mostly in the form of erosion and shrink-swell process. Heavy disturbances, and even light disturbances when soils are wet, could impact the species and its seed bank. These disturbances can include OHV use, livestock and wild ungulate grazing, and activities associated with oil and gas development. Managing for an appropriate disturbance type and/or level can be difficult since we lack research to better quantify these measures. In this document we use qualitative terms, but specifically solicit further input on methods or mechanisms that can better quantify or describe these measures. For the reasons discussed above, we identify an environment free from moderate to heavy disturbances when soils are dry and free from all disturbances when soils are wet to be a physical or biological feature for *P. submutica.*

Primary Constituent Elements for Ipomopsis polyantha, Penstemon debilis, and Phacelia submutica

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica* in geographic areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical and biological features that provide for a species' life-

history processes and are essential to the conservation of the species.

Ipomopsis polyantha

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to *Ipomopsis polyantha* are:

(i) *Mancos shale soils.*

(ii) *Elevation and climate.* Elevations from 6,400 to 8,100 ft (1,950 to 2,475m) and current climatic conditions similar to those that historically occurred around Pagosa Springs, Colorado. Climatic conditions include suitable precipitation; cold, dry springs; and winter snow.

(iii) Plant Community.

a. Suitable native plant communities (as described in b. below) with small (less than 100 ft^2 (10 m^2) or larger (several hectares or acres) barren areas with less than 20 percent plant cover in the actual barren areas.

b. Appropriate native plant communities, although these communities may not be like they were historically because they have already been altered. Therefore, the species can be found in areas where only the potential for the appropriate native plant community exists. For example, Ponderosa pine forests may have been cut or areas that had native vegetation may have been scraped. Native habitats and plants are desirable; however, because of the state of the habitat, altered habitats including some nonnative invasive species should not be discounted. These plant communities include:

i. Barren shales,

ii. Open montane grassland (primarily Arizona fescue) understory at the edges of open Ponderosa pine, or

iii. Clearings within the ponderosa pine and Rocky Mountain juniper and Utah juniper and oak communities.

(iv) *Habitat for pollinators.* Please see ''Special Management Considerations'' for further discussions of habitat fragmentation and pollinator habitats and foraging ranges.

a. Pollinator ground and twig nesting areas. Habitats suitable for a wide array of pollinators and their life history and nesting requirements. A mosaic of native plant communities generally would provide for this diversity.

b. Connectivity between areas allowing pollinators to move from one site to the next within each population.

c. Availability of other floral resources; this would include other flowering plant species that provide nectar and pollen for pollinators. Grass species do not provide resources for pollinators.

d. To conserve and accommodate these pollinator requirements, we have identified a 3,280-ft (1,000-m) area beyond occupied habitat to conserve the pollinators essential for reproduction.

(v) *Appropriate disturbance regime.* Please see ''*Physical and Biological Features''* above for a further discussion of the qualitative terms discussed below.

a. Appropriate disturbance levels—Light to moderate, or intermittent or discontinuous.

b. Naturally maintained disturbances through soil erosion or human maintained disturbances that can include light grazing, occasional ground clearing, and other disturbances that are not severe or continual.

With this proposed designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species through the identification of the primary constituent elements sufficient to support the life-history processes of the species. Two units proposed to be designated as critical habitat are currently occupied by *Ipomopsis polyantha* and contain the primary constituent elements to support the life-history needs of the species.

Because two populations do not offer adequate redundancy for the survival and recovery of *Ipomopsis polyantha,* we have determined that unoccupied areas are essential for the conservation of the species. Two additional units proposed to be designated as critical habitat are currently unoccupied by *I. polyantha*. We consider these units essential for the conservation of the species, as discussed below under ''Special Management Considerations.'' In addition, we believe the unoccupied units contain the primary constituent elements in the appropriate quantity and spatial arrangement sufficient to support the life-history needs of the species.

Penstemon debilis

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to Penstemon debilis are:

(i) *Suitable Soils and Geology.*

a. Parachute Member and the Lower part of the Green River Formation, although soils outside these formations would be suitable for pollinators (see *High levels of natural disturbanc*e below).

b. Appropriate soil morphology characterized by a surface layer of small to moderate shale channers (small flagstones) that shift continually due to the steep slopes and below a weakly developed calcareous, sandy to loamy layer with 40 to 90 percent coarse material.

(ii) *Elevation and climate.* Elevations from 5,250 to 9,600 ft (1,600 to 2,920 m). Climatic conditions similar to those of the Mahogany Bench, including suitable precipitation and temperatures.

(iii) *Plant Community.*

a. Barren areas with less than 10 percent plant cover.

b. Presence of other oil shale endemics, including *Mentzelia rhizomata, Thalictrum heliophilum, Astragalus lutosus, Lesquerella parviflora, Penstemon osterhoutii,* and *Festuca dasyclada.*

(iv) *Habitat for pollinators.* Please see ''Special Management Considerations'' for further discussions of habitat fragmentation and pollinator habitats and foraging ranges.

a. Pollinator ground and twig nesting habitats. Habitats suitable for a wide array of pollinators and their life history and nesting requirements. A mosaic of native plant communities generally would provide for this diversity (see *Plant Community* above). These habitats can include areas outside of the soils identified in *Suitable Soils and Geology.*

b. Connectivity between areas allowing pollinators to move from one population to the next within units.

c. Availability of other floral resources. This would include other flowering plant species that provide nectar and pollen for pollinators. Grass species do not provide resources for pollinators.

d. To conserve and accommodate these pollinator requirements, we have identified a 3,280-ft (1,000-m) area beyond occupied habitat to conserve the pollinators essential for reproduction.

(v) *High levels of natural disturbance.* Please see ''*Physical and Biological Features''* above for a further discussion of the qualitative terms discussed below.

a. Very little or no soil formation.

b. Slow to moderate, but constant, downward motion of the oil shale that maintains the habitat in an early successional state.

With this proposed designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species through the identification of the primary constituent elements sufficient to support the life-history processes of the species. Two units proposed to be designated as critical habitat are

currently occupied by Penstemon debilis and contain the primary constituent elements to support the life-history needs of the species. Two additional units proposed to be designated as critical habitat are currently unoccupied by P. debilis. Currently occupied areas do not adequately provide for the conservation of the species, because of a lack of redundancy. We consider these units essential for the conservation of the species, as discussed below under ''Special Management Considerations.'' In addition, we believe the unoccupied units contain the primary constituent elements to support the life-history needs of the species.

Phacelia submutica

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to *Phacelia submutica* are:

(i) *Suitable Soils and Geology.*

a. Atwell Gulch and Shire members of the Wasatch formation.

b. Within these larger formations, small areas (from 10 to 1,000 ft^2 (1 to 100 m^2)) on colorful exposures of chocolate to purplish brown, light to dark charcoal gray, and tan clay soils are especially important. These small areas are slightly different in texture and color than the similar surrounding soils. Occupied sites are characterized by alkaline (pH range from 7 to 8.9) soils with higher clay content than similar nearby unoccupied soils.

c. Clay soils that shrink and swell dramatically upon drying and wetting and are likely important in the maintenance of the seed bank.

(ii) *Topography.* Moderately steep slopes, benches, and ridge tops adjacent to valley floors. Occupied slopes range from 2 to 42 degrees with an average of 14 degrees.

(iii) *Elevation and climate.*

a. Elevations from 4,600 to 7,450 ft (1,400 to 2,275 m).

b. Climatic conditions similar to those around DeBeque, Colorado, including suitable precipitation and temperatures. Annual fluctuations in moisture (and probably temperature) greatly influences the number of *Phacelia submutica* individuals that grow in a given year and are thus able to set seed and replenish the seed bank.

(iv) *Plant Community.*

a. Small (from 10 to 1,000 ft^2 (1 to 100 m^2)) barren areas with less than 20 percent plant cover in the actual barren areas.

b. Presence of appropriate associated species that can include (but are not limited to) the natives *Grindelia fastigiata, Eriogonum gordonii, Monolepis nuttalliana, and Oenothera caespitosa.* If sites become dominated by *Bromus tectorum* or other invasive nonnative species, they should not be discounted because *Phacelia subm*utica may still be found there.

c. Appropriate plant communities within the greater pinyon–juniper woodlands that include:

(i) Clay badlands within the mixed salt desert scrub, or

(ii) Clay badlands within big sagebrush shrublands.

(v) *Maintenance of the Seed Bank and Appropriate Disturbance Levels.* Please see ''Physical and Biological Features'' above for a further discussion of the qualitative terms discussed below.

a. Within suitable soil and geologies (see *Suitable Soils and Geology* above), undisturbed areas where seed banks are left undamaged.

b. Areas with light disturbance when dry and no disturbance when wet. Clay soils are relatively stable when dry but are extremely vulnerable to disturbances when wet.

Phacelia submutica has evolved with some light natural disturbances, including erosional and shrink-swell processes. However, human disturbances that are either heavy or light when soils are wet could impact the species and its seed bank. Because we do not understand how the seed bank may respond to disturbances, more heavily disturbed areas should be evaluated, over the course of several years, for the species' presence.

With this proposed designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species through the identification of the primary constituent elements sufficient to support the life-history processes of the species. All units and subunits proposed to be designated as critical habitat are currently occupied by *Phacelia submutica* and contain the primary constituent elements sufficient to support the life-history needs of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the physical and biological features within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. All areas proposed for designation as critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the three plants. In all units, special management will be required to ensure that the habitat is able to provide for the growth and reproduction of the species.

A detailed discussion of threats to *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica* and their habitat can be found in the final listing rule elsewhere in today's **Federal Register**. The primary threats impacting the physical and biological features essential to the conservation of *I. polyantha, P. debilis*, and *P. submutica* that may require special management considerations or protection within the proposed critical habitat include, but are not limited to, the following:

Ipomopsis polyantha

The features essential to the conservation of this species (plant community and competitive ability, elevation, soils, climate, reproduction, and disturbance regime) may require special management considerations or protection to reduce threats. *Ipomopsis polyantha's* highly restricted soil requirements and geographic range make it particularly susceptible to extinction at any time from commercial, municipal, and residential development; associated road and utility improvements and maintenance; heavy livestock use; inadequacy of existing regulatory mechanisms; fragmented habitat; and prolonged drought. Over 86 percent of the species' occupied habitat is on private land with no limits on development (75 FR 35740; June 23, 2010).

Special management considerations or protections are required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include (but are not limited to): Introducing new *Ipomopsis polyantha* populations; establishing permanent conservation easements or land acquisition to protect the species on private lands; developing zoning regulations that could serve to protect the species; establishing conservation agreements on private and Federal lands to identify and reduce threats to the species and its features; eliminating the use of smooth brome and other competitive species in areas occupied by the species; promoting/encouraging habitat restoration; developing other regulatory mechanisms to further protect the species; placing roads and utility lines away from the species; minimizing

heavy use of habitat by livestock; and minimizing habitat fragmentation.

These management activities would protect the primary constituent elements for the species by preventing the loss of habitat and individuals, maintaining or restoring plant communities and natural levels of competition, protecting the plant's reproduction by protecting its pollinators, and managing for appropriate levels of disturbance.

Penstemon debilis

The features essential to the conservation of this species (plant community and competitive ability, elevation, slope, soils, climate, reproduction, and disturbance regime) may require special management considerations or protection to reduce threats. Extremely low numbers and a highly restricted geographic range make Penstemon debilis particularly susceptible to becoming endangered in the foreseeable future. Threats to the species and its habitat include energy development, road maintenance, and inadequacy of existing regulatory mechanisms (75 FR 35740; June 23, 2010).

Special management considerations or protections are required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include (but are not limited to): the introduction of new Penstemon debilis populations; the establishment of permanent conservation easements or land acquisition to protect the species on private lands; regulations and/or agreements that balance conservation with energy development in areas that would affect the species and its pollinators; the designation of protected areas with specific provisions and protections for the plant; the elimination or avoidance of activities that alter the morphology and status of the shale slopes; and avoidance of placing roads in habitats that would affect the plant or its pollinators.

These management activities would protect the primary constituent elements for the species by preventing the loss of habitat and individuals, maintaining or restoring plant communities and natural levels of competition, protecting the plant's reproduction by protecting its pollinators, and managing for appropriate levels and types of disturbance.

Phacelia submutica

The features essential to the conservation of this species (plant community and competitive ability, elevation, topography, soils, climate, reproduction and seed bank, and disturbance regime) may require special management considerations or protection to reduce threats. The current range of *Phacelia submutica* is subject to human-caused modifications from natural gas exploration and production with associated expansion of pipelines, roads, and utilities; development within the Westwide Energy Corridor; increased access to the habitat by OHVs; soil and seed disturbance by livestock and other human-caused disturbances; nonnative invasive species including *Bromus tectorum and Halogeton glomeratus* (halogeton); and inadequate regulations (75 FR 35741; June 23, 2010).

Special management considerations or protections are required within critical habitat areas to address these threats. Management activities that could ameliorate these threats include (but are not limited to): Development of regulations and/or agreements to balance conservation with energy development and minimize its effects in areas where the species resides; minimization of OHV use; placement of roads and utility lines away from the species and its habitat; minimization of livestock use or other human-caused disturbances that disturb the soil or seeds; and the minimization of habitat fragmentation.

These management activities would protect the primary constituent elements for the species by preventing the loss of habitat and individuals, protecting the plant's habitat and soils, and managing for appropriate levels of disturbance.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available to designate critical habitat. We review all available information pertaining to the habitat requirements of the species.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical and biological features essential for the conservation of Penstemon debilis and *Phacelia submutica.* The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. In the case of *Ipomopsis polyantha,* because the plant is often found growing on partially developed sites, around buildings, or immediately adjacent to roads, we did not attempt to exclude buildings, pavement, and other structures. For all three species, any developed lands left inside critical habitat boundaries shown on the maps of this proposed rule are not proposed for designation as critical habitat as per regulation. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultations with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical and biological features essential to the conservation of the species within adjacent critical habitat.

All units are proposed for designation based on sufficient elements of physical and biological features being present to support *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica* life-history processes. Some units contain all of the identified elements of physical and biological features and supported multiple life-history processes. Unoccupied units contain only the elements of the physical and biological features necessary to support the species' particular use of that habitat but not the multiple life-history processes since they are unoccupied.

Small populations and plant species with limited distributions, like those of *Ipomopsis polyantha* and Penstemon debilis, are vulnerable to relatively minor environmental disturbances (Given 1994, pp. 66–67; Frankham 2005, pp. 135–136), and are subject to the loss of genetic diversity from genetic drift, the random loss of genes, and inbreeding (Ellstrand and Elam 1993, pp. 217–237; Leimu *et al.* 2006, pp. 942–952). Plant populations with lowered genetic diversity are more prone to local extinction (Barrett and Kohn 1991, pp. 4, 28). Smaller plant populations generally have lower genetic diversity, and lower genetic diversity may in turn lead to even smaller populations by decreasing the species' ability to adapt, thereby increasing the probability of population extinction (Newman and Pilson 1997, p. 360; Palstra and Ruzzante 2008, pp. 3428–3447). Because of the dangers associated with small populations or limited distributions, the recovery of many rare plant species includes the creation of new sites or reintroductions to ameliorate these effects.

Genetic analysis of *Ipomopsis polyantha* has not been conducted; therefore, we do not understand the genetic diversity of this species. Given the species' limited extent and presence

in only two populations, we expect the species may be suffering from low genetic diversity or could in the future.

Genetic research on Penstemon debilis has found that there is more genetic diversity in larger populations than smaller populations, that the northeastern populations are more closely related to one another than to the southwestern populations, that inbreeding is common within each population, and that genetic diversity for the species is low when compared with other species of plants with similar life history traits (Wolfe 2010, p. 1). Small population sizes with few individuals are a problem for this species, as supported by this research.

When designating critical habitat for a species, we attempt to consider the species' survival and recoverability, as outlined in the destruction or adverse modification standard. Realizing that the current occupied habitat is not enough for the survival and recovery of *Ipomopsis polyantha* and Penstemon debilis, we worked with species' experts to identify unoccupied habitat essential for the conservation of these two species. The justification for why unoccupied habitat is essential to the conservation of these species and methodology used to identify the best unoccupied areas for consideration for inclusion is described under ''*Criteria Used to Identify Critical Habitat''* section below.

Habitat fragmentation can have negative effects on biological populations, especially rare plants, and affect survival and recovery (Aguilar *et al.* 2008, pp. 5177–5188). Fragments are often not of sufficient size to support the natural diversity prevalent in an area and thus exhibit a decline in biodiversity (Noss and Cooperrider 1994, pp. 50–54). Habitat fragments are often functionally smaller than they appear because edge effects (such as increased nonnative invasive species or wind speeds) impact the available habitat within the fragment (Lienert and Fischer 2003, p. 597). Habitat fragmentation has been shown to disrupt plant-pollinator interactions and predator-prey interactions (Steffan-Dewenter and Tscharntke 1999, pp. 432–440), alter seed germination percentages (Menges 1991, pp. 158–164), and result in low fruit set (Cunningham 2000, pp. 1149–1152). Extensive habitat fragmentation can result in dramatic fluxes in available solar radiation, water, and nutrients (Saunders *et al.* 1991, pp. 18–32).

Shaffer and Stein (2000) identify a methodology for conserving imperiled species known as the three Rs: Representation, resiliency, and redundancy. Representation, or preserving some of everything, means conserving not just a species but its associated plant communities, pollinators, and pollinator habitats. Resiliency and redundancy ensure there is enough of a species so it can survive into the future. Resiliency means ensuring that the habitat is adequate for a species and its representative components. Redundancy ensures an adequate number of sites and individuals. This methodology has been widely accepted as a reasonable conservation methodology (Tear *et al.* 2005, p. 841).

We have addressed representation through our primary constituent elements for each species (as discussed above) and by providing habitat for pollinators of *Ipomopsis polyantha* and Penstemon debilis (as discussed further under ''*Ipomopsis polyantha''* below). For *Phacelia submutica,* we believe that the occupied habitat provides for both resiliency and redundancy and that with conservation of these areas, the species should be conserved and sustained into the future. For *I. polyantha,* there are only two known populations, both with few or no protections in place (low resiliency). For adequate resiliency, we believe it is necessary for the survival and recovery of *I. polyantha* that additional populations with further protections be established. Therefore, we have identified two unoccupied areas as proposed critical habitat units (CHUs) for *I. polyantha.* For P. debilis, there are only approximately 4,000 known individuals (low redundancy) and all within two concentrated areas (low resiliency). For adequate redundancy and resiliency, we believe it is necessary for survival and recovery that additional populations of P. debilis be established. Therefore, we have identified two unoccupied areas as proposed CHUs for P. debilis.

Ipomopsis polyantha

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. For *Ipomopsis polyantha,* we are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing in 2011. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing, because such areas are essential for the conservation of the species.

Occupied critical habitat was identified by delineating all known sites within a population (Colorado Natural Heritage Program (CNHP) 2010b, p. 1), placing a minimum convex polygon around the perimeter of all sites, and then adding an additional 3,280-ft (1,000-m) area for pollinator habitat. The distance that pollinators can travel is significant to plants including *Ipomopsis polyantha* because pollen transfer and seed dispersal are the only mechanisms for genetic exchange. Both pollen and seed dispersal can vary widely by plant species (Ellstrand 2003, p. 1164). In general, pollinators will focus on small areas where floral resources are abundant; however, occasional longer distance pollination will occur, albeit infrequently. No research has been conducted on flight distances of *I. polyantha's* pollinators. Therefore, we rely on general pollinator travel distances described in the literature.

Typically, pollinators fly distances that are in relation to their body sizes, with smaller pollinators flying shorter distances than larger pollinators (Greenleaf *et al.* 2007, pp. 589–596). If a pollinator can fly long distances, pollen transfer is also possible across these distances. The largest pollinators of *Ipomopsis polyantha* are bumblebee species (*Bombus* spp.). In one study, the buff-tailed bumblebee (*Bombus terrestris*) flew a maximum distance of 2,037 ft (621 m) (Osborne *et al.* 1999, pp. 524–526). The bumblebee-pollinated plant species, *Scabiosa columbaria* (dove pincushions), experienced decreased pollen flow at a patch isolation distance of 82 ft (25 m), and little to no pollen transfer when patches were isolated by 656 ft (200 m) (Velterop 2000, p. 65).

In contrast, another study found that displaced buff-tailed bumblebee individuals were able to return to their nests from distances over 5.6 mi (9 km) (Goulson and Stout 2001, p. 108). Another study found that buff-tailed bumblebee workers (resource collectors) were recaptured while foraging on super-abundant resources at distances of 1.1 mi (1.75 km) from the nest (Walther-Hellwig and Frankl 2000, p. 303). These studies suggest variability in the distances over which pollen transfer may occur and over which bumblebee species can travel. *Ipomopsis polyantha* sites within populations can be separated by more than 3,280 ft (1000 m) making conservation of these large pollinators especially important for genetic exchange between sites. In the interest of protecting *Ipomopsis polyantha's* pollinators, we have identified a 3,280-ft (1,000-m) wide

pollinator area. This area has the added benefit of providing more habitat for *I. polyantha* to potentially expand into, in the future.

A recovery plan has not yet been written for *Ipomopsis polyantha.* However, as described above, with only two known populations of *I. polyantha,* both of which are located largely on private lands with few protections, we expect that future recovery efforts will include efforts to improve resiliency by increasing the number of populations; therefore, we also are proposing to designate unoccupied habitat. We determined that not all potential habitat (Mancos shale soil layer near the town of Pagosa Springs) for *I. polyantha* was essential to the conservation of the species, and in keeping with section 3(5)(C) of the Act, which states that critical habitat may not include the entire geographical area which can be occupied by the species, we carefully refined the area proposed for designation.

To assist us in determining which specific areas may be essential to the conservation of the species and considered for inclusion in this proposal, we not only evaluated the biological contribution of an area, but also evaluated the conservation potential of the area through the overlay of a designation of critical habitat. While we recognize that there is an education value to designating an area as critical habitat, the more prevailing benefit is consultation under section 7 of the Act on activities that may affect critical habitat on Federal lands or where a Federal action may exist. Thus, in evaluating the potential conservation value of an unoccupied area for inclusion in critical habitat, we first focused on lands that are biologically important to the species and then considered which of those lands were under Federal ownership or likely to have a Federal action occur on them. If the inclusion of areas that met those criteria were not sufficient to conserve the species, we then evaluated other specific areas on private lands that were not likely to have a Federal action on them. Unoccupied critical habitat was identified by overlaying the Mancos shale soil layer around Pagosa Springs with Federal ownership (Service 2011e, p. 1). As little overlap occurred where Mancos shale soils and Federal lands intersected with habitat supporting the appropriate plant communities for future *I. polyantha* introductions, habitat is somewhat limited in suitable areas. Upon discussions with local species and area experts as well as land managers, we identified two areas on USFS lands as potential recovery or introduction areas for *I. polyantha.* These two areas include the O'Neal Hill Special Botanical Area and Eight Mile Mesa, both managed by USFS. These areas contain the primary constituent elements sufficient to support the life-history needs of the species, including Mancos shale soils and appropriate plant communities, and when added to the proposed occupied areas would provide sufficient resiliency, redundancy, and representation for the conservation of the species.

We delineated the critical habitat unit (CHU) boundaries for *Ipomopsis polyantha* using the following steps:

(1) In determining what areas were occupied by *Ipomopsis polyantha*, we used data collected by the CNHP (O'Kane 1985, maps; Lyon 2002, p. 3; Lyon and Mayo 2005, pp. 2–7; CNHP 2008; 2010a, pp. 1–8), BLM (Brinton 2010, pers. comm.), USFS (Brinton 2010, pers. comm.), the Service (Mayo 2005, pp. 1–35; Glenne and Mayo 2009, spatial data; Langton and Mayo 2010, spatial data), research efforts (Collins 1995, maps), and consulting firms (JGB Consulting 2005, pp. 2–7) to map specific locations of *I. polyantha.* These data were input into ArcMap 9.3.1. Based on criteria developed by the CNHP, sites were classified into discrete populations if they were within 2 mi (3 km) of each other and were not separated by unsuitable habitat (CNHP 2010b, p. 1).

(2) For currently occupied CHUs, we delineated proposed critical habitat areas by creating minimum convex polygons around each population and adding a 3,280-ft- (1,000-m)-wide area for pollinator habitat as previously described.

(3) For currently unoccupied CHUs, we identified two areas where the Mancos shale (Tweto 1979, spatial data) was intersected with Federal ownership (COMaP version 8—Theobald *et al.* 2010, spatial data). COMaP version 8 is the most updated geospatial data layer available for land ownership in Colorado. We delineated these areas by following the Federal land management boundary, and identifying suitable habitats based on species and area experts' input and aerial imagery. Our reasoning for identifying unoccupied units is further described above.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential for the conservation of the species, as well as lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of *Ipomopsis polyantha.*

Penstemon debilis

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing in 2011. We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing, because such areas are essential for the conservation of the species.

Occupied critical habitat was identified by delineating all known sites within a population (CNHP 2010b, p. 6), placing a minimum convex polygon around the perimeter of all these sites, and then adding a 3,280-ft (1,000-m) area for pollinator habitat as previously described. Like *Ipomopsis polyantha,* Penstemon debilis' largest pollinators are the bumblebee species (*Bombus* sp.) (discussed above under *I. polyantha*).

A recovery plan has not yet been written for Penstemon debilis. With only 4,100 known individuals of P. debilis concentrated in two areas, we conclude that future recovery efforts will necessitate actions to improve redundancy by increasing the number of individuals and sites. Therefore, we also are proposing to designate unoccupied habitat as critical habitat. Unoccupied critical habitat was delineated by identifying potential habitat on large contiguous areas of Federal ownership (see Number 3 below) (Service 2011e, p. 2). Occupied areas were expanded into adjacent areas containing this same potential habitat, as delineated and described below. This roughly doubled the size of these occupied units, providing more potential habitat for future recovery and introduction efforts. We determined that not all potential habitat (as defined below) for P. debilis was essential to the conservation of the species, and in keeping with section 3(5)(C) of the Act, which states that critical habitat may not include the entire geographical area which can be occupied by the species, we carefully refined the area proposed for designation.

To assist us in determining which specific areas may be essential to the conservation of the species and considered for inclusion in this proposal, we not only evaluated the biological contribution of an area, but also evaluated the conservation

potential of the area through the overlay of a designation of critical habitat. While we recognize that there is an education value to designating an area as critical habitat, the more prevailing benefit is consultation under section 7 of the Act on activities that may affect critical habitat on Federal lands or where a Federal action may exist. Thus, in evaluating the potential conservation value of an unoccupied area for inclusion in critical habitat, we first focused on lands that are biologically important to the species and then considered which of those lands were under Federal ownership or likely to have a Federal action occur on them. If the inclusion of areas that met those criteria were not sufficient to conserve the species, we then evaluated other specific areas on private lands that were not likely to have a Federal action on them. Upon discussions with local species and area experts, as well as land managers, we identified two areas on BLM lands as potential recovery or introduction areas for *P. debilis.* These two areas include Brush Mountain and Cow Ridge, both managed by BLM. These areas contain the primary constituent elements sufficient to support the life-history needs of the species, including oil shale soils and appropriate plant communities.

We delineated the CHU boundaries for *Penstemon debilis* using the following steps:

(1) In determining what areas were occupied by *Penstemon debilis*, we used data collected by the CNHP (O'Kane and Anderson 1986, p. 1; Spackman *et al.* 1996, p. 7; CNHP 2010a, spatial data), the BLM (Scheck and Kohls 1997, p. 3; DeYoung *et al.* 2010, p. 1; DeYoung 2011, pers. comm.), CNAP (CNAP 2006, maps, pp. 4–7), the Service (Ewing 2009, spatial data and map), and a consulting firm (Graham 2009, spatial data) to map populations using ArcMap 9.3.1. These locations were classified into discrete element occurrences (populations) by CNHP (2010b, p. 6).

(2) We delineated preliminary units by creating minimum convex polygons around each population and adding a 3,280-ft- (1,000-m)-wide area for pollinator habitat as described above.

(3) We then identified potential habitat (Service 2011e, p. 2) in ArcMap 9.3.1 by intersecting the following criteria: The Parachute Creek Member and the Lower part of the Green River Formation geological formations (Tweto 1979), with elevations between 6,561 to 9,350 ft (2,000 and 2,850 m), with suitable soil types that included five soil series (Irigul-Starman channery loams, Happle-Rock outcrop association, Rock outcrop-Torriorthents complec,Torriorthents-Camborthids-Rock outcrop complex, and Tosca channery loam) which represented 89 percent of all known *Penstemon debilis* sites (Service 2011c, p. 2; NRCS 2010, spatial data), and with the ''Rocky Mountain cliff and canyon'' landcover classification SW ReGAP 2004, spatial data). We chose the ''Rocky Mountain cliff and canyon'' landcover classification because 75 percent of all the known *P. debilis* locations fall within this mapping unit (and all sites outside are either on artificially created habitats or are directly below this classification where both oil shale substrate and *P. debilis* seed dispersal down drainage constantly occurs. We did not include the lower elevations currently occupied by *Penstemon debilis* in our minimum convex polygon edges that we used for delineating pollinator habitat (step 2) or in our potential habitat analysis (step 3), because there are few plants in these more ephemeral wash-out habitat types and because these unusual habitat types do not seem to represent the species' typical habitat requirements. However, it should be noted that these unusual sites are still included within the boundaries of Unit 3 (as delineated by step 2).

(4) From this potential habitat analysis (as delineated in step 3), we took the two continuous bands of potential habitat that include the areas where *Penstemon debilis* is currently found and added them to our existing polygons, including pollinator habitat (as delineated in step 2). We did this by again creating a minimum convex polygon. This condensed all known populations into two currently occupied CHUs (Units 3 and 4).

(5) For currently unoccupied CHUs, we identified two areas where our potential habitat was intersected with Federal ownership (COMaP version 8—Theobald *et al.* 2010, spatial data). COMaP version 8 is the most updated geospatial data layer available for land ownership in Colorado. The boundaries are clipped to our potential habitat layer and the Federal ownership layer. Our reasoning for identifying unoccupied units is further described above.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential for the conservation of the species, and lands outside of the geographical area occupied at the time of listing that we have determined are essential for the conservation of *Penstemon debilis*.

Phacelia submutica

In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are not currently proposing to designate any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species if the threats are addressed with appropriate management.

Occupied critical habitat was identified by delineating all known sites within a population (CNHP 2010b, p. 11), and placing a minimum convex polygon around the perimeter of all these sites. We then added a 328-ft-(100-m)-wide area to account for indirect effects from factors such as edge effects from roads, nonnative species, dust impacts, and others (as discussed above).

*Phacelia sub*mutica has a large enough range (sufficient representation and resiliency), enough populations (sufficient redundancy), and enough individuals (sufficient redundancy) that we felt that the occupied habitat alone, if protected from threats, would be adequate for the future survival and recovery of the species. Therefore, no unoccupied habitat was included in this critical habitat designation.

We delineated the CHU boundaries for *Phacelia submutica* using the following steps:

(1) In determining what areas were occupied by *Phacelia submutica,* we used data collected by CNHP (CNHP 1982, pp. 1–17; Burt and Spackman 1995, pp. 10–14; Burt and Carston 1995, p. 3; Spackman and Fayette 1996, p. 5; Lyon 2008, spatial data; 2009, spatial data; Lyon and Huggins 2009a, p. 3; Lyon and Huggins 2009b, p. 3; Lyon 2010, pers. comm.; CNHP 2010a, spatial data), the Colorado Native Plant Society (Colorado Native Plant Society [CNPS] 1982, pp. 1–9), the BLM (BLM pers. comm. 2010, spatial data; DeYoung 2009, pers. comm.), USFS (Johnston 2010, pers. comm.; Kirkpatrick 2011, pers. comm.; Potter 2010, spatial data; Proctor 2010, pers. comm.), CNAP (Wenger 2008; 2009; 2010, spatial data), the Service (Ewing and Glenne 2009, spatial data; Langton 2010, spatial data), and consulting firms (Ellis and Hackney 1982, pp. 7–8; WestWater Engineering [WWE] 2007a, spatial data; 2007b, spatial data; 2010, pp. 17–19, maps and spatial data) to map specific locations of *P. submutica* using ArcMap 9.3.1. These locations were classified into discrete

element occurrences or populations if they were within 1.2 mi (2 km) and were not separated by unsuitable habitat, based on criteria developed by CNHP (CNHP 2010b, p. 11). Then, we used 2009 aerial imagery (NAIP 2009, spatial data) to look at all sites that were considered historically occupied because they had not been revisited in the last 20 years. Based on our analysis, we determined all historically occupied sites were suitable habitat and considered these sites still in existence and occupied at the time of listing.

(2) We delineated proposed critical habitat areas by creating minimum convex polygons around each population and buffering the polygons by 328 ft (100 m) to account for indirect effects as described immediately above.

(3) We then modified these proposed critical habitat polygon boundaries to exclude unsuitable habitat as defined by a potential habitat model (Decker *et al.* 2005, p. 9). From this modeling exercise, we chose the more restrictive of the two habitat models (the envelope model) to further refine our critical habitat polygons. This model was developed by comparing occupied areas with environmental variables, such as elevation, slope, precipitation, temperature, geology, soil type, and vegetation type. The environmental variables with the highest predictive abilities influence the potential habitat the model then identifies.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing and contain sufficient elements of physical and biological features to support life-history processes essential for the conservation of *Phacelia submutica.*

Proposed Critical Habitat Designation

Ipomopsis polyantha

We are proposing four units as critical habitat for *Ipomopsis polyantha.* The CHUs we describe below meet the definition of critical habitat for *I. polyantha.* The four units we propose as critical habitat are: (1) Dyke, (2) O'Neal Hill Special Botanical Area, (3) Pagosa Springs, and (4) Eight Mile Mesa. Table 2 shows the proposed units.

TABLE 2—OCCUPANCY OF *Ipomopsis polyantha* BY PROPOSED CRITICAL HABITAT UNITS

Unit	Currently occupied?
1. Dyke	Yes.
2. O'Neal Hill Special Botanical Area.	No.
3. Pagosa Springs	Yes.
4. Eight Mile Mesa	No.

The approximate area of each proposed CHU is shown in table 3.

TABLE 3—PROPOSED CRITICAL HABITAT UNITS (CHUS) FOR *Ipomopsis polyantha*

[Area estimates reflect all land within CHU boundaries]

Critical habitat unit	Land ownership	Size of unit
1. Dyke	BLM	42 ac (17 ha).
	Private	1,415 ac (573 ha).
	Archuleta County (County Road ROWs)	5 ac (2 ha).
	Colorado Department of Transportation (CDOT)	13 ac (5 ha).
	Total for Dyke Unit	1,475 ac (597 ha).
2. O'Neal Hill Special Botanical Area	USFS–San Juan National Forest	784 ac (317 ha).
3. Pagosa Springs	Town of Pagosa Springs	599 ac (242 ha).
	CDOW	28 ac (11 ha).
	Private	5,652 ac (2,288 ha).
	State Land Board	110 ac (44 ha).
	Archuleta County (County Road ROWs)	18 ac (7 ha).
	CDOT (Highway ROWs)	50 ac (20 ha).
	Total for Pagosa Spring Unit	6,456 ac (2,613 ha).
4. Eight Mile Mesa	USFS–San Juan National Forest	1,180 ac (478 ha).
Total		9,894 ac (4,004 ha).

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units included in this proposed critical habitat designation and reasons why they meet the definition of critical habitat for *Ipomopsis polyantha.* The units are listed in order geographically west to east.

Unit 1. Dyke

Unit 1, the Dyke Unit, consists of 1,475 ac (597 ha) of Federal and private lands. The Unit is located at the junction of U.S. Hwy 160 and Cat Creek Road (County Road 700) near the historic town of Dyke in Archuleta County, Colorado. Ninety-seven percent of this Unit is on private lands; of these private lands, 1 percent is within highway ROWs. Three percent is on Federal land managed by the BLM, through the Pagosa Springs Field Office of the San Juan Public Lands Center. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species including a collection of all three communities (barren shales, open montane grassland (primarily Arizona fescue) understory at the edges of open Ponderosa pine, or clearings within the ponderosa pine and Rocky Mountain juniper and Utah juniper and oak communities), pockets of shale with little to no competition from other species, suitable elevational ranges from 6,720 to 7,285 ft (2,048 to 2,220 m), Mancos shale soils, suitable climate, pollinators and habitat for these pollinators, and areas where the correct disturbance regime is present. Lands within this Unit are largely agricultural although some housing is present within the Unit. A large hunting ranch also falls within this Unit. While these lands currently have the physical and biological features essential to the conservation of *Ipomopsis polyantha,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Threats to *Ipomopsis polyantha* in this Unit include highway maintenance and disturbance (several hundred plants

have been documented along Highway 160 (CNHP 2010a, p. 5)), grazing, agricultural use, *Bromus inermis* encroachment, potential development, and a new road that was constructed through the *I. polyantha* population. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 2. O'Neal Hill Special Botanical Area

Unit 2, the O'Neal Hill Botanical Area consists of 784 ac (317 ha) of USFS land that is managed by the San Juan Public Lands Center. The Unit is north of Pagosa Springs, roughly 13 mi (21 km) north along Piedra Road. Roughly half the acreage of this Unit (308 ac (125 ha)) falls within the O'Neal Hill Special Botanical Area that was designated to protect another Mancos shale endemic, *Lesquerella pruinosa* (Pagosa bladderpod). Because *L. pruinosa* is sometimes found growing with *I. polyantha,* we believe the site has high potential for introduction of *I. polyantha.* This Unit is not currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species including a collection of all three plant communities, pockets of shale with little to no competition from other species, suitable elevational ranges from 7,640 to 8,360 ft (2,330 to 2,550 m), Mancos shale soils, suitable climate, habitat for pollinators (although we do not know if *Ipomopsis polyantha* pollinators are found here), and areas where the correct disturbance regime is present. Because of the presence of these features, we believe this may make a good introduction area for *Ipomopsis polyantha* in the future and is needed to ensure conservation of the species.

Threats to *Ipomopsis polyantha* in this Unit include road maintenance and disturbance, low levels of recreation, some hunting, deer and elk use, and a utility corridor and related maintenance (Brinton 2011, pers. comm). The threats should be addressed as detailed above in the ''*Special Management Considerations or Protection'' section.*

Ipomopsis polyantha is known from only two populations, both with few or no protections (little resilience). For adequate resiliency and protection we believe it is necessary for survival and recovery that additional populations with further protections be established. Because this area receives low levels of use and because it is already partially protected through the special botanical area, the area would make an ideal site for future introductions of *I. polyantha.* Therefore, we have identified this Unit as a proposed CHU for *I. polyantha.*

Unit 3. Pagosa Springs

Unit 3, the Pagosa Springs Unit, is the largest of the four *Ipomopsis polyantha* CHUs and consists of 6,456 ac (2,613 ha) of municipal, State, and private lands. The Unit is located at the junction of Highways 160 and 84, south along Highway 84, west along County Road 19, and east along Mill Creek Road. Ownership of the land in Unit 3 is divided as follows: 87.7 percent is under private ownership, 9.2 percent is owned by the Town of Pagosa Springs, 1.7 percent is owned and operated by the Colorado State Land Board, 0.8 percent falls within the Colorado Department of Transportation (CDOT) ROWs, 0.4 percent is found on CDOW lands, and 0.3 percent is located on Archuleta County ROWs. This Unit is currently occupied and contains the majority of *I. polyantha* individuals.

This Unit currently has all the physical and biological features essential to the conservation of the species, including a collection of all three plant communities, pockets of shale with little to no competition from other species, suitable elevational ranges from 6,960 to 7,724 ft (2,120 to 2,350 m), Mancos shale soils, suitable climate, pollinators and habitat for these pollinators, and areas where the correct disturbance regime is present. Lands within this Unit fall into a wide array of land management scenarios, including agricultural use, junkyards, urban areas, small residential lots, and large 30- to 40-ac (12- to 16-ha) residential parcels. While these lands currently have the physical and biological features essential to the conservation of *Ipomopsis polyantha,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Since almost 88 percent of this Unit is under private ownership, the primary threat to the species in this Unit is agricultural or urban development. Other threats include highway ROW disturbances, *Bromus inermis* and other nonnative invasive species, excessive livestock grazing, and mowing. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 4: Eight Mile Mesa

Unit 4, Eight Mile Mesa, consists of 1,180 ac (478 ha) of USFS lands that are managed by the Pagosa Springs Field Office of the San Juan Public Lands Center. This Unit is located roughly 6.5 mi (10.5 km) south of the intersections of Highways 160 and 84 in Pagosa Springs, Colorado, and on the western side of Highway 84. This Unit is not currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species including a collection of all three plant communities, pockets of shale with little to no competition from other species, suitable elevational ranges from 7,320 to 7,858 ft (2,230 to 2,395 m), Mancos shale soils, suitable climate, habitat for pollinators, and areas where the correct disturbance regime is present. Because there are so few Mancos shale sites on Federal lands, and because this site has an array of habitat types, it provides the best potential area for introduction of *I. polyantha* in the future.

Threats to *Ipomopsis polyantha* in this Unit include a road running through the site, recreational use, horseback riding, dispersed camping and hunting, and firewood gathering. The Unit has some dense Ponderosa pine stands, and several small wildfires, that are actively suppressed, occur every year. There is a vacant grazing allotment at this Unit, and noxious weeds are being actively controlled (Brinton 2011, pers. comm.). These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Ipomopsis polyantha is known from only two populations, both with few or no protections (little resilience). For adequate resiliency and protection we believe it is necessary for survival and recovery that additional populations with further protections be established. Therefore, we have identified this Unit and one other unoccupied area as proposed CHUs for *I. polyantha.*

Penstemon debilis

We are proposing four units as critical habitat for Penstemon debilis. The CHUs we describe below constitute our current best assessment of locations that meet the definition of critical habitat for P. debilis. The four units we propose as critical habitat are: (1) Brush Mountain, (2) Cow Ridge, (3) Mount Callahan, and (4) Anvil Points. Table 4 shows the occupancy of the units.

TABLE 4—OCCUPANCY OF *Penstemon debilis* BY PROPOSED CRITICAL HABITAT UNIT

Unit	Currently occupied?
1. Brush Mountain	No.
2. Cow Ridge	No.
3. Mount Callahan	Yes.

TABLE 4—OCCUPANCY OF *Penstemon debilis* BY PROPOSED CRITICAL HABITAT UNIT—Continued

Unit	Currently occupied?
4. Anvil Points	Yes.

The approximate area of each proposed CHU is shown in table 5.

TABLE 5—PROPOSED CRITICAL HABITAT UNITS (CHUS) FOR *Penstemon debilis*

[Area estimates reflect all land within CHU boundaries.]

Critical habitat unit	Land ownership by type		Size of unit
	Federal	Private	
1. Brush Mountain	1,437 ac (582 ha)		1,437 ac (582 ha).
2. Cow Ridge	4,819 ac (1,950 ha)		4,819 ac (1,950 ha).
3. Mount Callahan	4,338 ac (1,756 ha)	3,675 ac (1,487 ha)	8,013 ac (3,243 ha).
4. Anvil Points	3,424 ac (1,386 ha)	1,461 ac (591 ha)	4,885 ac (1,977 ha).
Total	13,888 ac (5,621 ha)	4,824 ac (1,952 ha)	19,155 ac (7,752 ha).

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units included in the proposed critical habitat designation and reasons why they meet the definition of critical habitat for Penstemon debilis. The units are listed in order geographically west to east, and north to south.

Unit 1. Brush Mountain

Unit 1, the Brush Mountain Unit, consists of 1,437 ac (582 ha) of federally owned lands, managed by BLM through the Grand Junction Field Office. It is located approximately 16 mi (26 km) northwest of the town of DeBeque in Garfield County, Colorado. It is northwest of the intersection of Roan Creek Road (County Road 204) and Brush Creek Road (County Road 209). This Unit is not currently occupied.

This Unit has all the physical and biological features essential to the conservation of the species, including the Rocky Mountain Cliff and Canyon plant community (SW ReGAP 2004, spatial data) with less than 10 percent plant cover, suitable elevational ranges of 6,234 to 8,222 ft (1,900 to 2,506 m), outcrops of the Parachute Creek Member of the Green River Formation, steep slopes of these soil outcrops that lend to the appropriate disturbance levels, pollinator habitat, and a climate with between 12 to 18 in. (30 and 46 cm) in annual rainfall and winter snow. Because of the presence of these features, we believe this may make a good introduction area for Penstemon debilis in the future and is needed to ensure conservation of the species.

The primary threat to Penstemon debilis in this Unit is energy development. This threat should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section. P. debilis consists of only 4,100 known individuals (little redundancy), and all occur within two concentrated areas (little resilience). For adequate redundancy and resiliency, we believe it is necessary for survival and recovery that additional populations be established. Therefore, we have identified this Unit as a proposed CHU for P. debilis.

Unit 2. Cow Ridge

Unit 2, the Cow Ridge Unit, is 4,819 ac (1,950 ha) of federally owned lands managed by BLM through the Grand Junction Field Office. It is located approximately 8 mi (13 km) northwest of the town of DeBeque in Garfield County, Colorado, and north of Dry Fork Road. This Unit is not currently occupied.

This Unit has all the physical and biological features essential to the conservation of the species, including the Rocky Mountain Cliff and Canyon plant community (SW ReGAP 2004, spatial data) with less than 10 percent cover, suitable elevational ranges of 6,273 to 8,284 ft (1,912 to 2,525 m), outcrops of the Parachute Creek Member of the Green River Formation, steep slopes of these soil outcrops that lend to the appropriate disturbance levels, habitat for pollinators, and a climate with between 12 to 18 in. (30 and 46 cm) in annual rainfall and winter snow. Because of the presence of these features, we believe this may make a good introduction area for Penstemon debilis in the future and is needed to ensure conservation of the species.

The primary threat to Penstemon debilis in this Unit is energy development. This threat should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section. P. debilis consists of only 4,100 known individuals (little redundancy) and all within 2 concentrated areas (low resilience). For adequate redundancy and resiliency, we believe it is necessary for survival and recovery that additional populations be established. Therefore, we have identified this Unit as a proposed CHU for P. debilis.

Unit 3. Mount Callahan

Unit 3, the Mount Callahan Unit, consists of 8,013 ac (3,243 ha) of Federal and private land. It is located approximately 2 mi (3 km) west of the town of Parachute on the south-facing slopes of Mount Callahan and westward along the cliffs of the Roan Plateau. Fifty-four percent of Unit 3 is managed by the BLM under the management of two field offices: 80 percent of these Federal lands are managed by the Colorado River Valley Field Office and 20 percent are managed by the Grand Junction Field Office. Eight percent of this Unit (674 ac (273 ha)) has been designated as two Colorado Natural Areas (Mount Callahan and Mount

Callahan Saddle). These privately owned lands are currently protected from energy development, but are in close proximity to oil wells and associated infrastructure. We are considering these two Natural Areas for exclusion from this CHU. These exclusions are discussed in further detail below under ''Exclusions—*Application of Section 4(b)(2) of the Act.''* Thirty-five percent of this Unit falls on private lands with no protections. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of Penstemon debilis, including the Rocky Mountain Cliff and Canyon plant community (SW ReGAP 2004, spatial data) with less than 10 percent cover, suitable elevational ranges of 5,413 to 8,809 ft (1,650 to 2,685 m), outcrops of the Parachute Creek Member of the Green River Formation, suitable pollinators and habitat for these pollinators, steep slopes of these soil outcrops that lend to the appropriate disturbance levels, and a climate with between 12 to 18 in. (30 and 46 cm) in annual rainfall and winter snow.

The primary threat to Penstemon debilis and its habitat in this Unit is energy development. This threat should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 4. Anvil Points

Unit 4, the Anvil Points Unit, consists of 4,885 ac (1,977 ha) of Federal and private land. It is located approximately 1 mi (2 km) north of the town of Rulison in Garfield County, Colorado. Seventy percent of this Unit is managed by the BLM, Colorado River Valley Field Office. Twenty-three percent of the Unit (1,102 ac (446 ha)) is within several potential BLM Areas of Critical Environmental Concern (ACECs). If these become ACECs, they would have several stipulations to protect Penstemon debilis, particularly from oil and gas development. These areas are discussed further in the proposed (75 FR 35732; June 23, 2010) and final listing rules (in today's Rules and Regulations section of the **Federal Register**). Thirty percent of this Unit is on private lands. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of Penstemon debilis, including the Rocky Mountain Cliff and Canyon plant community (SW ReGAP 2004, spatial data) with less than 10 percent plant cover, suitable elevational ranges of 6,318 to 9,288 ft (1,926 to 2,831 m), outcrops of the Parachute Creek Member of the Green River Formation, suitable pollinators and habitat for these pollinators, steep slopes of these soil outcrops that lend to the appropriate disturbance levels, and a climate with between 12 to 18 in. (30 and 46 cm) in annual rainfall and winter snow.

Threats to Penstemon debilis and its habitat in this Unit is primarily energy development. This threat should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Phacelia submutica

We are proposing nine units as critical habitat for *Phacelia submutica.* The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *P. submutica.* The nine units we propose as critical habitat are: (1) Sulphur Gulch, (2) Pyramid Rock, (3) Roan Creek, (4) DeBeque, (5) Mount Logan, (6) Ashmead Draw, (7) Baugh Reservoir, (8) Horsethief Mountain, and (9) Anderson Gulch. Table 6 shows the proposed critical habitat units.

TABLE 6—PROPOSED CRITICAL HABITAT UNITS (CHUS) FOR *Phacelia submutica*

[Area estimates reflect all land within CHU boundaries.]

Unit #/Unit name	Land ownership by type			Size of unit
	Federal	State	Private	
1. Sulphur Gulch	1,046 ac (423 ha)			1,046 ac (423 ha).
2. Pyramid Rock	15,429 ac (6,244 ha)		1,892 ac (766 ha)	17,321 ac (7,010 ha).
3. Roan Creek	2 ac (1 ha)		52 ac (21 ha)	54 ac (22 ha).
4. DeBeque	401 ac (162 ha)		129 ac (52 ha)	530 ac (215 ha).
5. Mount Logan	242 ac (98 ha)		35 ac (14 ha)	277 ac (112 ha).
6. Ashmead Draw	1,046 ac (423 ha)		174 ac (71 ha)	1,220 ac (494 ha).
7. Baugh Reservoir	19 ac (8 ha)		10 ac (4 ha)	28 ac (12 ha).
8. Horsethief Mountain	3,614 ac (1,463 ha)		594 ac (240 ha)	4,209 ac (1,703 ha).
9. Anderson Gulch		173 ac (70 ha)	128 ac (52 ha)	301 ac (122 ha).
Total	21,800 ac (8,822 ha)	173 ac (70 ha)	3,014 ac (1,220 ha)	24,987 ac (10,112 ha).

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units included in the proposed critical habitat designation and reasons why they meet the definition of critical habitat for *Phacelia submutica.* The units are listed in order geographically west to east.

Unit 1. Sulphur Gulch

Unit 1, the Sulphur Gulch Unit, consists of 1,046 ac (423 ha) of federally owned land. The Unit is located approximately 7.7 mi (12.5 km) southwest of the town of DeBeque in Mesa County, Colorado. This Unit is managed by BLM, through the Grand Junction Field Office. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species including barren clay badlands with less than 20 percent plant/vegetation cover, suitable elevational ranges of 5,480 to 6,320 ft (1,670 to 1,926 m), appropriate topography, and shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation. All lands within this Unit are leased as grazing allotments, and less than 1 percent is managed as an active pipeline ROW by the BLM. While these lands currently have the physical and biological features essential to the conservation of *Phacelia submutica,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Threats to *Phacelia submutica* and its habitat in this Unit include energy development, recreation (especially OHVs), domestic and wild ungulate grazing and use, and nonnative invasive species, such as *Bromus tectorum.* These threats should be addressed as

detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 2. Pyramid Rock

Unit 2, the Pyramid Rock Unit, is the largest Unit we are proposing and consists of 17,321 ac (7,010 ha) of federally and privately owned lands in Mesa and Garfield Counties, Colorado. This Unit is approximately 1.6 mi (2.6 km) west of the town of DeBeque. The eastern boundary borders Roan Creek, and Dry Fork Creek runs through the northern quarter of the Unit. Eighty-nine percent is managed by BLM through the Grand Junction Field Office, and 11 percent is under private ownership. Three percent of this Unit is within the Pyramid Rock Natural Area and Pyramid Rock ACEC that was designated, in part, to protect the species as discussed in the proposed (75 FR 35739; June 23, 2010) and final listing rules (in the Rules and Regulations section of today's **Federal Register**). This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species including barren clay badlands with less than 20 percent plant/vegetation cover, suitable elevational ranges of 4,960 to 6,840 ft (1,512 to 2,085 m), the appropriate topography, and shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation. Ninety-four percent of this Unit is managed as a grazing allotment by the BLM. Additionally, 11 percent of this Unit is managed as an active pipeline ROW. While these lands currently have the physical and biological features essential to the conservation of *Phacelia submutica,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Threats to *Phacelia submutica* and its habitat in this Unit include energy development, recreation (especially OHV use), livestock and wild ungulate grazing and use, and nonnative invasive species including *Bromus tectorum* and *Halogeton glomeratus.* The Westwide Energy corridor runs through this Unit. The corridor covers almost 10 percent of this Unit (Service 2011a, p. 9). These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 3. Roan Creek

Unit 3, the Roan Creek Unit, consists of 54 ac (22 ha) of Federal and privately owned lands in Garfield County, Colorado. The Unit is located 3.3 mi (5.4 km) north of the town of DeBeque and for 1.7 mi (2.7 km) along both sides of County Road 299. Ninety-seven percent of this Unit is privately owned. Three percent of this Unit is managed by BLM through the Grand Junction Field Office. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species including barren clay badlands with less than 20 percent cover, suitable elevational ranges of 5,320 to 5,420 ft (1,622 to 1,652 m), the appropriate topography, and shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation. The entire Unit is within a grazing allotment. While these lands currently have the physical and biological features essential to the conservation of *Phacelia submutica,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Threats to *Phacelia submutica* and its habitat in this Unit include recreation (especially OHV use), livestock and wild ungulate grazing and use, invasion by nonnative invasive species including *Bromus tectorum* and *Halogeton glomeratus,* and a lack of protections on private lands. These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 4. DeBeque

Unit 4, the DeBeque Unit, consists of 530 ac (215 ha) of Federal and private lands in Mesa County, Colorado. This Unit is located 0.25 mile north of DeBeque between Roan Creek Road and Cemetery Road. Seventy-six percent of this Unit is managed by BLM through the Grand Junction Field Office. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species including barren clay badlands with less than 20 percent plant/vegetation cover, suitable elevational ranges of 5,180 to 5,400 ft (1,579 to 1,646 m), the appropriate topography, and shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation. While these lands currently have the physical and biological features essential to the conservation of *Phacelia submutica,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Threats to *Phacelia submutica* and its habitat in this Unit include energy development, residential development, recreation (especially OHV use), livestock and wild ungulate grazing and use, and nonnative invasive species including *Bromus tectorum* and *Halogeton glomeratus.* Since 24 percent of the Unit is privately owned and borders the north of the town of DeBeque, this Unit is threatened by potential urban or agricultural development. The Westwide Energy corridor runs through this Unit. The corridor covers almost 66 percent of this Unit (Service 2011a, p. 9). These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 5. Mount Logan

Unit 5, the Mount Logan Unit, consists of 277 ac (112 ha) of Federal and private lands in Garfield County, Colorado. The Unit is located 2.7 mi (4.4 km) north, northeast of the town of DeBeque, Colorado, and 0.5 mi (0.8 km) west of Interstate 70. Eighty-eight percent of this Unit is managed by BLM through the Grand Junction Field Office. The remainder of this Unit is privately owned. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species including barren clay badlands with less than 20 percent plant/vegetation cover, suitable elevational ranges of 4,960 to 5,575 ft (1,512 to 1,699 m), the appropriate topography, and shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation. Eighty-eight percent of this Unit is managed as a grazing allotment by BLM, and 53 percent is managed as an active pipeline ROW. An access road runs through the Unit connecting several oil wells and associated infrastructure. While these lands currently have the physical and biological features essential to the conservation of *Phacelia submutica,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Threats to *Phacelia submutica* and its habitat in this Unit include energy development, recreation (especially OHV use), livestock and wild ungulate grazing and use, and nonnative invasive species, including *Bromus tectorum* and *Halogeton glomeratus.* These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 6. Ashmead Draw

Unit 6, the Ashmead Draw Unit, consists of 1,220 ac (494 ha) of both Federal and private lands in Mesa County, Colorado. The Unit is located

1.5 mi (2.5 km) southeast of the town of DeBeque, Colorado, and east of 45.5 Road (DeBeque Cut-off Road). Eighty-six percent of this Unit is managed by BLM through the Grand Junction Field Office. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species including barren clay badlands with less than 20 percent plant/vegetation cover, suitable elevational ranges of 4,940 to 5,808 ft (1,506 to 1,770 m), the appropriate topography, and shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation. A network of access roads runs through the Unit. Eighty eight percent of this Unit is within a BLM grazing allotment, and 84 percent is within the Grand Junction Field Office's designated energy corridor. Thirty percent of the Unit is managed as an active pipeline ROW. While these lands currently have the physical and biological features essential to the conservation of *Phacelia submutica,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Threats to *Phacelia submutica* and its habitat in this Unit include energy development, recreation (especially OHV use), livestock and wild ungulate grazing and use, and nonnative invasive species, including *Bromus tectorum* and *Halogeton glomeratus.* The Westwide Energy corridor runs through this Unit. The corridor covers almost 84 percent of this Unit (Service 2011a, p. 9). These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 7. Baugh Reservoir

Unit 7, the Baugh Reservoir Unit, consists of 29 ac (12 ha) of Federal and private lands in Mesa County, Colorado. The Unit is located 6 mi (10 km) south of DeBeque, Colorado, near Kimball Mesa and Horse Canyon Road. Sixty-six percent is managed by BLM through the Grand Junction Field Office, and the remaining 34 percent is on private lands. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species, including barren clay badlands with less than 20 percent plant/vegetation cover, a suitable elevational range of 5,400 to 5,700 ft (1,646 to 1,737 m), the appropriate topography, and shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation. An access road runs through the Unit, close to the occurrence of *Phacelia submutica.* While these lands currently have the physical and biological features essential to the conservation of *P. submutica,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Threats to *Phacelia submutica* and its habitat in this Unit include energy development, recreation, livestock and wild ungulate grazing and use, and nonnative invasive species including *Bromus tectorum* and *Halogeton glomeratus.* The Westwide Energy corridor runs through this Unit. The corridor covers almost 66 percent of this Unit (Service 2011a, p. 9). These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 8. Horsethief Mountain

Unit 8, the Horsethief Mountain Unit, consists of 4,209 ac (1,703 ha) of Federal and private lands in Mesa County, Colorado. It is located approximately 3.5 mi (5.6 km) southeast of DeBeque, Colorado, and along the eastern side of Sunnyside Road (V Road). Thirty-four percent is managed by BLM through the Grand Junction Field Office, 29 percent by the White River National Forest, 23 percent by the Grand Mesa Uncompahgre National Forest, and 14 percent is on private lands. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species, including barren clay badlands with less than 20 percent plant/vegetation cover, a suitable elevational range of 5,320 to 6,720 ft (1,622 to 2,048 m), the appropriate topography, and shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation. While these lands currently have the physical and biological features essential to the conservation of *Phacelia submutica,* because of a lack of cohesive management and protections, special management will be required to maintain these features in this Unit.

Threats to *Phacelia submutica* and its habitat in this Unit include energy development, recreation (especially OHV use), livestock and wild ungulate grazing and use, and nonnative invasive species, including *Bromus tectorum* and *Halogeton glomeratus.* These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Unit 9. Anderson Gulch

Unit 9, the Anderson Gulch Unit, consists of 301 ac (122 ha) of State and private lands in Mesa County, Colorado. It is located 11 mi (17 km) southeast of DeBeque, Colorado, and 3.5 mi (5.5 km) north of the town of Molina, Colorado. Within the Unit, 57 percent of the lands are managed by CDOW, within the Plateau Creek State Wildlife Area, and 43 percent is private. This Unit is currently occupied.

This Unit currently has all the physical and biological features essential to the conservation of the species, including barren clay badlands with less than 20 percent plant/vegetation cover, a suitable elevational range of 5,860 to 6,040 ft (1,786 to 1,841 m), the appropriate topography, and shrink-swell alkaline clay soils within the Atwell Gulch and Shire members of the Wasatch Formation. Forty-two percent of the Unit is a pending pipeline ROW. While these lands currently have the physical and biological features essential to the conservation of *Phacelia submutica,* because of a lack of cohesive management and protections on State and private land, special management may be required to maintain these features in this Unit.

Threats to *Phacelia submutica* and its habitat in this Unit include energy development, recreation (especially from OHVs), livestock and wild ungulate grazing and use, and nonnative invasive species, including *Bromus tectorum* and *Halogeton glomeratus.* These threats should be addressed as detailed above in the ''*Special Management Considerations or Protection''* section.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F. 3d 434, 442 (5th Cir. 2001)), and we

do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the ''Adverse Modification'' Standard

As we described above, we do not currently have a valid regulation that defines adverse modification. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features essential to the conservation of these species to an extent that appreciably reduces the conservation value of critical habitat for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica.* As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for *Ipomopsis polyantha, Penstemon debilis,* and *Phacelia submutica.*

For *Ipomopsis polyantha* these activities include, but are not limited to:

(1) Actions that would lead to the destruction or alteration of the plants or their habitat; or actions that would result in continual or excessive disturbance or prohibit overland soil erosion on Mancos shale soils. Such activities could include, but are not limited to, removing soils to a depth that the seed bank has been removed, repeatedly scraping areas, repeated mowing, excessive grazing, continually driving vehicles across areas, permanent developments, the construction or maintenance of utility or road corridors, and ditching. These activities could remove the seed bank, reduce plant numbers by prohibiting reproduction, impede or accelerate beyond historical levels the natural or artificial erosion processes on which the plant relies (as described above in ''*Physical and Biological Features''*), or lead to the total loss of a site.

(2) Actions that would result in the loss of pollinators or their habitat, such that reproduction could be diminished. Such activities could include, but are not limited to, destroying ground or twig nesting habitat, habitat fragmentation that prohibits pollinator movements from one area to the next, spraying pesticides that will kill pollinators, and eliminating other plant species on which pollinators are reliant for floral resources (this could include replacing native species that provide floral resources with grasses, which do not provide floral resources for pollinators). These activities could result in reduced fruit production for *Ipomopsis polyantha,* or increase the incidence of self-pollination, thereby reducing genetic diversity and seed production.

(3) Actions that would result in excessive plant competition at *Ipomopsis polyantha* sites. Such activities could include, but are not limited to, revegetation efforts that include competitive nonnative invasive species such as *Bromus inermis, Medicago* sativa (alfalfa), Meliotus spp. (sweetclover); planting native species, such as *Pinus ponderosa,* into open areas where the plant is found; and creating disturbances that allow nonnative invasive species to invade. These activities could cause *I. polyantha* to be outcompeted and subsequently either lost at sites, or reduced in numbers of individuals.

For *Penstemon debilis* these activities include, but are not limited to:

(1) Actions that would lead to the destruction or alteration of the plants or

their habitat. Such activities could include, but are not limited to, activities associated with oil shale mining, including the mines themselves, pipelines, roads, and associated infrastructure; activities associated with oil and gas development, including pipelines, roads, well pads, and associated infrastructure; activities associated with reclamation activities, utility corridors, or infrastructure; and road construction and maintenance. These activities could lead to the loss of individuals, fragment the habitat, impact pollinators, cause increased dust deposition, introduce nonnative invasive species, and alter the habitat such that important downhill movement or the shale erosion no longer occurs.

(2) Actions that would alter the highly mobile nature of the sites. Such activities could include, but are not limited to, activities associated with oil shale mining, including pipelines, roads, and associated infrastructure; activities associated with oil and gas development, including pipelines, roads, well pads, and associated infrastructure; activities associated with reclamation activities, utility corridors, or infrastructure; and road construction and maintenance. These activities could lead to increased soil formation and a subsequent increase in vegetation, alterations to the soil morphology, the loss of *Penstemon debilis* plants and habitat.

(3) Actions that would result in the loss of pollinators or their habitat, such that reproduction could be diminished. Such activities could include, but are not limited to, destroying ground or twig nesting habitat; habitat fragmentation that prohibits pollinator movements from one area to the next; spraying pesticides that will kill pollinators; and eliminating other plant species on which pollinators are reliant for floral resources. These activities could result in reduced fruit production for *Penstemon debilis,* or increase the incidence of self-pollination, thereby further reducing genetic diversity and reproductive potential.

For *Phacelia submutica* these activities include, but are not limited to:

(1) Actions that would lead to the destruction or alteration of the plants, their seed bank, or their habitat, or actions that would destroy the fragile clay soils where *Phacelia submutica* is found. Such activities could include, but are not limited to, activities associated with oil and gas development, including pipelines, roads, well pads, and associated infrastructure; utility corridors or infrastructure; road construction and maintenance; excessive OHV use; and excessive livestock grazing. Clay soils are most fragile when wet, so activities that occur when soils are wet are especially harmful. These activities could lead to the loss of individuals, fragment the habitat, impact pollinators, cause increased dust deposition, and alter the habitat such that important erosional processes no longer occur.

(2) Actions that would result in excessive plant competition at *Phacelia submutica* sites. Such activities could include, but are not limited to, using highly competitive species in restoration efforts, or creating disturbances that allow nonnative invasive species, such as *Bromus tectorum* and *Halogeton glomeratus,* to invade. These activities could cause *P. submutica* to be outcompeted and subsequently either lost or reduced in numbers of individuals.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

No Department of Defense lands occur within any of the proposed critical habitat designations.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he/she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he/she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If, based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

When identifying 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 action; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying 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 that provides equal to or more conservation than a critical habitat designation would provide.

In the case of *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica,* the benefits of critical habitat include public awareness of their presence and the importance of habitat protection, and in cases where a Federal nexus exists, increased habitat protection for *I. polyantha,* P. debilis, and *P. submutica* due to the protection from adverse modification or destruction of critical habitat. We are not currently proposing or considering any exclusions from critical habitat for *I. polyantha* or *P. submutica,* but we are considering two exclusions on private lands for P. debilis and are requesting public input on whether these areas should be excluded. For these three species, all of which are plants that do not receive protection from take under the Act, the primary impact and benefit of designating critical habitat will be on Federal lands or in instances where there is a Federal nexus for projects on private lands.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical and biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to determine whether the benefits of exclusion outweigh those of inclusion. If we determine that they do, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands in the proposed Penstemon debilis CHU 3 (Mount Callahan) are appropriate for exclusion from the final designation pursuant to section 4(b)(2) of the Act. If our analysis results in a determination that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then we will exclude the lands from the final designation, provided we find that the failure to designate such areas as critical habitat will not result in the extinction of the species.

The only exclusions we are considering are for the two Natural Areas that fall within Penstemon debilis Unit 3, Mount Callahan (see Map 7). These two areas are designated as the Mount Callahan Natural Area and the Mount Callahan Saddle Natural Area (CNAP 2010a, pp. 1–11). These two State Natural Areas were designated specifically to allow the CNAP to assist the landowner in protecting P. debilis. The Natural Areas have a long list of activities that can and cannot take place and best management practices also have been developed for these areas (see ''*Mount Callahan Natural Area and Mount Callahan Saddle Natural Area Articles of Designation and accompanying Best Management Practices''* below) designed to conserve the species and protect the essential physical and biological features (CNAP 2010a, pp. 4–6 and Exhibit B; CNAP 2010b, pp. 1–4). Although these agreements can be terminated at any time, we do not believe they will be, since the Mount Callahan Natural Area has been in existence since 1987, and was recently expanded to include the Mount Callahan Saddle Natural Area. Extensive time and care has been taken to protect P. debilis in these areas. Providing incentives to private landowners for voluntary conservation actions is one of the factors we are considering for these exclusions. This issue is discussed in further detail under ''Exclusions Based on Other Relevant Impacts'' below. We are seeking public input on the inclusion or exclusion of these Natural Areas in our critical habitat designation.

After considering the following areas under section 4(b)(2) of the Act, we are considering excluding them from the critical habitat designation for Penstemon debilis:

The Mount Callahan Natural Area

The Mount Callahan Saddle Natural Area

We are considering excluding the areas described above because we believe that:

(1) Their value for conservation will be preserved for the foreseeable future by existing protective actions, and

(2) They are appropriate for exclusion under the ''other relevant factor'' provisions of section 4(b)(2) of the Act.

However, we specifically solicit comments on the inclusion or exclusion of such areas. In the paragraphs below, we provide a detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors. Many of the CHUs, as proposed, include private lands. Federal lands with oil and gas leases, grazing permits, and recreational uses also are included. Several State parcels are included where hunting or recreational activities occur.

We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov,* or by contacting the Western Colorado Ecological Services Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this proposal, we have determined that the lands within the designation of critical habitat for *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica* are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not propose to exert his discretion to exclude any areas from the proposed designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities (none of the proposed critical habitat units contain any tribal lands). We also consider any social impacts that might occur because of the designation.

Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

(1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;

(2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and

(3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We believe that the Mount Callahan Natural Area and the Mount Callahan Saddle Natural Area fulfill the above criteria, and we are considering the exclusion of the non-Federal lands covered by this plan that provide for the conservation of Penstemon debilis. We are requesting comments on the benefits to P. debilis from the Mount Callahan Natural Area and the Mount Callahan Saddle Natural Area and their potential exclusion from critical habitat.

Mount Callahan Natural Area and Mount Callahan Saddle Natural Area Articles of Designation and Accompanying Best Management Practices

The Mount Callahan Natural Area was designated in 1987, shortly after the discovery of Penstemon debilis (CNAP 1987, pp. 1–7). The Mount Callahan Saddle Natural Area was designated in 2008 (CNAP 2008, pp. 1–11). Both Natural Areas were designated primarily to protect P. debilis. The agreement (both areas are in the same agreement) is between the CNAP and OXY USA. The articles of designation (for both areas) identify the following conservation measures: Camping is prohibited, noxious weed management is conducted to minimize damage to P. debilis, grazing is limited to preserve natural qualities, and motorized vehicle use is prohibited. The best management practices that apply within 328 ft (100 m) of occupied habitat provide guidelines for surveys, limit surface disturbance, address the protection of pollinators, limit projects that will affect storm water flows, limit undercutting, provide fencing stipulations for disturbances within 328 ft (100 m), address dust abatement activities, and address monitoring (CNAP 2008a, pp. 8–11). Ongoing management of the Mount Callahan Natural Area since 1987, consistent with the conservation measures and best management practices, demonstrates a long-term commitment by both parties. Furthermore, the Mount Callahan Saddle Natural Area was added in 2008, demonstrating an expansion of and commitment to conservation efforts.

Table 7 provides approximate areas of lands that meet the definition of critical habitat or are under our consideration for possible exclusion under section 4(b)(2) of the Act from the final critical habitat rule. Table 7 also provides our reasons for proposed exclusions.

TABLE 7—EXEMPTIONS AND AREAS CONSIDERED FOR EXCLUSION BY CRITICAL HABITAT UNIT FOR *Penstemon debilis*

Unit	Specific area	Basis for exclusion/exemption	Areas meeting definition of critical habitat	Areas considered for possible exclusion
3	Mount Callahan Natural Area	4(b)(2)—Natural Area Designation	7,571 ac (3,064 ha)	357 ac (144 ha).
	Mount Callahan Saddle Natural Area.	4(b)(2)—Natural Area Designation	.....	317 ac (128 ha).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period on our specific assumptions and conclusions in this proposed designation of critical habitat.

We will consider all comments and information we receive during this comment period on this proposed rule during our preparation of a final determination. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **ADDRESSES** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Our draft economic analysis will be completed after this proposed rule is published. Therefore, we will defer our Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Energy Supply, Distribution, or Use—Executive Order 13211, Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and Small Business Regulatory Enforcement Fairness Act (SBREFA), findings until after this analysis is done.

Regulatory Planning and Review—Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (Regulatory Planning and Review). The OMB bases its

determination upon the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

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 (SBREFA) of 1996 (5 U.S.C 801 *et seq.*), whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce its availability in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination.

Land use sectors that could be affected by this proposed rule include: Federal land managers, private landowners with lands that have a Federal nexus within proposed CHUs, commercial or residential developers with lands or activities that have a Federal nexus within proposed CHUs, oil and gas or oil shale companies with Federal leases that fall within proposed CHUs, livestock owners with permits that fall within proposed CHUs, and OHV users that may or are utilizing proposed CHUs.

We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica* all occur in areas where utility corridors are or may affect populations. In addition, both P. debilis and *P. submutica* are in areas with extensive oil and gas activity. Well pads and their existing infrastructure are within proposed CHUs. On Federal lands, entities conducting oil and gas related activities as well as power companies will need to consult within areas designated as critical habitat. Although we do not believe these impacts will rise to the level of significant, we are deferring our finding until the draft economic analysis has been completed. We will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) A condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because only a small percentage of the total land ownership fall on small government lands such as the Town of Pagosa Springs, Archuleta

County, and lands owned and operated by the State of Colorado. Therefore, a Small Government Agency Plan is not required. We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for *I. polyantha,* P. debilis, and *P. submutica* does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Colorado. The designation of critical habitat in areas currently occupied by the *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica* may impose nominal additional regulatory restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical and biological features essential to the conservation of the *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica* within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica,* under the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service,* 75 F.3d 1429 (10th Cir. 1996), we will undertake NEPA analysis for critical habitat designation and notify the public of the availability of the draft environmental assessment for this proposal when it is finished.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal

Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We determined that there are no tribal lands that were occupied by *Ipomopsis polyantha,* Penstemon debilis, and *Phacelia submutica* at the time of listing that contain the features essential for conservation of the species, and no tribal lands unoccupied by the *I. polyantha,* P. debilis, and *P. submutica* that are essential for the conservation of the species. Therefore, we are not proposing to designate critical habitat for *I. polyantha,* P. debilis, and *P. submutica* on tribal lands.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Western Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Western Colorado Ecological Services Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h), revise the entry for ''*Ipomopsis polyantha,''* ''Penstemon debilis,'' and ''*Phacelia submutica''* under ''*Flowering Plants''* in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants:							
*	* *		* *		*		*
Ipomopsis polyantha	Pagosa skyrocket	U.S.A. (CO)	Polemoniaceae	E	792	17.96(a)	NA
*	* *		* *		*		*
Penstemon debilis ...	Parachute beardtongue	U.S.A. (CO)	Plantaginaceae	T	792	17.96(a)	NA
*	* *		* *		*		*
Phacelia submutica	DeBeque phacelia	U.S.A. (CO)	Hydrophyllaceae	T	792	17.96(a)	NA
*	* *		* *		*		*

3. In § 17.96, amend paragraph (a) by adding entries for ''*Phacelia submutica* (DeBeque phacelia)'' in alphabetical order under Family Hydrophyllaceae, ''Penstemon debilis (Parachute penstemon)'' in alphabetical order under Family Plantaginaceae, and ''*Ipomopsis polyantha* (Pagosa skyrocket)'' in alphabetical order under Family Polemoniaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Hydrophyllaceae: *Phacelia submutica* (DeBeque phacelia)

(1) Critical habitat units are designated for Garfield and Mesa Counties, Colorado.

(2) Within these areas, the primary constituent elements (PCEs) of the physical and biological features essential to the conservation of *Phacelia submutica* consist of five components:

(i) *Suitable soils and geology.*

(A) Atwell Gulch and Shire members of the Wasatch formation.

(B) Within these larger formations, small areas (from 10 to 1,000 ft^2 (1 to 100 m^2)) on colorful exposures of chocolate to purplish brown, light to dark charcoal gray, and tan clay soils. These small areas are slightly different in texture and color than the similar surrounding soils. Occupied sites are characterized by alkaline (pH range from 7 to 8.9) soils with higher clay content than similar nearby unoccupied soils.

(C) Clay soils that shrink and swell dramatically upon drying and wetting and are likely important in the maintenance of the seed bank.

(ii) *Topography.* Moderately steep slopes, benches, and ridge tops adjacent to valley floors. Occupied slopes range from 2 to 42 degrees with an average of 14 degrees.

(iii) *Elevation and climate.*

(A) Elevations from 4,600 ft (1,400 m) to 7,450 ft (2,275 m).

(B) Climatic conditions similar to those around DeBeque, Colorado, including suitable precipitation and temperatures. Annual fluctuations in moisture (and probably temperature) greatly influences the number of *Phacelia submutica* individuals that grow in a given year and are thus able to set seed and replenish the seed bank.

(iv) *Plant community.*

(A) Small (from 10 to 1,000 ft^2 (1 to 100 m^2)) barren areas with less than 20 percent plant cover in the actual barren areas.

(B) Presence of appropriate associated species that can include (but are not limited to) the natives *Grindelia fastigiata, Eriogonum gordonii, Monolepis nuttalliana,* and *Oenothera caespitosa.* If sites become dominated by *Bromus tectorum* or other invasive nonnative species, they should not be discounted because *Phacelia submutica* may still be found there.

(C) Appropriate plant communities within the greater pinyon-juniper woodlands that include:

(*1*) Clay badlands within the mixed salt desert scrub; or

(*2*) Clay badlands within big sagebrush shrublands.

(v) *Maintenance of the seed bank and appropriate disturbance levels.*

(A) Within suitable soil and geologies (see paragraph (2)(i) of this entry), undisturbed areas where seed banks are left undamaged.

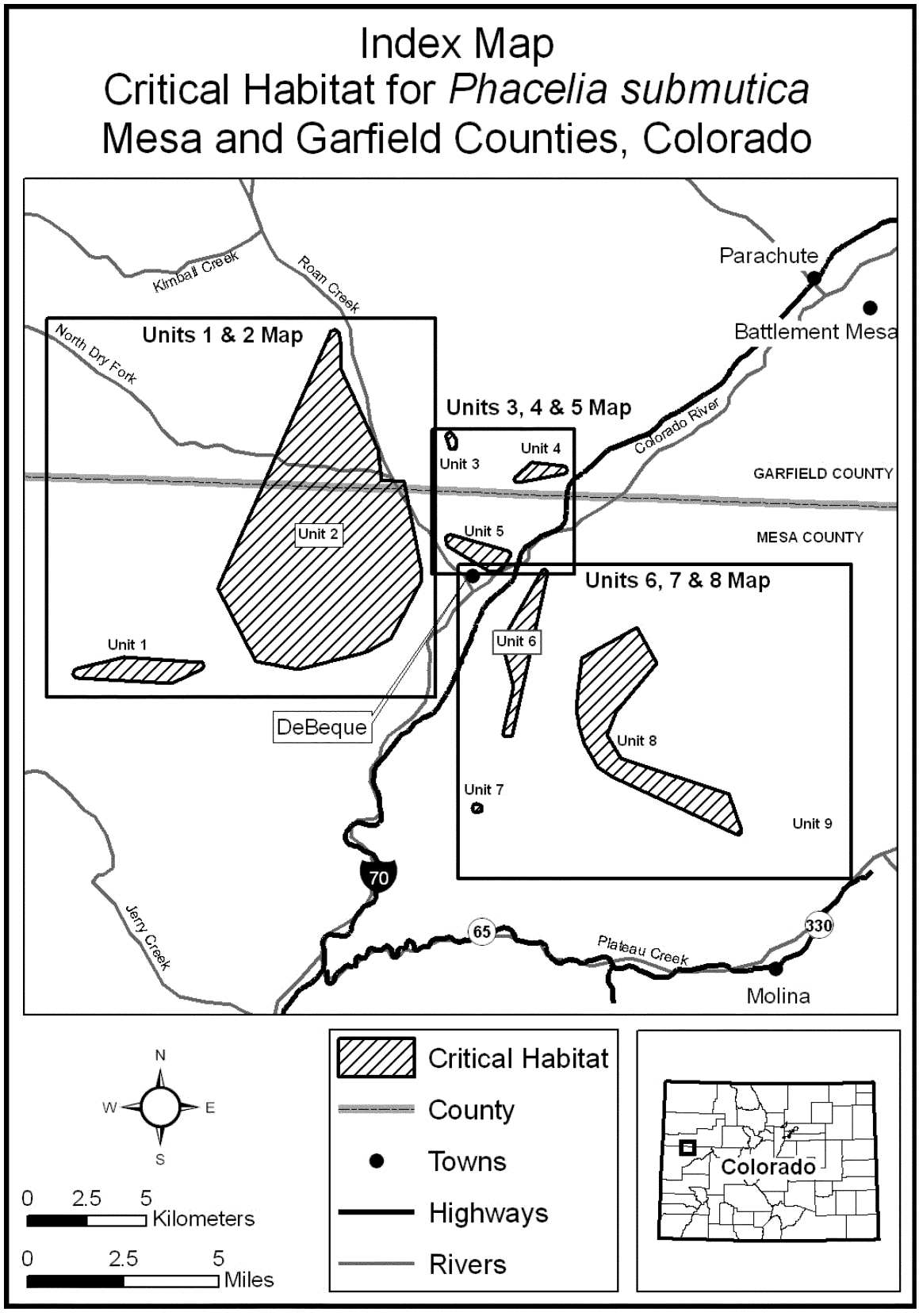
(B) Areas with light disturbance when dry and no disturbance when wet. Clay soils are relatively stable when dry but are extremely vulnerable to disturbances when wet. While *Phacelia submutica* has evolved with some light natural disturbances including erosional and shrink-swell processes, human disturbances that are either heavy or light when soils are wet could impact the species and its seed bank. More heavily disturbed areas should be evaluated over the course of several years for the species' presence.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of both satellite imagery (NAIP 2009) as well as USGS geospatial quadrangle maps and were mapped using NAD 83 Universal Transverse Mercator (UTM), zone 13N coordinates. Location information came from a wide array of sources. A habitat model prepared by the Colorado Natural Heritage Program also was utilized.

(5) **Note:** Index map of critical habitat for *Phacelia submutica* follows:

BILLING CODE 4310–55–P



(6) Unit 1: Mesa County, Colorado.

BILLING CODE 4310–55–C

(i) Land bounded by the following UTM NAD83, zone 13 N coordinates (E,N): 206056.41, 4354673.68; 206059.46, 4354708.47; 206068.50, 4354742.21; 206083.26, 4354773.87; 206103.29, 4354802.48; 206127.99, 4354827.18; 206156.61, 4354847.21; 206188.26, 4354861.97; 206214.13, 4354868.90; 208172.81, 4355368.77; 208189.62, 4355371.81; 208221.50,

4355372.48; 211387.70, 4355153.18; 211410.39, 4355151.28; 211445.58, 4355146.74; 211486.68, 4355135.00; 211547.06, 4355091.87; 211556.23, 4355027.68; 211558.18, 4354988.68; 211544.57, 4354945.59; 211505.83, 4354878.16; 211464.05, 4354854.86; 210208.15, 4354271.78; 210182.91, 4354265.02; 210158.47, 4354262.88; 206249.74, 4354473.91; 206222.00, 4354476.34; 206188.26, 4354485.38; 206156.60, 4354500.14; 206127.99, 4354520.17; 206103.29, 4354544.87; 206083.26, 4354573.48; 206068.50, 4354605.14; 206059.46, 4354638.88; and returning to 206056.41, 4354673.68.

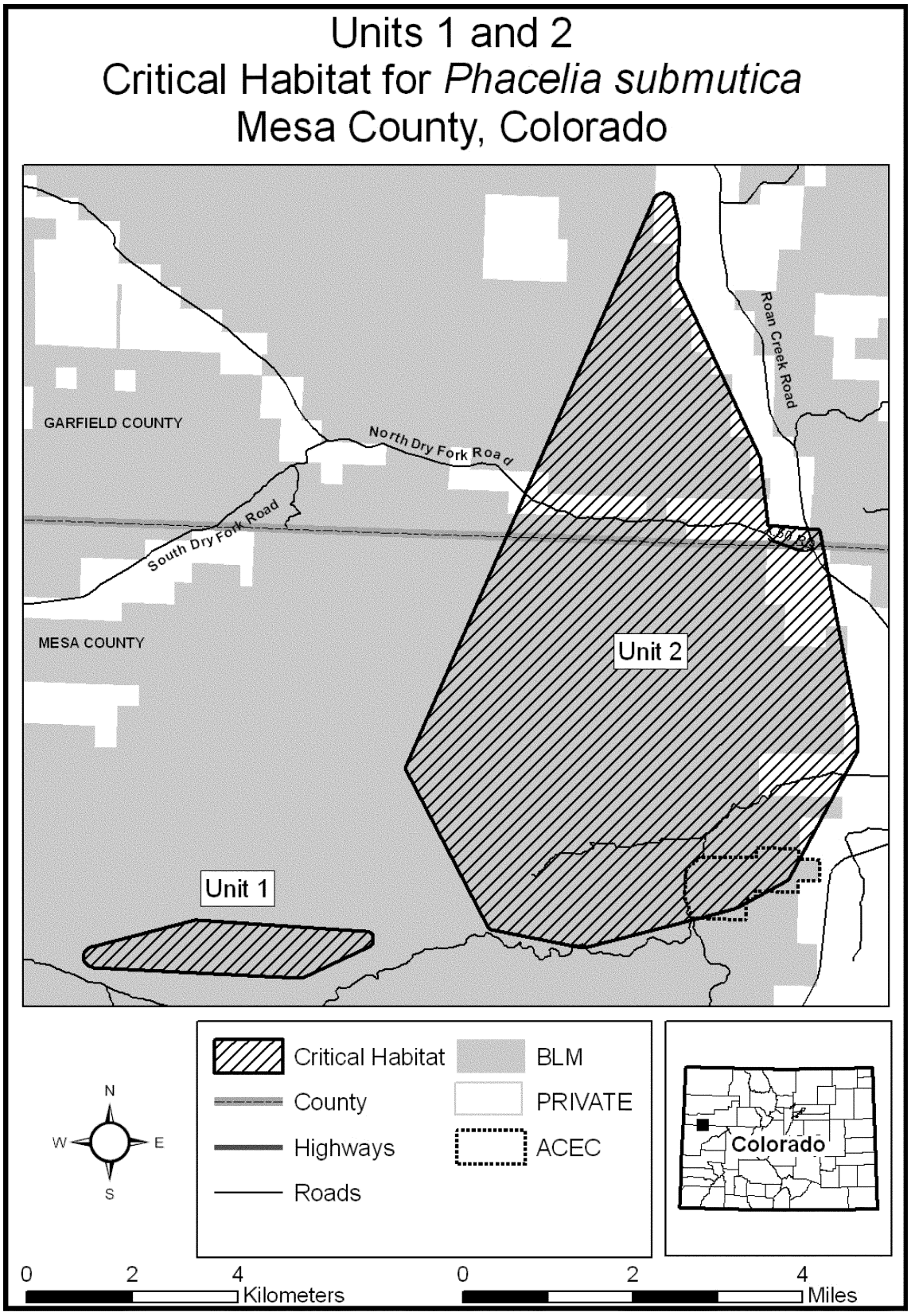
(ii) **Note:** Map of Unit 1 of critical habitat for *Phacelia submutica* is provided at paragraph (7)(ii) of this entry.

(7) Unit 2: Garfield and Mesa Counties, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 212167.61, 4358240.79; 212181.41, 4358305.17; 216874.61, 4369051.20; 216886.19, 4369076.04; 216906.22, 4369104.65; 216930.92, 4369129.35; 216959.53, 4369149.38; 216988.08, 4369162.70; 217007.08, 4369169.20; 217052.79, 4369178.50; 217098.42, 4369178.50; 217147.50, 4369168.62; 217185.45, 4369148.30; 217228.09, 4369111.07; 217246.04, 4369073.00; 217374.92, 4368485.88; 217316.01, 4367553.09; 218906.65, 4364145.98; 219044.12, 4362859.72; 220022.38, 4362778.06; 220029.81, 4362750.34; 220754.51, 4358989.62; 220756.77, 4358963.78; 220763.05, 4358652.76; 220758.37, 4358594.29; 219463.44, 4356169.16; 219454.46, 4356156.34; 219441.47, 4356143.35; 219429.06, 4356134.66; 218497.76, 4355625.60; 218409.92, 4355581.68; 218172.63, 4355513.88; 215567.84, 4354836.96; 215521.83, 4354844.15; 213794.77, 4355190.30; 213727.43, 4355250.15; and returning to 212167.61, 4358240.79.

(ii) **Note:** Map of Units 1 and 2 of critical habitat for *Phacelia submutica* follows:

BILLING CODE 4310–55–P



(8) Unit 3: Garfield County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 221791.53, 4364704.92; 221793.82, 4364731.04; 221800.60, 4364756.36; 221811.68, 4364780.12; 221826.71, 4364801.59; 221845.25, 4364820.12; 221866.72, 4364835.16; 221890.48, 4364846.24; 221915.80, 4364853.02; 221941.92, 4364855.31; 221968.03, 4364853.02; 221993.35, 4364846.24; 222017.11, 4364835.16;

222038.58, 4364820.12; 222057.11, 4364801.59; 222070.52, 4364782.44; 222216.47, 4364510.68; 222225.04, 4364492.29; 222231.83, 4364466.97; 222234.11, 4364440.85; 222232.54, 4364422.94; 222216.07, 4364254.88; 222209.42, 4364230.07; 222198.34, 4364206.31; 222183.30, 4364184.84; 222164.77, 4364166.30; 222143.30, 4364151.27; 222119.54, 4364140.19; 222094.22, 4364133.40; 222068.10, 4364131.12; 222041.99, 4364133.40; 222016.67, 4364140.19; 221992.91, 4364151.27; 221971.44, 4364166.30; 221952.90, 4364184.84; 221937.87, 4364206.31; 221927.38, 4364228.80; 221798.70, 4364660.60; 221793.82, 4364678.81; and returning to 221791.53, 4364704.92.

(ii) **Note:** Map of Unit 3 of critical habitat for *Phacelia submutic*a is provided at paragraph (10)(ii) of this entry.

(9) Unit 4: Mesa County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 221750.44, 4360417.57; 221910.53, 4360544.11; 222011.30, 4360532.40; 224377.86, 4359858.22; 224479.87, 4359777.31; 224505.92, 4359669.86; 224162.67, 4359105.67; 224121.94, 4359039.96; 224061.14, 4358997.20; 223982.52, 4358972.67; 223916.23, 4358974.09; 223647.66, 4358996.02; 221914.01, 4359996.02; 221888.97, 4360013.55; 221864.27, 4360038.25; 221844.24, 4360066.86; 221829.48, 4360098.52; 221822.43, 4360124.80; and returning to 221750.44, 4360417.57.

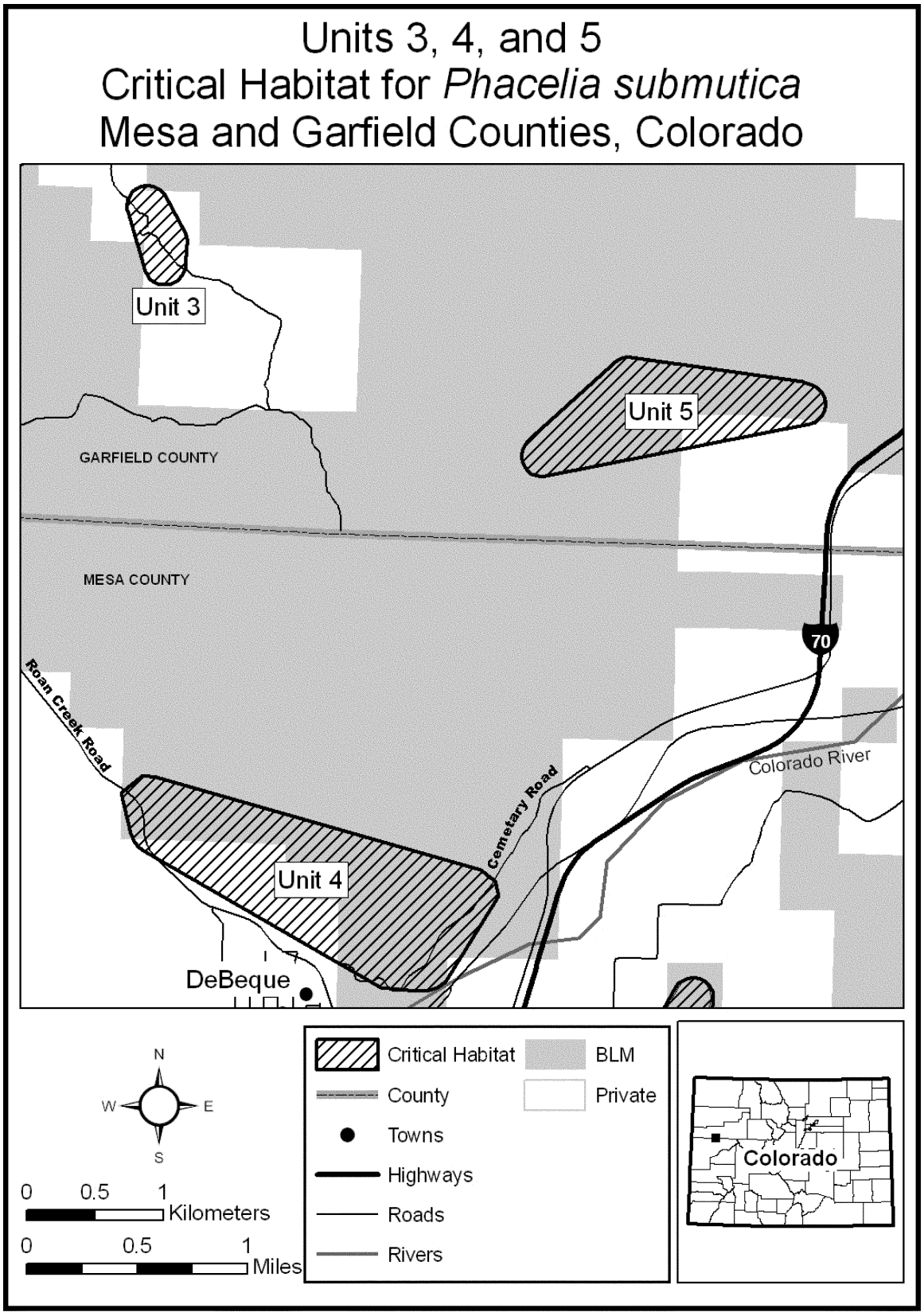
(ii) **Note:** Map of Unit 4 of critical habitat for *Phacelia submutica* is provided at paragraph (10)(ii) of this entry.

(10) Unit 5: Garfield County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 224674.62, 4362880.00; 224676.90, 4362906.11; 224683.69, 4362931.43; 224694.77, 4362955.19; 224709.80, 4362976.66; 224723.94, 4362990.81; 225361.43, 4363566.66; 225380.81, 4363580.23; 225404.57, 4363591.31; 225429.89, 4363598.10; 225456.00, 4363600.38; 225476.05, 4363598.63; 226724.37, 4363422.10; 226741.36, 4363417.55; 226799.80, 4363398.33; 226821.01, 4363388.44; 226842.49, 4363373.40; 226861.02, 4363354.87; 226876.06, 4363333.40; 226887.14, 4363309.64; 226893.92, 4363284.32; 226896.21, 4363258.20; 226893.92, 4363232.09; 226887.14, 4363206.77; 226876.06, 4363183.01; 226861.02, 4363161.54; 226842.49, 4363143.01; 226821.01, 4363127.97; 226797.26, 4363116.89; 226777.13, 4363111.50; 224847.74, 4362731.61; 224825.00, 4362729.62; 224798.89, 4362731.90; 224773.57, 4362738.69; 224749.81, 4362749.77; 224728.34, 4362764.80; 224709.80, 4362783.34; 224694.77, 4362804.81; 224683.69, 4362828.57; 224676.90, 4362853.89; and returning to 224674.62, 4362880.00.

(ii) **Note:** Map of Units 3, 4, and 5 of critical habitat for *Phacelia submutica* follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(11) Unit 6: Mesa County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 224130.10, 4355992.22; 224137.33, 4356027.59; 224164.10, 4356079.43; 225800.48, 4358995.39; 225813.35, 4359013.77; 225831.89, 4359032.31; 225853.36, 4359047.34; 225877.12, 4359058.42; 225902.44, 4359065.20; 225928.55, 4359067.49; 225954.67, 4359065.20; 225979.99, 4359058.42; 226003.74, 4359047.34;

226025.22, 4359032.31; 226043.75, 4359013.77; 226058.79, 4358992.30; 226069.86, 4358968.54; 226076.65, 4358943.22; 226078.93, 4358917.11; 226076.86, 4358893.40; 224608.12, 4352128.37; 224602.98, 4352109.18; 224591.90, 4352085.43; 224576.87, 4352063.95; 224558.33, 4352045.42; 224536.86, 4352030.38; 224513.10, 4352019.30; 224487.78, 4352012.52; 224467.81, 4352010.77; 224347.33, 4352006.47; 224323.80, 4352008.53; 224298.48, 4352015.31; 224274.72, 4352026.39; 224253.25, 4352041.43; 224234.71, 4352059.96; 224219.68, 4352081.44; 224208.60, 4352105.19; 224201.81, 4352130.52; 224199.99, 4352151.35; 224629.91, 4354119.91; and returning to 224130.10, 4355992.22.

(ii) **Note:** Map of Unit 6 of critical habitat for *Phacelia submutica* is provided at paragraph (14)(ii) of this entry.

(12) Unit 7: Mesa County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 222895.27, 4348972.58; 222897.80, 4349033.20; 222915.05, 4349089.21; 222986.91, 4349165.50; 223071.80, 4349165.50; 223127.84, 4349151.49; 223191.28, 4349133.16; 223258.08, 4349099.76; 223289.13, 4349042.83; 223296.46, 4348986.16; 223281.88, 4348879.74; 223202.51, 4348825.62; 223135.45, 4348812.21; 223082.26, 4348808.17; 223046.13, 4348816.20; 222983.74, 4348834.55; 222946.47, 4348871.83; 222913.76, 4348920.89; and returning to 222895.27, 4348972.58.

(ii) **Note:** Map of Unit 7 of critical habitat for *Phacelia submutica* is provided at paragraph (14)(ii) of this entry.

(13) Unit 8: Mesa County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 227287.92, 4353124.64; 227363.29, 4353992.27; 227486.10, 4355236.26; 227494.99, 4355269.46; 227509.75, 4355301.11; 227529.79, 4355329.72; 227554.49, 4355354.42; 227580.17, 4355372.41; 229695.80, 4356548.43; 229713.96, 4356556.90; 229769.67, 4356573.00; 229791.21, 4356573.00; 229846.71, 4356568.20; 229895.06, 4356513.86; 229901.97, 4356503.99; 230681.73, 4355125.75; 228988.56, 4353080.54; 228569.46, 4352091.46; 229156.20, 4351102.39; 233728.76, 4349562.63; 233736.17, 4349546.74; 234244.43, 4348051.25; 234244.43, 4347992.84; 234223.25, 4347925.78; 234136.83, 4347851.71; 234053.14, 4347868.45; 234019.56, 4347882.27; 228869.43, 4350285.62; 228801.70, 4350322.67; 228248.13, 4350668.17; 228218.86, 4350689.66; 227621.62, 4351711.59; 227402.60, 4352451.12; 227394.12, 4352487.23; 227348.70, 4352740.95; and returning to 227287.92, 4353124.64.

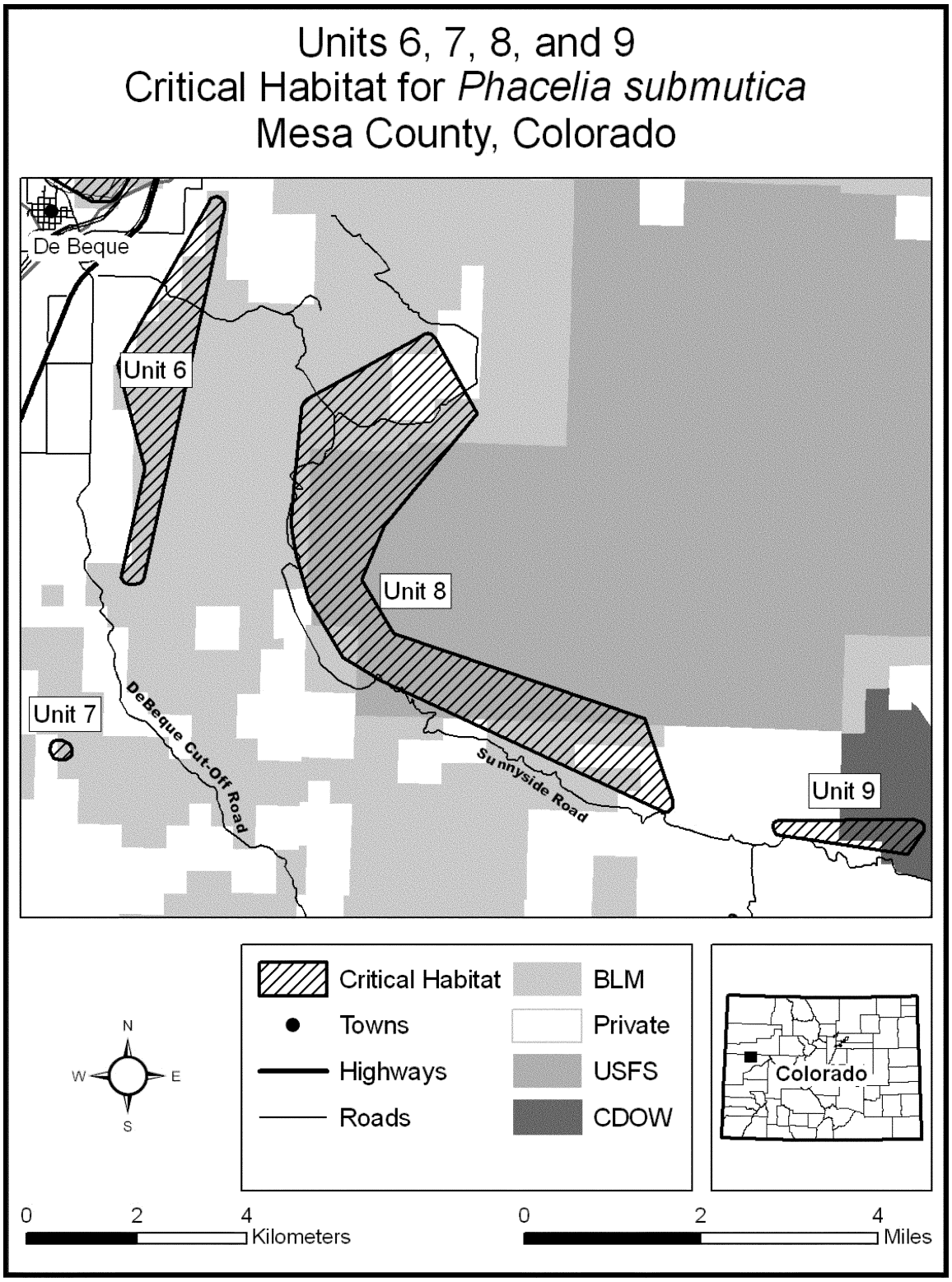
(ii) **Note:** Map of Unit 8 of critical habitat for *Phacelia submutica* is provided at paragraph (14)(ii) of this entry.

(14) Unit 9: Mesa County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 236060.14, 4347594.28; 236061.74, 4347612.58; 236066.50, 4347630.33; 236074.26, 4347646.98; 236084.79, 4347662.02; 236097.78, 4347675.01; 236112.83, 4347685.55; 236129.48, 4347693.31; 236147.22, 4347698.07; 236160.44, 4347699.22; 238599.07, 4347734.44; 238748.35, 4347678.56; 238818.30, 4347624.15; 238813.83, 4347530.21; 238505.71, 4347090.68; 238427.01, 4347093.30; 236169.29, 4347430.50; 236154.51, 4347434.46; 236137.86, 4347442.23; 236122.81, 4347452.76; 236109.83, 4347465.75; 236099.29, 4347480.80; 236094.26, 4347491.59; 236065.90, 4347560.46; 236061.74, 4347575.99; and returning to 236060.14, 4347594.28.

(ii) **Note:** Map of Units 6, 7, 8, and 9 of critical habitat for *Phacelia submutica* follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

* * * * *

Family Plantaginaceae: Penstemon debilis (Parachute penstemon)

(1) Critical habitat units are designated for Garfield County, Colorado.

(2) Within these areas, the primary constituent elements (PCEs) of the physical and biological features essential to the conservation of Penstemon debilis consist of five components:

(i) *Suitable soils and geology.*

(A) Parachute Member and the Lower Part of the Green River Formation, although soils outside these formations would be suitable for pollinators (see paragraph (2)(v) of this regulation).

(B) Appropriate soil morphology characterized by a surface layer of small to moderate shale channers (small

flagstones) that shift continually due to the steep slopes and below a weakly developed calcareous, sandy to loamy layer with 40 to 90 percent coarse material.

(ii) *Elevation and climate.* Elevations from 5,250 to 9,600 ft (1,600 to 2,920 m) in elevation. Climatic conditions similar to those of the Mahogany Bench, including suitable precipitation and temperatures.

(iii) *Plant community.*

(A) Barren areas with less than 10 percent plant cover.

(B) Other oil shale endemics, which can include: Mentzelia rhizomata, Thalictrum heliophilum, Astragalus lutosus, Lesquerella parviflora, Penstemon osterhoutii, and Festuca dasyclada.

(iv) *Habitat for pollinators.*

(A) Pollinator ground and twig nesting habitats. Habitats suitable for a wide array of pollinators and their life-history and nesting requirements. A mosaic of native plant communities generally would provide for this diversity (see paragraph (2)(iii) of this regulation). These habitats can include areas outside of the soils identified in paragraph (2)(i) of this regulation.

(B) Connectivity between areas allowing pollinators to move from one population to the next within units.

(C) Availability of other floral resources such as other flowering plant species that provide nectar and pollen for pollinators. Grass species do not provide resources for pollinators.

(D) To conserve and accommodate these pollinator requirements, we have identified a 3,280-ft (1,000-meter) area beyond occupied habitat to conserve the pollinators essential for reproduction.

(v) *High levels of natural disturbance.*

(A) Very little to no soil formation.

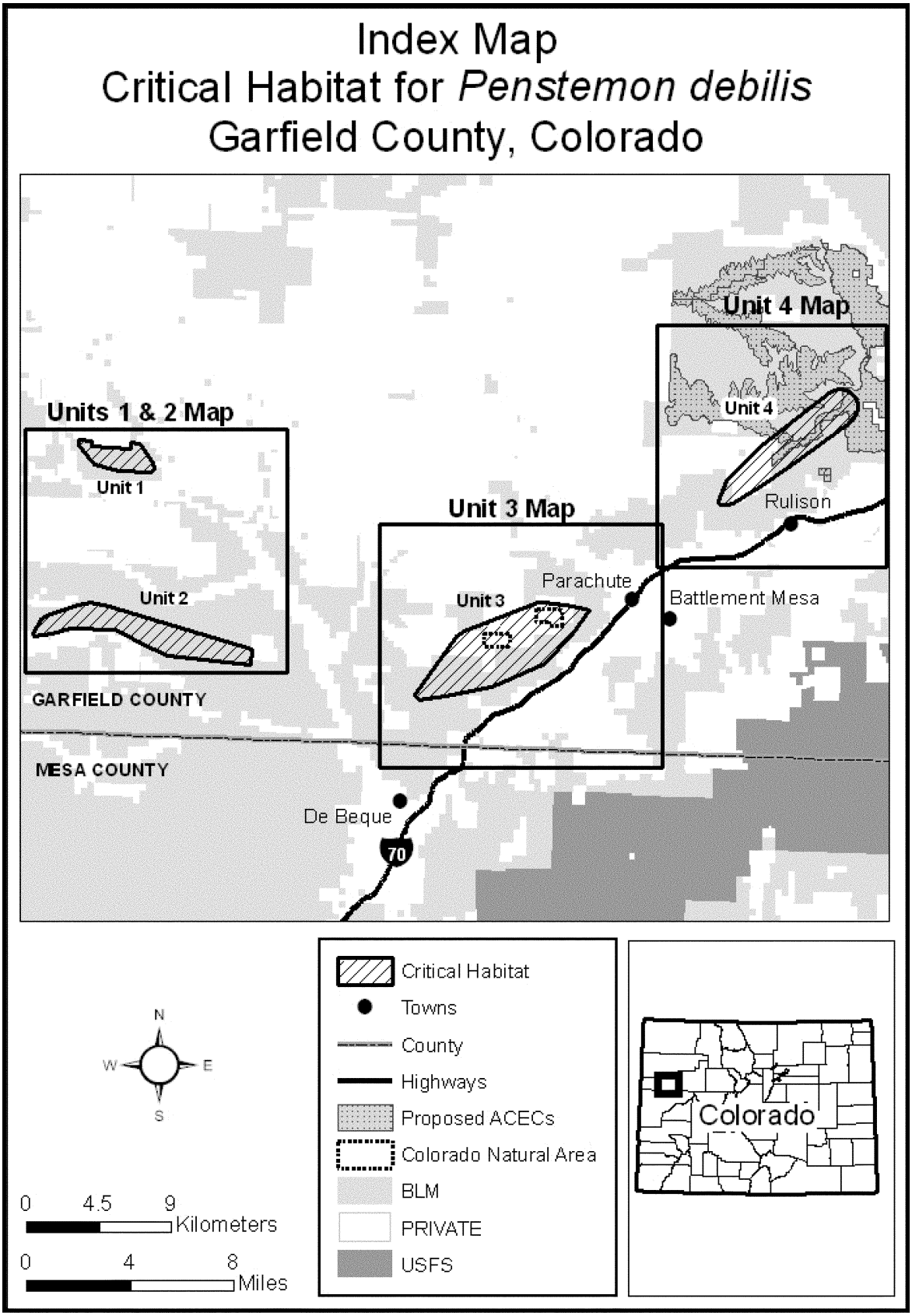
(B) Slow to moderate but constant downward motion of the oil shale that maintains the habitat in an early successional state.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of both satellite imagery (NAIP 2009) as well as USGS geospatial quadrangle maps and were mapped using NAD 83 Universal Transverse Mercator (UTM), zone 13N coordinates. Location information came from a wide array of sources. Geology, soil, and landcover layers also were utilized.

(5) **Note:** Index map of critical habitat for Penstemon debilis follows:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(6) Unit 1: Garfield County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 202906.15, 4381320.29; 203687.82, 4381249.23; 203711.51, 4380870.24; 206127.56, 4380775.50; 206151.24, 4381130.80; 206743.41,

4381059.74; 207481.34, 4379882.89; 207546.04, 4379737.88; 207579.46, 4379590.78; 207560.32, 4379461.09; 207478.37, 4379389.00; 207474.54, 4379385.64; 207331.18, 4379313.30; 207242.86, 4379310.27; 205522.68, 4379335.39; 205374.75, 4379343.44; 203884.46, 4379765.47; 203832.32, 4379794.30; 203128.54, 4380665.06; 202917.56, 4380968.75; 202914.21, 4381113.81; and returning to 202906.15, 4381320.29.

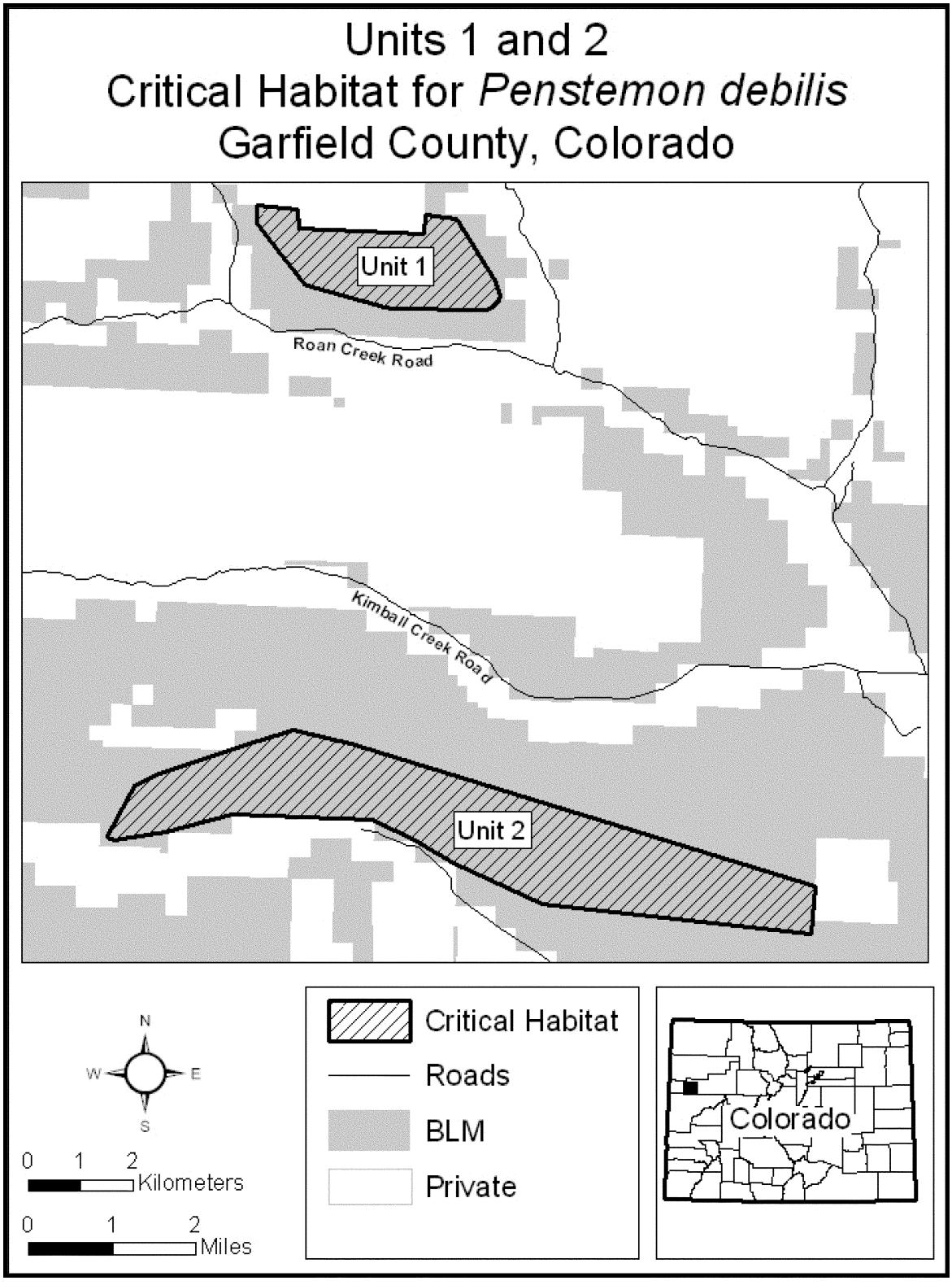
(ii) **Note:** Map of Unit 1 of critical habitat for Penstemon debilis is provided at paragraph (7)(ii) of this entry.

(7) Unit 2: Garfield County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 200037.93, 4369152.60; 200064.07, 4369235.93; 200561.00, 4370149.00; 200968.81, 4370359.43; 202579.41, 4370903.05; 203616.76, 4371206.04; 204719.41, 4370944.44; 213659.95, 4368221.51; 213580.99, 4367281.93; 208401.49, 4367866.21; 206696.04, 4368647.87; 205938.06, 4369097.92; 205132.71, 4369500.59; 202432.42, 4369595.34; 201153.33, 4369263.73; 200171.00, 4369099.00; and returning to 200037.93, 4369152.6.

(ii) **Note:** Map of Units 1 and 2 of critical habitat for Penstemon debilis follows:

BILLING CODE 4310–55–P



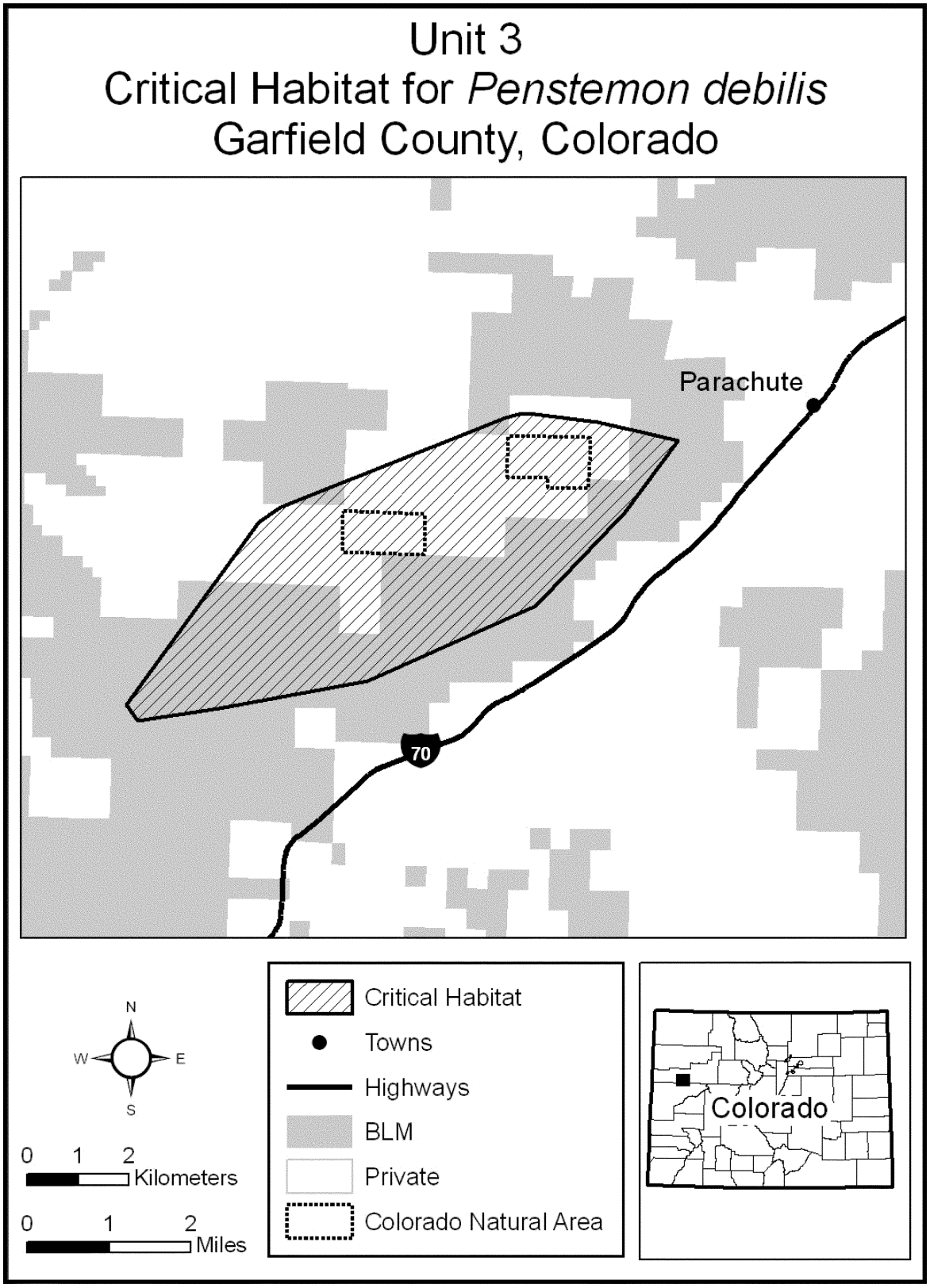
BILLING CODE 4310–55–C

(8) Unit 3: Garfield County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 223794.63, 4365442.99; 226421.38, 4369052.84; 226846.74, 4369360.71; 231279.92, 4371117.43; 231538.71, 4371188.86; 231847.17, 4371187.49; 233083.49, 4371030.55; 234022.16, 4370823.43; 234684.25, 4370657.01; 233636.51, 4369246.26; 231875.03, 4367395.93; 228564.25, 4365920.22; 225627.45, 4365376.45; 224031.96, 4365135.93; and returning to 223794.63, 4365442.99.]

(ii) **Note:** Map of Unit 3 of critical habitat for Penstemon debilis follows:

BILLING CODE 4310–55–P

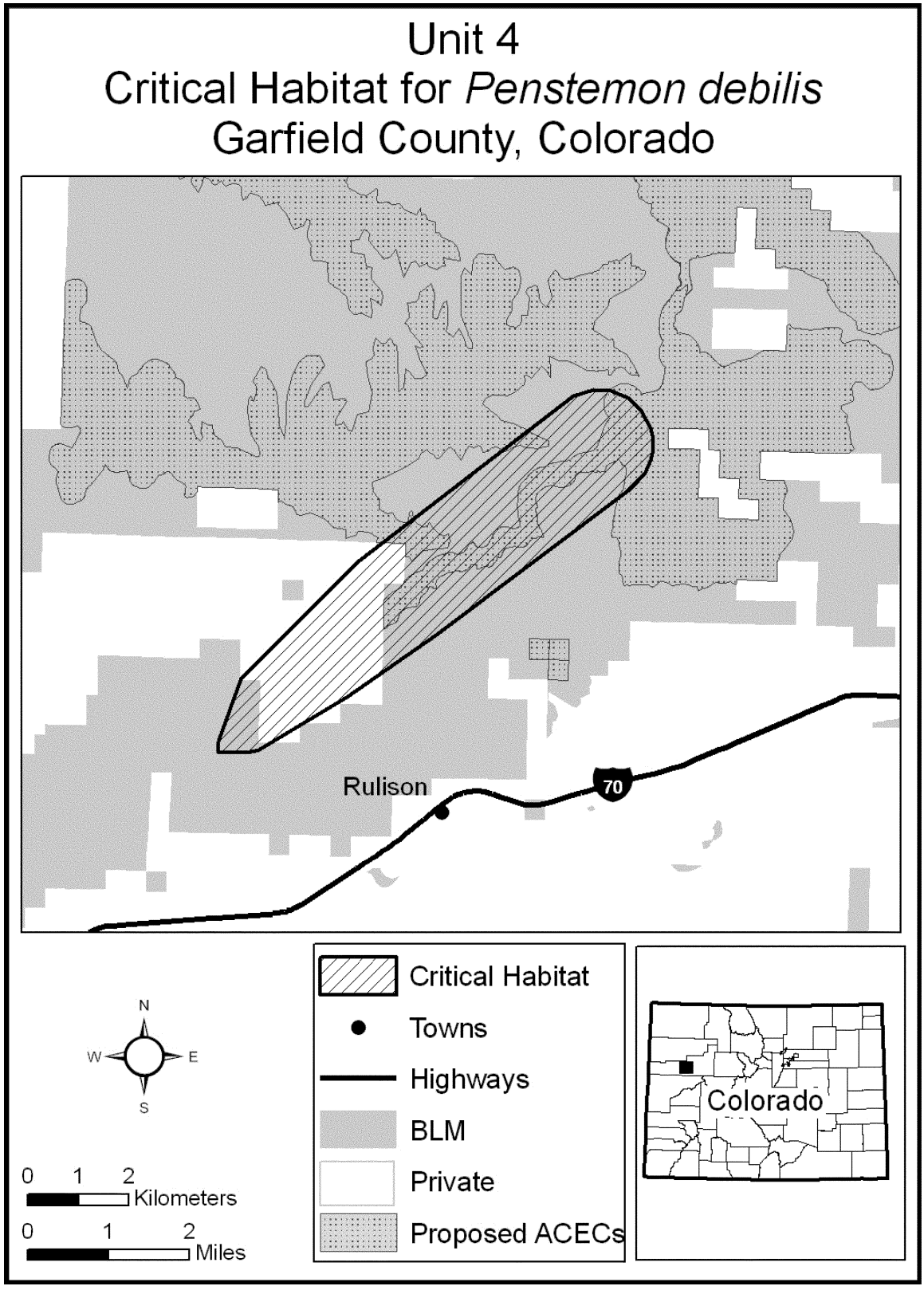


(9) Unit 4: Garfield County, Colorado

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 242721.77, 4377480.02; 243191.00, 4378729.00; 245443.06, 4380986.80; 245458.93, 4381002.66; 245475.49, 4381017.80; 245509.28, 4381047.32; 245532.34, 4381066.29; 249608.89, 4384223.08; 249636.03, 4384243.26; 249649.77, 4384253.12; 249662.66, 4384262.04; 249667.22, 4384265.16; 249676.38, 4384271.35; 249699.98, 4384286.36; 249738.49, 4384309.37; 249778.00, 4384330.63; 249818.42, 4384350.10; 249838.85,

4384359.38; 249859.67, 4384367.73; 249901.68, 4384383.50; 249922.86, 4384390.91; 249944.35, 4384397.36; 249987.59, 4384409.30; 250031.33, 4384419.28; 250075.48, 4384427.29; 250138.32, 4384436.98; 250178.44, 4384442.24; 250223.13, 4384446.26; 250245.51, 4384447.77; 250267.95, 4384448.27; 250312.81, 4384448.27; 250335.24, 4384447.77; 250357.63, 4384446.26; 250402.32, 4384442.24; 250426.41, 4384439.48; 250430.89, 4384438.85; 250459.56, 4384434.76; 250479.91, 4384431.42; 250520.47, 4384423.91; 250562.42, 4384414.26; 250605.67, 4384402.32; 250648.34, 4384388.46; 250690.34, 4384372.69; 250711.17, 4384364.34; 250731.60, 4384355.06; 250772.02, 4384335.59; 250792.01, 4384325.41; 250811.53, 4384314.33; 250850.04, 4384291.32; 250887.49, 4384266.60; 250923.78, 4384240.23; 250941.63, 4384226.64; 250958.86, 4384212.26; 250992.65, 4384182.74; 251025.07, 4384151.74; 251056.08, 4384119.31; 251076.49, 4384096.62; 251086.93, 4384084.27; 251092.10, 4384078.05; 251109.95, 4384056.24; 251118.88, 4384045.00; 251136.41, 4384022.27; 251157.79, 4383992.34; 251182.51, 4383954.89; 251201.82, 4383923.11; 251216.21, 4383897.34; 251223.21, 4383884.35; 251236.10, 4383859.56; 251239.59, 4383852.72; 251246.47, 4383838.98; 251259.13, 4383811.66; 251276.77, 4383770.40; 251285.12, 4383749.58; 251292.53, 4383728.40; 251306.40, 4383685.73; 251315.85, 4383652.83; 251321.59, 4383629.94; 251324.33, 4383618.47; 251331.27, 4383587.73; 251333.50, 4383577.32; 251337.75, 4383556.47; 251343.27, 4383523.86; 251349.29, 4383479.40; 251353.31, 4383434.72; 251355.32, 4383389.90; 251355.83, 4383367.46; 251355.32, 4383345.03; 251353.31, 4383300.21; 251349.29, 4383255.53; 251343.27, 4383211.07; 251336.94, 4383174.60; 251330.90, 4383146.08; 251327.68, 4383131.86; 251319.74, 4383099.14; 251317.83, 4383091.52; 251313.89, 4383076.30; 251305.40, 4383047.21; 251291.54, 4383004.54; 251280.41, 4382973.76; 251272.78, 4382954.63; 251268.86, 4382945.10; 251257.95, 4382919.32; 251253.09, 4382908.20; 251243.09, 4382886.07; 251227.77, 4382855.08; 251206.51, 4382815.57; 251195.43, 4382796.06; 251183.50, 4382777.06; 251158.78, 4382739.62; 251132.41, 4382703.32; 251104.44, 4382668.24; 251090.06, 4382651.02; 251071.10, 4382629.21; 251042.63, 4382596.73; 251011.62, 4382564.31; 250979.20, 4382533.30; 250945.41, 4382503.78; 250928.19, 4382489.40; 250910.33, 4382475.81; 247067.01, 4379599.29; 247053.05, 4379588.99; 247024.77, 4379568.88; 245278.56, 4378356.07; 243539.79, 4377302.88; 243299.65, 4377257.84; 242735.72, 4377245.93; and returning to 242721.77, 4377480.02]

(ii) **Note:** Map of Unit 4 of critical habitat for Penstemon debilis follows:



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* * * * *

Family Polemoniaceae: *Ipomopsis polyantha* (Pagosa skyrocket)

(1) Critical habitat units are designated for Archuleta County, Colorado.

(2) Within these areas, the primary constituent elements (PCEs) of the physical and biological features essential to the conservation of *Ipomopsis polyantha* consist of five components:

(i) *Mancos shale soils.*

(ii) *Elevation and climate.* Elevations from 6,400 to 8,100 ft (1,950 to 2,475 m)

and current climatic conditions similar to those that historically occurred around Pagosa Springs, Colorado. Climatic conditions include suitable precipitation; cold, dry springs; and winter snow.

(iii) *Plant community.*

(A) Suitable native plant communities (as described in paragraph (2)(iii)(B) of this entry) with small (less than 100 ft^2 (10 m^2)) or larger (several hectares or acres) barren areas with less than 20 percent plant cover in the actual barren areas.

(B) Appropriate potential native plant communities, although these communities may not be like they were historically because they have already been altered. Therefore, there only needs to be the potential for the appropriate native plant community. For example, Ponderosa pine forests may have been cut, or areas that had native vegetation may have been scraped. Native habitats and plants would be preferred to habitats dominated by nonnative invasive species. These plant communities include:

(*1*) Barren shales;

(*2*) Open montane grassland (primarily Arizona fescue) understory at the edges of open Ponderosa pine; or

(*3*) Clearings within the ponderosa pine/Rocky Mountain juniper and Utah juniper/oak communities.

(iv) *Habitat for pollinators.*

(A) Pollinator ground and twig nesting areas. Habitats suitable for a wide array of pollinators and their life-history and nesting requirements. A mosaic of native plant communities generally would provide for this diversity.

(B) Connectivity between areas allowing pollinators to move from one site to the next within each population.

(C) Availability of other floral resources, such as other flowering plant species that provide nectar and pollen for pollinators. Grass species do not provide resources for pollinators.

(D) To conserve and accommodate these pollinator requirements, we have identified a 3,280-ft (1,000-m) area beyond occupied habitat to conserve the pollinators essential for reproduction.

(v) *Appropriate disturbance regime.*

(A) Appropriate disturbance levels—Light to moderate, or intermittent or discontinuous.

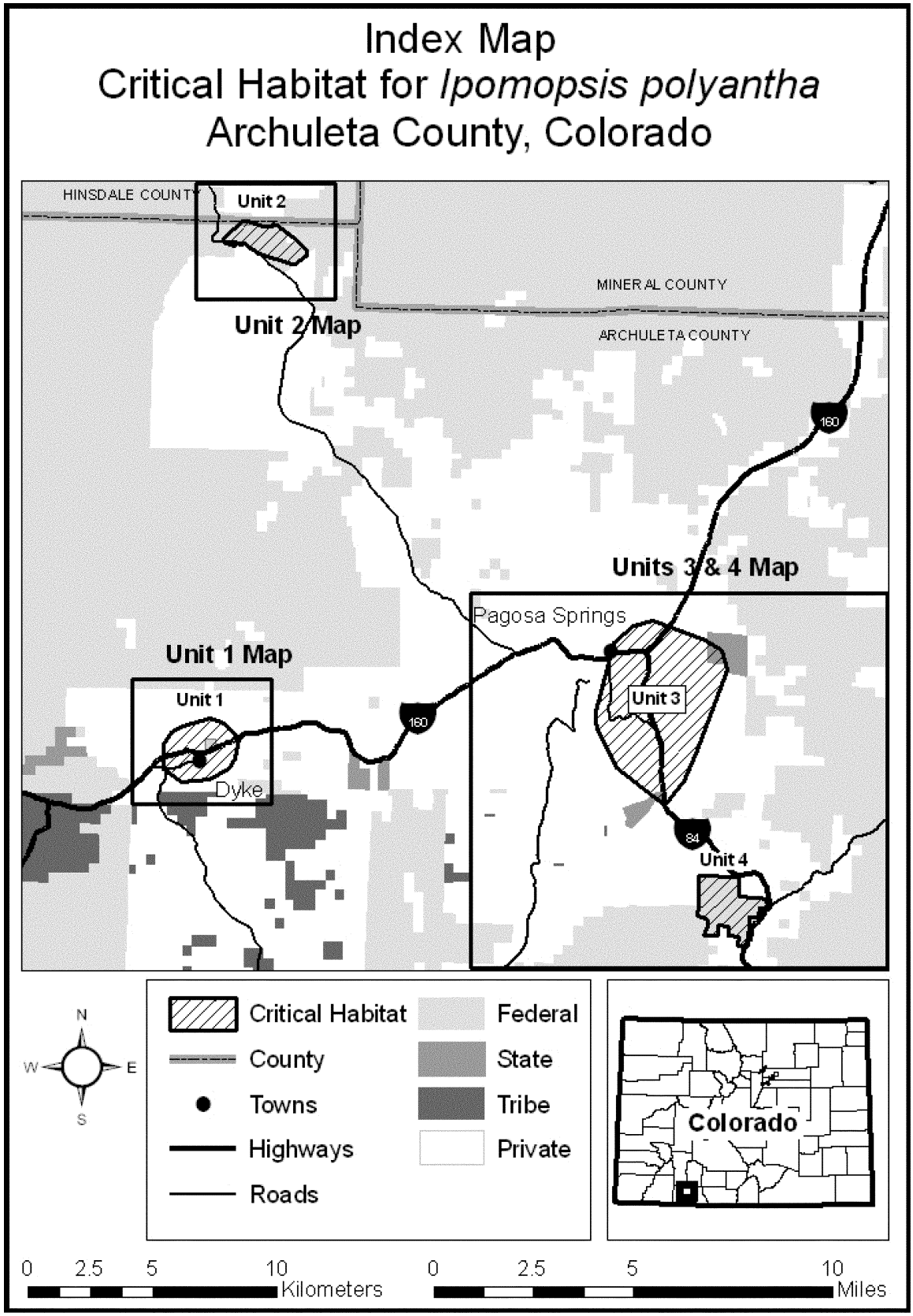
(B) Naturally maintained disturbances through soil erosion or human-maintained disturbances that can include light grazing, occasional ground clearing, and other disturbances that are not severe or continual.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule. However, because Ipomopsis polyantha is found along the edges of roads and buildings, the edges of roads and edges of structures are included in the designation.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of both aerial imagery (NAIP 2009) as well as USGS geospatial quadrangle maps and were mapped using NAD 83 Universal Transverse Mercator (UTM), zone 13N coordinates. Location information came from a wide array of sources.

(5) **Note:** Index map of critical habitat for *Ipomopsis polyantha* follows:

BILLING CODE 4310–55–P

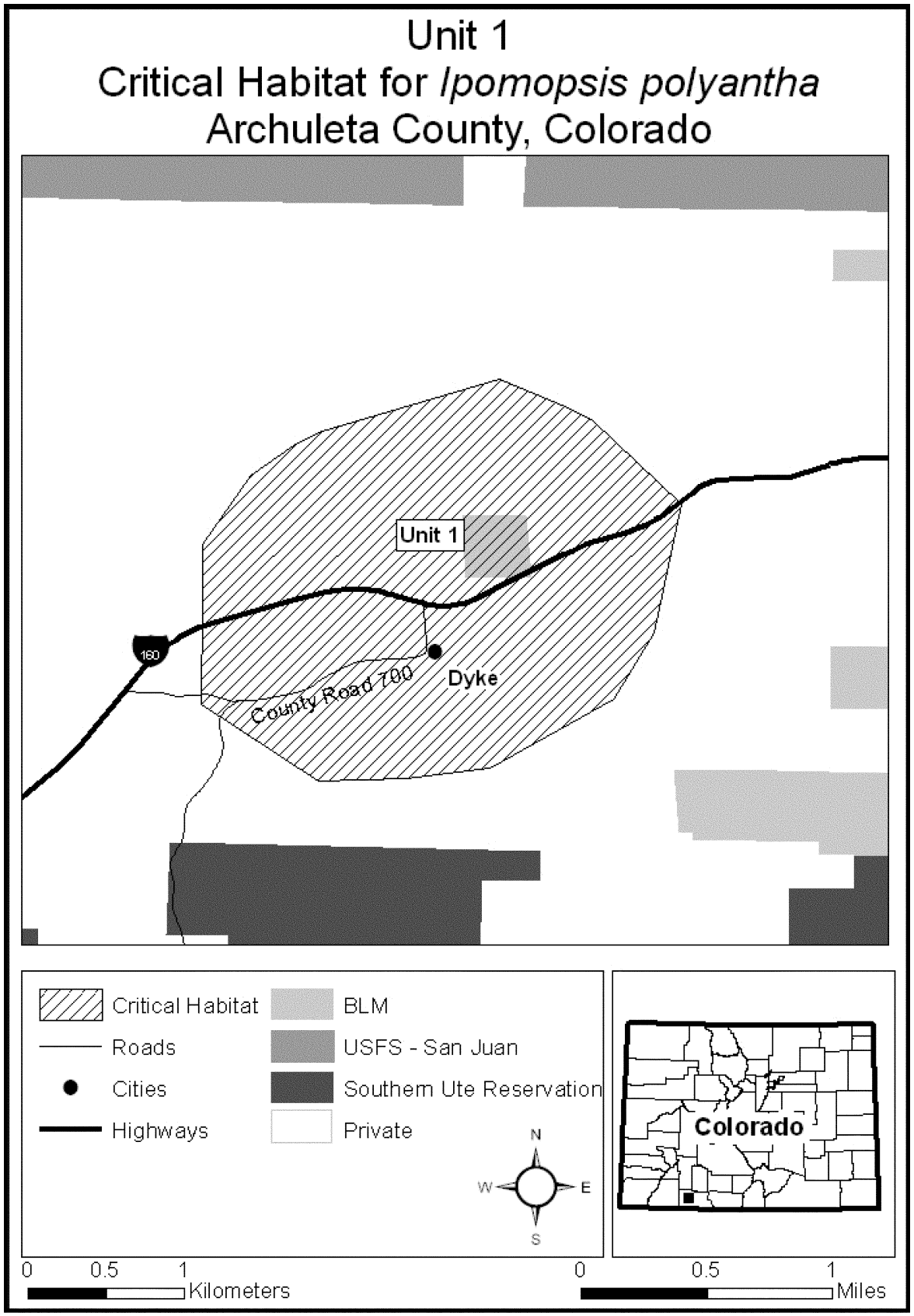


(6) Unit 1: Archuleta County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13 coordinates (E,N): 303791.32, 4122535.03; 303793.45, 4122922.32; 304096.00, 4123362.40; 304369.56, 4123552.58; 304559.79, 4123642.82; 305688.95, 4123978.43; 306091.12, 4123810.03; 306288.11, 4123711.53; 306854.07, 4123177.90; 306682.38, 4122356.39; 306421.31, 4121926.16; 305629.19, 4121491.52;

305085.53, 4121418.90; 304527.32, 4121406.59; 303782.83, 4121898.71; and returning to 303791.32, 4122535.03.

(ii) **Note:** Map of Unit 1 of critical habitat for *Ipomopsis polyantha* follows:



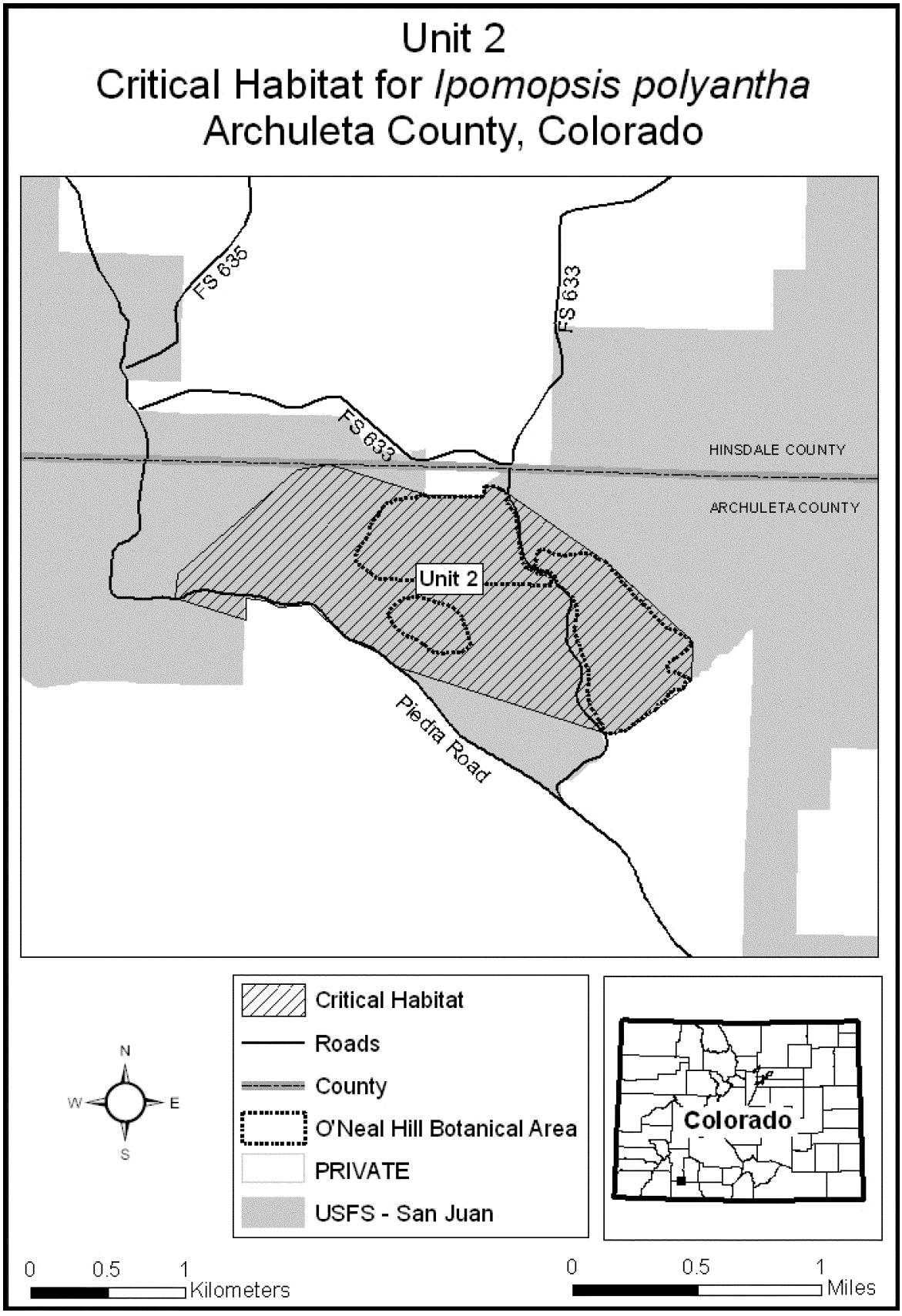
BILLING CODE 4310–55–C

(7) Unit 2: Archuleta County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13 coordinates (E,N): 306215.91, 4143150.27; 306228.72, 4143313.61; 307003.79, 4143989.39; 307211.97, 4144018.22; 307840.95, 4143816.88; 308210.39, 4143809.74; 308215.75, 4143886.66; 308293.59, 4143872.46; 308346.60, 4143847.52; 309004.29, 4143385.20; 309534.52, 4142892.90; 309558.00, 4142861.72; 309548.26, 4142623.97; 309546.44, 4142621.82; 309498.44, 4142571.81; 309318.44, 4142432.81; 309132.45, 4142298.80; 309124.45, 4142295.80; 309054.45, 4142279.80; 309046.45, 4142278.80; 309016.45, 4142278.80; 308991.49, 4142282.38; 307639.65, 4142712.29; 307518.06, 4142804.69; 307308.93, 4142897.10; 307090.07, 4143115.96; 306885.80, 4143091.64; 306798.26, 4143140.28; 306666.95, 4143154.87; 306667.03, 4143009.21; and returning to 306215.91, 4143150.27.

(ii) **Note:** Map of Unit 2 of critical habitat for Ipomopsis polyantha follows:

BILLING CODE 4310–55–P



(8) Unit 3: Archuleta County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 321192.95, 4123901.22; 321219.78, 4124232.82; 321945.28,

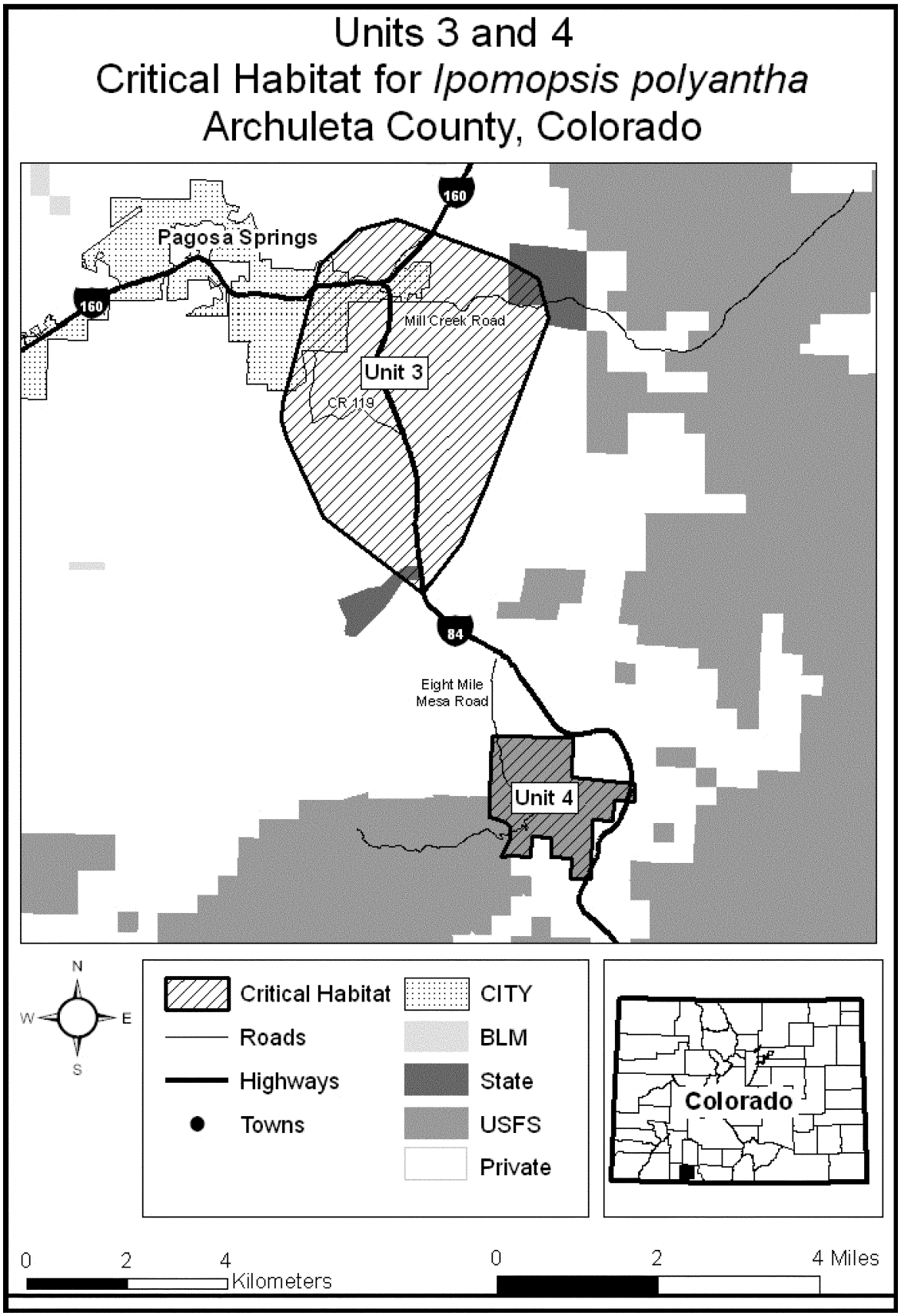
4127008.59; 322719.45, 4127682.22; 323501.91, 4127905.25; 325613.28, 4127099.77; 326316.06, 4126714.67; 326499.78, 4125923.28; 325267.71, 4122561.16; 324767.28, 4121430.82; 324009.92, 4120447.34; 322039.88, 4121949.02; 321275.11, 4123556.12; and returning to 321192.95, 4123901.22.

(ii) **Note:** Map of Unit 3 of critical habitat for Ipomopsis polyantha is provided at paragraph (9)(ii) of this entry.

(9) Unit 4: Archuleta County, Colorado.

(i) Land bounded by the following UTM NAD83, zone 13N coordinates (E,N): 325341.89, 4116396.61; 325387.72, 4117588.25; 326991.87, 4117571.07; 326986.14, 4116780.45; 328223.62, 4116654.41; 328223.62, 4116287.75; 327816.85, 4116316.40; 327799.67, 4115921.09; 327392.90, 4115932.55; 327369.98, 4114758.09; 326957.49, 4114763.82; 326963.22, 4115164.85; 326567.91, 4115187.77; 326562.18, 4115588.81; 326172.61, 4115594.53; 326161.15, 4115204.96; 325777.30, 4115210.69; 325576.78, 4115199.23; 325737.20, 4115554.43; 325754.39, 4115795.05; 325668.45, 4115886.72; 325324.70, 4115995.57; and returning to 325341.89, 4116396.61.

(ii) **Note:** Map of Units 3 and 4 of critical habitat for *Ipomopsis polyantha* follows:


Units 3 and 4
Critical Habitat for Ipomopsis polyantha
Archuleta County, Colorado
Pagosa Springs
160
160
Mill Creek Road
Unit 3
CR 119
84
Eight Mile
Mesa Road
Unit 4
N
W
E
S
Critical Habitat
Roads
Highways
Towns
CITY
BLM
State
USFS
Private
Colorado
0
2
4
Kilometers
0
2
4 Miles

* * * * *

Dated: July 12, 2011.

Eileen Sobeck,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011–18428 Filed 7–26–11; 8:45 am]

BILLING CODE 4310–55–C

FEDERAL REGISTER

Vol. 76 Wednesday,
No. 144 July 27, 2011

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Gopher Tortoise as Threatened in the Eastern Portion of Its Range; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2009–0029; MO 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Gopher Tortoise as Threatened in the Eastern Portion of Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the gopher tortoise (*Gopherus polyphemus*) in the eastern portion of its range (east of the Mobile and Tombigbee Rivers) as threatened and to designate critical habitat under the Endangered Species Act of 1973, as amended. In this finding, we also evaluate whether the status of the gopher tortoise in the western portion of its range (west of the Mobile and Tombigbee Rivers) is accurate. After review of all available scientific and commercial information, we find that the current listing of the gopher tortoise as a threatened species in the western portion of its range is accurate and that listing the gopher tortoise in the eastern portion of its range is warranted. Currently, however, listing the gopher tortoise in the eastern portion of its range is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. We will add the gopher tortoise in the eastern portion of its range to our candidate species list, and we will develop a proposed rule to list the gopher tortoise in the eastern portion of its range as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. In any interim period we will address the status of the candidate taxon through our annual Candidate Notice of Review and will work through partnerships to conserve the species by improving the habitat and removing the threats with the objective to make listing unnecessary. The Service's candidate conservation efforts place great emphasis on coordination with the states and other partners, voluntary conservation efforts, and may include tools such as Candidate Conservation Agreements with Assurances. Even though we are currently unable to take action to list the gopher tortoise in the eastern portion of its range, this does not affect the status of the gopher tortoise in the western portion of its range, where it remains listed as threatened.

DATES: The finding announced in this document was made on July 27, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number [FWS–R4–ES–2009–0029]. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, North Florida Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

FOR FURTHER INFORMATION CONTACT: David L. Hankla, Field Supervisor, North Florida Field Office (see **ADDRESSES**); by telephone at 904–731–3308; or by facsimile at 904–731–3048 *mailto:*. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Threatened and Endangered Wildlife and Plants that contains substantial scientific or commercial information that listing a species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we determine that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

Previous Federal Action

On July 7, 1987, we listed the population of the gopher tortoise as a threatened species in the western portion of its range (west of the Mobile and Tombigbee Rivers in Alabama, Louisiana, and Mississippi) (52 FR 25376). On January 18, 2006, we received a petition dated January 13, 2006, from Save Our Big Scrub, Inc. and Wild South requesting that the population of the gopher tortoise in the eastern portion of its range (east of the Mobile and Tombigbee Rivers in Alabama, Florida, Georgia, and South Carolina) be listed as a threatened species under the Act and critical habitat be designated. The petition included supporting information regarding the species' taxonomy, biology, historical and current distribution, present status, and a summary of actual and potential threats. We acknowledged receipt of the petition in a letter to Wild-Law, legal counsel for Save Our Big Scrub, Inc. and Wild South, dated February 24, 2006. In that letter we also stated that, due to a substantial number of listing-related actions in fiscal year 2006, there were insufficient funds to begin processing the petition at that time. We indicated that we would reevaluate our ability to respond to outstanding petitions as additional funding became available.

Funding became available to begin processing the petition in early February, 2007. On September 9, 2009, we published a 90-day finding (74 FR 46401) that the petition presented substantial scientific and commercial information indicating that listing may be warranted and that we would initiate a status review. We indicated we would accept information to assist us in the review until November 9, 2009. Several commenters requested additional time to provide their comments, and on January 12, 2010, we published clarification that we would accept information through *http://www.regulations.gov* until March 15, 2010 (75 FR 1567). Thereafter, we indicated that information could be submitted to the Service's North Florida Field Office (see **ADDRESSES**) throughout the time period of our review. This notice constitutes the 12-month finding on the January 13, 2006, petition to list the population of the gopher tortoise in the eastern portion of its range as a threatened species.

Species Information

Our 90-day finding summarized much of the current literature regarding the gopher tortoise's distribution, habitat requirements, and life history and

should be reviewed for detailed information (74 FR 46401; September 9, 2009). Below, we summarize previously presented information and provide new information that we believe is relevant to understanding our analysis of the factors that may threaten the gopher tortoise.

Taxonomy and Genetics

The gopher tortoise is one of four living North American tortoise species and the only one indigenous to the southeastern United States (Ernst and Lovich 2009, p. 581). The other three species are found in the western United States. First described by F.M. Daudin in 1802, *G. polyphemus* is classified as belonging to class Reptilia, Order Testudines, and Family Testudinidae. Bramble (1982, p. 864) proposed that *G. polyphemus* along with its cladistic relative *G. flavomarginatus* should be the only members of genus *Gopherus,* placing the other members of this genus *G. berlandieri* and *G. agassizii* into a new genus *Scaptochelys.* However, more recent morphological and genetic studies have reinforced the traditional assignment of all four species into genus *Gopherus* (Crumly 1994, pp. 12–16). Allozyme differentiation has indicated that *G. polyphemus* is most closely related to *G. flavomarginatus* and is thus placed in a clade (genetically related group) distinct from the clade containing *G. berlandieri* and *G. agassizii* (Morafka *et al.* 1994, p. 1669). Mitochondrial DNA (mtDNA) sequences for the cytochrome b gene show a seven percent sequence divergence between the two clades (Lamb and Lydeard 1994, p. 283).

The taxonomic status of the gopher tortoise throughout its range is considered valid (Interagency Taxonomic Information System 2010, p. 1). There is no taxonomic distinction between the gopher tortoise in the western and eastern portions of its range or at any level of geographic subdivision. We are aware of no efforts to describe subspecies. There have been several phylogeographic studies of the gopher tortoise including mtDNA (Osentoski and Lamb, 1995 entire; Clostio 2010) and microsatellites (Schwartz and Karl 2005, entire; Ennen 2009, pp. 66–85; Clostio 2010). Several showed genetically distinct population assemblages across the geographic range (Osentoski and Lamb 1995, p. 713; Ennen 2009, p. 78; Clostio 2010) although the three studies were not entirely congruent in their delineations of western and eastern genetic assemblages. Osentoski and Lamb (1995, pp. 713–714) described three major genetic groups; an eastern group, containing 21 haplotypes (combination of DNA sequences) and ranging from South Carolina to southern Florida; a mid-Florida group, made up of seven haplotypes and located in a small region in central peninsular Florida; and a western group, containing seven haplotypes in a range from the Florida panhandle north to west-central Georgia and west to Louisiana.

Ennen (2009, p. 73) reported a phylogenetic (difference in genetics) break between the western and eastern portions of the tortoise's range based on a 712 base pair portion of a mitochondrial gene. However, the phylogenetic break did not entirely correspond to one particular geographic barrier because shared haplotypes from the eastern and western portions of the tortoise's range were found in the panhandle of Florida and in Georgia populations (Ennen 2009, p. 73). Recent research using another mitochondrial gene similarly found no shared haplotypes across the Mobile and Tombigbee Rivers (Clostio 2010). However, analysis of microsatellite markers indicates phylogenetic division of *G. polyphemus* into eastern and western lineages apparently corresponding to the ranges east and west of the Apalachicola River (Clostio 2010).

There are a number of other smaller-scale genetic analyses that have been conducted to better understand local and regional genetic variation. From comparisons of nine microsatellite loci sampled throughout Florida and southern Georgia (Schwartz *et al.* 2003, p. 285), it was subsequently determined that the populations could be further subdivided into at least eight genetic assemblages, five of which were showing effects of population bottlenecks and four of which showed signs of genetic admixture from separate populations (Schwartz and Karl 2005, pp. 921–925). In the Florida panhandle, mitochondrial DNA analysis found minimal genetic diversity among six populations and suggested that gene flow has occurred among these populations (Berish 2010), which would be in conflict with the findings of Clostio (2010) and consistent with Ennen (2009, p. 78). Subsequent analysis compared the above-referenced Florida panhandle genetics with those collected by Schwartz and Karl (2005, entire) and found a genetic break between peninsular Florida and the Florida panhandle as did Osentoski and Lamb 1995 (as cited in Winters 2010, pp. 3–4), but these data indicated genetic exchange across the panhandle of Florida from Wakulla County to Escambia County, with no significant break at the Apalachicola River as suggested by Clostio (2010).

Microsatellite DNA markers and mitochondrial DNA were used to determine whether gopher tortoise populations on Camp Shelby, Mississippi, were spatially structured, if spatial structure was affected by military activity and habitat quality, and whether there was a correlation between geographic distance and genetic relatedness (Theodorakis 2008, p. 6). Results indicated that there was genetic structure within these populations, and that genetic diversity and gene flow were affected by habitat and land use. Genetic distance did not seem to correlate with geographic distance (Theodorakis 2008, p. 21).

Based on the diversity of six microsatellite loci from 96 individual tortoises from Kennedy Space Center in east-central Florida, it was determined that the population was one nearly continuous population; there were no genetically distinct assemblages (Sinclair *et al.* 2010, p. 192). These findings resulted in a recommendation to manage the Space Center's tortoises as one single population.

Drawing conclusions about genetic subdivisions and unique genetic assemblages based on available genetic data are difficult because methodologies varied between studies, sample sizes were small in some areas, distances between samples were large in some cases, and areas covered by each study varied. Conclusions from rangewide phylogeographic studies of the gopher tortoise are somewhat contradictory. However, other important information about gopher tortoises can be synthesized from these studies. For example, analyses of mitochondrial DNA and nuclear DNA microsatellite markers indicate a long-term population decline since the Pleistocene era of *G. polyphemus* in the western portion of its range (*i.e.,* the listed portion of its range) and past population bottlenecks (Clostio 2010). These findings are supported by a recent evaluation of genetic diversity indices which indicated that four gopher tortoise populations in Mississippi have lower genetic diversity than some populations in the eastern portion of the tortoise's range (Ennen *et al.* 2010, p. 31, 36). This lower genetic variation and heterozygocity (different genes) suggests either a prior population bottleneck, or that historically the western populations persisted naturally with low genetic diversity (Ennen *et al.* 2010, p. 35).

Distribution

The gopher tortoise occurs in the southeastern Coastal Plain from

southeastern South Carolina to extreme southeastern Louisiana (Auffenberg and Franz 1982, p. 95). Throughout much of the western range of the gopher tortoise, only small populations remain in isolated habitat patches (Landry and Gregory 2008, pp. 2–3). The largest populations and greatest density of populations in the western portion of its range occur in the De Soto National Forest, Mississippi (Hammond 2009, p. 12). The eastern portion of the gopher tortoise's range includes Alabama (east of the Tombigbee and Mobile Rivers), Florida, Georgia, and South Carolina. The core of the current distribution of the gopher tortoise in the eastern portion of its range includes central and north Florida and southern Georgia.

There has been no rangewide survey of gopher tortoises, and there are only a limited number of comprehensive surveys over relatively small geographic areas. As a result, the distribution of gopher tortoises would be incomplete if we used only existing survey data, so we relied on the location of potential habitat to identify where tortoises may be present. It is important to note, however, this Geographic Information System (GIS) effort does not reflect the current distribution of gopher tortoise populations nor the size or connectivity of gopher tortoise populations. In all likelihood, the actual distribution of gopher tortoises is less, perhaps much less, than modeled because much of the modeled potential habitat may be unsuitable. However, the information generated from the Hoctor and Beyeler (2010, entire) GIS model and subsequent model revisions for Florida (FWC 2011a) is the best information currently available and roughly estimates the amount and distribution of potential gopher tortoise habitat throughout the eastern portion of the tortoise's range.

In their assessment, Hoctor and Beyeler (2010, pp. 6–7) defined potential primary habitat as having appropriate vegetative communities (*e.g.,* longleaf pine forests, scrub, coastal dunes), soils, and canopy cover of less than 65 percent within the known historic range of the tortoise. Potential secondary habitat was defined as having appropriate forest cover types and soils, but not suitable canopy cover. Potential foraging habitat was defined as areas with appropriate habitat types within 300 meters (m) (984 feet) of either potential primary or potential secondary habitat. Hoctor and Beyeler (2010, p. 16) conducted a goodness-of-fit analysis comparing known gopher tortoise data points from Florida with habitat categories established in the GIS analysis. The analysis indicated that the location of gopher tortoise point data in Florida was not randomly distributed in relation to any grouping. This suggests the GIS analysis distinguished between potential habitat and non-habitat fairly well: primary habitat ($\chi^2 = 3091.58$, df = 1, $P < 0.001$); primary and secondary habitat combined ($\chi^2 = 2157.66$, df = 1, $P < 0.001$); primary, secondary, and foraging habitat combined ($\chi^2 = 1319.44$, df = 1, $P < 0.001$); appropriate soils ($\chi^2 = 826.07$, df = 1, $P < 0.001$). These statistics indicate that the model accurately identified gopher tortoise potential habitat in Florida.

The FWC slightly modified the Hoctor and Beyeler model to account for variations in potential gopher tortoise habitat that were thought to be unique to Florida (FWC 2011a). The inclusion of beach and dune habitat, inclusion of depth to water table of 0.5 to 2.3 meters (1.5 to 6.5 feet), and the exclusion of the 300 meter buffer surrounding primary habitat. These model modifications resulted in a decrease in the acreage of potential gopher tortoise habitat identified in Florida (3.0 million to 2.2 million) but likely more closely estimates the distribution of habitat in Florida. For consistency and comparative purposes, we use acreages reported by Hoctor and Beyeler (2010). Refined analyses such as those conducted by FWC are not available for the remainder of the range and reductions in acreages such as those indicated in Florida's model revisions bolsters our prior assumption that the Hoctor and Beyeler model overestimates the actual distribution of potential habitat. Future conservation actions for the species would no doubt benefit from more site-specific data included in modeling efforts such as that carried out by FWC.

A total of about 9.5 million hectares (ha) [23.5 million acres (ac)] of potential primary, secondary, and foraging habitat is estimated to currently occur within the eastern portion of the tortoise's range (Hoctor and Beyeler 2010, p. 12). Nearly 88 percent of the habitat is estimated to be in private ownership, and the remainder is controlled by local, State, Federal, or private conservation entities (Table 1). The largest patches of contiguous potential habitat (those greater than 100 ha or 250 ac) accounted for about 5.6 million ha (13.9 million ac), and 85 percent of this area was privately owned (Hoctor and Beyeler 2010, pp. 13–14). Using a similar GIS analysis based on the Hoctor and Beyeler (2010, entire) model for the eastern range, the distribution of potential gopher tortoise habitat was estimated throughout the western range (Ginger 2010). A total of 1.8 million ha (4.5 million ac.) of potential primary, secondary, and foraging habitat was estimated using the model, with the largest habitat patches (those greater than 100 ha or 250 ac) accounting for about 0.5 million ha (1.4 million ac). For two counties, Greene (Mississippi) and Washington (Alabama), base soils information was not available, so those counties were not included in the analysis. The base layers represent coarse and sometimes outdated data, and the model was not field tested and no goodness-of-fit analysis was conducted for data originating from the western portion of the tortoise's range. However, the results are likely inflated values that may represent the amount of habitat closer to the historic range rather than the current potential distribution.

Table 1. Distribution of all (primary, secondary and foraging) potential gopher tortoise habitat on private and public lands currently in the eastern portion of its range (summarized from Hoctor and Beyeler 2010, p. 14).

Alabama	Private	1,798,369 ha (4,444,371 ac)
Alabama	Public	57,493 ha (142,065 ac)
Florida	Private	2,378,338 ha (5,876,794 ac)
Florida	Public	753,272 ha (1,861,312 ac)
Georgia	Private	3,569,093 ha (8,819,109 ac)
Georgia	Public	135,599 ha (335,599 ac)
South Carolina	Private	640,987 ha (1,583,858 ac)
South Carolina	Public	73,941 ha (182,707 ac)

Habitat

Gopher tortoises require well-drained, sandy soils for burrowing and nest construction, an abundance of herbaceous ground cover for food, and a generally open canopy that allows sunlight to reach the forest floor (Landers 1980, p. 6; Auffenberg and Franz 1982, p. 98). Longleaf pine and oak uplands, xeric hammock, sand pine and oak ridges (beach scrub), and ruderal (disturbed) habitat most often provide the conditions necessary to support gopher tortoises (Auffenberg and Franz 1982, p. 99). In the western range, soils contain more silt, and xeric (dry) conditions are less common west of the Florida panhandle (Crual *et al.* 2005, p. 73). Ground cover in this Coastal Plains area can be separated into two general regions with the division in the central part of southern Alabama and northwest Florida. To the west, bluestem (*Andropogon* spp.) and panicum (*Panicum* spp.) grasses predominate; to the east, wiregrass (*Aristida stricta*) is most common (Boyer 1990, p. 3). However, gopher tortoises do not necessarily respond to specific plants but rather the physical characteristics of habitat (Diemer 1986, p. 126). Longleaf pine and oak uplands (*e.g.,* sandhills) are the preferred habitat for gopher tortoises (Landers and Speake 1980, p. 515; McRae *et al.* 1981, p. 177; Auffenberg and Franz 1982, p. 100; Diemer 1986, p. 126). Ruderal (*i.e.,* disturbed or atypical) habitats include roadsides and utility rights-of-way, grove/forest edges, fencerows, and clearing edges. Historic gopher tortoise habitats were open pine forests, savannahs, and xeric grasslands that covered the coastal plain from Mexico and Texas to Florida. Historic habitats might have had wetter soils at times and been somewhat cooler but were generally xeric, open, and diverse (Ashton and Ashton 2008, p. 73).

Sandy soils are most appropriate for burrow construction (Jones and Dorr 2004, p. 461), and most burrows are found on loam and sandy loam type soils (Tuma 1996, p. 43). Much of the remaining undisturbed gopher tortoise habitat in the eastern portion of the range consists primarily of coastal dunes or xeric uplands dominated by wiregrass and longleaf pine-turkey oak or scrub communities (Landers *et al.* 1980, pp. 353–354; Diemer 1986, p. 126). Conversely, most tortoise habitat in the western portion of the range (western Alabama, Louisiana, and Mississippi) consists of soils with a low sand content and a more substantial clay component. Jones and Dorr (2004, p. 461) suggest that higher clay content in soils may contribute to lower abundance and density of tortoises in Mississippi versus the remainder of the range.

Sand texture is most important in the formation of the burrow apron, which impedes rain from entering the burrow (Landers 1980, p. 6). Sand depth is also important because soil layers underlying it, such as clay, can impede digging and influence burrow depth (Baskaran *et al.* 2006, p. 347). Burrows are shorter in clay soils, and clay soils may adversely affect nest success because these soils reduce exchange of oxygen and carbon dioxide (Wright 1982, p. 21; Ultsch and Anderson 1986, p. 790; Smith *et al.* 1997, p. 599). Larger diameter burrow openings tend to result in longer burrows (Hansen 1963, p. 355). Burrows are usually distributed on higher ridge tops rather than wetlands, and their depths are sometimes limited by the water table (Baskaran *et al.* 2006, p. 346).

Gopher tortoises use their burrows as a respite from extreme surface temperatures, desiccation, and predators (Hansen 1963, p. 359; Landers 1980, p. 7; Wright 1982, p. 50; Diemer 1986, p. 127; Boglioli 2000, p. 699). Digging burrows benefits the surrounding habitat by returning leached nutrients to the surface (Auffenberg and Weaver 1969, p. 191; Landers 1980, p. 7), as well as increasing the heterogeneity (diversity) of the habitat in the vicinity of the burrow (Kaczor and Hartnett 1990, p. 107). Burrows can also serve to shelter seeds from fires (Kaczor and Harnett 1990, p. 108). Many organisms adapted to hot summers and cool winters use gopher tortoise burrows for refuge (Landers and Speake 1980, p. 515). Jackson and Milstrey (1989, p. 87) compiled a list of 60 vertebrates and 302 invertebrates that share tortoise burrows. Gopher tortoise burrows not only provide other species shelter from extreme environmental conditions and predation, but may also be used as feeding or reproduction sites, as well as permanent microhabitats for one or all life stages (Jackson and Milstrey 1989, p. 86).

Gopher tortoises have a well-defined activity range where all feeding and reproduction take place and that is limited by the amount of herbaceous ground cover (Auffenberg and Iverson 1979, p. 549). Tortoises are obligate herbivores eating mainly grasses, plants, fallen flowers, fruits, and leaves. Gopher tortoises prefer grassy, open-canopy microhabitats (Boglioli *et al.* 2000, p. 703), and their population density directly relates to the density of herbaceous biomass (Auffenberg and Iverson 1979, p. 558; Landers and Speake 1980, p. 522; Wright 1982, p. 22; Stewart *et al.* 1993, p. 79) and a lack of canopy (Breininger 1994, p. 63; Boglioli *et al.* 2000, p. 703). Grasses and grass-like plants are important in gopher tortoise diets (Auffenberg and Iverson 1979, p. 558; Landers 1980, p. 9; Garner and Landers 1981, p. 123; Wright 1982, p. 25; McDonald and Mushinsky 1988, p. 351; Mushinsky *et al.* 2003, p. 480; Birkhead *et al.* 2005, p. 146). A lack of vegetative diversity may negatively impact the long-term sustainability of gopher tortoise populations (Ashton and Ashton 2008, p. 78).

Gopher tortoises may enhance nitrogen cycling by augmenting legume germination and abundance around burrows. Boglioli *et al.* (2000, p. 704) found that legumes were three times more abundant around burrows than at control points. Since legumes have thick seed coats, they may benefit from scarification after passing through the digestive tract (Boglioli *et al.* 2000, p. 704). Low food availability negatively affects tortoise population densities and can be caused by plant growth suppression due to accumulated leaves, litter, and low light associated with canopy closure (Landers and Speake 1980, p. 522).

Gopher tortoises require a sparse canopy and litter-free ground not only for feeding, but also for nesting (Landers and Speake 1980, p. 522). In Florida, McCoy and Mushinsky (1988, p. 35) found that the number of active burrows per tortoise was lower where canopy cover was high. Females require almost full sunlight for nesting (Landers and Buckner 1981, p. 5) because eggs are often laid in the burrow apron or other sunny spot and require the warmth of the sun for appropriate incubation (Landers and Speake 1980, p. 522).

At one site in southwest Georgia, Boglioli (*et al.* 2000, p. 703) found most tortoises in areas with 30 percent or less canopy cover. Diemer (1992, p. 162) found that ecotones created by clearing were also favored by tortoises in north Florida. When canopies become too dense, usually due to fire suppression, tortoises tend to move into ruderal habitats such as roadsides with more herbaceous ground cover, lower tree cover, and significant sun exposure (Garner and Landers 1981, p. 122; McCoy *et al.* 1993, p. 38; Baskaran *et al.* 2006, p. 346). In Georgia, Hermann *et al.* (2002, p. 294) found that open pine areas (*e.g.,* pine forests with canopies that allow light to penetrate to the forest floor) were more likely to have burrows, support higher burrow densities, and have more burrows used by large, adult tortoises than closed-canopy forests. Historically, open-canopied pine forests

were maintained by frequent, lightning-generated fires. Subsequently, grazing and mowing have contributed to the maintenance of some gopher tortoise habitat (Ashton and Ashton 2008, p. 78).

Status

Effectively assessing the status (*i.e.,* whether it is increasing, decreasing, or stable) of the gopher tortoise throughout its range requires evaluation of the distribution of tortoises, number of tortoises and populations, number of individuals in populations, and trends in population growth. As we indicated above, we do not have specific distribution data for most of the tortoise's range, but we estimated where potential habitat existed and where tortoises may still be present. Below, we provide summaries of survey data about the sizes and, in some cases, trends of gopher tortoise populations. There is a noticeable disparity between the apparently large area (expressed in hectares or acres, or ha/ac) of potential gopher tortoise habitat reported above and actual numbers of individual tortoises known from populations that have been surveyed, as summarized below. Upon cursory examination, there seem to be few tortoises where there are millions of hectares of potential habitat. Many Federal and State agencies, non-governmental organizations (NGO), and timber owners have only recently begun to assess where and how many gopher tortoises are present on lands they own or manage. Nonetheless, we have evaluated the status of the gopher tortoise based on the best available scientific information, which is summarized in the next section.

Our review of the literature indicates that the status of an individual gopher tortoise population is dependent on the size of the population and its demographic performance. For comparative purposes, and as described in greater detail below, we considered tortoise populations to be large enough to persist in the future (*i.e.,* viable) if they contained 250 or more reproductively active individuals. Ideally, recruitment should exceed mortality, but few long-term studies provide this demographic information. In the absence of these data, burrow surveys that report hatchling- and juvenile-sized burrows indicate that recent recruitment occurred, but we still often lack information about whether the observed level of recruitment is sufficient to offset mortality. The amount of habitat necessary to support a population of at least 250 breeding individuals likely varies depending on habitat quality. Populations in poor-quality habitat, such as those in atypical vegetative communities and in areas not aggressively managed, will likely require more area than populations in high-quality soils where there would be sparse canopy cover, multi-aged pine forests with abundant ground cover, and where prescribed fire is used periodically to maintain habitat conditions. Because of these variations, the density of gopher tortoises in a population that is large and demographically viable will vary.

Using available information we can estimate that 250 individual tortoises are needed to represent a viable population. We also estimated how much habitat an ancestral (conditions prior to human disturbance) gopher tortoise population of 250 individuals may have required. The recovery criteria for the populations in western portion of the range on priority soils calls for gopher tortoise densities of five active burrows per ha (two active burrows per ac). With a reported 0.61 burrow occupancy correction factor (*i.e.,* proportion of burrows occupied by tortoises) this equates to about 3.0 tortoises per ha (1.2 per ac) (Service 1990, p. 14). Based on historic survey data, tortoise densities as high as 4.9 per ha (2.0 per ac) are targeted for some high-quality recipient sites under Florida's gopher tortoise management plan (Plan) (Fish and Wildlife Conservation Commission (FWC) 2007, p. 76). Burrow densities on two conservation parcels containing mature longleaf pine forests in Georgia that have been managed with short-return (*i.e.,* 1–3 years) fire intervals for 20 to 70 years had burrow densities 2.7–5.1 per ha (1.1–2.1 per ac) (Guyer 2010, Hermann *et al.* 2002, p. 296). Based on the above data, we estimate that a viable ancestral (prior to human disturbance) tortoise population contained a minimum of 250 breeding individuals, with active burrow densities ranging between 1.5–5.1 per ha (0.6–2.1 per ac). Using an occupancy correction factor 0.37 from the best representative ancestral extant population (Hermann *et al.* 2002, p. 296), these burrow densities would equate to 0.6–1.9 tortoises per ha (0.2–0.8 per ac). At these densities, ancestral tortoise populations of 250 tortoises in southern Georgia would likely have occurred in habitat patches ranging from 132–416 ha (326–1,028 ac). Using the 0.61 correction factor specified in the gopher tortoise recovery plan results in 0.9–3.1 tortoises per ha (0.4–1.3 per ac) and would have occupied 81–278 ha (192–687 ac). Few extant gopher tortoise populations currently meet these criteria.

Status in Western Portion of the Range

Alabama: On commercial forests in Alabama and Mississippi, tortoise surveys were conducted from July 1999 through May 2001 on about 11,838 ha (29,252 ac). Survey sites were selected opportunistically and not based on known tortoise populations or habitat suitability for tortoises. About 0.05 active burrows per ha (0.02 per ac) were found in these mostly closed-canopy slash and loblolly pine forests (National Council for Air and Stream Improvement, Inc. 2010, pp. 15–16). Burrow surveys conducted on corporate pine forests in southern Mississippi and southwestern Alabama on soils that were variably suitable for gopher tortoises did not detect active burrows on about 88 percent of surveyed sites (Jones and Dorr 2004, p. 461). Where burrows were detected, densities of active burrows ranged from 0.10–0.60 burrows per ha (0.04–0.24 burrows per ac) (Jones and Dorr 2004, p. 460).

Louisiana: Tortoises are not widespread or abundant in Louisiana, and all known populations are small and occur in fragmented habitat. Determining the status of tortoises in Louisiana is difficult because of limited survey data (Diaz-Figueroa 2005, p. 5). The most recent surveys during 2007 and 2008 in Washington, Tangipahoa, and St. Tammany parishes, where the largest known gopher tortoise populations remain, found 54 active and 45 inactive burrows on Ben's Creek Wildlife Management Area. Sandy Hollow Wildlife Management Area contained 25 active, 12 inactive, and 4 abandoned burrows. A natural gas pipeline corridor supported 26 active, 31 inactive, and 4 abandoned gopher tortoise burrows (Landry and Gregory 2008, pp. 2–3). Burrow density estimates were not included in the survey results for locations in Louisiana.

Mississippi: Data gathered in the De Soto National Forest evaluated gopher tortoise population trends over a 12-year period based on three burrow surveys conducted in 1995, 2002, and 2007. The surveys were limited to only the deep, sandy soil types, which comprise only 2.5 percent of the De Soto National Forest. Nonetheless, gopher tortoise burrow densities declined by 35.7 percent from 1995 to 2007, and 18 locations that contained tortoises in 1995 had no tortoises in 2007 (Conservation Southeast, Inc. 2009, pp. 1, 12, 27). Eighty percent of locations containing adults contained no juvenile burrows. The mean adult active burrow density on priority soils ranged from 0.12–0.67 per ha (0.05–0.27 per ac) on three sections of the National Forest

(Conservation Southeast, Inc. 2009, p. 21). Qualls (2010) observed that the majority of tortoise populations on the De Soto National Forest appeared to be small and adult-dominated and recruitment was low or absent. Analysis of gopher tortoise population sizes from Wester (2005, pp. 18–19) on the Camp Shelby Training Site (within the De Soto National Forest) found that 159 of 162 colonies (98 percent) contained fewer than 50 individual tortoises and up to 25 percent of all tortoises found were not associated with a population (Ginger 2010). These findings support earlier observations of small, fragmented populations on many of the study sites in Mississippi evaluated by Mann (1995, pp. 1, 2, 24). Implementation of recent management efforts within the De Soto National Forest may be slowing the observed population decline (Conservation Southeast, Inc. 2009, p. 13).

A subsample of gopher tortoise survey locations from 1995 on Camp Shelby were resurveyed in 1999 and 2000. The distribution of tortoise colonies did not change between surveys and most were still located in ruderal habitats, and the largest number of burrows was located in fire-suppressed pine forests (Epperson and Heise 2001, p. 26). Populations appear to be declining, and age classes are shifting towards more adults (Epperson and Heise 2001, p. 38). Burrow densities were not estimated from data gathered during this study, but evaluation of three prior surveys on the De Soto National Forest showed that burrow densities (including all active, inactive, and abandoned burrows) ranged from 0.11–1.38 burrows per ha (0.04–0.56 burrows per ac) (Epperson and Heise 2001, p. 25). A subsequent comparison of gopher tortoise survey data from 1995 with information obtained during 2003 and 2004 surveys found the number of active burrows declined from 1,133 to 856 (33 percent reduction) while the number of inactive or abandoned burrows increased by 923 (Wester 2005, p. 17). The 33 percent decline in active burrows was consistent with documented tortoise declines throughout the remainder of the De Soto National Forest (Conservation Southeast, Inc. 2009, pp. 1, 12).

Surveys in known gopher tortoise habitat were conducted from 1993–1995 (during the months between May and August) on 1,554 ha (3,840 ac) of planted pines in southern Mississippi. The planted pines had been recently thinned and frequently burned. About 0.20 active burrows per ha (0.08 per ac) and 0.7 active burrow per kilometer (1.1 per mile) in linear (*e.g.,* roads, gas line right of ways, electrical transmission lines) habitats were found (National Council for Air and Stream Improvement, Inc. 2010, p. 15).

Estes and Mann (1996, p. 1) conducted surveys on sites with suitable soils on Section 16 lands (*i.e.,* in each township, Section 16 is set aside for maintenance of public schools) in southern Mississippi. Surveys covered about 1,090 ha (2,693 ac) and found an average of 1.0 burrow (active and inactive) per ha (0.4 per ac). Burrows were most dense on suitable soils in longleaf pine habitats that were regularly burned. Based on burrow sizes encountered, the authors concluded that recruitment was low. Gopher tortoise populations were small and isolated, and few had evidence of recruitment. The researchers questioned the long-term viability of most Section 16 tortoise populations (Estes and Mann 1996, pp. 23–24).

We also reviewed data collected during a mail survey seeking information on the status of gopher tortoises on private lands within the historic range of the tortoise in Mississippi. Although data were not useful in evaluating numbers, densities, or status of tortoises in southern Mississippi, we found that few reporting landowners had tortoises (19 percent); of the remaining tortoises, most were persisting in longleaf pine habitats, and most tortoise populations had recently disappeared from other habitat types (Underwood *et al.* 2010, pp. 8, 11, 15).

Status in the Eastern Portion of the Range

Alabama: The official Web site of the Alabama Department of Conservation and Natural Resources, *http://www.outdooralabama.com* (accessed September 9, 2010)), reports that gopher tortoises are found in Baldwin, Barbour, Bullock, Butler, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Houston, Monroe, Montgomery, Pike, and Wilcox Counties. Small introduced populations also occur in Autauga and Macon counties. Alabama is in the initial stages of planning surveys or censuses for the gopher tortoise in the eastern portion of the range. Therefore, no data currently exist to evaluate the status of tortoises on public lands in the eastern portion of the range in Alabama, beyond general counties of occurrence.

In 2003, surveyors found 636 active gopher tortoise burrows at Fort Rucker, Alabama, which was reported to have about 19,830 ha (49,000 ac) of potential tortoise habitat (Southeast Regional Partnership for Planning and Sustainability 2010, pp. 11, 27).

Florida: In north central Florida, a gopher tortoise population was intensively monitored for 6 years on a 66-ha (163-ac) 33-year-old slash pine plantation beginning in 1981. After the study site was clear cut in 1988, a follow-up assessment found that tortoises had moved to ecotones (ecological transition zone) between cut and mature forests, but roughly the same number of tortoises were captured pre- (n = 60) and post-clearcut (n = 58). In 2009, an additional follow-up in the now 11-year-old plantation that had been burned and planted in longleaf pine in preparation for gopher tortoise introductions indicated about the same number of tortoises (n = 52), but a substantial decline in the number of juveniles was detected (Berish 2010). The investigator concluded that viable and robust populations can persist long term in habitat with ongoing intensive silviculture. However, in this case, we noted that efforts were under way to enhance gopher tortoise habitat on the study site in preparation for introduction of additional tortoises. The researcher's conclusion of a viable tortoise population persisting in an intensive silvicultural forest did not take into account the possible positive demographic response tortoises may have had to habitat enhancement activities in the later stages of this monitoring effort or the substantial decline in the number of juvenile tortoises.

Tortoise populations on 10 public lands were evaluated twice over a 12-year period and the number of active and inactive burrows decreased at 9 of the 10 sites. On eight of the sites, there was at least a 10 percent decline over the 12-year period (McCoy *et al.* 2006, p. 123). No strong correlation was observed between burrow declines and habitat quality between surveys, but the response of a population to decline in habitat quality may depend on the initial habitat structure, the degree of change in habitat structure, the period of time over which change is measured, the amount of habitat involved, and the level of habitat management (McCoy *et al.* 2006, p. 1).

At Cape Sable, in south Florida, burrow counts using line- or strip-transects were conducted in 1979, 1990, and 2001. The density of active burrows decreased 76 percent between 1979 and 2001. Between 1979 and 1990 the population was probably stable or slightly increasing, but declined substantially between 1990 and 2001, despite evidence of recruitment. Reduced habitat quality and tropical storms may have been responsible for

the observed declines between 1990 and 2001 (Waddle *et al.* 2006, pp. 280–283).

Burrow counts were completed at six locations on Naval Air Station Pensacola and at eight sites at Naval Air Station Whiting Field in 1996 and again in 2006 (Davis and Russo 2007a, entire; 2007b, entire; Naval Air Station Pensacola Natural Resources Division 2008, entire). On Naval Air Station Pensacola active burrows were not detected from two locations where they were observed in 1996, but increased at three others (Davis and Russo 2007a, pp. 2–3). Small burrow sizes indicated that juvenile tortoises were present in the remaining three areas demonstrating successful reproduction. On Naval Air Station Whiting Field the number of active burrows declined on three sites, was unchanged at one site, and increased at four others. Burrow numbers were small in all areas, and reproduction was evident at two locations. Most burrows were located in ruderal habitat, and native pine forests were in need of management (Davis and Russo 2007b, p. 2).

Surveys for gopher tortoise burrows on Camp Blanding Joint Training Center, Clay County, Florida, in 2008 estimated a total of 6,433 active burrows by extrapolating from a survey of 10 percent of the 7,350 ha (18,170 ac) of potential habitat on the Center (Southeast Regional Partnership for Planning and Sustainability 2010, pp. 11, 27).

A recent survey conducted on a 230-ha (570–ac) property in Alachua County, FL, in a high-density slash pine plantation with no burning history and substantial mid-story hardwood found 58 active burrows in the area (Plum Creek 2010, p. 3). The location of the burrows was not described.

A 2009 survey on Egmont Key National Wildlife Refuge (NWR), Hillsborough County, Florida, found 148 active burrows on about 132 ha (328 ac) (Southeast Regional Partnership for Planning and Sustainability 2010, p. 31). On Ding Darling NWR, 12 active and one inactive burrow were detected, and from five populations on Sanibel-Captiva Islands near Ding Darling NWR, a total of 170 active burrows and 39 inactive burrows were found during surveys in late 2009. Archie Carr NWR recorded 11 active burrows on two acres, and Pelican Island NWR found one active burrow during 2010 surveys.

Surveys conducted on a 74 ha (183 ac) parcel of the Jennings Forest Wildlife Management Area in 1999, 2005, and 2010 indicated that the gopher tortoise population apparently responded positively to habitat restoration and management activities (FWC 2010a). The number of tortoise burrows increased from 378 active and inactive in 1999, to 442 active and inactive burrows in 2005, and then to 657 active and inactive burrows in 2010. Using a burrow occupancy correction factor of 0.614, FWC concluded that the tortoise population increased from 271 to 403 individuals over the 11-year monitoring period. The reason(s) for the observed increase in population size was not described (*e.g.*, increased immigration or increased recruitment).

A survey was completed in 2010 on a 100 ha (246 ac) parcel representing about 27 percent of available potential gopher tortoise habitat on Fort White Wildlife and Environmental Area, Florida. Burrow estimates for all potential habitat equaled 1994 ± 95 burrows, or 1810 to 2185 burrows with a 95 percent confidence interval (Sullivan 2010).

Georgia: In seven southwest Georgia counties, tortoise burrow surveys conducted at randomly selected forest units with suitable soils for gopher tortoises found that 64 percent of the parcels contained no gopher tortoise burrows (Hermann *et al.* 2002, p. 292). On parcels that were occupied, burrow densities ranged from 0.04 per ha (0.02 per ac) to 2.2 per ha (0.9 per ac) with a mean of 1.1 per ha (0.4 per ac) (Hermann *et al.* 2002, p. 293). Suitable soils that had non-timber agriculture, hardwoods, and planted pine plantations were about 6 times less likely to have burrows and contained 20 times fewer tortoise burrows than open pine sites (Hermann *et al.* 2002, p. 294–295).

Recently, burrow surveys using line-transect distance sampling and burrow scoping were attempted on 20 wildlife management areas, State parks, and other public lands in southern Georgia. No tortoises were observed at one parcel, and seven others had burrow densities that were insufficient to accurately estimate population levels (Smith *et al.* 2009, p. 361). Thirteen sites contained populations ranging in 48–321 individuals with densities of 0.21–1.65 tortoises per ha (0.08–0.68 tortoises per ac). In general, burrow size class distribution were skewed toward adult tortoises suggesting low recruitment of juveniles.

One-time burrow surveys from Kings Bay Naval Submarine Base in southeastern Georgia indicated a total of 200 active burrows including juvenile and hatchling-sized burrows. The majority of burrows occurred in ruderal, edge, or transition habitat, sandhill, and young pine (Tuberville *et al.* 2009, p. 7). Area of gopher tortoise habitat for Kings Bay Naval Submarine Base was not provided. Native pine forests were degraded and in need of management (Tuberville *et al.* 2009, p. 8).

Surveys on 12 study sites at Fort Benning, Georgia, during 1995 found active and recently used burrow densities ranging from 0.05–1.2 per ha (0.02–0.49 per ac) (Styrsky 2010, p. 405). About 2,700 active burrows were estimated on Fort Benning during 1998 surveys, and with nearly 25,375 ha (62,700 ac) of potential habitat, this equates to about 0.11 active burrows per ha (0.04 burrows per ac) (Southeast Regional Partnership for Planning and Sustainability 2009, p. 11, 27). Surveys on Fort Gordon, Georgia, located 147 active burrows, which contained about 4,570 ha (11,300 acres) of tortoise habitat or about 0.03 active burrow per ha (0.01 per ac). During 2009 surveys on Fort Stewart, Georgia, 4,045 active burrows were located with a reported 5,790 ha (14,300 ac) of tortoise habitat or about 0.70 burrows per ha (0.28 per ac) (Southeast Regional Partnership for Planning and Sustainability 2009, p. 11, 27).

Okeefenokee NWR surveyed two tracts of 11 and 18 ha (26 and 45 ac) in 2010 and found. The 11 ha tract had 73 active, and 35 inactive, burrows and the 18 ha tract had 31 active and 16 inactive, respectively. Surveys on a 102 ha (250 ac) tract on the Eufaula NWR in both Georgia and Alabama found 30 active tortoise burrows.

South Carolina: Little is known about the population status of the tortoise in Aiken County or in the Coosawhatchie region (Bennett and Buhlmann 2005, p. 2). The Aiken Gopher Tortoise Heritage Preserve contains a small population that is believed to be in decline (Bennett and Buhlmann 2005, p. 2). Augmentation into this population is ongoing, and the effects of these translocations are not known (Bennett 2010). Tortoises on the Tillman Sand Ridge Heritage Preserve have been surveyed in the past (Auffenberg and Franz 1982, entire; Wright 1982, entire; Tuberville and Dorcas 2001, entire), and population estimates from these studies indicate a historical decline in the adult population of gopher tortoises. Recent assessments suggest this population may be stabilizing or growing, but several more years of monitoring will be necessary to confirm this trend (Bennett 2010). No other natural tortoise populations are known in South Carolina.

Multi-State Surveys: A one-time survey on 22 tracts of commercial forest containing 88 stands known to support gopher tortoises was conducted in late 2009 and early 2010 (National Council for Air and Stream Improvement, Inc.

2010, p. 15). Surveys covered 1,938 ha (4,789 ac) of longleaf pine (n = 47 stands), loblolly pine (n = 16 stands), and slash pine (n = 14 stands)), sandpine (n = 4 stands), and recently harvested stands (n = 7) in Alabama, Florida, Georgia, and Mississippi. Potentially active and abandoned gopher tortoise burrow density averaged 2.8 per ha (1.1 per ac) and 1.8 per ha (0.7 per ac), respectively, for each stand.

Population Modeling: In the absence of field surveys and long-term monitoring, models may be used to project the status of populations in the future based on a specific set of assumptions and assignment of demographic parameters. There have been four substantive modeling efforts evaluating the long-term persistence of gopher tortoises (Tuberville *et al.* 2009, pp. 5–10). Two early modeling efforts focused on estimating the minimum number of tortoises needed for a population to persist for 200 years (Cox *et al.* 1987, p. 28). Although relatively small population sizes (40–50 adults) were modeled to persist over the model duration, all populations declined and were projected to go extinct at some point in the future depending on model parameters.

Miller *et al.* (2001, p. 1) assessed the likelihood of tortoises being extirpated from Florida over a 100-year period when evaluating all known tortoise populations or only those on public lands considering a variety of assumptions regarding survivorship, carrying capacity constraints, disease, *etc.* (Miller *et al.* 2001, pp. 12–26). The model results suggest that gopher tortoises have greater than 80 percent chance of persisting in Florida over the next 100 years whether looking at all known populations or only those on public lands (Miller *et al.* 2001, pp. 27–28). Furthermore, they concluded that populations as small as 50 individuals can have conservation value under favorable conditions, but under less favorable habitat conditions populations larger than 250 individuals would be necessary to protect against extinction due to stochastic factors that increase hatchling and adult mortality (Miller *et al.* 2001, p. 28).

The most recent modeling effort recognized the need to evaluate the viability of individual populations, rank populations most appropriate for in-situ protection, and determine if nonviable populations are more likely to contribute to conservation through augmentation or translocation (Tuberville *et al.* 2009, p. 9). All model scenarios resulted in a population decline of one to three percent per year, which varied as a function of habitat quality and location within the range (Tuberville *et al.* 2009, p. 17). Only modeled populations with at least 250 tortoises were able to persist for 200 years, which is substantially different than earlier model results.

We can draw two very general conclusions from the models described above. First, gopher tortoise populations are likely to decline in the future under a wide array of demographic and environmental conditions that exist today. Second, gopher tortoise populations, although declining, and in some cases functionally extinct, will persist for 100 to 200 years. The effect of these may be that tortoises will be seen for long periods of time throughout their range, not because their populations are stable or increasing, but because they are long-lived.

Other efforts have focused on identifying the minimum area needed to support viable gopher tortoise populations. As described above, Cox (1987, pp. 30–31) used viability modeling to estimate that 50 individual tortoises would persist and calculated that 10–20 ha (25–50 ac) would be required to support a population of this size. Breininger *et al.* 1994 (p. 64) concluded that based on burrow densities on Kennedy Space Center, Florida, it would require 30–35 ha (74–86 ac) to support a population of 50 tortoises. Eubanks *et al.* 2002 (pp. 469–470) estimated that 50 tortoises would require 19–41 ha (47–101 ac) based on burrow densities and 25–81 ha (62–200 ac) based on home range size estimates. More recently McCoy and Mushinsky (2007, p. 1404–1405) used a variant of the density-area method to evaluate minimum patch size for the gopher tortoise. Where tortoise populations were spatially constrained (*e.g.*, not able to disperse) tortoise populations were estimated to require about 100 ha (247 ac), and unconstrained populations required 143–250 ha (353–618 ac). Furthermore, if metapopulation dynamics are important to the long-term persistence of gopher tortoises, then the minimum patch size for unconstrained populations must be multiplied by the number of populations necessary to constitute a viable metapopulaton (*e.g.*, 429–750 ha or 1,060–1,853 ac for three populations in a metapopulation, *etc.*) (McCoy and Mushinsky 2007, p. 1405).

The density of tortoises affects their social interactions and recent research has shown that when tortoise densities fall below 0.4 individuals per ha (0.2 per ac), social interactions decrease dramatically because it takes too much energy to search for mates (Guyer 2010). This decrease in socialization is predicted to limit mate selection opportunities because male tortoises will not travel great distances to find females and, therefore, females will not be able to select among several potential mates. Viability of low-density populations is expected to decline due to adverse genetic impacts. Comparison of density data from other studies to the threshold data from this study indicates that many extant gopher tortoise populations are below the density threshold identified above. Successful conservation of the gopher tortoise will require active habitat management to provide opportunities for tortoise populations to exceed the threshold density necessary to ensure long-term persistence in longleaf pine forests (Guyer 2010).

Recently, segmented regression models were developed to evaluate the relationship between area of habitat occupied by gopher tortoises and abundance of gopher tortoises to define how many individuals constitute a population and how much area is required for such a population. Data synthesized from 21 study sites in Alabama, Georgia, and Mississippi with varying tortoise population numbers indicated that an average gopher tortoise population consists of 444 burrows, covers 755 ha (1,865 ac), and contains 240 tortoises (Styrsky *et al.* 2010, p. 407). This average population contained a density of 0.3 tortoises per ha (0.1 per ac), which is below the threshold identified by Guyer (2010) for maintaining a persistent population. The authors noted that this average tortoise population was calculated based on a variety of existing landscapes that differed in their current management and past land use history and, therefore, did not represent what a population of tortoises might be in areas that were all managed with frequent fire and contained the uneven-aged trees of old-growth longleaf pine forests. Thus, it is likely that tortoises could persist on smaller parcels, but only if habitat were aggressively managed (Styrsky *et al.* 2010, p. 408). Lack of prescribed fire or ineffective use of prescribed fire is known to be a substantial impediment to the restoration and maintenance of gopher tortoise habitat throughout much of its range. The model results depict a typical tortoise population as one occupying a large area. This seems congruent with existing habitat conditions that are reported throughout much of the tortoise's range. Therefore, the model results show that most existing conservation lands contain too few tortoises and too little suitable habitat to support persistent tortoise populations.

Expert Opinion: Expert opinion is often used in combination with available data or in the absence of data to gather information and draw conclusions on wildlife resource issues (Lawrence *et al.* 1997, p. 1; Johnson and Gillingham 2004, pp. 1037–1038). In 2003, a group of 21 individuals from academia, State, and Federal agencies and nongovernmental organizations with knowledge of gopher tortoise biology and conservation gathered to discuss the ecology, status, and management of the gopher tortoise (Smith *et al.* 2006, p. 1). In addition, the group completed a questionnaire that indicated about 86 percent of the participants felt that the gopher tortoise was declining and 76 percent indicated the decline would require additional legal protection in the next 50 years. About 43 percent felt that local or regional extinction was likely within a 50-year period. Slightly less than five percent thought populations were increasing. Major threats identified by the participants included: Fire suppression or lack of growing-season fire, management of high-density pine forests, predation, road mortality, disease, translocation, and habitat degradation due to invasive plants. Participants felt that many populations on protected areas were too small (<100 individuals) to be viable long term (Smith *et al.* 2006, p. 327).

Summary of the Status of the Gopher Tortoise

A wide variety of information is available on the number and density of gopher tortoises and their burrows from many areas throughout their range. These data resulted from numerous surveys/censuses using a variety of methodologies ranging from one-time censuses to repeated surveys over several decades. The diversity of data poses a challenge when trying to evaluate the status of a species from a landscape perspective. For example, in some areas we have more data (*e.g.,* Florida and in portions of the listed range), and we have higher confidence in drawing conclusions about status of tortoises in these areas. In other areas, where there is little or no data, our confidence in assessing the status of tortoises is lower. Because of disparities in the type of data collected, methodologies in collecting data, and differences in the scope of studies, it is not possible to simply combine datasets to evaluate the status of the gopher tortoise throughout its range. Instead, we considered each individual dataset in the context of all other best available science to form general conclusions about the status of the gopher tortoise.

In the western portion of their range, gopher tortoise populations are small and occur in fragmented habitat. The largest and most substantial gopher tortoise populations in the western portion of its range occur on the De Soto National Forest in southern Mississippi. Long-term monitoring here indicates a decline in population sizes, a tendency towards adult-dominated populations, and a lack of, or very low, recruitment. Results of smaller-scale surveys of forest lands in Mississippi and public and private lands in Louisiana are largely consistent with findings on the De Soto National Forest. There are no known populations large enough (*e.g.,* > 250 individuals) to persist long-term based on projections resulting from recent modeling efforts.

The gopher tortoise is more widespread and abundant in parts of the eastern portion of its range, particularly southern Georgia and central and northern Florida. Long-term monitoring data indicate that many populations have declined and most are relatively small and fragmented. Smaller-scale, short-term or one-time surveys throughout the unlisted portion of the range indicate that tortoise populations typically occur in fragmented and degraded habitat, are small, and densities of individuals are low within populations. Unlike the western portion of the range, there are several known populations of tortoises in the eastern portion of the range that appear to be sufficiently large to persist long-term (*e.g.,* Camp Blanding Joint Training Center, FL; Chassahowitzka Wildlife Management Area, FL; Fort White Wildlife and Environmental Area, FL; Jennings Forest Wildlife Management Area, FL; Three Lakes Wildlife Management Area, FL; Fort Benning, GA; Fort Stewart, GA; River Creek Wildlife Management Area, GA; Townsend Wildlife Management Area, GA). There are about 80 other public parcels in Florida that contain a substantial amount of potential gopher tortoise habitat but surveys or censuses of these areas have not been conducted to estimate the number of tortoises present (FWC 2011b).

Evaluation of Listable Entity

The Service makes listing decisions on entire species or subspecies that may be threatened or endangered throughout all or a significant portion of their range, and on distinct population segments (DPS) of vertebrate animals. In determining what listable entity we are evaluating, we often are guided by specificity of petition requests or have historic listing actions on the same or similar species. In general, however, we consider the largest listable entity addressed within a petition, but we have the flexibility to consider listing actions broader than those requested in petitions.

The petition refers to gopher tortoises as a population and as various numbers of populations in certain geographic areas. Since the petition referenced both a single population and multiple populations, but consistently referred to the eastern portion of its range, we concluded that the petitioner's intent was to request listing the gopher tortoise east of the Mobile and Tombigbee Rivers in Alabama, Florida, Georgia, and South Carolina as threatened. As stated above, the species is already listed under the Act as a threatened species west of the Mobile and Tombigbee Rivers in Alabama, Louisiana, and Mississippi. To avoid confusion, our 90-day finding clarified that we would refer to the petitioner's description of the eastern population of the gopher tortoise as the gopher tortoise in the eastern portion of its range. We will continue to use that language in this 12-month finding. Furthermore, our 90-day finding indicated that, to comprehensively evaluate the status of the gopher tortoise, we would consider its status throughout all of its range, including where it is currently listed as threatened. Since this 12-month finding also evaluates the rangewide status of the gopher tortoise, we are considering the listable entity as the species throughout its range. Based on the information above, we have determined that the species, *Gopherus polyphemus,* is a listable entity.

Summary of Information Pertaining to Five Factors

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations (50 CFR 424), set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to the gopher tortoise, in relation to the five factors provided in

section 4(a)(1) of the Act, is discussed below.

In considering what factors might constitute threats to a species, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to that factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined in the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that these factors are operative threats that act on the species to the point that the species may meet the definition of endangered or threatened under the Act.

Additionally, in the summary section of each of the five factors we determine the magnitude and immediacy of the threat pursuant to our List and Recovery Priority Guidance (48 CFR 43908). Magnitude of threat is categorized as low, moderate, or high. Species facing the greatest threats to their continued existence would receive the highest listing priority (*e.g.,* highest magnitude of threat). There are two categories of immediacy of threat: Imminent and nonimminent. Imminent threats are those identifiable threats that are currently affecting a species. Nonimminent threats are those that are not currently affecting a species.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of the Gopher Tortoise's Habitat or Range

Gopher tortoise habitat in both the eastern and western portions of its range has been destroyed or modified in the past due to: (1) Conversion of natural pine forests to intensely managed planted pine plantations or naturally regenerated stands (Hermann *et al.* 2002, p. 296; Siry 2002, p. 335; Conner and Hartsell 2002, pp. 373–376); (2) loss of natural pine forests resulting from urban development, conversion of xeric vegetative communities to citrus, and phosphate mining (Kautz 1998, p. 184; FWC 2006, p. 4 and 8); and (3) degradation of natural pine forest due to lack, or insufficient use, of prescribed fire (Florida Fish and Wildlife Conservation Commission 2006, p. 10; Bailey and Smith 2007, p. 8; Yager *et al.* 2007, p. 1). Several of these same factors are cited in the gopher tortoise recovery plan as historical processes that resulted in habitat destruction and modification in the western portion of the tortoise's range, as well (Service 1990, pp. 8–10). Additional details of these historic threats can be found in our 90-day finding (74 FR 46401) and Florida Fish and Wildlife Conservation Commission (2006, pp. 4–6).

The conversion of native southern pine forests to intensively managed pine forests (planted pine plantations or regenerated forests) is anticipated to continue in the future (Bailey and Smith 2007, p. 8), although the rates of projected conversion vary. The future rate of conversion to pine plantations may be lower than in the past because rates of conversion seem to have declined over the past decade compared to the rates of conversion documented in the 1980s and 1990s.

In 2000, natural pine forests made up 11 percent of the forest industry's land holdings in the southern United States, but is projected to decline to two percent by 2020 (Siry 2002, p. 335). Similarly, in 2000, natural pine forests made up about 14 percent of nonindustrial forest holdings, but this was projected to decrease to 10 percent by 2020 (Siry 2002, p. 335). Forestland management modeling indicates that in Arkansas, Louisiana, and Mississippi, future establishment of pine plantations are likely to occur at the expense of hardwood forests and natural pine forests (Sohngen and Brown 2006, p. 706). Although only a portion of the study area in Arkansas, Louisiana, and Mississippi encompasses the current range of the gopher tortoise, projections from this three-state assessment suggested that up to 135,000 ha (333,500 ac) per year of planted pine may be established each year over the next 25 years and that up to 35,000 ha (about 86,500 ac) of natural pine forest would be destroyed each year over the same 25-year period to accommodate a portion of the expected increase in pine plantations (Sohngen and Brown 2006, p. 706).

The area covered by pine plantations in the south has been modeled and under certain scenarios is projected to increase by about 4 to 10 million ha (10 to 25 million ac) by 2040 (Prestemon and Abt 2002, pp. 18–20). We could not determine the area within the gopher tortoise's range that was projected to be converted to pine plantations. Overall, projected decreases in the area of private timberland in natural forest management types are expected to come from increases in pine plantations and the liquidation of forests to accommodate urban development (Prestemon and Abt 2002, p. 21).

The destruction of gopher tortoise habitat in Florida due to urban development has temporarily eased due to the recent economic downturn (FWC 2010b, p. 1). We suspect similar trends exist throughout the remainder of the tortoise's range. However, with economic recovery, we anticipate a return of urban development in coastal urban centers and throughout much of peninsular Florida. Zwick and Carr (2006, pp. 2, 4–6) modeled human population growth in Florida and concluded that of 2.8 million ha (7.0 million ac), 1.1 million ha (2.7 million ac) of land will be converted to urban use by 2060. In Florida, future urban development may result in the loss of about 283,300 ha (700,000 ac) or 20 percent of the remaining gopher tortoise habitat (not defined in publication) in Florida by 2060 (Florida Fish and Wildlife Conservation Commission 2008, p. 4).

Others have predicted a loss of up to 50 percent of forest lands in central Florida and up to 25 percent in north Florida and southeast Alabama (Prestemon and Abt 2002, p. 18). In 10 coastal Georgia counties, the human population is expected to increase 51 percent by 2030 (Center for Quality Growth and Regional Development 2006 p. 4), but no estimate of impact on native habitats was provided. Within the five counties of the Mississippi gulf region future development is expected to impact gopher tortoise habitat. Evidence of this potential growth can be found in the Mississippi Gulf Region and Wastewater Plan, as well, which outlines water, wastewater, and stormwater infrastructure improvements that are intended to support existing and future growth patterns, particularly new house construction and economic development (Mississippi Department of Environmental Protection 2010, pp. ES1–ES2).

In addition to habitat loss, gopher tortoise habitat will continue to be degraded due to fragmentation, conversion to intensively managed pine forests, and lack, or ineffective use of prescribed fire. The spatial and temporal scale of fragmentation from silvicultural activities will vary depending on location, size, and timing of these activities, but frequent alterations of intensely managed pine forests are unlikely to support stable tortoise populations (Diemer 1992, p. 288). Typically, gopher tortoises move from intensively managed pine forests when canopies begin to close to roadsides and then to adjacent clearcuts or other peripheral habitats, if they are

available (Auffenberg and Franz 1982, p. 102; Diemer 1992, p. 288). These peripheral areas are often road shoulders, which may give the impression that population numbers are high, even though the adjacent pine plantation is largely unoccupied (FWC 2001, p. 4). Gopher tortoises are known to abandon areas that had been recently converted to pine plantations FWC (2001, p. 4).

Early-aged pine plantations may provide open, grassy habitat that can be colonized by gopher tortoises for several years, but these populations are typically short-lived because within 10 to 15 years pine canopies shade out ground vegetation and tortoises either die or disperse (Auffenberg and Franz 1982, p. 111). Large, closed-canopy pine plantations without forage resources may also serve as barriers to tortoise movement (Jones and Dorr 2004, p. 462). Generally, conversion to pine plantations and intensively managed regenerated pine forests results in poor habitat quality that support smaller populations of gopher tortoises (Hermann *et al.* 2002, p. 296).

Gopher tortoise habitat is fire-dependent, and naturally ignited fires and prescribed burning maintains an open canopy and reduces forest floor litter that combine to allow penetration of sunlight necessary for ground cover growth and gopher tortoise nest thermoregulation. In natural and planted pine stands, frequent burning is the most important management tool in sustaining gopher tortoise habitat (Landers and Buckner 1981, p. 6; Breininger *et al.* 1994, p. 63). In suitable habitats, periodic burning or shrub removal can increase gopher tortoise carrying capacity (Stewart *et al.* 1993, p. 79). Landers (1980, p. 7) found that mixed stands of longleaf pine, turkey oak, and other scrub oaks that were burned every 2 to 4 years produced the densest tortoise colonies. In south-central Florida, tortoises moved into areas that were frequently burned and abandoned areas that were unburned or burned less frequently (Ashton *et al.* 2008, p. 527). However, recently burned potential (but unoccupied) habitat may not be colonized by tortoises if fire has been suppressed in surrounding habitat making it unsuitable for tortoises.

Even though management efforts may restore habitat, previous fire-suppression can result in abandonment of adjacent habitat and create dispersal barriers (Ashton *et al.* 2008, p. 528). Breininger *et al.* (1994, p. 63) determined that burned habitats had more herbaceous ground cover and gopher tortoises than unburned oak-palmetto. Landers and Buckner (1981, p. 5) determined that burned plantations and longleaf pine scrub oak ridges had nest densities four times higher than in unburned plantations and ridges. Landers and Speake (1980, p. 518) recorded that herbaceous ground cover was 2.3 times higher and gopher tortoise density was 3.1 times higher in a frequently burned slash pine plantation as in an adjacent unburned natural sandhill area.

Loss and alteration of gopher tortoise habitat from fire exclusion or fire suppression has a significant effect on survival of the gopher tortoise (Boglioli *et al.* 2000, p. 704). Although burning has been accepted as a management tool, increased urbanization has limited its use in many locations (Ashton and Ashton 2008, p. 78). Many southeastern pine forests have dense canopies, more mid-canopy shrubs, and herbaceous ground cover decline due to fire suppression (Yager *et al.* 2007, p. 428). Tortoise population life expectancy was shorter than normal in fire-suppressed savanna communities (Auffenberg and Iverson 1979, p. 562). Population reduction was directly correlated with the degree and rate of successional habitat modification (Auffenberg and Iverson 1979, p. 562). Auffenberg and Franz (1982, p. 108) recorded a decrease of 1.5 tortoises per hectare every 5 years on an unburned site for 16 years. Fire exclusion may reduce tortoise numbers by 60 to 80 percent in 8 years (Diemer 1989, p. 3) or 100 percent in 16 years (Auffenberg and Franz 1982, p. 108). In south-central Florida, sandhill and scrubby flatwoods were abandoned by gopher tortoise after about 20 years of fire exclusion (Ashton *et al.* 2008, p. 528).

Fire suppression and the decline of prescribed fire in both natural pine forests and pine plantations have resulted in a substantial decline in gopher tortoise habitat (Service 1990, pp. 9–10, FWC 2006, p. 10). Auffenburg and Franz (1982, p. 106) reported that tortoise densities are highest in fire-adapted associations (sand pine-scrub oak and longleaf pine-oak) or early successional stages (beach scrub and old-field). In the absence of fire, each of these associations would eventually be replaced by predominantly evergreen hardwood communities, in which tortoises are generally less abundant (Auffenburg and Franz 1982, pp. 106–107). In Florida, and likely many other areas, some public land managers do not have the resources to implement effective habitat management programs (Howell *et al.* 2003, p.10). In a questionnaire to land managers in Florida, the Service asked what challenges they faced in effectively using prescribed fire to manage scrub, a fire-maintained ecosystem. Many respondents indicated that funding, staff, and smoke management issues substantially reduced their ability to burn (Service 2006, Excel spreadsheet; Thomson 2010, p. 12). Recent communications with FWC indicate that they are having some success in reaching their burning goals, noting that 39,360 ha (97,260 ac) acres were burned on FWC-lead areas during 2009. Since 2006, FWC has had at least 86 percent of their lands within the recommended fire return interval (Johnson 2011). However, there is little question that at the landscape level, maintaining adequate burning programs is a serious challenge and fire suppression is a significant issue if not in Florida, certainly throughout the majority of the species range.

Thomson (2010, p. 39) indicated that the proposed restoration and long-term management of gopher tortoise habitat in Florida would cost an estimated $103 to $156 million and necessitate the contracting or hiring of 80 to 120 additional full-time staff. Existing economic conditions in Florida have resulted in substantive changes in recent land management budget allocations. For example, in fiscal year 2009–2010, land management funding covering a wide variety of programs was reduced by $69.5 million. Recent funding reductions for land management and the uncertainty of when adequate land management funding will be available is likely to preclude the FWC from fully meeting habitat restoration targets. Other States within the range of the gopher tortoise have experienced reduced budgets in recent years that are expected to continue in the near future (McNichol *et al.* 2010, entire). Some of these funding limitations may result in fewer land management activities that would benefit the gopher tortoise (Georgia Environmental Action Network 2010, p.1)

Conservation Efforts To Reduce Habitat Destruction, Modification, or Curtailment

When considering the listing of a species, section 4(b)(1)(A) of the Act requires us to consider efforts by any State, foreign nation, or political subdivision of a State or foreign nation to protect the species. Such efforts would include measures by Native American Tribes and organizations. Also, Federal, Tribal, State, and foreign recovery actions (16 U.S.C. 1533(f)), and Federal consultation requirements (16 U.S.C. 1536) constitute conservation measures. In addition to identifying

these efforts, under the Act and our policy implementing this provision, known as Policy for Evaluation of Conservation Efforts (PECE) (68 FR 15100; March 28, 2003), we must evaluate the certainty of an effort's effectiveness on the basis of whether the effort or plan establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; is likely to be implemented; and is likely to improve the species' viability at the time of the listing determination. In general, in order to meet these standards for the gopher tortoise, conservation efforts must, at minimum, report data on existing populations, describe activities taken toward conservation of the species, demonstrate either through data collection or best available science how these measures will alleviate threats, provide for a mechanism to integrate new information (adaptive management), and provide information regarding certainty of the implementation (*e.g.,* funding and staffing mechanisms).

The gopher tortoise is frequently associated with longleaf restoration, even being cited as an umbrella species for the ecosystem (Fenwood 2010). An estimated 1.4 million ha (3.4 million ac) of longleaf currently exist in the southeastern United States (Gaines 2010). Fifty-five percent of this acreage is in private ownership, 34 percent is in Federal ownership, and 11 percent is in State or local ownership (Gaines 2010). There are numerous ongoing initiatives and incentives to conserve gopher tortoise and restore longleaf pine forests within the gopher tortoise's range (National Council for Air and Stream Improvement, Inc. 2010, pp. 7–14; Tall Timbers, 2010, p. 1; McWilliams 2009, p. 2). Restoration efforts vary from large-scale and comprehensive (*e.g.,* full-scale ecosystem restoration effort in Conecuh National Forest) to voluntary silvicultural management practices being undertaken by industrial and private timber landowners that are believed to improve tortoise habitat and can be compatible with timber and income production (*e.g.,* use of prescribed fire, lower basal area after thinning, lower planting densities, increased planting of longleaf pine, mid-rotation woody brush control with herbicide, and planting plans that provide continuous supply of early-age planted pines in the vicinity of known tortoise populations (Jones and Dorr 2004, p. 463; Plum Creek 2010, p. 5).

Below, we consider the variety of conservation measures that were discussed in documents submitted during the public comment period or known to us that could minimize or eliminate threats under Factor A. We also evaluate the benefit that these efforts may provide for tortoises, measures that could improve benefits for tortoises, as well as the certainty of effectiveness and implementation, as required under the PECE policy.

America's Longleaf Restoration Initiative

America's Longleaf Initiative (Initiative) is a collaborative and voluntary effort (involving more than 20 organizations and agencies) that seeks to ''define, catalyze, and support coordinated longleaf pine conservation efforts.'' The vision of the Initiative is to achieve ''functional, viable longleaf pine ecosystems with the full spectrum of ecological, economic and social values inspired through a voluntary partnership of concerned, motivated organizations and individuals,'' (*http://www.americaslongleaf.org,* Accessed 9/30/2010). In March 2009, the Initiative released the Range-Wide Conservation Plan for Longleaf Pine (Longleaf Pine Plan). The Longleaf Pine Plan calls for an increase of between 1.4–3.2 million ha (3.4–8.0 million ac) of additional longleaf pine forests within 15 years. It includes guiding principles, strategies, and cross-cutting approaches that are intended to be implemented through collaborative, voluntary efforts. The Longleaf Pine Plan also calls for habitat improvement in existing longleaf forests by seeking an increase from 0.6– to 1.2 million ha (1.5–3.0 million ac) in the ''desired longleaf woodland/open understory condition,'' using prescribed burning, mechanical treatments, and commercial thinning. It is acknowledged by the Initiative that approximately 80 percent of the restoration will need to occur on private lands.

As part of the Initiative, American Recovery and Reinvestment Act (ARRA) funding was provided in 2009, in the amount of $8.975 million, to the United States Department of Agriculture (USDA) Forest Service, Southern Region for longleaf restoration. State Foresters in North Carolina, South Carolina, Georgia, Alabama, and Florida each received $1.74 million to help address key items in the Longleaf Pine Plan (Gaines 2010). So far these grants have assisted States in establishing more than 3,237 ha (8,000 ac) of longleaf pine from North Carolina to Alabama and improved nearly 9,700 ha (24,000 ac) of longleaf pine stands using prescribed burning, mid-story treatment, invasive species control, and native understory plant establishment. They have also improved seedling capacity at State nurseries.

The Service's Partners for Fish and Wildlife Program has also administered approximately $800,000 in ARRA funds to the States of Alabama, Florida, and Georgia, which together has improved approximately 1,200 ha (3,000 ac) of longleaf habitat through implementation of prescribed fire plans and restoration of native groundcover, including the planting of approximately 600 ha (1,500 ac) of longleaf seedlings. Local implementation teams made up of Federal, State, and NGO members are in the process of forming. Joint Ventures (*i.e.,* public and private sector partners working together to conserve species and habitats) are also working on an effort to develop and define desired forest conditions to help provide technical guidance to land managers for this type of restoration. A regional inventory of longleaf acreages and activities, as well as associated mapping, is under way.

An initial Federal partnership (Memorandum of Understanding) between the Service, Forest Service, and the Department of Defense has been formed to provide leadership to achieve the goals of the Initiative. So far, about $20 million dollars has been spent on national forests resulting in approximately 210,000 ha (520,000 ac) of restoration throughout the range of longleaf pine. Also, for the past 3 years, military installations, which currently contain about 295,000 ha (730,000 ac) of longleaf (18 percent of remaining longleaf in the Southeast), have spent an average of $11 million per year on management of longleaf pine forests (Fenwood 2010).

In 2009, the Farm Services Agency (FSA) received $22 million for longleaf pine restoration and management on about 138,000 ha (342,000 ac) on private lands through the Conservation Reserve Program (CRP) (Gaines 2010). The FSA reported approximately 1,400 ha (3,452 ac) of pine seedlings were planted in 2009, bringing the cumulative total to about 32,000 ha (79,298 ac).

The Natural Resources Conservation Service also received $5 million in 2009 to establish/improve 30,750 ha (76,000 ac) of longleaf on private lands through assistance programs (*e.g.,* Environmental Quality Incentives Program, Wildlife Habitat Incentives Program, Forest Healthy Reserve Program, Conservation Technical Assistance) (Gaines 2010).

The Gopher Tortoise Candidate Conservation Agreement

Stakeholders within the range of the unlisted gopher tortoise representing the four States' fish and wildlife agencies, branches of the Department of Defense, U.S. Forest Service, Fish and Wildlife Service, and various NGOs recently drafted and executed a Candidate Conservation Agreement (CCA). The goal of the CCA, which focuses on the eastern range of the tortoise, is to organize a cooperative rangewide approach to gopher tortoise conservation and management in that portion of the range. The CCA uses a common conservation approach and framework and allows the signing parties to leverage knowledge and funding within it. The CCA is flexible and voluntary, so that different conservation and management actions can be adopted and implemented at varying levels by the signing parties. The stakeholders produce an annual report, which includes information on: Hectares included by protection level; hectares managed and restored; invasive exotics treated; population trends/survey results; population manipulation; research; land conservation; education and outreach; and legal protection measures (Southeast Regional Partnership for Planning and Sustainability 2010, p.1–2). The signatories of the CCA carry out a variety of efforts for tortoise conservation.

Department of Defense

The Army has four installations with gopher tortoise in the eastern portion of the range including: Fort Rucker, AL; Fort Benning, GA; Fort Gordon, GA; and Fort Stewart, GA. Conservation of gopher tortoise is included for each site within an Integrated Natural Resources Management Plan (INRMP). These 5-year plans provide for enhancement and protection of habitat and where necessary, relocation of tortoises to avoid harm from human impacts. The estimated area of habitat and potential habitat at all installations above is about 54,600 ha (135,000 ac). In 2009, management for gopher tortoise was conducted on 31,000 ha (76,500 ac), which included almost 28,300 ha (70,000 ac) of prescribed burning. Survey data indicates that the Army has 14,000 active burrows. Since 1997, 645 tortoises have been translocated at Army installations (Southeast Regional Partnership for Planning and Sustainability 2010, pp. 17, 27, 35).

The U.S. Navy has four installations within the eastern range of the gopher tortoise that support populations (Kings Bay in southeastern Georgia, Naval Air Station (NAS) Jacksonville in northeastern Florida, and NAS Whiting Field and NAS Pensacola in the western Florida panhandle) and two that do not (*i.e.,* Naval Support Activity Panama City, FL and Naval Station Mayport, FL). Each installation has an INRMP that is active and current. From October 1, 2008, to September 30, 2009, the Navy managed over 4,850 ha (12,000 ac) of tortoise habitat, conducted prescribed burning on 602 ha (1,489 ac), reduced brush encroachment on 60 ha (147 ac), treated 28 ha (68 ac) for invasive species, and removed 95 feral hogs. Surveys indicated 685 active burrows and 304 inactive burrows across the installations, with an estimated population of 428 gopher tortoises. No issues with disease or predation were reported. No translocations were conducted. At NAS Whiting Field and NAS Pensacola, one research study was conducted involving DNA blood sampling. There were no reported losses or gains in habitat acreage. Brochures and informational signage were provided as community outreach. No new regulations, laws, or policies were implemented or changed, and there were no changes or additions to the CCA Agency Conservation Strategy (Southeast Regional Partnership for Planning and Sustainability 2010, p. 3).

The U.S. Air Force reports six installations with gopher tortoises or habitat in the eastern portion of the range including five in Florida: Avon Park Bombing Range; Eglin Air Force Base (AFB); MacDill AFB; Patrick AFB; and Tyndall AFB; and Moody AFB in Georgia. The Air Force reports over 178,000 ha (440,000 ac) of potential tortoise habitat, the vast majority of which is on Eglin AFB (155,600 ha or 384,500 ac). At Avon Park, a baseline survey is under way to obtain population size, density, and other basic demographic information. Also, 3,240 ha (8,000 ac) of tortoise habitat underwent a prescribed burn, and 216 ha (535 ac) were treated for invasive plants with herbicide. At the large scale, Eglin AFB has been conducting habitat management in order to maintain or improve gopher tortoise habitat conditions and at the smaller scale has conducted some surveys. In addition, they have relocated several tortoises to good habitat and away from project areas within Eglin.

MacDill AFB supports approximately 100 tortoises in several populations throughout the airfield and pine forest areas. In terms of habitat improvement, the installation spent annual funding to improve habitat areas and also worked to avoid construction in gopher tortoise areas (*e.g.,* found a suitable alternative site for the proposed Explosive Ordnance Disposal facility, which would have impacted tortoise habitat). Patrick AFB contains four major installations. Of these, Cape Canaveral Air Force Station has the largest population of gopher tortoises of the four sites. An accurate population estimate is not available at present because a population survey has not yet been completed for all sites. Management of gopher tortoise habitat includes mechanical cutting and controlled burning, as well as treatment and removal of invasive vegetation. Gopher tortoise relocations at Patrick AFB are conducted as laid out in the 45SW Gopher Tortoise Relocation Plan (Southeast Regional Partnership for Planning and Sustainability 2010, p. 4).

Gopher tortoises have been identified on three separate areas on Tyndall AFB (totaling 127 ha or 315 ac). These areas were surveyed in the past either for general biological information or in support of missions. Two activities that would benefit suitable tortoise habitat are used on the base: Longleaf pine restoration and frequent prescribed fire. At Moody AFB, gopher tortoise management is carried out through projects identified in the INRMP with concurrence by the Georgia Department of Natural Resources (GDNR) and the Service. Current projects include: Surveys and seasonal monitoring of known gopher tortoise populations; habitat improvement/restoration through burning, chemical release, and mechanical means; Upper Respiratory Tract Disease (URTD) disease surveillance; studies on movement of gopher tortoise in relation to military activities; and a gopher tortoise mark-recapture population demography study (Southeast Regional Partnership for Planning and Sustainability 2010, pp. 3–5).

The Marine Corps conducts management activities for gopher tortoise at two installations in the eastern portion of the range that have/may have gopher tortoises and conduct some management. Marine Corps Support Facility Blount Island located in Jacksonville, FL, has 6 ha (15 ac) of tortoise habitat on which a burrow survey identified 30 active burrows and 15 inactive burrows in April of, 2009. The Marine Corps is currently evaluating the possibility of moving all gopher tortoises to a long-term protected site off the installation. The other site, Marine Corps Logistics Base Albany located in Albany, GA, has 566 ha (1,400 ac) of potential gopher tortoise habitat, on which it uses prescribed fire for maintenance and enhancement.

While no burrow surveys have been conducted at this site, one tortoise was killed in November 2009 by an automobile (Southeast Regional Partnership for Planning and Sustainability 2010, p. 5).

U.S. Forest Service

Gopher tortoises occur in both Covington and Escambia Counties, AL, on Conecuh National Forest. This site contains likely the largest aggregation of gopher tortoises in Alabama, though no estimates of numbers are available at this time. The gopher tortoise and its burrows are protected on the National Forest by timber sale specifications requiring protection of burrows and a Supervisor's Closure Order that bans the gassing of burrows. Management activities conducted for the restoration and maintenance of native fire ecosystems that support gopher tortoise include: prescribed fire, timber harvest to restore native overstory species (longleaf), timber thinning in mature longleaf stands, chemical treatment and eradication of cogongrass, propagation for future restoration needs, trapping and removal of feral hogs, native grass seed collection, and educational efforts through outreach and interpretation.

Management activities for the maintenance and restoration of gopher tortoise habitat in the National Forests of Florida in fiscal year 2009 (October 2008 through September 2009) included: Prescribed fire, timber thinning in mature longleaf stands, nonnative invasive species eradication, mechanical mowing of mid-story vegetation, road restoration activities, land enclosures via electric fence to prevent hog disturbance, hog hunts in gopher tortoise areas, seed collection and planting, and fire line restoration. Surveys for the gopher tortoise, as well as education efforts through signage in strategic locations in the forests were also completed (Southeast Regional Partnership for Planning and Sustainability 2010, p. 5).

U.S. Fish and Wildlife Service

Restoration efforts are occurring at most National Wildlife Refuges, including prescribed burning. Comprehensive Conservation Plans (CCPs) have been developed for most of the refuges, which include management and monitoring actions based on the priorities of the refuge. Other management may include restoration of priority areas, pine thinning, and exotic vegetation removal. There is a need for more monitoring of gopher tortoises at most refuge properties (Southeast Regional Partnership for Planning and Sustainability 2010, p. 5).

Alabama

Gopher tortoises occur in 16 counties within the lower coastal plain of Alabama. Total habitat within the State is currently unknown. On lands under ADCNR control or ownership, tortoises benefit from efforts primarily intended to restore historic longleaf pine habitats, if they currently occur at these sites. ADCNR owns or manages approximately 22,250 ha (55,000 ac) in the range of the gopher tortoise (*i.e.,* the Division of Wildlife and Freshwater Fisheries owns or manages three tracts of approximately 10,900 ha (27,000 ac) in the unlisted range of the tortoise; the State Lands Division manages 9,300 ha (23,000 ac) in six tracts within the unlisted range and 2,023 ha (5,000 ac) in Mobile County in the listed range). Through the State Wildlife Grant program, the ADCNR is providing funding for gopher tortoise research. Information on the life history of the species and State-funded research can be found on the department Web site, Outdoor Alabama (*http://www.outdooralabama.com*) (Southeast Regional Partnership for Planning and Sustainability 2010, p. 6).

Florida

Early regulations required payment of mitigation fees to offset impacts of development projects on gopher tortoises. Mitigation fees were subsequently used to purchase gopher tortoise habitat. During this regulatory process, about $55 million in mitigation funding was generated that resulted in fourteen acquisitions of property totaling about 6,200 ha (15,300 ac) specifically for gopher tortoise conservation. A $20 million dollar endowment exists to fund long-term management of these mitigation parcels.

More recently, the gopher tortoise was reclassified by the State to threatened with the approval of a Management Plan (Plan) in September 2007. The primary goal of the Plan is to '' 'restore and maintain secure, viable populations of gopher tortoises throughout the species' current range in Florida by addressing habitat loss '.'' Other specific objectives include conducting appropriate vegetation management to maintain gopher tortoise habitat (*e.g.,* prescribed burning); increasing the amount of protected habitat; restocking tortoises to protected, managed, suitable habitats where densities are low; and decreasing tortoise mortality on lands proposed for development. Each of these objectives contains measurements and benchmarks through which assessment of progress toward the goal can be achieved. The extensive list of conservation actions in the plan for the first 5-year cycle fall under the over-arching categories of ''regulations, permitting, local government coordination, law enforcement, habitat preservation and management, population and disease management, landowner incentives, monitoring and research, and education and outreach,'' (Southeast Regional Partnership for Planning and Sustainability 2010, p. 7).

An interagency working group was formed to address restocking tortoises onto State public lands where populations have been depleted. Staff also continue to coordinate with public and nonprofit organizations to encourage and provide incentives for gopher tortoise conservation on private lands. A more comprehensive summary of land management activities, surveys, and inventories will be forthcoming (Southeast Regional Partnership for Planning and Sustainability 2010, p. 7–8).

Georgia

In Georgia, 12,500 ha (30,889 ac) of tortoise habitat are permanently protected on State Parks, Wildlife Management Areas, Natural Areas, Public Fishing Areas, and Historic Sites. Beneficial land management on these properties for the tortoise, during the period October 1, 2008, to September 30, 2009, included prescribed burning of 7,350 ha (18,170 ac), thinning or clear-cutting of 1,350 ha (3,346 ac) of off-site planted pines, removal of invasive sand pine from 306 ha (758 ac), planting longleaf pine on 152 ha (375 ac), and planting native warm-season grasses on 101 ha (250 ac). The GDNR protected 1,527 ha (3,772 ac) of tortoise habitat during the reporting period through acquisition and conservation easements and contracted gopher tortoise surveys and population estimates on 19 total sites, including 14 State-owned sites. The State also conducted a project aimed at assessing the quality of sandhill habitat across the State, including time-constrained searches for tortoise burrows at 91 sites. A Candidate Conservation Agreement with Assurances was also developed for the repatriation of gopher tortoises at Plant Vogtle, Burke County, which is currently under review with the Service (Southeast Regional Partnership for Planning and Sustainability 2010, p. 8).

Research completed or funded by GDNR included a project on offspring survival and reproductive ecology of translocated gopher tortoises on St. Catherine's Island, comparison of methods used on sites in Georgia to the official population estimate methodology of Florida, researching the

predatory behavior of armadillos during gopher tortoise nesting season, and behavioral studies at Reed Bingham State Park on head-started (*i.e.,* eggs were collected from the wild and held in captivity and hatchlings were released to the wild) hatchlings (99 head-started hatchlings were released at the Park to combat the impact of nest predation on the site). Efforts to increase awareness for gopher tortoise conservation among the general public and professionals included publications, Web site materials, workshops, and events during 2009 (Southeast Regional Partnership for Planning and Sustainability 2010, p. 8).

South Carolina

Management of gopher tortoise habitat owned by South Carolina Department of Natural Resources including burning and mechanical treatment, as well as data analysis for research on gopher tortoise life history and ecology, was completed during the period October 1, 2008, to September 30, 2009. Staff within the agency is currently completing a conservation strategy for the gopher tortoise in South Carolina, intended to guide agency action for the conservation of the species (Southeast Regional Partnership for Planning and Sustainability 2010, pp. 8, 25).

CCA Summary

Throughout the eastern portion of the range, the signatories of the CCA collectively report more than 1.8 million ha (4.5 million ac) of potential habitat, which includes private land projections in Florida, and approximately 24,338 tortoises. They also report that they have conducted more than 158,000 ha (390,000 ac) of burning and 142,000 ha (350,000 ac) of restoration benefitting gopher tortoises during the period October 1, 2008, to September 30, 2009. Though estimates of the number of tortoises at sites covered by the CCA are under 25,000, it is expected that over time these estimates will be refined upwards, as many sites have not been fully surveyed or reported. We also anticipate that the area reported as ''potential habitat'' may be refined to a smaller number as ''suitable habitat'' is better defined and more detailed analysis is conducted.

The full scope of the benefit to tortoise conservation from this effort is yet to be realized as many partners are still in the information gathering phase of implementation. Some signatories did not gather or report information during the first reporting cycle (Southeast Regional Partnership for Planning and Sustainability 2010, pp. 15, 25–26, 34, 38, 44, 54, 59, 62). We note that the agreement would be strengthened through formalization of commitments to fund activities (such as, tortoise population monitoring or longleaf restoration and management) into the future and legally binding commitments to complete restoration. In order to meet the criteria set forth under the PECE policy, certainty of effectiveness must be demonstrated through data on populations and habitat, while certainty of implementation could be demonstrated by formalized commitments and dedicated funding to carry out the habitat improvements.

Other Efforts Not Previously Addressed

Sustainable Forestry Initiative

Voluntary participation and certification under the Sustainable Forestry Initiative and internal conservation measures of the forest industry are likely to contribute to enhancing working forest landscapes for wildlife. The standards for southeastern forests provide general criteria for protecting rare, threatened, and endangered species and their habitat and maintaining ecological function and values (The Forest Management Trust 2005, pp. 18–19) and have utility in describing the general goals and objectives of the initiative. However, these do not address specific habitat requirements of the gopher tortoise.

Florida Forever Act

Florida statute 259.105 continues two decades of land acquisition and management for conservation and recreation purposes. Specifically, 259.105(1)(2)(a)11 mandates that the State of Florida must play a major role in the recovery and management of its imperiled species (*i.e.,* State and Federally listed species) through the acquisition, restoration, enhancement, and management of ecosystems that can support the major life functions of imperiled species. This statute also requires that any state lands acquired under the auspices of this law that contain imperiled species consider the habitat needs of these species during preparation of management plans for each parcel. Thus, over the 20 plus years of acquisition, restoration, and management of lands purchased under the Florida Forever Act and its predecessor statutes, there have been many additional acres of potential gopher tortoise habitat placed under public protection.

Georgia Forest Land Protection Act of 2008

Georgia's commitment to encourage the protection of forested landscapes through tax incentives may assist in reducing habitat destruction due to land use changes. However, the Georgia Forest Land Protection Act (O.C.G.A. 48–5–7–7) is intended to provide incentives to encourage protection of trees, fiber, or other wood and wood fiber products. Wildlife preservation and management may be allowed as secondary uses.

The Nature Conservancy's Southern Forest Project

The Nature Conservancy's Southern Forest Project is targeting the acquisition of about 24,000 ha (61,000 ac) of longleaf pine habitat in Florida, Georgia, and Alabama. Gopher tortoises are indicated as species likely to benefit from these acquisitions, but the amount of habitat that will be conserved and distribution of extant tortoise populations on these properties is not known.

Gulf Coast Plain Ecosystem Partnership

The Gulf Coast Plain Ecosystem Partnership includes 10 entities that entered into a 1996 Memorandum of Understanding (MOU). The MOU encompasses about 425,900 ha (1,052,400 ac) in northwest Florida and south Alabama. This area is known for its historic longleaf pine forests. The goal of the partnership is to enhance conservation and management of longleaf pine forests. We expect this partnership to enhance longleaf pine restoration, as evidenced by ongoing gopher tortoise habitat restoration and management efforts in the Conecuh National Forest.

American Forest Foundation Habitat Credit Trading Program

We believe that establishment of a voluntary habitat trading credit system has the potential for conservation and management of gopher tortoise habitat that might offset impacts to tortoise habitat elsewhere. This system would function similar to a conservation bank, but in a preregulatory capacity.

Summary

Long-term tortoise persistence is predicated on the presence of multi-aged pine forests on suitable soils (Mushinski *et al.* 2006, p. 364) with ground vegetation maintained by frequent fire. These conditions may be met without waiting for old growth pine forests to regenerate (Kirkman and Mitchell 2006, p. 1), but restoration of such forest communities may be difficult because of multiple-use mandates, limited funds, and the size and juxtaposition of properties to other developed lands (McCoy *et al.* 2006, p. 125). Furthermore, reestablishment of a

multi-aged pine forest ecosystem is complex, and mechanisms for achieving this goal are not well understood (Joseph W. Jones Ecological Research Center at Ichauway, 2010a, p. 1; Van Lear *et al.* 2005, pp. 159–162). Ongoing and planned restoration efforts will take time (*i.e.,* years) to achieve the desired vegetative community structure. Any behavioral or demographic response by tortoises to habitat manipulation will also take time (Yager *et al.* 2007, p. 444). Therefore, we acknowledge the difficulty of restoring a functioning longleaf pine ecosystem and the substantial commitment already made to conservation of a variety of species within the longleaf-wiregrass ecosystem [(*e.g.,* red-cockaded woodpecker (*Picoides borealis*))], as well as restoration of the ecosystem itself. Undoubtedly, many other species continue to benefit from a wide variety of longleaf restoration efforts currently occurring, even where tortoises may no longer occur.

There is certainly a benefit associated with restoring these systems where the gopher tortoise occurs. However, longleaf restoration also currently occurs well beyond the historic range of the tortoise and on soils/areas within the range that will likely never support viable tortoise populations. Also, gopher tortoise conservation is usually neither the only goal of longleaf restoration nor the primary goal of management activities in longleaf stands. Therefore, estimates of longleaf restoration acreage and potential habitat estimates for tortoises likely result in an overestimate of actual benefits to tortoise populations. Longleaf restoration may provide other potential benefits to tortoises, either by providing expanded habitat for existing populations or by providing new sites within the range as potential reintroduction sites that may assist in conservation of the species.

In total, we note that millions of hectares of longleaf restoration and management are targeted in the southeastern United States;, and that partners throughout the historic range of the tortoise and longleaf pine have made voluntary commitments to restore additional acreage and maintain existing forests. However, it is difficult to get an accurate picture of total numbers of tortoises currently residing in the southeastern United States and the overlap that exists with restoration efforts and existing tortoise populations. If numbers provided in the CCA are indicative of current conditions, it can be inferred that, though substantial potential habitat exists, there are hundreds of thousands of additional ha/ac in need of restoration and management. Additionally, the full value of these management efforts is not expected to occur for several decades. Tortoise population responses will likely be demonstrated through coordinated and continued monitoring for a number of years, though this will require dedicated staff and funding. We note that these efforts have likely alleviated some of the magnitude of the threat of habitat loss and degradation, though it is difficult to fully assess the degree to which this has occurred due to insufficient data.

The Service recognizes the importance of forming and supporting partnerships to achieve mutually identified goals and objectives. We encourage our partners to work with us to incorporate specific goals and objectives for the protection of gopher tortoises and their habitat, commit to long-term monitoring, without which it is difficult to evaluate the effectiveness of conservation measures intended to benefit tortoises (McCoy *et al.* 2006, p. 125), and develop adaptive management strategies as part of planned and ongoing conservation actions that have the potential to benefit the gopher tortoise. By doing so, we hope to improve management by tracking advances in the science. While we see the potential for substantial benefit to the tortoise that could be realized in the near future with continuation of these varied efforts, we have some difficulty demonstrating the necessary elements of many of these programs to satisfy the PECE policy. Without specific, binding commitments to monitor populations, provide long-term funding and support, and conduct management, it is impossible to predict both the certainty of effectiveness and certainty of implementation necessary under the PECE policy. We encourage our many partners, where possible, to take these steps, which would facilitate conservation of tortoise populations.

Summary of Factor A

We have identified a number of threats to gopher tortoise habitat which have resulted in the destruction and modification of habitat in the past, are continuing to threaten habitat now, and are expected to continue in the future because of inadequate regulations described in further detail in Factor D below. Rangewide, about 12 percent of potential gopher tortoise habitat is in either public ownership or some type of permanent or long-term conservation status. While habitat loss on private lands is not a certainty, the loss of habitat due to conversion of natural pine forests to more intense silvicultural management regimes is expected to be prominent in interior portions of the tortoise's range. We believe that tortoises in the vicinity of the coast in Georgia, Alabama, Louisiana, and Mississippi, as well as peninsular Florida are currently threatened with habitat loss and modification resulting from urban development. Habitat loss and fragmentation due to urban development is expected to continue in the future. Lack of, restrictions on, or inappropriate use of, prescribed fire is likely to continue in the future and adversely affect gopher tortoise habitat and extant populations, throughout the majority of the current range.

On the basis of this analysis, we find that the destruction, modification, or curtailment of the gopher tortoise's habitat is currently a threat and is expected to persist and possibly escalate in the future. While there are a number of conservation measures in place, at this time it is not reasonably certain that they are adequate to ameliorate this threat. Because this threat is ongoing and expected to continue over the coming decades, we consider the threat to be imminent. Considering the threat of habitat loss is reduced on the relatively large amount of habitat that is in public ownership and private conservation lands, we believe the magnitude of this threat is moderate. Based upon our review of the best commercial and scientific data available, we conclude that the present or threatened destruction, modification, or curtailment of its habitat or range is an imminent threat of moderate magnitude to the gopher tortoise, both now and in the foreseeable future.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Despite adoption of protective laws (see Factor D below), tortoise exploitation persists. Organized rattlesnake round-ups still occur in two communities in Georgia and one community in Alabama (Means 2009, p. 133). Furthermore, collection of rattlesnakes for skins, curios, and antivenom by individuals is unregulated in any of the States within the range of the gopher tortoise. Both individual and organized rattlesnake captures typically extract snakes from gopher tortoise burrows using noxious liquids or gases (The Humane Society 2009, p. 2), which undoubtedly harms or harasses gopher tortoises in active burrows. In January 2010, four men were arrested by Georgia Department of Natural Resources staff after they were found to have been gassing tortoise burrows to collect rattlesnakes in advance of the Whigham, GA, rattlesnake roundup. Although

tortoises are protected in all States, it appears that enforcement of applicable laws may not be entirely effective since rattlesnakes are still successfully harvested.

Conservation Efforts To Reduce or Eliminate Overutilization

Florida law specifically prohibits the use of gasoline or other chemical or gaseous substances to drive wildlife from their retreats (Florida Administrative Code 68 A.4–001(2). Georgia codes § 27–1–130 and 27–3–130 prohibit gassing of burrows, but excludes protection of venomous snakes. Alabama recently adopted regulation 220–2–.11 prohibiting the use of gas, noxious chemicals or gaseous substances into wildlife burrows, dens, or retreats. We believe these regulatory measures will reduce incidental mortality of gopher tortoises during rattlesnake collections. However, effective enforcement of these regulations would likely be enhanced with development of a regulated harvest of rattlesnakes or a prohibition on rattlesnake harvest.

Summary of Factor B

After reviewing available information we find that the unregulated harvest of rattlesnakes poses a current and future threat to the gopher tortoise. We anticipate this threat is imminent since rattlesnake roundups occur annually, and collections for these events and by individual collectors may occur throughout the year. We believe the impacts will be localized to areas near the three communities that still support rattlesnake roundups; consequently, the magnitude of threat is considered low. This threat has abated over the past several decades but still occurs in some rural areas. Conservation measures are insufficient to eliminate this risk. Overall, we consider the magnitude of threat to gopher tortoises due to rattlesnake collection to be low because there are few organized events, but the threat is imminent because harvests are ongoing. Based on this information, the overutilization for commercial, recreational, scientific, or educational purposes, in the form of unregulated harvest of rattlesnakes occupying tortoise burrows, is a threat to the gopher tortoise now and in the foreseeable future.

Factor C. Disease or Predation

A number of diseases have been documented in the gopher tortoise, including fungal keratitis (Myers *et al.* 2009, p. 582), iridovirus, herpesvirus, herpes virus, bacterial diseases related to *Salmonella, Mycoplasma,* and *Dermatophilus,* and numerous internal and external parasites (Ashton and Ashton 2008, pp. 39–41). Upper Respiratory Tract Disease (URTD) resulting from *Mycoplasma* infection has received the most attention recently and has been implicated in mortality of gopher tortoises on State and Federal lands in Mississippi and Florida where URTD was documented (Berish *et al.* 2010, p. 696). It is considered an emerging infectious disease which may threaten populations of free-ranging tortoises (Seigel *et al.* 2003, pp. 142–143). However, correlations between exposure to *Mycoplasma* spp. and population declines appear to be variable among geographic locations and often transient when viewed over a 10-year timeframe (McCoy *et al.* 2007, p. 173). In the case of a chronic disease in a long-lived species, actually quantifying low-level impact of an infectious, chronic disease on an annual basis can be problematic. (Ozgul *et al.* 2009, p. 795). Detecting the effects of this disease on tortoise populations will require long-term monitoring (Berish *et al.* 2010, p. 704).

Current hypotheses suggest that differences in virulence of *Mycoplasma* (Sandmeier *et al.* 2009, p. 1261) and increased susceptibility to infection due to environmental stressors (*e.g.,* poor habitat quality) may increase risk of URTD outbreaks and associated mortality. However, tortoises have natural antibodies to *Mycoplasma* spp. (Hunter *et al.* 2008, p. 464) and these natural immune mechanisms may explain why die-offs are not more prevalent throughout the gopher tortoise's range (Gonynor and Yabsley 2009, pp. 1–2; Sandmeier *et al.* 2009, pp. 1261–1262). In contrast, recent research suggests that susceptible tortoises in high-seroprevalence (number of individuals exposed to disease) populations have decreased apparent survival and when coupled with the increase in gopher tortoise shell remains at high-seroprevalence sites, there may be a low level of increased mortality in the initial stages of disease (Ozgul *et al.* 2009, p. 796). Also, Wendland *et al.* (2009, pp. 1257 and 1261) has suggested that juveniles may be less likely to be infected due to limited social interaction and, thereby, might provide a pool of tortoises to aid in later recruitment after a disease event, though these size classes are usually represented by a very small proportion of the overall population.

Since most gopher tortoise populations are not regularly monitored, it is difficult to estimate the exposure of gopher tortoises to URTDs throughout their range. Consequently, the magnitude of threat URTD poses to gopher tortoise populations and tortoise demographics is uncertain at this time (Karlin 2008, p. 1). We suspect that as monitoring efforts expand in time and space we will detect more incidences of URTD-related mortality and the relationship of disease to demography and habitat quality will be better understood.

Predators destroy more than 80 percent of gopher tortoise nests (Puckett and Franz 2001, p. 5). In one study in South Carolina, 17 of 24 (74 percent) nests were destroyed by predators (Wright 1982, p. 59). In Georgia, females are estimated to produce one clutch (approximately seven eggs per clutch in southern Georgia) annually; however, predators destroyed 87 percent of these clutches (Landers and Garner 1981, p. 46). In a study located on Camp Shelby in Mississippi, most (65 percent) hatchlings were killed within 30 days of hatching (Epperson and Heise 2003, pp. 320 and 322), and none survived to adult size. In northern Florida, hatchling gopher tortoises had a mortality rate of 94.2 percent during their first year of life (Alford 1980, p. 180). Due to predation, survivorship of tortoise hatchlings is low throughout their range, and in some cases no hatchlings survive past 1 year (Pike and Seigel, 2006, p. 128).

Of all predators, raccoons (*Procyon lotor*) were the most frequent to take tortoise eggs and young (Landers *et al.* 1980, p.358; Butler and Sowell 1996, p. 456), but); other predators include gray foxes (*Urocyon cinereoargenteus*), skunks (*Mephitis mephitis*), opossums (*Didelphis virginiana*), coyotes (*Canis latrans*), snakes (*Agkistrodon piscivorous, Crotalus adamanteus, Drymarchon corais, Masticophis flagellum*), fire ants (*Conomyrma* sp., *Solenopsis invicta*), and red-tailed hawks (*Buteo jamaicensis*), which have all been known to take juveniles (Douglass and Winegarner 1977, p. 237; Fitzpatrick and Woolfenden 1978, p. 49; Landers *et al.* 1980, p. 358; Wilson 1991, p. 378; Butler and Sowell 1996, pp. 456–7; Wetterer and Moore 2005, p. 353; Pike and Seigel 2006, p. 128). Ashton and Ashton (2008, p. 27) listed 25 animals—12 mammals, 5 birds, 6 reptiles and 2 invertebrates—known to be predators of eggs, emerging neonates, hatchlings, and older tortoises. Adult gopher tortoises are less likely to experience predation except by canines (*e.g.,* domestic dogs, coyotes, foxes) and humans (Causey and Cude 1978, pp. 94–95; Taylor 1982, p. 79; Hawkins and Burke 1989, p. 99). It has been suggested by numerous authors that human presence may aid in the spread of some

predators through habitat fragmentation and the associated increase in edge effect (*e.g.,* fire ants) (Wetterer *et. al.* 2005, pp. 352–253), habitat disturbance from roads and infrastructure (*e.g.,* fire ants) (Stiles and Jones 1998, p. 343; Tschinkel 1986, p. 553), increased availability of supplemental food (*e.g.,* raccoons), reduction or elimination of top carnivores (*e.g.,* coyotes, foxes) (Joseph W. Jones Ecological Research Center at Ichauway, *http://www.jonesctr.org/research/projects/mesopredators/mesopredators_main.html,* accessed November 18, 2010), ecological perturbations allowing range expansion (*e.g.,* coyotes), and simply because some are domestic and associated with humans (*e.g.,* cats and dogs).

Most studies are recent and short term (Pike and Seigel 2006, p. 1) and have only evaluated predation over a relatively short period of time considering the lifespan and reproductive capacity of adult tortoises. The tortoise is a long-lived species, which should naturally experience high levels of mortality in early life stages; however, at the current rates of predation, a small increase in predation (either on the limited number of surviving hatchlings or on an adult female) could have a substantial effect on present and long-term recruitment. Sufficient evidence exists indicating that predation of eggs and young tortoises may limit recruitment in many populations. Low recruitment may confound a tortoise population's ability to withstand environmental stressors (*e.g.,* poor habitat quality, stochastic events) and chronic demographic effects due to small population size and reduced genetic diversity. In addition, there is substantial evidence that predation can work synergistically to further limit recruitment (Ashton and Ashton 2008, p. 28), which in many populations may already be limited by other factors (Ennen *et al.* 2010, pp. 35–36; Qualls 2010).

Conservation Efforts To Reduce or Eliminate Disease or Predation

In the listed portion of the gopher tortoise's range individual animals are translocated either to avoid entombment during land development activities or because they are considered waif tortoises by the State agency and the Service. Waif individuals may be those brought in by the public, those that are reproductively isolated, or individuals determined to be in danger (*e.g.,* crossing roads, burrows near road edges, *etc.*). At the time of capture, all waif tortoises and, for development projects, all tortoises at both the impact and relocation sites are evaluated to determine whether they have URTD symptoms through a physical examination and laboratory blood test. Tortoises that test positive for URTD antibodies are evaluated on a case-by-case basis, but generally are not relocated into a URTD-negative tortoise population.

Efforts to contain URTD in the listed portion of the range may prevent mixing of infected and noninfected tortoises during translocation, but these efforts may not reduce or eliminate the stressors that ultimately caused the infections. There have been few symptomatic tortoises found in the listed range, no recorded deaths from URTD, and very few URTD-positive tortoises, so the current testing program will likely prevent spread of URTD during translocations (Ginger 2010; Epperson and Heise 2001, pp. 52–53).

In the western portion of the range where it is listed, gopher tortoise conservation banks and other related sites must include fire ant monitoring and control as part of their management plan in an effort to reduce the effects of predation on tortoise eggs and hatchlings. Currently, the State of Georgia is also conducting head-starting experiments (*i.e.,* hatching eggs in controlled environments and releasing the hatchlings into the wild) to determine if this method can improve recruitment.

Summary of Factor C

Upper Respiratory Tract Disease (URTD) causes high morbidity (sickness) and apparently low mortality (death) in gopher tortoises, although localized mortality events may be substantial (Berish *et al.* 2010, p. 696). Predicting where and when populations will be affected is not currently possible, but we expect that further loss and degradation of habitat and isolation of populations will result in increasing stress on individual tortoises and populations. We believe that URTD-related mortality will become more prevalent under these conditions, and, therefore, we expect this threat to gopher tortoises will increase in the future throughout all of its range. Given our current state of knowledge, we believe the threat of disease is imminent and that because mortality associated with the presence of disease is not currently widespread and the sublethal effects are not understood, we believe the magnitude of impact is low.

Predation of eggs and young is common and substantial throughout the tortoise's range and may be a limiting factor in some parts of the western portion of the range. Predation is an imminent threat because it is ongoing, occurs annually, and occurs throughout much of the tortoise's range. Tortoise populations undoubtedly persisted historically in the face of this natural threat. However, tortoises are now faced with other anthropogenic (man-caused) threats and the combination of predation and other threats identified in this finding indicate that predation is a moderate threat. Based on this information, disease or predation is a threat to the gopher tortoise now and in the foreseeable future.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Federal Statutes and Regulations

In the listed portion of the tortoise's range, the Act prohibits take of tortoises without proper authorizations under sections 7 or 10(a)(1)(A). Consequently, activities that impact gopher tortoises in the listed range should be in compliance with the protective measures afforded by the Act. Even though the Act provides umbrella regulatory coverage for the gopher tortoise in the listed portion of its range, we also evaluated whether existing State statutes or regulations would be adequate in the absence of the prohibitions provided by the Act. These are described in more detail below.

The Department of the Interior, through the Service, administers the National Wildlife Refuge System. The National Wildlife Refuge System Administration Act (NWRAA) represents organic legislation that sets up the administration of a national network of lands and water for the conservation, management, and restoration of fish, wildlife, and plant resources and their habitats for the benefit of the American people (16 U.S.C. 668dd). Amendment of the NWRAA in 1997 required the refuge system to ensure that the biological integrity, diversity, and environmental health of refuges be maintained and requires development and implementation of a comprehensive conservation plan (CCP) for each refuge. The CCP must identify and describe the wildlife and related habitats in the refuge and actions needed to correct significant problems that may adversely affect wildlife populations and habitat (16 U.S.C. 668dd(e)). Gopher tortoise habitat within national wildlife refuges is protected from loss due to urban development. However, gopher tortoises are not indicator species for refuges within the species' range, so specific management goals and objectives have not been established for the tortoise on refuge property (Hunter 2010). Tortoises

may indirectly benefit from fire management programs intended to maintain and restore habitat for species such as the Florida scrub-jay (*Aphelocoma coerulescens*) and red-cockaded woodpecker (*Picoides borealis*), but no systematic monitoring programs are in place to evaluate gopher tortoise responses to land management activities within the refuge system.

The Department of Defense (DOD) must conserve and maintain native ecosystems, viable wildlife populations, Federal and State listed species, and habitats as vital elements of its natural resource management programs on military installations, to the extent these requirements are consistent with the military mission (DOD Instruction 4715.3). Amendments to the Sikes Act (16 U.S.C. 670 *et seq*) require each military department to prepare and implement an integrated natural resource management plan (INRMP) for each installation under its jurisdiction. The INRMP must be prepared in cooperation with the Service and State fish and wildlife agencies and must reflect the mutual agreement of these parties concerning conservation, protection, and management of wildlife resources (16 U.S.C. 670a). Each INRMP must provide for wildlife, land and forest management, wildlife-oriented recreation, wildlife habitat enhancement, wetland protection, sustainable public use of natural resources that are not inconsistent with the needs of wildlife resources, and enforcement of natural resource laws (16 U.S.C 670a). DOD regulations mandate that resources and expertise needed to establish and implement an integrated natural resource management program are maintained (DOD Instruction 4715.3). These regulations further define the IRNMP requirements and mandate that plans be revised every 5 years and that they ensure the military lands suitable for management of wildlife are actually managed to conserve wildlife resources (DOD Instruction 4715.3).

The effectiveness of individual INRMPs to protect gopher tortoises vary between and within military departments. The Army has identified the gopher tortoise as a priority species at risk, which has enabled greater resources to be allocated to conservation and study in the eastern portion of the tortoise's range (U.S. Department of the Army 2009, p. 1). The Army estimates that its installations contain about 62,950 ha (155,500 ac) of potential habitat of which 31,000 ha (76,500 ac) were managed in 2009 (Southeast Regional Partnership for Planning and Sustainable Development 2009, pp. 11, 17). The Air Force provides for the protection and conservation of State-listed species when practicable and with similar conservation measures as provided by state law when such protection is not in direct conflict with the military mission (U.S. Air Force 2004, p. 23). Examples include Eglin AFB's Threatened and Endangered Species Component Plan, which provides no specific habitat management strategies for the gopher tortoise, but assumes this species benefits from a number of land management practices such as prescribed fire in sandhills, predator control, and public outreach (Eglin Air Force Base 2006, pp. 12–24 to 12–28). Comparatively, Tyndall AFB's INRMP acknowledges threats to the gopher tortoise and the importance of the tortoise as an indicator species for sandhills, but the INRMP indicates that no information is available on tortoise distribution or abundance on the base. Tyndall's INRMP provides only recommendations for management actions to benefit the gopher tortoise and establishes no goals or objectives.

The Navy incorporates protective and management recommendations specific for the gopher tortoise into the INRMPs for Naval Submarine Base Kings Bay, Naval Air Station (NAS) Pensacola, NAS Jacksonville, and Naval Support Activity Panama City. However, the INRMP for NAS Whiting Field does not include specific management measures for the gopher tortoise (U.S. Navy 2010, entire). The Navy estimates that its installations contain 4,850 ha (12,000 ac) of potential tortoise habitat. Reports submitted by the Navy in response to our request for additional biological information on the tortoise indicate that in many instances natural pine forests within the installations were fire suppressed and largely unsuitable for gopher tortoises in 2007–2009 (*e.g.,* most tortoises were located in ruderal areas). The Navy reported that they managed slightly more than 648 ha (1,600 ac) in 2009 (Southeast Regional Partnership for Planning and Sustainable Development 2009, p. 17). We are aware of no specific guidelines adopted by the Marines for management measures that are specifically implemented to benefit the gopher tortoise.

The Forest and Rangeland Renewable Resources Planning Act (16 U.S.C. 36), as amended by the National Forest Management Act of 1976 (16 U.S.C. 1600–1614), requires that each national forest be managed under a forest plan which is revised every 10 years. Regulations governing preparation of forest plans are found in 36 CFR 219. The purpose of a forest plan is to provide an integrated framework for analyzing and approving future site-specific project and programs, including conservation of listed species. Identification and implementation of land management and conservation measures to benefit the gopher tortoise vary between forests. For example, on the national forests in Florida, the gopher tortoise is not designated as a species for which special management prescriptions are implemented, except that a nearly 8-meter (25-foot buffer around burrows are provided during silvicultural activities to comply with State requirements. Otherwise, there are no specific land management objectives for tortoises on the national forests in Florida. However, gopher tortoises are likely to benefit from the restoration of about 6,070 ha (15,000 ac) of offsite slash pine to longleaf pine, but this restoration objective contained no requirement for establishment of ground cover vegetation; consequently, the desired future condition may not maximize benefits to tortoises. Resource managers are implementing management prescriptions not called for in the forest plan to enhance longleaf-pine ground cover for gopher tortoises on the Ocala National Forest (Henchi 2010). The Apalachicola National Forest is currently assessing a proposed project to begin gopher tortoise habitat restoration efforts on up to 830 ha (2,000 ac) of currently unsuitable, but restorable, pine forests using herbicides to control hardwood midstory (U.S. Forest Service 2009a, pp. 1–2).

The Revised Land and Resource Management Plan for the National Forests in Alabama provides for the restoration of the coastal plain longleaf pine forest through various silvicultural prescriptions (U.S. Forest Service 2004, p. 3–38). The plan calls for the restoration and maintenance of mature longleaf forest on about 22,500 ha (55,000 ac) on the Conecuh National Forest over the next 30 years. Early efforts have resulted in the preliminary restoration of about 1,600 ha (4,000 ac), and an additional 2,700 ha (6,700 ac) of restoration work is currently being assessed (U.S. Forest Service 2009b, entire). Appropriate management of the coastal plain longleaf pine forest is expected to provide suitable to optimal habitat for wild turkey and suitable habitat for mid- to late-successional forest associates (U.S. Forest Service 2004, p. 3–39). The plan's objectives for red-cockaded woodpecker (*Picoides borealis*) management areas (longleaf pine stands) state that benefits to northern bobwhite quail (*Colinus*

virginianus), Bachman's sparrows (*Aimophila aestivalis*), prairie warblers (*Dendroira discolor*), brown-headed nuthatches (*Sitta pusilla*), southeastern American kestrel (*Falco sparverius*), wild turkey (*Meleagris galloparvo*) and white-tailed deer (*Odocoileus virginaianus*) are expected. Although not mentioned, we expect red-cockaded woodpecker habitat management will likely benefit the gopher tortoise (U.S. Forest Service 2004, p. 3–36). Surveys for the gopher tortoise on the Conecuh National Forest were initiated recently but are not complete. The extent to which ongoing longleaf pine restoration and red-cockaded woodpecker habitat management activities will benefit tortoises is uncertain and will not be known until longer term monitoring takes place.

The national forests in Mississippi are operating under a 1985 Land and Resource Management Plan that does not mention the gopher tortoise because it was not listed at the time the plan was finalized. No formal amendments have been made to the plan to address gopher tortoise or gopher tortoise habitat needs, but draft habitat management guidelines were informally adopted for use by the De Soto and Chickasawhay Ranger Districts. However, these guidelines were never formally adopted through Forest Supervisor signature, and they are currently outdated (Kilpatrick 2010). The existing plan is based on a 10-year timber entry and prescription cycle, which is inadequate for gopher tortoise habitat restoration and management (McDearman 2010). Despite the lack of established goals and targets for gopher tortoise and silvicultural management activities that are not conducive to gopher tortoise conservation, the De Soto and Chickasawhay Ranger Districts of the De Soto National Forest have developed intensive habitat restoration plans for the gopher tortoise, but these projects do not represent official objectives of the national forests in Mississippi. Furthermore, the Chickasawhay Ranger District has developed a stewardship program to restore all habitat on priority soils over a 5-year period, has recently added another stewardship project to include habitat on suitable soils, and has emphasized landscape-level connectivity between priority soils and non-priority soils with high gopher tortoise populations (Kilpatrick 2010). To date, 1,093 ha (2,700 ac) of habitat on priority soil areas have been restored and more than 2,000 ha (5,000 ac) have been improved as part of the landscape connectivity project.

Federal ownership of potential gopher tortoise habitat represents a portion of the public lands acreage accounting for 12 percent of all potential gopher tortoise habitats on public lands (Hoctor and Beyeler 2010, pp 14–15). While there are some regulatory and policy measures that protect gopher tortoises and their habitat on Federal lands, there are other properties that do not protect the tortoise or have conflicting land use mandates. We believe that Federal statutes (without protection afforded by the Act) and regulations are limited in their scope and effectiveness in protecting tortoises and their habitat.

State Statutes and Regulations

Alabama regulation (220–2–.92) makes it unlawful to take, capture, kill, or attempt to take, capture, or kill, possess, sell, or trade any State-listed wildlife for anything of monetary value, or offer to sell or trade listed wildlife for anything of monetary value. In 2009, Alabama banned the gassing of wildlife burrows/and dens, including gopher tortoise burrows.

Florida's rule (F.A.C. 68A–27.003) prohibits any person from taking, attempting to take, pursue, hunt, harass, capture, possess, sell, or transport any gopher tortoise or parts thereof or their eggs, or molest, damage, or destroy gopher tortoise burrows, except as authorized by a FWC permit or when complying with FWC guidelines for specific actions that may impact gopher tortoises or their burrows. Florida has also developed gopher tortoise permitting guidelines that direct regulatory actions (FWC 2009, entire), including mitigation, habitat management, and habitat acquisition objectives. As a result, Florida's regulations require that take of tortoises be authorized by State permit and that the impacts be considered and compensated. On Florida's wildlife management areas, regulations protect individual gopher tortoises because they are not listed as a game species, and, therefore, there are no legal seasons established for taking. Wildlife management area regulations prohibit destruction or modification of habitat, except for management and restoration activities.

The State of Florida recently enacted regulations that allow the FWC to issue permits authorizing incidental take of State-designated threatened species. The State considers whether proposed activities for which permits are sought will contribute to a Federal recovery plan or whether it furthers the objectives of the State's Plan; whether incidental take could reasonably be avoided, minimized, or mitigated; and other factors relevant to the conservation and management of State listed species, including the gopher tortoise. The regulations also direct staff to pursue statutory changes within 3 years to develop wildlife best management practices for agriculture in order to maintain State permit exemptions for incidental take. Florida's regulations, with full funding independent of mitigation and with implementation of effective BMP's may be an important conservation tool for the gopher tortoise.

In Georgia, Title 27, Chapter 3, Article 5 Endangered Wildlife Act of 1973 establishes statutory protection for protected species, including the gopher tortoise (Ga. Code Ann. § 27–3–130–133). Georgia Board of Natural Resources Rule (Chapter 391–4–10) mirrors the statute but includes permitting for research under a scientific collecting permit (O.C.G.A. § 27–2–12).

Louisiana concurred with the Federal listing of the gopher tortoise and State statute (LSA–R.S. 56:1901–07) subsequently made it unlawful to take, possess, transport, or export gopher tortoises from the State, as well as to process, sell, or offer for sale or shipment of gopher tortoises within the State.

Mississippi statute § 49–5–101–119, The Nongame and Endangered Species Conservation Act, makes it unlawful for any person to take, possess, transport, export, process, sell or offer for sale, or ship, and for any common or contract carrier knowingly to transport or receive for shipment any Federally or State-listed species. Mississippi Public Notice 3357.001 listed the gopher tortoise as endangered and afforded it the protections provided by the Nongame and Endangered Species Conservation Act.

South Carolina's Nongame and Endangered Species Conservation Act (Chapter 15, Sections 50–15–10 through 90) establishes the statutory framework to protect endangered and nongame species including making it unlawful to take, possess, transport, export, process, sell or offer for sale, or ship nongame wildlife deemed by the South Carolina Department of Natural Resources to be in need of management. State regulations (S.C. Code of Regulations 123–150) establish that the gopher tortoise is a State-listed endangered species (S.C. Code of Regulations 123–150), and the protective measures mirror those provided in the Nongame and Endangered Species Conservation Act.

Generally, State statutes and regulations provide measures to protect individual gopher tortoises from take but do not provide for protection of their habitat. However, on more than 70

percent of the potential habitat, there are no State regulations providing permitting oversight or requiring conservation benefit to gopher tortoises or their habitat on either private or public lands. In Georgia, for example, State statute requires that any rule and regulation promulgated for protected species (including the gopher tortoise) shall not affect rights in private property or in public or private streams, nor shall such rules and regulations impede construction of any nature (GA ST §§ 27–3–132(b)). Any implementing regulations promulgated in Georgia are constrained by these statutory requirements. Regulations cannot exceed the statutory requirement and, therefore, can only prohibit collection, killing, or selling of individual tortoises. Furthermore, regulations may be developed to protect gopher tortoise habitat on public lands. As a result, most conservation efforts in Georgia are focused on management and restoration of habitat on public lands (Georgia Department of Natural Resources, 2009, pp. 1–2). All other States within the range of the gopher tortoise have protective statutes, but, except for Florida, none have developed implementing regulations addressing impacts to gopher tortoise habitat.

Local Laws and Ordinances

We are aware of no local rules or regulations protecting gopher tortoises or their habitat beyond those requirements established by State statute and regulation. Florida's State Comprehensive Plan and Growth Management Act of 1985 (F.A.C. 163 Part II) requires each county to develop local comprehensive planning documents. Comprehensive plans contain policy statements and natural resource protection objectives, including protection of state and Federally listed species, but they are only effective if counties develop, implement, and enforce ordinances. Some Florida county governments have developed protective ordinances for State and Federally listed species, we are aware of no county or local regulations or ordinances that protect the gopher tortoise beyond existing State law in this or other States within the tortoise's range.

Conservation Efforts To Increase Adequacy of Existing Regulations

As we indicated above, the inadequacies of existing regulations in Factor D are inextricably linked to threats associated with the present or threatened destruction, modification, or curtailment of the gopher tortoise's habitat or range as explained under Factor A above. Similarly, the inadequacy of existing regulations has resulted in threats associated with overutilization as described in Factor B. Below, we summarize conservation efforts that are being implemented to address habitat-related threats.

The Alabama Department of Conservation and Natural Resources has established management guidelines for the gopher tortoise (2009, entire) that borrow from the Recommended Conservation Activities outlined in Appendix B of the gopher tortoise CCA. The goals of Alabama's plan are to identify and conserve gopher tortoise populations, develop and implement habitat management strategies, maintain or enhance gopher tortoise habitat, and monitor the response of tortoises to conservation and management actions. Habitat management, translocation of tortoises from small populations or development areas, and monitoring are key components of Alabama's gopher tortoise management plan although no target dates for accomplishments were established. Furthermore, funding sources for implementation of Alabama's gopher tortoise management plan were not identified.

Beginning in 2007, Florida implemented its Plan and associated regulatory framework. The Plan established a number of goals to conserve the gopher tortoise throughout Florida. Part of the Plan included adoption and implementation of a permitting system that was intended to eliminate tortoise mortality during development activities on public or private property. Florida's Plan established several objectives by 2022: (1) Through applied habitat management, improve tortoise carrying capacity of all protected, potential habitat on both public and private lands supporting gopher tortoises; (2) increase protected, potential habitat to about 791,000 ha (1,955,000 ac), which will require the protection of an additional 249,000 ha (615,000 ac) (an average of about 10,000 ha (25,000 ac) per year in public acquisition and an average of about 6,500 ha (16,000 ac) per year within the private sector); (3) restock 60,000 gopher tortoises to protected, managed, suitable habitats where they no longer occur or where densities are low; and (4) decrease mortality through a revised permitting program and relocate 180,000 tortoises (FWC 2007, p. iii).

The Florida legislature provided $3.7 million to implement the Plan in its first year and subsequently appropriated $2.1 million annually in addition to an ongoing appropriation of $1.1 million for habitat management. With this funding, about 28,328 ha (70,000 ac) of public and private property have benefitted from prescribed fire, prescribed fire preparation, and habitat restoration activities to improve gopher tortoise habitat. About 2,833 ha (7,000 ac) of private land has been protected through conservation easements and is currently under management. Since implementation of the Plan, Florida has acquired 1,752 ha (4,330 ac) of habitat as part of its tortoise mitigation park program, in addition to about 6,070 ha (15,000 ac) that was acquired as mitigation prior to adoption of the current Plan. As of July 2010, Florida officials have relocated 6,365 gopher tortoises pursuant to the Plan's new relocation and permit requirements (Burr 2010), but we have no data on whether the translocations are contributing to the establishment of viable gopher tortoise populations.

While Florida's Plan is ambitious, it could be improved with increased funding to ensure the Plan meets its habitat protection and management targets, both annually and throughout the Plan's full performance period. Currently, several elements of the Plan are dependent on demand for gopher tortoise mitigation, which requires that impacts to gopher tortoises occur. Slow economic conditions have resulted in less development and a corresponding decrease in impacts to tortoises. Therefore, lower numbers of tortoises have been relocated and less private property has been protected by conservation easement than were projected in the objectives of the Plan. Concurrently, the economic downturn has also lessened deleterious impacts to gopher tortoises associated with development. Given current economic conditions, we believe that several of the objectives of the Plan may be delayed or not fully achieved, but this may be offset by a substantial reduction in development, which eliminates gopher tortoise habitat. Florida does have a limited management endowment of $20 million, and the annual interest from this money generates about $1.1 million that is appropriated for gopher tortoise habitat management, but it is insufficient to cover all habitat management costs. If other States adopt a similar conservation strategy, we also recommend they seek dedicated funding that is independent of impacts to the tortoise.

In response to regulatory actions under the Act, several conservation measures have been undertaken that benefit tortoises in the listed portion of its range. The Pine Belt Regional Solid Waste Management Authority created the Plum Creek Gopher Tortoise

Conservation Area (PCGTCA) in Perry County, MS. The 42-ha (105-ac) conservation area is used to translocate tortoises from areas that are used to expand an existing landfill. Surveys of PCGTCA in 2008 found 151 burrows with an estimated tortoise population of 50–60 individuals.

The Mobile Area Water and Sewage System established a gopher tortoise conservation area so that small land owners could compensate for impacts to gopher tortoises during residential development in Mobile County, AL. The bank manages about 89 ha (220 ac) of sandhill habitat for the benefit of gopher tortoises.

South Alabama Utilities Gopher Tortoise Conservation Area created a 154-ha (380-ac) preserve for mitigating impacts to tortoises during installation of water lines in Mobile, Washington, and Choctaw Counties.

A 243-ha (600-ac) parcel in Mobile County, AL was purchased to protect gopher tortoises and serve as a recipient site for tortoises displaced by Alabama Department of Transportation (ALDOT)-sponsored projects. When purchased, the property contained a small tortoise population. With implementation of appropriate management, this site has the capacity to support an estimated population of 346 tortoises (Federal Highways Administration 2010, p. 1).

In Greene County, MS, the 498-ha (1,230-ac) Chickasawhay Gopher Tortoise Conservation Bank was established to accept tortoises displaced by development within the Bank's service area and to compensate impacts to tortoises. The Bank has a carrying capacity estimated at 270 gopher tortoises.

The tortoise conservation areas and banks protect and manage gopher tortoise in the listed portion of the tortoise's range and likely benefit the local tortoise populations. We are confident that these conservation measures will continue in the future and are adequately funded. However, these conservation measures are small in scope relative to the rangewide distribution of gopher tortoises.

Summary of Factor D

Current Federal, State, and local regulations establish adequate regulatory protection of individual tortoises from take, but implementation of these regulations varies. All do not adequately protect gopher tortoise habitat in private ownership and most do not address the management needs of the tortoise. This is problematic because of the total forested landscape in the southeastern United States, about 1.4 million ha (3.4 million ac) are longleaf pine forests, of which about 55 percent (0.8 million ha or 2.0 million ac) are privately owned (America's Longleaf 2009, p. 37). Within the gopher tortoise's range about 87 percent of the pine forests are privately owned (National Council for Air and Stream Improvement, Inc. 2010, p. 3). In the western portion of the tortoise's range, the Act provides a Federal regulatory umbrella that fills regulatory gaps that are inherent in other Federal statutes; State regulations; and local law, ordinances, or policies.

In the eastern portion of the tortoise's range, only Florida implements a regulatory program designed to mitigate the effects of habitat loss on private lands. The degree to which the Plan is effective in meeting the conservation needs of the species on private lands, particularly those under agricultural and silvicultural practices, will depend on the development and implementation of effective best management practices in the future, but these are not currently available. Even if all tortoise habitat acquisitions and protections identified in Florida's Plan were implemented, those conservation measures in combination with the current amount of habitat in public and private conservation ownership would result in about 22 percent of potential gopher tortoise habitat in the eastern portion of its range encompassed in protected lands. The amount of habitat on protected lands might increase substantially if other States considered developing and implementing similar tortoise management plans, but we are aware of no such efforts by any State in the eastern portion of the tortoise's range. As a result, we find that the current implementation of Florida's plan, in combination with the conservation commitments of Federal agencies and the military, will not protect up to 78 percent of the total potential habitat throughout the range of the gopher tortoise.

Threats due to inadequacy of existing regulatory mechanisms, particularly outside of Florida, are an imminent threat to the gopher tortoise throughout its range because the existing regulatory mechanisms that are currently in place are not sufficiently protecting tortoise habitat throughout its range. The magnitude of this threat is moderate because existing regulations protect individual tortoises throughout their range. These regulations have eliminated some forms of harassment and mortality (*e.g.*, capture for food, pets, races, *etc.*), but gopher tortoise habitat in private ownership is largely unprotected and is vulnerable to degradation or destruction throughout most of its range. Based on this information, the gopher tortoise is threatened due to the inadequacy of existing regulatory mechanisms, in combination with the other threats identified in this finding, both now and in the foreseeable future.

Factor E. Other Natural or Manmade Factors Affecting the Gopher Tortoise's Continued Existence

Early research associated movement of tortoises by humans (including translocation and relocation) with erosion of the existing baseline of habitat for the species (Diemer 1984, p. 132), disruption of social structure (Berry 1986, p. 122; Cox *et al.* 1987, p. 60), unnatural genetic mixing (Diemer 1984, p. 132, 133), and spread of disease (Diemer 1984, p. 133; Diemer 1989, p. 3; Cox *et al.* 1987, p. 60), particularly at unnaturally high densities (Diemer 1984, p. 133; Burke 1989, p. 305). Historically, dispersal of relocated tortoises from relocation sites has been shown to be high, (Lohoefener and Lohmeier 1986, pp. 37–40; Burke 1989, p. 299; Diemer 1989, p. 2; Mushinsky *et al.* 2006, p. 366), particularly during the first year post-relocation, though Ashton and Burke (2007, entire) have suggested that there is likely stabilization in subsequent years. With this in mind, translocation and relocation could be considered by some to be a threat to populations because these activities could result in long-term loss of tortoises through dispersal from populations, transmission of disease, loss of habitat, and unnatural genetic mixing. Furthering the concern about relocation was a general lack of follow-up studies, analysis, and dissemination of associated results for relocation projects (Burke 1989, p. 296). However, Mushinsky *et al.* (2006, p. 369) have suggested that, though ''gopher tortoise translocation is controversial, labor-intensive, and time consuming,'' ''* * * the future of the species may depend on perfecting translocation practices and procedures.''

A number of researchers have provided recommendations for improving translocation/relocation procedures for tortoises and other reptiles. Among these, Lohoefener and Lohmeier (1986, p. 40) recommended that only free-ranging tortoises (not captive) be used, that relocation sites be areas that supported tortoises in the past, that the sex ratio of the relocated animals be 1:1, that penning occur for at least 1 week, and that the animals be protected from human and animal predation. They also recommended that populations not be allowed to decline to

the point where relocation is necessary for the survival of the species.

Through time, specific measures have been added that have improved the practice. Dodd and Seigel (1991, pp. 344–346) recommended that translocations be undertaken only when the cause of decline in the recipient population was known and ameliorated. They went further to suggest that a number of other considerations should be included such as: Biological constraints of the species, genetic factors, demographic and biophysical constraints, and disease transmission risk; and providing sufficient space for feeding, reproduction, cover and social interaction, which should all be followed by long-term monitoring. Lohoefener and Lohmeier's (1986, pp. 37–38) recommendations on penning and starter burrows to improve success and lower post-relocation dispersal have been modified to increase duration of penning (Tuberville *et al.* 2005, p. 356), which has shown improved success. Ashton and Burke (2007, p. 786) recommended that relocations be conducted when they: Are economically and logistically justified, have a high probability of success, include at least 100 individual tortoises, occur in areas of high-quality habitat in the native range, and take place where habitat management will occur after translocation. With regard to disease transmission, Mushinsky *et al.* (2006, p. 369) recommended not relocating tortoises showing clinical signs of disease and ensuring protection and management of recipient sites.

Many of these improved practices for tortoise relocation have already made their way into many on-the-ground management projects, plans, and recommendations (see examples under Conservation Efforts Sections for Factors A and C), as well as regulatory agency guidance (Ginger 2010), in both the listed and unlisted portions of the range. Though long-term monitoring will be needed to evaluate the success of past and future relocation efforts, considerable effort has been invested to improve the practice. Several States are currently considering projects or have ongoing efforts to relocate tortoises. Their success or failure will be determined, in large part, by the degree of care taken in the effort and likely the employment of many of the above considerations. At this time, there is insufficient data to determine the degree to which unsuccessful relocations occurred in the past. We note, however, that improving practices (as described above) will likely result in long-term benefit to tortoises should they be incorporated into future efforts.

There is little information on the short-term and residual effects of herbicide application in forest management prescriptions on tortoises or their food plants (Jones and Dorr 2004, p. 462). However, typical forestry herbicides have low toxicity and environmental persistence (McNabb 1997, pp. 1–2; Michael and Neary 1991, p. 641; Miller and Miller 2004, p. 1050). Anticipated impacts associated with continued use of herbicides include temporary loss or reduction in available forage for tortoises that persist in and around intensely managed pine forests. Additionally, the use of herbicides in silvicultural practices results in the accelerated release of planted pines, which results in a more rapid canopy closure and subsequent degradation of ground cover. Some current forest management guidelines recommend aggressive use of herbicides to control not only woody vegetation but also herbaceous species (Yeiser and Ezell 2004, p. 23; Moorhead *et al.* 2002, p. 2) that may be important gopher tortoise forage. In reviewing publications about land management efforts in Florida, Menges and Gordon (2010, pp. 156–161) indicated that herbicide application typically results in the temporary decline of ground cover and should never be used as a surrogate for fire in sandhill and other fire-maintained vegetative communities. Others have demonstrated that herbicide application in combination with mid-rotation burning can increase ground cover when used in certain combinations (Miller and Chamberlain 2008, pp. 776–777; Jones *et al.* 2009a, p, 1168; Jones *et al.* 2009b, pp. 556–558). However, when used as a silvicultural management tool, the intended results of herbicide and prescribed fire are to control native and invasive plants that might compete with planted or managed pines.

Effective implementation of herbicide and fire management regimes can result in fast release of planted pines and shorter time to canopy closure. Therefore, the short-term gains of maintaining ground cover may be offset by more rapid canopy closure (Jones *et al.* 2009b, p. 559; Miller and Chamberlain 2008, p. 779). While these management efforts may have value to mobile species such as white-tailed deer and quail (Jones *et al.* 2009a, pp. 1169–1171), the value of these spatially and temporally limited habitat patches have not been demonstrated for the gopher tortoise. We believe that continued efforts to reduce herbaceous vegetation in newly planted pine plantations and mid-canopy at mid-rotation, respectively, may have short- and long-term detrimental effects to tortoises.

Habitat destruction and degradation of upland habitats (see Factor A analysis) has resulted in fragmentation of large tortoise populations and forced individuals into unsuitable habitats and onto highways (Diemer 1987, p. 75; Mushinsky *et al.* 2006, p. 358). Based on anticipated future habitat destruction resulting from urban development and resulting habitat degradation, we expect gopher tortoises will continue to disperse to find better quality habitat and will be at risk of being killed on highways. This threat is likely to increase as road densities increase and habitat patches become more isolated and more difficult to effectively manage (FWC 2006, p. 10). Highway mortality of gopher tortoises will be highest where there are improved roads and adjacent gopher tortoise populations. Tortoises in the vicinity of urban areas will be particularly vulnerable (Mushinsky *et al.* 2006, p. 362). This threat is ongoing and will continue to occur in the future in peninsular Florida and urban centers in coastal portions of Georgia, Alabama, and Mississippi where human populations are likely to increase in the future. Quantification of road mortality will be difficult because there is no current rangewide monitoring effort for tortoise road mortality.

Climate change will result in the loss and degradation of gopher tortoise habitat in the future, particularly in Florida. According to the Intergovernmental Panel on Climate Change Synthesis Report (IPCC 2007, p. 2), evidence of warming of the earth's climate is ''unequivocal,'' from observations of increases in average global air and ocean temperatures, widespread melting of snow and ice, and rising sea level. Temperatures are predicted to rise from 2.0 °C to 5.0 °C (3.6 °F to 9.0 °F) for North America by the end of this century (IPCC 2007, p. 9). Other processes to be affected by this projected warming include rainfall (amount, seasonal timing, and distribution), storms (frequency and intensity), and sea level rise. The 2007 IPCC report (p. 8) found a 90 percent probability of 18 to 58 centimeters (7 to 23 inches) of sea level rise by 2100. Rising sea levels will have direct and indirect impacts to gopher tortoises. In certain areas (*e.g.*, coastal tortoise populations), sea level rise may inundate habitat or substantially raise water table levels making currently occupied habitat unsuitable. The largest gopher tortoise population at risk from habitat loss and degradation due to climate change is on Merritt Island, Florida.

Indirect impacts to gopher tortoises and their habitat may occur due to the relocation of people from flood-prone urban areas to inland areas (Ruppert *et al.* 2008, p. 127), including the relocation of millions of people to currently undeveloped interior natural areas (Stanton and Ackerman 2007, p. 15). Others have proposed implementation of a large-scale systematic translocation of at-risk human populations to interior locations (Gilkey 2008, pp. 9–12). Alabama, Florida, Louisiana, and Mississippi's interior natural ecological communities will likely be impacted with the increasing need of urban infrastructure to support retreating coastal inhabitants. Increases in gopher tortoise habitat loss related to climate change would be in addition to the 20 percent loss projected to occur by 2060 due solely to people immigrating into Florida (FWC 2008, p. 2). Increasing threats of habitat loss due to coastal retreat is likely to also affect tortoise habitat inland from the Georgia, Alabama, and Mississippi coastal counties. The timing of these impacts will be dependent on the rate at which the sea level rises, and a gradual coastal retreat and concurrent impacts to gopher tortoises are likely during this time.

Finally, in our 90-day finding we indicated that delayed maturity and low reproductive rates exacerbate many of the threats described above (74 FR 46406). While these factors may limit the ability of gopher tortoise populations to respond quickly to conservation measures, they are part of the life-history strategy of this species. The magnitude of various threats considers the life history of the species throughout this finding.

Conservation Efforts To Reduce or Eliminate Other Natural or Manmade Factors

In addition to the protection of gopher tortoise habitat described in Factor D above, ALDOT also has installed fences along two of its road projects to minimize gopher tortoise road mortality. The two road projects (Highway 98 and State Road 158) cumulatively resulted in the installation of about 16 kilometers (10 miles) of gopher tortoise fencing.

The Mississippi Department of Transportation also used fencing to protect gopher tortoises as a result of work on State Route 63 in Green County. About 24 kilometers (15 miles) of fencing were erected, and road mortality has decreased from 1–2 tortoises annually to none.

These projects reduce or eliminate road mortality and contribute to sustainability of local tortoise populations. However, they are small in scope and do not substantively reduce the threat of gopher tortoise road mortality throughout its range, nor do they eliminate the habitat fragmentation caused by roads.

Summary of Factor E

Although improvements in relocation could be made, we do not consider this practice to be a threat at this time. However, we consider the underlying habitat loss and habitat degradation that necessitates relocation to be a threat, as stated above. The combined threats from silvicultural herbicides and road mortality are occurring now and are expected to continue in the future. These threats will be focused in areas of silvicultural production and roadways in and around urban areas, respectively. These threats are ongoing so they are imminent and the magnitude of threat is moderate for use of silvicultural herbicides, based primarily on our existing knowledge of the distribution of tortoises and their vulnerability to incompatible silvicultural forest management practices.

We know that road mortality occurs, but the extent to which it affects populations and the species as a whole is not well documented. As a result, the threat of road mortality is imminent because it is ongoing and will likely continue in the future. We have no information linking road mortality directly to population declines so the magnitude of this factor is not currently known. Climate change is not an imminent threat because we have not detected climate change-related impacts on gopher tortoise populations. We are uncertain about the magnitude of this threat because we do not currently understand all potential impacts of climate change on the gopher tortoise or human responses to mitigate its effects on human populations. Based on this information, the gopher tortoise is threatened due to other natural or manmade factors in the form of silvicultural herbicide use and road mortality, in combination with the other threats identified in this finding, both now and in the foreseeable future.

Summary of All Factors and Status

The current exact number of gopher tortoise populations and amounts of suitable and occupied habitat are uncertain. Population studies and surveys are incomplete. Of those completed, the only evidence of population increases is on Department of Defense lands in the Florida panhandle, but there are also decreases on these same installations. The remainder of the studies, in Georgia, South Carolina, Mississippi and Florida, indicate declines.

The amount of estimated potential habitat, about 11 million ha (over 27 million ac) spread across six states, might suggest that threats to habitat are not sufficient to warrant listing of the gopher tortoise as either endangered or threatened. However, as discussed above, this figure represents potential habitat. Much of this potential habitat is either not suitable, or of reduced suitability for reasons of soil type, vegetation structure and composition, or other factors, and almost half of this potential habitat is fragmented into parcels of less than about 101 ha (250 ac).

Most of the potential gopher tortoise habitat, about 88 percent, is privately held, and much of this is in silviculture. Silvicultural practices can be, but are not necessarily, compatible with gopher tortoise conservation. While much of this land is unlikely to be developed in the near term, private lands are also sensitive to economic conditions. These conditions affect potential conversion to other land uses as well as the viability of management treatments that impact species composition, harvest rates, thinning, and burning.

We also know that not all potential habitats on public lands are suitable gopher tortoise habitat. Few lands have been acquired expressly for gopher tortoise conservation. Thus, gopher tortoise habitat suitability is often a byproduct of other management treatments. Public lands, while less vulnerable to development, are still subject to economic pressures and constraints. Currently, public agency budgets are strained, and most are probably not adequate to provide for large-scale, intensive management specifically targeting gopher tortoise habitat. We know that periodic burning of gopher tortoise habitat is crucial to the conservation of the species. We also know that pressures to control wildfires for public safety and the adverse effects of smoke make burning more and more difficult.

Based on available data, we believe that, at the landscape level, gopher tortoises are still found mostly in isolated and fragmented populations throughout the six-state range. We know they are more abundant east of the Tombigbee River and are most abundant in central and north Florida and southern Georgia. In a few isolated locations they are relatively common and there are nine locations referenced in this finding where they are likely to persist long term. Many more large populations likely exist, but comprehensive surveys or censuses

have not been undertaken throughout much of the tortoise's eastern range. They are also more protected in Florida than elsewhere in the eastern portion of the range, and there is more protected habitat in Florida than in the rest of the range combined. Florida also has the strongest of the State laws protecting gopher tortoises and is the only State with a management plan for the species. But Florida is also the State facing the most development pressure in the foreseeable future, and while the State's Plan may provide considerable conservation benefits to the gopher tortoise, it is too early to evaluate its overall success.

Overall, our assessment is that gopher tortoise habitat is diminishing and that populations are declining. Disease and human-related impacts are documented threats to the species and sea level rise will likely also eliminate some coastal habitats. There are likely some viable gopher tortoise populations on both public and private lands in the eastern portion of the species' range. However, the extent to which these populations are sufficient in both number and security to ensure the long-term persistence of gopher tortoises throughout their range is unknown. The positive effects of recent commitments of landowners through the Candidate Conservation Agreement and more protective regulations in Florida are just beginning to be realized. Regardless, there are no programs in place that would ensure the maintenance of contiguous, suitable, occupied habitats to secure the species against stochastic events and to provide for sufficient genetic diversity.

Confounding the issue of threats is the biology of the species. Gopher tortoises are long-lived and slow to reproduce, and the planning horizon for gopher tortoise conservation far exceeds our ability to reliably project economic conditions and land uses. Individuals of the species could linger for decades in areas where reproduction is no longer successful, thus lending a false picture of security to the public and regulators. However, the risk of failing to act in a timely manner could have far-reaching and perhaps irreversible consequences for the species.

Absent a cohesive effort to protect and maintain sufficient habitats to ensure long-term persistence of the species, gopher tortoises will likely succumb to continued loss of habitat and degradation of habitat due to difficulties in applying prescribed fire as frequently as necessary. For example, while there are more than 1.6 million ha (4.0 million ac) of potential habitat in the western portion of the range, there are no known populations of more than 250 individuals, a number that some suggest is necessary as a minimum viable population.

Conservation of the species at this stage may be easy to accomplish relative to many listed species, particularly if sufficient habitats currently supporting large populations or having the capability to support large populations can be identified and secured, and protective and management measures implemented.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the gopher tortoise is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the gopher tortoise. We reviewed the petition, information available in our files; other available published and unpublished information; and information submitted during the public comment period from military installations, the U.S. Forest Service, State forest agencies, State wildlife and conservation agencies, mineral and chemical producers, corporate and other private timber owners and various companies representing timber owners, agricultural interests, and gopher tortoise experts.

This status review identified threats to the gopher tortoise attributable to Factors A, B, C, D, and E. The primary threat to the gopher tortoise is from habitat destruction and modification (Factor A) in the form of conversion of native pine forests to intensively managed silvicultural pine forests, urban development, and habitat degradation due to lack of fire management. Under Factor B we conclude that overutilization for commercial, recreational, scientific, or educational purposes resulting from ongoing rattlesnake roundups are likely to continue to threaten the gopher tortoise now and into the future in the vicinity of roundup events. We consider predation under Factor C to be a serious ongoing threat. Disease is expected to become more problematic for gopher tortoises as additional habitat is lost and fragmentation increases. Stressors are likely to elevate risks of tortoises to upper respiratory tract disease, but these effects will likely be localized. Existing regulations (Factor D) do protect individual tortoises, but do not adequately protect habitat on private lands where the majority of the remaining potential tortoise habitat occurs. Under Factor E, we believe that incompatible use of silvicultural herbicides is an imminent threat. We consider disease, road mortality, and the effects of climate change identified under Factors C and E to be secondary threats.

As we discussed above, many tortoise populations will undoubtedly persist for 100–200 years albeit declining in numbers due to the species' longevity. Functionally, however, many of these populations may already be, or may soon become, extinct because there are not enough breeding individuals or their densities are too low to ensure that recruitment of young exceeds mortality generation after generation. Existing survey data indicate that many populations are below the 0.4 tortoise per ha (0.2 tortoise per ac) necessary for successful reproduction. The best science currently available indicate that most tortoise populations are in decline, and current efforts to reverse these trends with habitat management may be too late or are not yet being quantified.

There are almost 1.0 million ha (2.4 million ac) of potential gopher tortoise habitat in public ownership that are not susceptible to destruction. Provided these properties are managed appropriately in the future and site-specific management activities target restoration and maintenance of suitable habitat, gopher tortoises may persist in these areas for longer periods than they would without such protection and management efforts. However, based on model projections, many of the gopher tortoise populations on public lands may not be large enough to persist long term, regardless of how well their habitat is protected and managed.

Consequently, the protection and management of public lands may serve to extend the time that gopher tortoises remain on public lands, but these efforts may not be sufficient to overcome the adverse effects of environmental stochasticity, which often results in poor demographic performance in small populations. Protection of public lands and associated management efforts will likely ensure that the tortoise is not currently in danger of extinction throughout all or a significant portion of its range. Finally, we find that the observed and anticipated cumulative impacts of habitat loss, degradation, disease, inadequacy of existing regulations and other factors are threats of sufficient imminence, intensity, or magnitude to indicate that the gopher tortoise is in danger of extinction (endangered), or likely to become endangered within the foreseeable

future (threatened), throughout the eastern portion of its range.

On the basis of the best scientific and commercial information available, we find that the petitioned action to list the gopher tortoise in the eastern portion of its range is warranted and that its current status as a threatened species in the western portion of its range is appropriate. We will make a determination on the specific status of the gopher tortoise in the eastern portion of its range when we complete a proposed rule to list the gopher tortoise. At that time we will also assess and propose regulations as deemed necessary and advisable to provide for the conservation of the species. However, as explained in more detail below, an immediate proposal of a regulation implementing this action is precluded by higher priority listing actions, and we are making expeditious progress to add or remove qualified species from the Lists of Endangered and Threatened Wildlife and Plants.

We reviewed the available information to determine if the existing and foreseeable threats render the gopher tortoise in the eastern portion of its range at risk of extinction now such that issuing an emergency regulation temporarily listing the species throughout its range per section 4(b)(7) of the Act is warranted. We have determined that issuing an emergency regulation temporarily listing the gopher tortoise throughout its range is not warranted at this time because the immediacy of primary threats is such that the species is not in danger of extinction in the immediate future. However, if at any time we determine that issuing an emergency regulation temporarily listing the gopher tortoise throughout its range is warranted, we will initiate this action at that time.

Listing Priority Number

The Service adopted guidelines on September 21, 1983 (48 FR 43098), to establish a rational system for utilizing available resources for the highest priority species when adding species to the Lists of Endangered or Threatened Wildlife and Plants or reclassifying species listed as threatened to endangered status. These guidelines, titled ''Endangered and Threatened Species Listing and Recovery Priority Guidelines'' address the magnitude and immediacy of threats, and the level of taxonomic distinctiveness by assigning priority in descending order to monotypic genera (genus with one species), full species, and subspecies (or equivalently, distinct population segments of vertebrates). We assigned the gopher tortoise a Listing Priority Number (LPN) of 8 based on our finding that the species faces threats that are of moderate magnitude and are imminent. These threats include the present or threatened destruction, modification, or curtailment of its habitat; predation; the inadequacy of existing regulatory mechanisms; and use of incompatible silvicultural management activities. We consider overutilization, disease, and road mortality, and the effects of climate change to be minor threats. Our rationale for assigning the gopher tortoise an LPN of 8 is outlined below.

Under the Service's LPN Guidance, the magnitude of threat is the first criterion we look at when establishing a listing priority. The guidance indicates that species with the highest magnitude of threat are those species facing the greatest threats to their continued existence. These species receive the highest listing priority.

GIS analysis indicates that about 88 percent of remaining potential gopher tortoise habitat is in private ownership. Much of this habitat is susceptible to future conversion for silviculture, agriculture, and urban land uses because most existing regulatory mechanisms do not protect gopher tortoise habitat. The area covered by pine plantations in the south has been modeled and under certain scenarios is projected to increase between about 4–10 million ha (10–25 million ac) by 2040 (Prestemon and Abt 2002, pp. 18–20). Future urban development may result in the loss of about 283,300 ha (700,000 ac) or 20 percent of the remaining gopher tortoise habitat in Florida by 2060 (Florida Fish and Wildlife Conservation Commission 2008, p. 4). Others have predicted a loss of up to 50 percent of forest lands in central Florida and up to 25 percent in north Florida and southeast Alabama (Prestemon and Abt 2002, p. 18). Some gopher tortoise habitat in public ownership and on most private lands is currently threatened with degradation due to fire suppression or use of inadequate prescribed fire regimes. Reduced survival and low recruitment observed in many gopher tortoise populations throughout the species' range are thought to result from poor habitat quality due to fire suppression. This threat will continue in the future.

While the cumulative adverse effects of present or threatened destruction, modification, or curtailment of habitat span much of the gopher tortoises range, there are many ongoing longleaf pine restoration initiatives that have the potential to protect and enhance gopher tortoise habitat. As a result of these ongoing protection and management efforts, the magnitude of this threat is reduced. Nonetheless, due to the broad geographic area affected by this threat, the overall magnitude is moderate.

Under Factor C above, we determined that predation of gopher tortoise eggs and hatchlings resulted in 70 to 100 percent mortality. These rates of mortality are not uncommon among long-lived animals, but high mortality of eggs and young is likely to prolong, if not preclude, gopher tortoise recovery in areas where active land management may provide suitable habitat. This threat is widespread throughout the tortoise's range. Even though predation has been, and still is, a naturally occurring limiting factor, we consider it to be of moderate magnitude because it is probably working synergistically with other threats identified herein to impact gopher tortoises.

We considered the inadequacy of existing regulations to be a moderate threat throughout the eastern portion of the tortoise's range. Except for the State of Florida, no other State has adopted regulations that attempt to mitigate the effects of habitat loss and subsequent take of tortoises. In all States in the eastern portion of the range, silvicultural and agricultural lands are generally exempted from regulatory oversight; therefore, impacts to tortoises resulting from activities associated with silviculture or agriculture are not reviewed or mitigated. Nearly 88 percent of all remaining potential habitat is in private ownership, and much of this falls under silvicultural or agricultural uses. Consequently, potential future impacts to gopher tortoises resulting from inadequate regulations are expected to be substantial.

We also considered the adverse effects of incompatible uses of herbicides in silviculture to be a moderate threat to gopher tortoises primarily in the interior portions of Alabama, Georgia, Louisiana, and Mississippi. Aerial or broad-scale application of herbicides is used to reduce vegetative competition with newly planted pine seedlings and to reduce hardwood encroachment during mid-rotation thinning. Herbicide applications at the time of seedling planting result in mortality of ground cover plants that tortoises use for forage. Reduced forage may result in tortoises abandoning a site (if adjacent habitat is available) or poor physical condition due to lack of food. Poor physical condition may result in mortality, increased susceptibility to disease, and reduced reproductive fitness. This threat limited to silvicultural lands that use herbicides and those silvicultural lands that will use herbicides in the future. The area potentially affected by

this threat relatively large and is anticipated to increase in size in the future. As a result, we consider this threat to be of moderate magnitude.

Under our LPN Guidance, the second criterion we consider in assigning a listing priority is the immediacy of threats. This criterion is intended to ensure that the species that face actual, identifiable threats are given priority over those for which threats are only potential or that are intrinsically vulnerable but are not known to be presently facing such threats. The major threats are imminent because we have factual information that the threats are identifiable and that the gopher tortoise is currently facing them throughout all portions of its range. These actual, identifiable threats are covered in detail under the discussion of Factors A, C, D, and E of this finding and currently include habitat loss, fragmentation, and degradation; predation; inadequacy of regulatory mechanisms; and incompatible use of herbicides in silvicultural activities.

In addition to their current existence, we expect these threats to continue and likely intensify in the foreseeable future. Additional urban development in peninsular Florida and coastal portions of Alabama, the Florida panhandle, Georgia, and Mississippi is predicted in the future as is an increase in the acreage of planted pine in interior portions of these States. Use of prescribed fire in natural and planted pine stands is likely to decrease in the future due to legal liabilities. Resultantly, habitat loss, fragmentation, and degradation are imminent and likely to persist in the future. Predation will continue to be an imminent threat in the future because eradication or control of many nest and hatchling predators does not appear to be achievable over large areas. The inadequacy of existing regulations is a present threat throughout the eastern portion of the tortoise's range. While it is possible that additional regulatory protections may be adopted by local or State governments in the future, we are aware of no such efforts currently under way. Finally, the use of herbicides in silviculture has been used increasingly as a mechanism to reduce plant competition while minimizing environmental impacts (*e.g.,* ground disturbances). When used broadly, herbicides are nonselective and kill ground cover used by tortoises for forage. Because herbicide treatments are typically less expensive and labor intensive, we expect use of this management technique will continue in the future and possibly increase in acreage.

The third criterion in our LPN guidance is intended to devote resources to those species representing highly distinctive or isolated gene pools as reflected by taxonomy. The gopher tortoise is a valid taxon at the species level and, therefore, receives a higher priority than subspecies or DPSs, but a lower priority than species in a monotypic genus. The gopher tortoise faces medium-magnitude, imminent threats and is a valid taxon at the species level. Thus, in accordance with our LPN guidance, we have assigned the gopher tortoise an LPN of 8.

We will continue to monitor the threats to and the status of the gopher tortoise, and the species' status on an annual basis, and should the magnitude or the imminence of the threats change, we will revisit our assessment of the LPN.

Work on a proposed listing determination for the gopher tortoise is precluded by work on higher priority listing actions with absolute statutory, court-ordered, or court-approved deadlines and final listing determinations for those species that were proposed for listing with funds from Fiscal Year 2011. This work includes all the actions listed in the tables below under Preclusion and Expeditious Progress. Between the publication date of this notice and the final listing determination for the gopher tortoise, we will work with our private, State, and Federal partners to identify and implement conservation, management, and regulatory opportunities to remove or alleviate threats so that the listing priority is reduced or so that listing of the gopher tortoise is no longer warranted. Such opportunities may include, but are not limited to, improving the scientific base of knowledge, development and implementation of best management practices or management plans, impact avoidance and minimization measures, and Candidate Conservation Agreements and Candidate Conservation Agreements with Assurances.

With regard to specific actions that can be taken to reduce threats to the gopher tortoise under the five listing factors, we recommend the following. Threats under Factor A can largely be alleviated by restoring (*i.e.* mechanical vegetation reduction) and managing (*i.e.,* burning at short-term fire return intervals) appropriate habitat and continuing to secure habitat to support viable populations throughout the range. While the CCA has documented progress towards gopher tortoise conservation, additional data collection on existing populations, habitat, and effective management are still needed to demonstrate success. Threats under Factor B could be alleviated by eliminating the loss of tortoises incidental to the capture of other species. This could be accomplished by eliminating the legal harvest of species that may be found in gopher tortoise burrows. Threats under Factor C may require various precautionary measures in different parts of the range, but information collected for individual populations may demonstrate that either disease or predation risks might require additional measures such as disease screening to prevent spread of URTD or measures to prevent predation of nests and hatchlings. Threats under Factor D, which in turn contribute to habitat loss, may require additional protective measures for both individual populations and associated habitat and could include management of populations and habitat to enhance long-term viability. Threats under Factor E vary in their possible remediation. In the case of silvicultural herbicides, it is possible that in some areas fire management might provide a suitable alternative, however, additional measures such as timing of applications and alternative strategies should be considered. Harvest rotations could be adjusted to ensure suitable habitat is always adjacent to existing tortoise populations. Road mortality, has been alleviated by fencing in some locations. In areas with high tortoise densities additional fencing could be employed to reduce road mortality, though its use should be considered carefully, as it may inhibit dispersal.

Preclusion and Expeditious Progress

Preclusion is a function of the listing priority of a species in relation to the resources that are available and the cost and relative priority of competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a listing proposal regulation or whether promulgation of such a proposal is precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual ''resubmitted''

petition findings on prior warranted-but-precluded petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat). The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds that may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program (''The critical habitat designation subcap will ensure that some funding is available to address other listing activities'' (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In some FYs since 2006, we have been able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. In other FYs, while we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations, we did use some of this money to fund the critical habitat portion of some proposed listing determinations so that the proposed listing determination and proposed critical habitat designation could be combined into one rule, thereby being more efficient in our work. At this time, for FY 2011, we plan to use some of the critical habitat subcap funds to fund proposed listing determinations.

We make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. Through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities nationwide. Therefore, the funds in the listing cap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

Congress identified the availability of resources as the only basis for deferring the initiation of a rulemaking that is warranted. The Conference Report accompanying Public Law 97–304 (Endangered Species Act Amendments of 1982), which established the current statutory deadlines and the warranted-but-precluded finding, states that the amendments were ''not intended to allow the Secretary to delay commencing the rulemaking process for any reason other than that the existence of pending or imminent proposals to list species subject to a greater degree of threat would make allocation of resources to such a petition [that is, for a lower-ranking species] unwise.'' Although that statement appeared to refer specifically to the ''to the maximum extent practicable'' limitation on the 90-day deadline for making a ''substantial information'' finding, that finding is made at the point when the Service is deciding whether or not to commence a status review that will determine the degree of threats facing the species, and therefore the analysis underlying the statement is more relevant to the use of the warranted-but-precluded finding, which is made when the Service has already determined the degree of threats facing the species and is deciding whether or not to commence a rulemaking.

In FY 2011, on April 15, 2011, Congress passed the Full-Year Continuing Appropriations Act (Pub. L. 112–10), which provides funding through September 30, 2011. The Service has $20,902,000 for the listing program. Of that, $9,472,000 is being used for determinations of critical habitat for already listed species. Also $500,000 is appropriated for foreign species listings under the Act. The Service thus has $10,930,000 available to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In FY 2010, the Service received many new petitions and a single petition to list 404 species. The receipt of petitions for a large number of species is consuming the Service's listing funding that is not dedicated to meeting court-ordered commitments. Absent some ability to balance effort among listing duties under existing funding levels, the Service is only able to initiate a few new listing determinations for candidate species in FY 2011.

In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority, International Affairs Program, to the Endangered Species Program. Therefore, starting in FY 2010, we used a portion of our funding to work on the actions described above for listing actions related to foreign species. In FY 2011, we anticipate using $1,500,000 for work on listing actions for foreign species, which reduces funding available for domestic listing actions; however, currently only $500,000 has been allocated for this function. Although there are no foreign species issues included in our high-priority listing actions at this time, many actions have statutory or court-approved settlement deadlines, thus increasing their priority. The budget allocations for each specific listing action are identified in the Service's FY 2011 Allocation Table (part of our record).

For the above reasons, funding a proposed listing determination for the gopher tortoise is precluded by court-ordered and court-approved settlement agreements, listing actions with absolute

statutory deadlines, and work on proposed listing determinations for those candidate species with a higher listing priority (*i.e.,* candidate species with LPNs of 1–7).

Based on our September 21, 1983, guidelines for assigning an LPN for each candidate species (48 FR 43098), we have a significant number of species with a LPN of 2. Using these guidelines, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats (high or moderate to low), immediacy of threats (imminent or nonimminent), and taxonomic status of the species (in order of priority: Monotypic genus (a species that is the sole member of a genus); species; or part of a species (subspecies, or distinct population segment)). The lower the listing priority number, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority).

Because of the large number of high-priority species, we have further ranked the candidate species with an LPN of 2 by using the following extinction-risk type criteria: International Union for the Conservation of Nature and Natural Resources (IUCN) Red list status/rank, Heritage rank (provided by NatureServe), Heritage threat rank (provided by NatureServe), and species currently with fewer than 50 individuals, or 4 or fewer populations. Those species with the highest IUCN rank (critically endangered), the highest Heritage rank (G1), the highest Heritage threat rank (substantial, imminent threats), and currently with fewer than 50 individuals, or fewer than 4 populations, originally comprised a group of approximately 40 candidate species (''Top 40''). These 40 candidate species have had the highest priority to receive funding to work on a proposed listing determination. As we work on proposed and final listing rules for those 40 candidates, we apply the ranking criteria to the next group of candidates with an LPN of 2 and 3 to determine the next set of highest priority candidate species. Finally, proposed rules for reclassification of threatened species to endangered species are lower priority, because as listed species, they are already afforded the protection of the Act and implementing regulations. However, for efficiency reasons, we may choose to work on a proposed rule to reclassify a species to endangered if we can combine this with work that is subject to a court-determined deadline.

With our workload so much bigger than the amount of funds we have to accomplish it, it is important that we be as efficient as possible in our listing process. Therefore, as we work on proposed rules for the highest priority species in the next several years, we are preparing multi-species proposals when appropriate, and these may include species with lower priority if they overlap geographically or have the same threats as a species with an LPN of 2. In addition, we take into consideration the availability of staff resources when we determine which high-priority species will receive funding to minimize the amount of time and resources required to complete each listing action.

As explained above, a determination that listing is warranted but precluded must also demonstrate that expeditious progress is being made to add and remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. As with our ''precluded'' finding, the evaluation of whether progress in adding qualified species to the Lists has been expeditious is a function of the resources available for listing and the competing demands for those funds. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the list under the Recovery program in light of the resource available for delisting, which is funded by a separate line item in the budget of the Endangered Species Program. So far during FY 2011, we have completed one delisting rule.) Given the limited resources available for listing, we find that we are making expeditious progress in FY 2011 in the Listing Program. This progress included preparing and publishing the following determinations:

FY 2011 COMPLETED LISTING ACTIONS

Publication date	Title	Actions	FR pages
10/6/2010	Endangered Status for the Altamaha Spinymussel and Designation of Critical Habitat.	Proposed Listing Endangered	75 FR 61664–61690.
10/7/2010	12-month Finding on a Petition to list the Sacramento Splittail as Endangered or Threatened.	Notice of 12-month petition finding, Not warranted.	75 FR 62070–62095.
10/28/2010	Endangered Status and Designation of Critical Habitat for Spikedace and Loach Minnow.	Proposed Listing Endangered (uplisting)	75 FR 66481–66552.
11/2/2010	90-Day Finding on a Petition to List the Bay Springs Salamander as Endangered.	Notice of 90-day Petition Finding, Not substantial.	75 FR 67341–67343.
11/2/2010	Determination of Endangered Status for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail and Designation of Critical Habitat.	Final Listing Endangered	75 FR 67511–67550.
11/2/2010	Listing the Rayed Bean and Snuffbox as Endangered.	Proposed Listing Endangered	75 FR 67551–67583.
11/4/2010	12-Month Finding on a Petition to List Cirsium wrightii (Wright's Marsh Thistle) as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 67925–67944.
12/14/2010	Endangered Status for Dunes Sagebrush Lizard.	Proposed Listing Endangered	75 FR 77801–77817.
12/14/2010	12-month Finding on a Petition to List the North American Wolverine as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78029–78061.
12/14/2010	12-Month Finding on a Petition to List the Sonoran Population of the Desert Tortoise as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78093–78146.

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
12/15/2010	12-Month Finding on a Petition to List *Astragalus microcymbus* and *Astragalus schmolliae* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	75 FR 78513–78556.
12/28/2010	Listing Seven Brazilian Bird Species as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 81793–81815.
1/4/2011	90-Day Finding on a Petition to List the Red Knot subspecies *Calidris canutus roselaari* as Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 304–311.
1/19/2011	Endangered Status for the Sheepnose and Spectaclecase Mussels.	Proposed Listing Endangered	76 FR 3392–3420.
2/10/2011	12-Month Finding on a Petition to List the Pacific Walrus as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 7634–7679.
2/17/2011	90-Day Finding on a Petition To List the Sand Verbena Moth as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 9309–9318.
2/22/2011	Determination of Threatened Status for the New Zealand-Australia Distinct Population Segment of the Southern Rockhopper Penguin.	Final Listing Threatened	76 FR 9681–9692.
2/22/2011	12-Month Finding on a Petition to List *Solanum conocarpum* (marron bacora) as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 9722–9733.
2/23/2011	12-Month Finding on a Petition to List Thorne's Hairstreak Butterfly as Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 9991–10003.
2/23/2011	12-Month Finding on a Petition to List *Astragalus hamiltonii, Penstemon flowersii, Eriogonum soredium, Lepidium ostleri,* and *Trifolium friscanum* as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded & Not Warranted.	76 FR 10166–10203.
2/24/2011	90-Day Finding on a Petition to List the Wild Plains Bison or Each of Four Distinct Population Segments as Threatened.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10299–10310.
2/24/2011	90-Day Finding on a Petition to List the Unsilvered Fritillary Butterfly as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 10310–10319.
3/8/2011	12-Month Finding on a Petition to List the Mt. Charleston Blue Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 12667–12683.
3/8/2011	90-Day Finding on a Petition to List the Texas Kangaroo Rat as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 12683–12690.
3/10/2011	Initiation of Status Review for Longfin Smelt	Notice of Status Review	76 FR 13121–31322.
3/15/2011	Withdrawal of Proposed Rule to List the Flat-tailed Horned Lizard as Threatened.	Proposed rule withdrawal	76 FR 14210–14268.
3/15/2011	Proposed Threatened Status for the Chiricahua Leopard Frog and Proposed Designation of Critical Habitat.	Proposed Listing Threatened; Proposed Designation of Critical Habitat.	76 FR 14126–14207.
3/22/2011	12-Month Finding on a Petition to List the Berry Cave Salamander as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 15919–15932.
4/1/2011	90-Day Finding on a Petition to List the Spring Pygmy Sunfish as Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 18138–18143.
4/5/2011	12-Month Finding on a Petition to List the Bearmouth Mountainsnail, Byrne Resort Mountainsnail, and Meltwater Lednian Stonefly as Endangered or Threatened.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 18684–18701.
4/5/2011	90-Day Finding on a Petition To List the Peary Caribou and Dolphin and Union population of the Barren-ground Caribou as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 18701–18706.
4/12/2011	Proposed Endangered Status for the Three Forks Springsnail and San Bernardino Springsnail, and Proposed Designation of Critical Habitat.	Proposed Listing Endangered; Proposed Designation of Critical Habitat.	76 FR 20464–20488.
4/13/2011	90-Day Finding on a Petition To List Spring Mountains Acastus Checkerspot Butterfly as Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 20613–20622.
4/14/2011	90-Day Finding on a Petition to List the Prairie Chub as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 20911–20918.
4/14/2011	12-Month Finding on a Petition to List Hermes Copper Butterfly as Endangered or Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 20918–20939.

FY 2011 COMPLETED LISTING ACTIONS—Continued

Publication date	Title	Actions	FR pages
4/26/2011	90-Day Finding on a Petition to List the Arapahoe Snowfly as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 23256–23265.
4/26/2011	90-Day Finding on a Petition to List the Smooth-Billed Ani as Threatened or Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 23265–23271.
5/12/2011	Withdrawal of the Proposed Rule to List the Mountain Plover as Threatened.	Proposed Rule, Withdrawal	76 FR 27756–27799.
5/25/2011	90-Day Finding on a Petition To List the Spot-tailed Earless Lizard as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 30082–30087.
5/26/2011	Listing the Salmon-Crested Cockatoo as Threatened Throughout its Range with Special Rule.	Final Listing Threatened	76 FR 30758–30780.
5/31/2011	12-Month Finding on a Petition to List Puerto Rican Harlequin Butterfly as Endangered.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 31282–31294.
6/2/2011	90-Day Finding on a Petition to Reclassify the Straight-Horned Markhor (*Capra falconeri jerdoni*) of Torghar Hills as Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 31903–31906.
6/2/2011	90-Day Finding on a Petition to List the Golden-winged Warbler as Endangered or Threatened.	Notice of 90-day Petition Finding, Substantial	76 FR 31920–31926.
6/7/2011	12-Month Finding on a Petition to List the Striped Newt as Threatened.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 32911–32929.
6/9/2011	12-Month Finding on a Petition to List *Abronia ammophila, Agrostis rossiae, Astragalus proimanthus, Boechera* (*Arabis*) *pusilla,* and *Penstemon gibbensii* as Threatened or Endangered.	Notice of 12-month petition finding, Not Warranted and Warranted but precluded.	76 FR 33924–33965.
6/21/2011	90-Day Finding on a Petition to List the Utah Population of the Gila Monster as an Endangered or a Threatened Distinct Population Segment.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36049–36053.
6/21/2011	Revised 90-Day Finding on a Petition To Reclassify the Utah Prairie Dog From Threatened to Endangered.	Notice of 90-day Petition Finding, Not substantial.	76 FR 36053–36068.
6/28/2011	12-Month Finding on a Petition to List *Castanea pumila* var. *ozarkensis* as Threatened or Endangered.	Notice of 12-month petition finding, Not warranted.	76 FR 37706–37716.
6/29/2011	90-Day Finding on a Petition to List the Eastern Small-Footed Bat and the Northern Long-Eared Bat as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 38095–38106.
6/30/2011	12-Month Finding on a Petition to List a Distinct Population Segment of the Fisher in Its United States Northern Rocky Mountain Range as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Not warranted.	76 FR 38504–38532.
7/12/2011	90-Day Finding on a Petition to List the Bay Skipper as Threatened or Endangered.	Notice of 90-day Petition Finding, Substantial	76 FR 40868–40871.
7/19/2011	12-Month Finding on a Petition to List *Pinus albicaulis* as Endangered or Threatened with Critical Habitat.	Notice of 12-month petition finding, Warranted but precluded.	76 FR 42631–42654.
7/19/2011	Petition To List Grand Canyon Cave Pseudoscorpion.	Notice of 12-month petition finding, Not warranted.	76 FR 42654–42658.

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the middle section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. Actions in the bottom section of the table are high-priority listing actions. These actions include work primarily on species with an LPN of 2, and, as discussed above, selection of these species is partially based on available staff resources, and when appropriate, include species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED

Species	Action
Actions Subject to Court Order/Settlement Agreement	
4 parrot species (military macaw, yellow-billed parrot, red-crowned parrot, scarlet macaw) [5]	12-month petition finding.
4 parrot species (blue-headed macaw, great green macaw, grey-cheeked parakeet, hyacinth macaw).[5]	12-month petition finding.
4 parrots species (crimson shining parrot, white cockatoo, Philippine cockatoo, yellow-crested cockatoo).[5]	12-month petition finding.
Longfin smelt	12-month petition finding.
Actions With Statutory Deadlines	
Casey's june beetle	Final listing determination.
6 Birds from Eurasia	Final listing determination.
5 Bird species from Colombia and Ecuador	Final listing determination.
Queen Charlotte goshawk	Final listing determination.
5 species southeast fish (Cumberland darter, rush darter, yellowcheek darter, chucky madtom, and laurel dace).[4]	Final listing determination.
Ozark hellbender [4]	Final listing determination.
Altamaha spinymussel [3]	Final listing determination.
6 Birds from Peru & Bolivia	Final listing determination.
Loggerhead sea turtle (assist National Marine Fisheries Service) [5]	Final listing determination.
2 mussels (rayed bean (LPN = 2), snuffbox No LPN) [5]	Final listing determination.
CA golden trout [4]	12-month petition finding.
Black-footed albatross	12-month petition finding.
Mojave fringe-toed lizard [1]	12-month petition finding.
Kokanee—Lake Sammamish population [1]	12-month petition finding.
Cactus ferruginous pygmy-owl [1]	12-month petition finding.
Northern leopard frog	12-month petition finding.
Tehachapi slender salamander	12-month petition finding.
Coqui Llanero	12-month petition finding/Proposed listing.
Dusky tree vole	12-month petition finding.
Leatherside chub (from 206 species petition)	12-month petition finding.
Frigid ambersnail (from 206 species petition) [3]	12-month petition finding.
Platte River caddisfly (from 206 species petition) [5]	12-month petition finding.
Anacroneuria wipukupa (a stonefly from 475 species petition) [4]	12-month petition finding.
3 Texas moths (*Ursia furtiva, Sphingicampa blanchardi, Agapema galbina*) (from 475 species petition).	12-month petition finding.
2 Texas shiners (*Cyprinella* sp., *Cyprinella lepida*) (from 475 species petition)	12-month petition finding.
3 South Arizona plants (*Erigeron piscaticus, Astragalus hypoxylus, Amoreuxia gonzalezii*) (from 475 species petition).	12-month petitio finding.
5 Central Texas mussel species (3 from 475 species petition)	12-month petition finding.
14 parrots (foreign species)	12-month petition finding.
Fisher—Northern Rocky Mountain Range [1]	12-month petition finding.
Mohave Ground Squirrel [1]	12-month petition finding.
Western gull-billed tern	12-month petition finding.
HI yellow-faced bees	12-month petition finding.
Giant Palouse earthworm	12-month petition finding.
OK grass pink (*Calopogon oklahomensis*) [1]	12-month petition finding.
Ashy storm-petrel [5]	12-month petition finding.
Honduran emerald	12-month petition finding.
Southeastern pop snowy plover & wintering pop. of piping plover [1]	90-day petition finding.
Eagle Lake trout [1]	90-day petition finding.
32 Pacific Northwest mollusks species (snails and slugs) [1]	90-day petition finding.
42 snail species (Nevada & Utah)	90-day petition finding.
Spring Mountains checkerspot butterfly	90-day petition finding.
Eastern small-footed bat	90-day petition finding.
Northern long-eared bat	90-day petition finding.
10 species of Great Basin butterfly	90-day petition finding.
6 sand dune (scarab) beetles	90-day petition finding.
404 Southeast species	90-day petition finding.
Franklin's bumble bee [4]	90-day petition finding.
2 Idaho snowflies (straight snowfly & Idaho snowfly) [4]	90-day petition finding.
American eel [4]	90-day petition finding.
Leona's little blue [4]	90-day petition finding.
Aztec gilia [5]	90-day petition finding.
White-tailed ptarmigan [5]	90-day petition finding.
San Bernardino flying squirrel [5]	90-day petition finding.
Bicknell's thrush [5]	90-day petition finding.
Chimpanzee	90-day petition finding.
Sonoran talussnail [5]	90-day petition finding.
2 AZ Sky Island plants (*Graptopetalum bartrami* & *Pectis imberbis*) [5]	90-day petition finding.
I'iwi [5]	90-day petition finding.

ACTIONS FUNDED IN FY 2010 AND FY 2011 BUT NOT YET COMPLETED—Continued

Species	Action
Humboldt marten	90-day petition finding.
Desert massasauga	90-day petition finding.
Western glacier stonefly (*Zapada glacier*)	90-day petition finding.
Thermophilic ostracod (*Potamocypris hunteri*)	90-day petition finding.
Sierra Nevada red fox [5]	90-day petition finding.
Boreal toad (eastern or southern Rocky Mtn population) [5]	90-day petition finding.
High-Priority Listing Actions	
20 Maui-Nui candidate species [2] (17 plants, 3 tree snails) (14 with LPN = 2, 2 with LPN = 3, 3 with LPN = 8).	Proposed listing.
Chupadera springsnail [2] (*Pyrgulopsis chupaderae* (LPN = 2)	Proposed listing.
8 Gulf Coast mussels (southern kidneyshell (LPN = 2), round ebonyshell (LPN = 2), Alabama pearlshell (LPN = 2), southern sandshell (LPN = 5), fuzzy pigtoe (LPN = 5), Choctaw bean (LPN = 5), narrow pigtoe (LPN = 5), and tapered pigtoe (LPN = 11)).[4]	Proposed listing.
Umtanum buckwheat (LPN = 2) and white bluffs bladderpod (LPN = 9) [4]	Proposed listing.
Grotto sculpin (LPN = 2) [4]	Proposed listing.
2 Arkansas mussels (Neosho mucket (LPN = 2) & Rabbitsfoot (LPN = 9)) [4]	Proposed listing.
Diamond darter (LPN = 2) [4]	Proposed listing.
Gunnison sage-grouse (LPN = 2) [4]	Proposed listing.
Coral Pink Sand Dunes Tiger Beetle (LPN = 2) [5]	Proposed listing.
Miami blue (LPN = 3) [3]	Proposed listing.
Lesser prairie chicken (LPN = 2)	Proposed listing.
4 Texas salamanders (Austin blind salamander (LPN = 2), Salado salamander (LPN = 2), Georgetown salamander (LPN = 8), Jollyville Plateau (LPN = 8)).[3]	Proposed listing.
5 SW aquatics (Gonzales Spring Snail (LPN = 2), Diamond Y springsnail (LPN = 2), Phantom springsnail (LPN = 2), Phantom Cave snail (LPN = 2), Diminutive amphipod (LPN = 2)).[3]	Proposed listing.
2 Texas plants (Texas golden gladecress (*Leavenworthia texana*) (LPN = 2), Neches River rosemallow (*Hibiscus dasycalyx*) (LPN = 2)).[3]	Proposed listing.
4 AZ plants (Acuna cactus (*Echinomastus erectocentrus* var. *acunensis*) (LPN = 3), Fickeisen plains cactus (*Pediocactus peeblesianus fickeiseniae*) (LPN = 3), Lemmon fleabane (*Erigeron lemmonii*) (LPN = 8), Gierisch mallow (*Sphaeralcea gierischii*) (LPN =2)).[5]	Proposed listing.
FL bonneted bat (LPN = 2) [3]	Proposed listing.
3 Southern FL plants (Florida semaphore cactus (*Consolea corallicola*) (LPN = 2), shellmound applecactus (*Harrisia* (=*Cereus*) *aboriginum* (=*gracilis*)) (LPN = 2), Cape Sable thoroughwort (*Chromolaena frustrata*) (LPN = 2)).[5]	Proposed listing.
21 Big Island (HI) species [5] (includes 8 candidate species—6 plants & 2 animals; 4 with LPN = 2, 1 with LPN = 3, 1 with LPN = 4, 2 with LPN = 8).	Proposed listing.
12 Puget Sound prairie species (9 subspecies of pocket gopher (*Thomomys mazama* ssp.) (LPN = 3), streaked horned lark (LPN = 3), Taylor's checkerspot (LPN = 3), Mardon skipper (LPN = 8)).[3]	Proposed listing.
2 TN River mussels (fluted kidneyshell (LPN = 2), slabside pearlymussel (LPN = 2) [5]	Proposed listing.
Jemez Mountain salamander (LPN = 2) [5]	Proposed listing.

[1] Funds for listing actions for these species were provided in previous FYs.
[2] Although funds for these high-priority listing actions were provided in FY 2008 or 2009, due to the complexity of these actions and competing priorities, these actions are still being developed.
[3] Partially funded with FY 2010 funds and FY 2011 funds.
[4] Funded with FY 2010 funds.
[5] Funded with FY 2011 funds.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

The gopher tortoise in the eastern portion of its range will be added to the list of candidate species upon publication of this 12-month finding. We will continue to monitor the status of this species as new information becomes available. This review will determine if a change in status is warranted, including the need to make prompt use of emergency listing procedures.

We intend that any proposed listing action for the gopher tortoise will be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the North Florida Field Office (see **ADDRESSES** section).

Author(s)

The primary authors of this notice are the staff members of the North Florida Ecological Services Field Office.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 19, 2011.

Daniel M. Ashe,

Director, Fish and Wildlife Service.

[FR Doc. 2011–18856 Filed 7–26–11; 8:45 am]

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H.R. 2279/P.L. 112–21

Airport and Airway Extension Act of 2011, Part III (June 29, 2011; 125 Stat. 233)

S. 349/P.L. 112–22

To designate the facility of the United States Postal Service located at 4865 Tallmadge Road in Rootstown, Ohio, as the ''Marine Sgt. Jeremy E. Murray Post Office''. (June 29, 2011; 125 Stat. 236)

S. 655/P.L. 112–23

To designate the facility of the United States Postal Service located at 95 Dogwood Street in Cary, Mississippi, as the ''Spencer Byrd Powers, Jr. Post Office''. (June 29, 2011; 125 Stat. 237)

Last List June 28, 2011

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